

## **Rule 91. Absence of Party at Hearing**

**(a) Failure to be Present at Hearing.** The arbitration hearing shall proceed in the absence of any party who, after due notice, fails to be present. The panel shall require the other party or parties to submit such evidence as the panel may require for the making of an award. The failure of a party to be present, either in person or by counsel, at an arbitration hearing shall constitute a waiver of the right to reject the award and a consent to the entry by the court of a judgment on the award. In the event the party who fails to be present thereafter moves, or files a petition to the court, to vacate the judgment as provided therefor under the provisions of the Code of Civil Procedure for the vacation of judgments by default, sections 2-1301 and 2-1401, the court, in its discretion, in addition to vacating the judgment, may order the matter for rehearing in arbitration, and may also impose the sanction of costs and fees as a condition for granting such relief. For the purposes of this paragraph, being present encompasses appearing in person, by counsel, or remotely, including by telephone or video conference.

**(b) Good-Faith Participation.** All parties to the arbitration hearing must participate in the hearing in good faith and in a meaningful manner. If a panel of arbitrators unanimously finds that a party has failed to participate in the hearing in good faith and in a meaningful manner, the panel's finding and factual basis therefor shall be stated on the award. Such award shall be *prima facie* evidence that the party failed to participate in the arbitration hearing in good faith and in a meaningful manner and a court, when presented with a petition for sanctions or remedy therefor, may order sanctions as provided in Rule 219(c), including, but not limited to, an order debarring that party from rejecting the award, and costs and attorney fees incurred for the arbitration hearing and in the prosecution of the petition for sanctions, against that party.

Adopted May 20, 1987, effective June 1, 1987; amended April 7, 1993, effective June 1, 1993; amended Sept. 29, 2021, eff. Oct. 1, 2021.

### Committee Comments

#### Paragraph (a)

There is precedent for such a rule and its consequence in the rules of other jurisdictions. Cuyahoga County (Cleveland), Ohio, has long had a rule which provides that the failure of a party to appear at the hearing either in person or by counsel constitutes a waiver of his right to reject the award and demand trial and further operates as a consent to the entry of judgment on the award.

The Washington rules provide that a party who fails to participate at the hearing without good cause waives the right to a trial.

The court administrator of the Philadelphia Court of Common Pleas, Judge Harry A. Takiff, upon reviewing our initial draft, applauded the inclusion of this rule. Judge Takiff proposed to recommend the adoption of a like rule for the Pennsylvania arbitration programs.

The enactment, by the legislature, establishing the procedure of mandatory court-annexed arbitration as an integral part of the juridical process of dispute resolution and the promulgation of these rules to implement such legislation compels the conclusion that its process must be utilized in arbitrable matters either to finally resolve the dispute or as the obligatory step prior to

resolution by trial. To permit any party or counsel to ignore the arbitration hearing or to exhibit an indifference to its conduct would permit a mockery of this deliberate effort on behalf of the public, the bar and judiciary to attempt to achieve an expeditious and less costly resolution of private controversies.

A party who knowingly fails to attend the scheduled hearing, either in person or by counsel, must be deemed to have done so with full knowledge of the consequences that inhere with this rule. Where the failure to attend was inadvertent, relief may be available to the party under the provisions of the Code of Civil Procedure, sections 2-1301 or 2-1401, upon such terms and conditions as shall be reasonable. See Ill. Ann. Stat., ch. 110, pars. 2-1301, 2-1401, Historical & Practice Notes (Smith-Hurd 1983); also *Braglia v. Cephus* (1986), 146 Ill. App. 3d 241, 496 N.E.2d 1171.

#### Paragraph (b)

Prior to the adoption of these sanctions, there were complaints by arbitrators that some parties and lawyers would merely attend but refuse to participate in arbitration. This paragraph was adopted to discourage such misconduct.

The arbitration process, and this rule in particular, was not intended to force parties to settle cases. Settlement, by definition, must be voluntary and not compelled. However, mandatory arbitration is a dispute resolution process under the auspices of the court. Parties and lawyers must not be allowed to abuse the arbitration process so as to make it meaningless.

Arbitration must not be perceived as just another hurdle to be crossed in getting the case to trial. Good-faith participation, as required by this rule, was therefore intended to assure the integrity of the arbitration process.

In drafting Rule 91(b), the committee surveyed the experience of other States, drawing particularly on similar requirements for good-faith participation in the mandatory arbitration rules of Arizona, California and South Carolina.