

### **Rule 93. Rejection of Award**

**(a) Rejection of Award and Request for Trial.** Within 30 days after the filing of an award with the clerk of the court, and upon payment to the clerk of the court of the sum of \$200 for awards of \$30,000 or less or \$500 for awards greater than \$30,000, any party who was present at the arbitration hearing, either in person or by counsel, may file with the clerk a written notice of rejection of the award and request to proceed to trial, together with a certificate of service of such notice on all other parties. The filing of a single rejection shall be sufficient to enable all parties except a party who has been debarred from rejecting the award to proceed to trial on all issues of the case without the necessity of each party filing a separate rejection. The filing of a notice of rejection shall not be effective as to any party who is debarred from rejecting an award.

**(b) Arbitrator May Not Testify.** An arbitrator may not be called to testify as to what transpired before the arbitrators and no reference to the fact of the conduct of the arbitration hearing may be made at trial.

**(c) Waiver of Costs.** Upon application of a poor person, pursuant to Rule 298, herein, the sum required to be paid as costs upon rejection of the award may be waived by the court.

Adopted May 20, 1987, effective June 1, 1987; amended April 7, 1993, effective June 1, 1993; amended December 3, 1996, effective January 1, 1997.

#### Committee Comments

##### Paragraph (a)

Delaware and New Jersey rules relative to arbitration programs expressly provide that the sole remedy of a party unwilling to accept the arbitration award is to file a rejection and to proceed on to trial. It is the Committee's view that this should be the interpretation applied by the courts with regard to proceedings after award.

Even under the Illinois Uniform Arbitration Act, section 112, it has been interpreted by the Illinois Supreme Court that an arbitration award may not be set aside, upon application to a court, for the arbitrator's errors in judgment or mistakes of law or fact. (*Garner v. Ferguson* (1979), 76 Ill. 2d 1, 389 N.E.2d 1181.) Under this section of the U.A.A., a party may apply to the court to vacate the award where the award was procured by corruption, fraud or other undue means; or that an arbitrator was guilty of misconduct prejudicing the rights of any party; or the arbitrators exceeded their powers. The Committee urges the interpretation that such alleged conduct should be addressed to the court for redress in a petition independent of the course of the proceedings in the action subsequent to the award; that the sole remedy in relation to the award, as an intermediate mechanism to resolve the dispute, should be to avail oneself of the right to a trial. The enabling act of Illinois expressly provides that the Illinois Uniform Arbitration Act shall not apply to these mandatory arbitration proceedings.

The 1981 official Explanatory Note to Pennsylvania Rule 1308 states:

“The Rules do not continue the practice of petitioning to set aside an award for corruption or misbehavior. Hearings or depositions on the petition proceedings could delay the proceedings. Rule 1311(b) creates quasi-judicial immunity for the arbitrators with respect to their official actions and they cannot be called to testify. As a practical matter, if the fraud or

corruption were proved, remand and the appointment of a new panel could be the only relief. *Trial de novo is preferable since it expedites the proceedings. The court would of course have the power to punish the attorney-arbitrators involved for any professional misconduct that could be proved.*” (Emphasis added.) (Our recommended Rule 93(b) incorporates the exact language of Pennsylvania Rule 1311(b).)

Only a party who has attended the hearing in person or by counsel shall have the right to reject the award without regard to the basis for such rejection. The filing of a rejection and request for trial will permit any other party, whose interest has not been otherwise adjudicated, to participate in the trial.

A party who fails to appear at the hearing, although thereby deemed to have waived the right to reject the award, may nevertheless participate in a trial of the cause upon rejection of the award by any other party, provided a judgment has not been entered against him on the award and the judgment has not been vacated.

The assessment of the fee of \$200 on the party who files the rejection is an item of cost consistent with the authorization provided therefor by the enabling legislation and is consistent with similar costs imposed in other jurisdictions in relation to the right to proceed further to a trial. This sum amounts to a small measure of the concomitant cost to the public for the conduct of the trial itself and would appear appropriate as an imposition on a party who has already been provided with a full hearing forum to resolve the dispute.

The Committee is unable to reach a consensus on the question of recommending a specific rule on whether or not the \$200 fee should be recoverable as a taxable cost. Pennsylvania, as does New York and Ohio, provides by rule that the costs assessed on the rejecting party shall apply to the cost of arbitrators fees and shall not be taxed as costs or be recoverable in any proceeding. The sum of \$200 is the same amount imposed by Philadelphia County’s rule on a party requesting trial after an award. Other jurisdictions, on the other hand, provide that such fee is recoverable and may be taxed as costs. If clarity in this regard requires a definitive rule, it is the Committee’s preference that the rule be stated similarly to that of Pennsylvania; to wit, the sum so paid to the clerk shall not be taxed as costs or recoverable in any proceeding.

Many jurisdictions authorize fee and cost sanctions to be imposed on parties who fail to improve their positions at the trial after hearing. It is hoped that the quality of the arbitrators, the integrity of the hearings and the fairness of the awards will keep, to a minimum, the number of rejections. Both the Pittsburgh and Philadelphia programs, in Pennsylvania, are prime examples of effective arbitration systems without the use of cost and fee sanctions. Until such time as it becomes evident that there is an abusive use of the right of rejection, the Committee proposes to rely on the integrity of practitioners and their clients to abide a fair decision of the arbitrators. Abuse of this process may be dealt with under existing disciplinary and remedial measures.

In *Campbell v. Washington* (1991), 223 Ill. App. 3d 283, the court interpreted Rule 93 as providing that a party’s right to reject an award is preserved when either the party or its attorney appears at the arbitration hearing. Therefore, the court held a trial court could not enter an order requiring forfeiture of the right of rejection as a sanction for failure of a party to appear pursuant to notice. The 1993 amendment to Rule 93 makes this rule consistent with other rules (for

example, Rules 90(g) and 91(b)) that allow a court to enter an order debaring a party from rejecting the award. The filing of a rejection by a party who is or has been debarred from rejecting is ineffective even if the party was present at the arbitration hearing in person or by counsel.

#### Paragraph (b)

The majority of jurisdictions prohibit any reference in a subsequent trial to the fact that an arbitration proceeding was held or that an award was made; arbitrators are not permitted to testify regarding the conduct at the hearing. In addition, several of the jurisdictions, California and New Jersey in particular, prohibit recording of the arbitration proceedings or the use of any testimony taken at the hearing at a subsequent trial. However, where a recording of testimony at the hearing is not prohibited such testimony could be used at trial if otherwise admissible under the established rules of evidence of that jurisdiction.

#### Paragraph (c)

In some jurisdictions where costs such as herein imposed are waived, it is provided in their rules that such costs may be imposed thereafter as an offset in the event a sufficient sum is recovered by the indigent party upon the trial of the cause.