Case Flow and Hearings Calendar

Case Assignment

In most instances, cases are assigned to mandatory arbitration calendars either as initially filed or by court transfer. In an initial filing, litigants may file their case with the office of the clerk of the circuit court as an arbitration case. The clerk assigns the case an “AR” designation, which places the matter directly onto the calendar of the supervising judge for arbitration. However, in the Circuit Court of Cook County, cases are not initially filed as arbitration cases. All civil cases in which the money damages being sought are between $10,000 and $50,000 are filed in the Municipal Department and are given an "M" designation by the clerk. Cases in which the money damages being sought are greater than $10,000 but do not exceed $30,000 are considered “arbitration-eligible.” After all preliminary matters are heard, arbitration-eligible cases are transferred to the arbitration program.

An additional means by which cases are assigned to a mandatory arbitration calendar is through transfer by the court. In all jurisdictions operating a court-annexed mandatory arbitration program, if it appears to the court that no claim in the action has a value in excess of the particular arbitration program’s jurisdictional amount, a case may be transferred to the arbitration calendar from another calendar. For example, if the court finds that an action originally filed as a law case (actions for damages in excess of $50,000) has a potential for damages within the jurisdictional amount for arbitration, the court may transfer the law case to the arbitration calendar.

Pre-Hearing Matters

The pre-hearing stage for cases subject to arbitration is similar to the pretrial stage for all cases. Summons are issued, motions are made and argued, and discovery is conducted. However, for cases subject to arbitration, discovery is limited pursuant to Illinois Supreme Court Rules 89 and 222.

One of the most important features of the arbitration program is the court's control of the time elapsed between the date of filing or transfer of the case to the arbitration calendar and the arbitration hearing. Supreme Court Rule 88 mandates speedy dispositions. Pursuant to the Rule, and consistent with the practices of each program site, all cases set for arbitration must proceed to hearing within one year of the date of filing or transfer to the arbitration calendar unless continued by the court upon good cause shown.

Pre-Hearing Calendar

The first stage of the arbitration process is pre-hearing. The pre-hearing arbitration calendar is comprised of new filings, reinstatements and transfers from other calendars. Cases may be removed from the pre-hearing calendar in either a dispositive or non-dispositive manner. A dispositive removal is one which terminates the case prior to commencement of the arbitration hearing. There are generally three types of pre-hearing dispositive removals: entry of a judgment, case dismissal, or the entry of a settlement order by the court.

A non-dispositive removal of a case from the pre-hearing arbitration calendar may remove the case from the arbitration calendar altogether. Other non-dispositive removals may simply move the case along to the next stage of the arbitration process. A case which has proceeded to an arbitration hearing, for example, is considered a non-dispositive removal from the pre-hearing calendar. Non-dispositive removals also include those occasions when a case is placed on a special calendar. For example, a case transferred to a bankruptcy calendar will generally stay all arbitration-related activity. Another type of non-dispositive removal from the pre-hearing calendar occurs when a case is transferred out of arbitration. Occasionally, a judge may decide that a case is not suited for arbitration and transfer the case to the appropriate calendar.

To provide litigants with the timeliest disposition of their cases, Illinois' arbitration system encourages attorneys and litigants to focus their early attention on arbitration-eligible cases. Therefore, the practice is to set a firm and prompt date for the arbitration hearing so that disputing parties, anxious to avoid the time and cost of an arbitration hearing, have a powerful incentive to negotiate and settle the matter prior to the hearing. In instances where a default judgment can be taken, parties are also encouraged to seek that disposition at the earliest possible time.

As a result of this program philosophy, a sizeable portion of each jurisdiction's arbitration caseload terminates voluntarily, or by court order, in advance of the arbitration hearing. An analysis of the State Fiscal Year 2008 statistics indicates that parties are carefully managing their cases and working to settle their disputes without significant court intervention prior to the arbitration hearing. During State Fiscal Year 2008, 52% of the cases on the pre-hearing arbitration calendar were disposed through default judgment, dismissal or some other form of pre-hearing termination. While it is true that a large number of these cases may have terminated without the need for a trial, and regardless of the availability of the arbitration process, the arbitration process tends to motivate a disposition sooner in the life of most cases due in part to the setting of a firm hearing date.

Additionally, terminations via court-ordered dismissals, voluntary dismissals, settlement orders and default judgments typically require limited court time to process. To the extent that arbitration encourages these dispositions, the system helps save the court and the litigants the expense of more costly, more time consuming proceedings.

A high rate of pre-hearing terminations also allows each program site to remain current with its hearing calendar and may allow the court to reduce a backlog. The combination of pre-hearing terminations and arbitration hearing capacity enables the system to absorb and process a greater number of cases in less time. (See Appendix 1 for Pre-Hearing Calendar Data).

Arbitration Hearing and Award

With some exceptions, the arbitration hearing resembles a traditional trial court proceeding. The Illinois Code of Civil Procedure and the rules of evidence apply. However, Supreme Court Rule 90(c) makes certain documents presumptively admissible. These documents include bills, records, and reports of hospitals, doctors, dentists, repair persons and employers, as well as written statements from opinion witnesses. The streamlined mechanism for the presentation of evidence enables attorneys to present their cases without undue delay.

