

## Court-Ordered Nonbinding Arbitration: A Way to Move Your Case Forward During COVID

This article explores an alternative for civil trial attorneys to utilize court-ordered, nonbinding arbitration to move a case forward during COVID-19 restrictions.

By Howard "Buddy" Googe

With the onslaught of COVID-19 in the State of Florida, civil trial attorneys find themselves in a dilemma as to how to move their cases forward. The ability to get a civil case set for a jury trial has been limited as a result of restrictions imposed by Executive Orders of the Governor and Administrative Orders by the Florida Supreme Court. Pursuant to Administrative Orders by the Florida Supreme Court, jury selection proceedings and civil trials were suspended from March 16 through July 17. Currently, only in Judicial Circuit Courts and counties that have transitioned to Phase 2 Reopening is it possible for civil jury trials to be scheduled.

This article explores an alternative for civil trial attorneys to utilize court-ordered, nonbinding arbitration to move a case forward during COVID-19 restrictions.

### The Process

Court-ordered, nonbinding arbitration is governed by Florida Statutes Section 44.103 as well as Rules of Civil Procedure adopted by the Supreme Court. Rule 1.820 of the Florida Rules of Civil Procedure specifically sets forth hearing procedures for Court-ordered non-binding arbitration.

With a few exceptions, courts may refer contested civil actions filed in a Circuit or County Court to nonbinding arbitration pursuant to Section 44.103(2), Florida Statutes. Pursuant to Rule 1.800 of the Florida Rules of Civil Procedure, a civil action may also be referred to arbitration by stipulation of the parties or upon motion of any party.

### Cost and Time Savings

The hearing is conducted informally with presentation of testimony and evidence to be kept to a minimum, and



Howard "Buddy" Googe, with Becker & Poliakoff in Stuart, FL. Courtesy photo

matters are presented to the Arbitrator(s) primarily through the statements and argument of counsel. This process provides an efficient way for parties to present their case at a significantly reduced cost than that of a full jury trial.

The parties may choose to have a single Arbitrator or a panel of three arbitrators. If the parties agree, they may also choose to conduct the arbitration hearing by Zoom teleconference. Any party may have the record and transcript of the arbitration hearing

made at that party's expense. Rule 1.802(f), Florida Rules of Civil Procedure.

Another advantage of utilizing the court-ordered, non-binding arbitration process is that the arbitration must be completed within 30 days of the first arbitration hearing, unless extended by court order, on motion by the chief arbitrator or a party. No extension of time shall be for a period exceeding 60 days from the date of the first arbitration hearing. Rule 1.820(g), Florida Rules of Civil Procedure.

Upon completion of the arbitration hearing, the arbitrator(s) must render a written decision within 10 days of the final adjournment of the arbitration hearing. The arbitration decision may set forth the issues in controversy and the Arbitrator's conclusions and findings of fact and law.

Any party who disagrees with an arbitration decision, may file a motion for trial de novo. If a motion for trial de novo is not filed within 20 days of service of the decision on the parties, the decision shall be referred to the presiding Judge, who shall enter such orders and judgments as may be required to carry out the terms of the decision as provided in Section 44.103(5), Florida Statutes.

The Florida legislature enacted Florida Statutes Section 44.103 as an alternative dispute resolution process

for the purpose of encouraging litigants to reach voluntary resolutions of lawsuits after reviewing the arbitration decision.

### **The Enforcement Hammer**

Pursuant to Florida Statutes Section 44.103(6), either party may file a motion within 30 days after the entry of a Judgment and the court may assess costs against the party requesting a trial de novo, including arbitration costs, court costs, reasonable attorney fees, and other reasonable costs such as investigation expenses and expenses for experts or other testimony which were incurred after the arbitration hearing and continuing through the trial of the case in accordance with the guidelines for taxation of costs as adopted by the Supreme Court. It is important to note that Section 44.103(6), Florida Statutes, provides the trial court with the discretion to assess costs and attorney fees or not. See *Saltzman, M.D. v. Hadlock*, 112 So.3d 772 (5<sup>th</sup> DCA 2013).

Section 44.103(6), Florida Statutes includes attorney fees and costs assessment guidelines. If the plaintiff files for a trial de novo and obtains a Judgment at trial which is at least 25% less than the arbitration award, costs and attorney fees shall be set off against the award. If the costs and attorney fees awarded total more

than the amount of the Judgment, the court shall enter Judgment for the defendant against the plaintiff for the amount of the costs and attorney fees, less the amount of the award to the plaintiff. "Judgment is defined as meaning the amount of the net Judgment entered, plus all taxable costs pursuant to the guidelines for taxation of costs as adopted by the Supreme Court, plus any post arbitration collateral source payments received or due as of the date of the Judgment, and plus any post-arbitration settlement amounts by which the verdict was reduced.

Alternatively, if the defendant files for a trial de novo and has a Judgment entered against it which is at least 25% more than the arbitration award, the court may assess costs and attorney's fees against the defendant. Section 44.103(6), Florida Statutes.

While court ordered non-binding arbitration may not be the best strategy for every case, it certainly provides an alternative to move a civil case forward during COVID-19 restrictions.

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