

COVID-19 AND YOUR CIVIL JURY TRIAL

by Rick Ellsley

Did COVID-19 Cancel Your Civil Jury Trial? Arbitrate the Case and Get a Decision Within 10 Days!

Yes. It is true. Very few trial lawyers like having to go to arbitration. In fact, probably no trial lawyer likes arbitration.

However, courts throughout Florida have halted in-person jury trials for almost all of 2020 due to COVID-19. It remains unlikely that there will be in-person civil jury trials in 2021 and maybe even through 2022.

Once the courthouses do re-open, the backlog of criminal trials will necessarily require many civil judges to preside over these criminal trials, leaving a huge number of civil cases awaiting jury trials.

What are trial lawyers and their clients supposed to do to get their cases adjudicated in a timely manner?

One answer is arbitration. Arbitration provides an effective, efficient, and economical resolution for a civil case. It is a smart alternative to waiting years for civil jury trials to be available again. Many civil court judges understand this and are referring cases to arbitration very soon after the case is formally at issue. These judges recognize the use for arbitration as a caseload reduction tool. Once the order to arbitrate is issued, the litigants must focus and prepare the cases for a fact-finding determination by a neutral arbitrator or panel of 3 arbitrators.

In Florida, arbitration is offered in a few different flavors. There is non-binding arbitration, voluntary binding arbitration, and voluntary trial resolution. Chapter 44 of the Florida Statutes regulates arbitration in our state. What is **non-binding** arbitration? Is it fast? What are the rules? Non-binding arbitration is detailed in Florida Statute §44.103 and Rules 1.810 and 1.820 of the Florida Rules of Civil Procedure. The parties may choose to have the case heard by one arbitrator or a panel of 3 arbitrators. Rule 1.820(c) requires that the arbitration hearing be “conducted informally” and that “presentation of testimony shall be kept to a minimum and matters shall be presented to the arbitrators primarily through the statements and arguments of counsel.”

Thus, for most disputes, non-binding arbitrations will be completed within 1 or 2 days. Rule 1.820(g)(3) mandates that “Within 10 days of the final adjournment of the arbitration hearing, the arbitrator(s) shall notify the parties, in writing, of their decision.” For most trial attorneys, it truly is a welcome sight to see a determinative decision on a case arrive within 10 days. This is especially true in the COVID-closure era.

In non-binding arbitration, after issuance of the arbitration decision, any party may move the trial court for a trial de novo, but must do so within 20 days of the service on the parties of the arbitration decision. Importantly, if a plaintiff does not accept the award of the arbitration panel, moves for a trial de novo, and then “obtains a judgment at trial which is at least 25 less than the arbitration award” then Florida Statute §44.103 (6) (a) allows the non-moving party to petition the trial court for an order assessing attorney fees and costs incurred

after the arbitration decision was delivered. Similarly, under subsection (6)(b), if a defendant does not accept the award of the arbitration panel, moves for a trial de novo, and then “has a judgment entered against [it] which is at least 25% more than the arbitration award” then the non-moving party may petition the trial court for fees and costs incurred post-arbitration.

In addition to non-binding arbitration, voluntary arbitration and voluntary trial resolution are two other choices; however, they are more formal in nature than non-binding arbitration. They are regulated by Florida Statute §44.104 and Rule 1.830 of the Florida Rules of Civil Procedure. The law provides that “the parties to a civil dispute may agree in writing to submit the controversy to voluntary binding arbitration or voluntary trial resolution.” Importantly, Florida Statutes §44.104(9) and (10) require that “The Florida Evidence Code shall apply” and that any appeal of the decision goes to the circuit court. Rule 1.830(c)(2) permits an appeal to be filed within 30 days of service of the arbitration decision, but if no appeal is timely filed, the arbitration decision is to be entered into a judgment by the trial court. Voluntary trial resolution is essentially a civil bench trial with a private judge. Arbitrators and voluntary trial resolution judges have the authority to issue subpoenas for witnesses and documents.

How can parties start the arbitration process? If the trial judge has not already issued an order referring a matter for arbitration, the parties may file a motion for arbitration. In Broward County, all necessary form orders and notices are accessible by clicking on Florida’s 17th Judicial Circuit’s Court Administration website and navigating to the Court Programs page: <http://www.17th.flcourts.org> The forms are simple and easy to comply with.

Obviously, a timely civil jury trial is the preferred choice. Until we are all able to return to civil trial by jury in a courtroom in a few years, arbitration offers a timely avenue to get a case resolved in the near term.

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