

**Rule 5. Arbitration****5.01 Authority**

Pursuant to Minnesota Statutes, section 484.73, the Fourth Judicial District has authorized the establishment of a system of arbitration for civil cases.

**5.02 Actions Subject to Arbitration**

(a) All civil actions are subject to arbitration except:

1. Actions for money damages in excess of \$50,000.00;
2. Actions for money damages within the jurisdictional limit of the Hennepin County Conciliation Court;
3. Actions that include a claim for equitable relief that is neither insubstantial nor frivolous;
4. Actions removed from the Hennepin County Conciliation Court for trial de novo;
5. Class actions;
6. Actions involving family law matters;
7. Unlawful detainer actions; or
8. Actions involving the title to real estate.

(b) The Chief Judge or the judge that the case is assigned to shall have authority to order that particular actions otherwise excluded shall be submitted to arbitration.

(c) Any action otherwise excluded above may be submitted to arbitration by agreement of all parties.

**5.03 Qualifications of Arbitrator**

Unless otherwise ordered by the Chief Judge or his/her designee or agreed to by all parties, an arbitrator must be admitted to practice in the State of Minnesota for a minimum of five years and must sign and file an Oath of Office with the Chief Judge of the District Court.

**5.04 Selection of Arbitrators**

(a) Arbitrators shall be selected from members of the Bar who reside or practice in Hennepin County and who are qualified in accordance with Rule 5.03.

(b) The Court Administrator shall randomly assign arbitrators from a list of qualified arbitrators maintained by the Court.

(c) Any party or his/her attorney may file with the Court Administrator within five days of the notice of appointment and serve on the opposing party a notice to remove. Upon receipt of the notice to remove, the Court Administrator shall immediately assign another arbitrator. After a party has once disqualified an arbitrator as a matter of right, a substitute arbitrator may be disqualified by that party only by making an affirmative showing of prejudice to the Chief Judge or his/her designee.

**5.05 Arbitrator's Fees**

(a) The arbitrator's award or a notice of settlement signed by the parties or their counsel must be timely filed with the Court Administrator before a fee may be paid to the arbitrator.

(b) On the arbitrator's verified ex parte application, the Court may for good cause authorize payment of a fee when the award was not timely filed.

(c) The arbitrator's fee statement shall be submitted to the Court Administrator promptly upon the completion of the arbitrator's duties and shall set forth the title and number of the cause arbitrated, the date of the arbitration hearing, and the date the award or settlement was filed.

(d) The arbitrator's fee will be set by the Court with a maximum of \$150 per day.

#### **5.06 Communication with the Arbitrator**

No ex parte disclosure of any offers of settlement shall be made to the arbitrator prior to the filing of the award.

#### **5.07 Arbitration Hearing**

(a) Within 30 days after assignment, the Court Administrator shall schedule an arbitration hearing, which hearing shall be set for not more than 60 days after the deadline for completion of discovery at a specified time and place. No further extensions for discovery shall be allowed unless granted by the Chief Judge or his/her designee on motion.

(b) By agreement of all parties, or by order of the court, an action may be submitted to arbitration before the deadline for completion of discovery.

(c) Failure to appear at the arbitration hearing may subject the nonappearing party or counsel, or both, to imposition by the assigned judge of appropriate sanctions.

(Amended January 22, 1992.)

#### **5.08 Continuances**

A continuance of the arbitration hearing may be granted only by the Court Administrator.

#### **5.09 Rules of Evidence at Hearing**

(a) All evidence shall be taken in the presence of the arbitrator and all parties, except where any of the parties has waived the right to be present or is absent after due notice of the hearing.

(b) The Rules of Evidence, construed liberally in favor of admission, apply to the conduct of the arbitration hearing, except:

1. Any party may offer, and the arbitrator shall receive in evidence, written medical and hospital reports, records and bills (including physiotherapy, nursing and prescription bills), documentary evidence of loss of income, property damage, repair bills or estimates, and police reports concerning an accident which gave rise to the case, if copies have been delivered to all opposing parties at least ten days prior to the hearing. Any other party may subpoena the author of a report, bill or estimate as a witness and examine that person as if under cross-examination. Any repair estimate offered as an exhibit, and the copies delivered to opposing parties, shall be accompanied by a statement indicating whether or not the property was repaired and if it was, whether the estimated repairs were made in full or in part, and by a copy of the receipted bill showing the items of repair made and the amount paid. The arbitrator shall not consider any opinion expressed in a police report as to ultimate fault.

2. The written statement of any other witness, including written reports of expert witnesses not enumerated above, and including statements of opinion which the witness would be qualified to express if testifying in person, may be offered and shall be received in evidence if: (i) they are made by affidavit or by declaration under penalty of perjury; (ii) copies have been delivered to all

opposing parties at least ten days prior to the hearing; and (iii) no opposing party has, at least five days before the hearing, delivered to the proponent of the evidence a written demand that the witness be produced in person to testify at the hearing. The arbitrator shall disregard any portion of a statement received pursuant to this rule that would be inadmissible if the witness were testifying in person, but the inclusion of inadmissible matter does not render the entire statement inadmissible.