Unlike proceedings in the trial court, the arbitration hearing is conducted by a panel of three attorneys who serve as arbitrators and are trained pursuant to local rules. At the hearing, each party to the dispute makes a concise presentation of his/her case to the arbitrators. Immediately following the hearing, the arbitrators deliberate privately and decide the issues as presented. To find in favor of a party requires the concurrence of two arbitrators. In most instances, an arbitration hearing is completed in approximately two hours. Following the hearing and the arbitrators' disposition, the clerk of the court records the arbitration award and forwards notice to the parties. As a courtesy to the litigants, many arbitration centers post the arbitration award immediately following submission by the arbitrators, thereby notifying the parties of the outcome on the same day as the hearing.

Post-Hearing Calendar

The post-hearing arbitration calendar consists largely of cases which have been heard by an arbitration panel and are awaiting further action. Upon conclusion of an arbitration hearing, a case is removed from the pre-hearing arbitration calendar and added to the post-hearing calendar. Cases previously terminated following a hearing may also be subsequently reinstated (added) at this stage. However, this is a rare occurrence even in the larger arbitration programs.

Arbitration administrators report three types of post-hearing removals from the arbitration calendar: (1) entry of judgment on the arbitration award; (2) dismissal or settlement by order of the court; or (3) rejection of the arbitration award. While any of these actions will remove a case from the post-hearing calendar, only judgment on the award or dismissal and settlement result in termination of the case. These actions are considered dispositive removals. Post-hearing terminations, or dispositive removals, are typically the most common means by which cases are removed from the post-hearing arbitration calendar.

A rejection of an arbitration award is a non-dispositive removal of a case from the post-hearing arbitration calendar, which places the case on the post-rejection arbitration calendar.

A commonly cited measure of performance for court-annexed arbitration programs is the extent to which awards are accepted by the litigants as the final resolution of the case. However, parties have many resolution options after the arbitration hearing is concluded. Tracking the various options by which post-hearing cases are removed from the arbitration inventory provides the most accurate measure.

A satisfied party may move the court to enter judgment on the arbitration award. Statewide statistics indicate 22% of parties in arbitration hearings motioned the court to enter a judgment on an award. If no party rejects the arbitration award, the court may enter judgment. Figures reported indicate that approximately 33% of the cases which progressed to a hearing were disposed after the arbitration hearing on terms other than those stated in the award. These cases were disposed either through settlement reached by the parties or by voluntary dismissals. The parties work toward settling the conflict prior to the deadline for rejecting the arbitration award. These statistics suggest that in a number of cases which progress to hearing, the parties may be guided by the arbitrator's assessment of the worth of the case, but they may not want a judgment entered.

The post-hearing statistics for arbitration programs consist of judgments entered on the arbitration award and settlements reached after the arbitration award and prior to the expiration for the filing of a rejection.

Rejecting an Arbitration Award

Supreme Court Rule 93 sets forth four conditions which a party must meet in order to reject an arbitration award. The rejecting party must: (1) have been present, personally or via counsel, at the arbitration hearing or that party's right to reject the award will be deemed waived; (2) have participated in the arbitration process in good faith and in a meaningful manner; (3) file a rejection notice within thirty days of the date the award was filed; and (4) unless indigent, pay a rejection fee. If these four conditions are not met, the party may be barred from rejecting the award and any other party to the action may petition the court to enter a judgment on the arbitration award. If a party's rejection of an arbitration award is filed and not barred, the supervising judge for arbitration must place the case on the trial call.

The rejection fee is intended to discourage frivolous rejections. All such fees are paid to the clerk of the court, who forwards the fee to the State Treasurer for deposit in the Mandatory Arbitration Fund. For awards of $30,000 or less, the rejection fee is $200. For awards greater than $30,000, the rejection fee is $500.

Rejection rates for arbitration awards vary from county to county. In State Fiscal Year 2008, the statewide average rejection rate was 51% and is fairly consistent with the five year average of 50% (State Fiscal Year 2004 through 2008). Although the rejection

rate may seem high, the success of arbitration is best measured by the percentage of cases resolved before trial, rather than by the rejection rate of arbitration awards alone. (See Appendix 2 for Post-Hearing Calendar Data). Of cases qualifying for the arbitration process, less than 2% ultimately go to trial in the trial courts.

Post-Rejection Calendar

The post-rejection calendar consists of arbitration cases in which one of the parties rejects the award of the arbitrators and seeks a trial before a judge or jury. In addition, cases which are occasionally reinstated at this stage of the arbitration process may be added to the inventory of cases pending post-rejection action. Removals from the post-rejection arbitration calendar are generally dispositive. When a case is removed by way of judgment before or after trial, dismissal or settlement, it is removed from the court's inventory of pending civil cases.

Many options remain available to parties after having rejected an award. As noted, parties file a notice of rejection of the arbitration award for the same variety of tactical reasons that they file notices of appeal from trial court judgments. More significant than the rejection rate is the frequency with which arbitration cases are settled subsequent to the rejection, but prior to trial. Of these cases that have gone to hearing, and which the award was rejected, 52% are still resolved. (See Appendix 3 for Post-Rejection Calendar Data).