

**Proposal 05-03
(P.R. 0137)**

**Offered by the Alternative Dispute Resolution Coordinating Committee of the
Illinois Judicial Conference**

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. For purposes of arbitration hearings in causes of action concerning subrogation, the insured and/or the driver of the vehicle shall be considered parties under Supreme Court Rule 90 (g) even when the cause of action is filed in the name of the insurance company. 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~~ except upon leave of court, 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.

(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.

Committee Comments

It is the opinion of the committee that the concept of good faith participation requires the major participants in cases to be present at arbitration. Their appearance and participation allows the arbitrators to properly evaluate all aspects of a dispute including witness credibility. This insures the integrity of the arbitration process.

In the traditional subrogation case, the plaintiff is the insurance company, not the driver of the plaintiff's car. Thus, Rule 237 does not apply, nor do discovery rules allow for a fair inquiry prior to the hearing. This rule change to Supreme Court Rule 91 puts the driver of the plaintiff's car or the insured into the category of a "party," making them subject to discovery and requiring their appearance at arbitration with or without a 237 notice. This rule change is intended to require of a plaintiff at arbitration that which would be required at trial.