3. The deposition of any witness may be offered by any party and shall be received in evidence, subject to objections, notwithstanding that the deponent is not "unavailable as a witness" and no exceptional circumstances exist, if: (i) the deposition was taken in the manner provided for by law or by stipulation of the parties and within the time provided for in these rules; and (ii) not less than ten days prior to the hearing the proponent of the deposition serves on all opposing parties notice of his/her intention to offer the deposition in evidence. The opposing party, upon receiving the notice, may subpoena the deponent and if he does so, at the discretion of the arbitrator, either the deposition may be excluded from evidence or the deposition may be admitted and the deponent may be further cross-examined by the party who subpoenaed him or her. These limitations are not applicable to a deposition admissible under the terms of Minn. R. Civ. P. 32.01.

(c) Subpoenas shall issue for the attendance of witnesses at arbitration hearings as provided in Minn. R. Civ. P. 45. It shall be the duty of the party requesting the subpoena to modify the form of subpoena to show that the appearance is before an arbitrator, and to give the time and place set for the arbitration hearing. At the discretion of the arbitrator, nonappearance of a properly subpoenaed witness may be a ground for an adjournment or continuance of the hearing. If any witness properly served with a subpoena fails to appear at the arbitration hearing or, having appeared, refuses to be sworn or to answer, proceedings to compel compliance with the subpoena on penalty of contempt may be had before the Court.

(d) Notwithstanding any other provisions in these rules, a party offering opinion testimony in the form of an affidavit or other statement, or a deposition, shall have the right to withdraw such testimony, whereupon the attendance of the witness at the hearing shall not be required.

### **5.10 Conduct of the Hearing**

(a) The arbitrator shall have the following powers:

1. To administer oaths or affirmations to witnesses;
2. To take adjournments upon the request of party or upon his/her own initiative when deemed necessary;
3. To permit testimony to be offered by deposition;
4. To permit evidence to be offered and introduced as provided in these rules;
5. To rule upon the admissibility and relevancy of evidence offered;
6. To invite the parties, on reasonable notice, to submit prehearing or posthearing briefs or prehearing statements of evidence;
7. To decide the law and facts of the case and make an award accordingly;
8. To award costs, not to exceed the statutory costs of the action;
9. To view any site or object relevant to the case; and
10. Any other powers agreed upon by the parties.

(b) The arbitrator may, but is not required to, make a record of the proceedings. Any records of the proceedings made by or at the direction of the arbitrator shall be deemed the arbitrator's personal notes and are not subject to discovery, and the arbitrator shall not deliver them to any party to the case or to any other person, except to an employee using the records under the arbitrator's supervision or pursuant to a subpoena issued in a criminal investigation or prosecution for perjury. No other record shall be made, and the arbitrator shall not permit the presence of a stenographer or court reporter or the use of any recording device at the hearing, except as expressly permitted by this rule.

### **5.11 The Award**

(a) The award shall be in writing and signed by the arbitrator. It shall determine all issues properly raised by the pleadings, including a determination of any damages and an award of costs if appropriate. The arbitrator is not required to make findings of fact or conclusions of law.

(b) Within ten days after the conclusion of the arbitration hearing, the arbitrator shall file his/her award with the Court Administrator, with proof of service on each party to the arbitration. On the arbitrator's application in cases of unusual length or complexity, the court may allow up to 20 additional days for the filing and service of the award. Within the time for filing the award, the arbitrator may file and serve an amended award.

(c) The Court Administrator shall enter the award as a judgment forthwith upon the expiration of 20 days after the award is filed if no party has, during that period, served and filed a request for trial as provided in these rules. Promptly upon entry of the award as a judgment, the Court Administrator shall mail notice of entry of judgment to all parties who have appeared in the case and shall execute a certificate of mailing and place it in the court's file in the case. The judgment so entered shall have the same force and effect in all respects as, and is subject to all provisions of law relating to, a judgment in a civil action or proceeding, except that it is not subject to appeal and it may not be attacked or set aside except as provided in subdivision (d). The judgment so entered may be enforced as if it had been rendered by the court in which it is entered.

(d) A party against whom a judgment is entered pursuant to an arbitration award may, within six months after its entry, move to vacate the judgment on the ground that the arbitrator was subject to a disqualification not disclosed before the hearing and of which the arbitrator was then aware, or upon one of the grounds set forth in the Uniform Arbitration Act, Minnesota Statutes, chapter 572, and upon no other grounds. The motion shall be heard by the Court upon notice to the adverse parties and to the arbitrator, and may be granted only upon clear and convincing evidence that the grounds alleged are true, and that the motion was made as soon as practicable after the moving party learned of the existence of those grounds.

### **5.12 Trial after Arbitration**

(a) Within 20 days after the arbitration award is filed with the Court Administrator, any party may request a trial by filing with the Court Administrator a request for trial, with proof of service of a copy upon all other parties appearing in the case. The 20-day period within which to request trial may not be extended.

(b) The case shall be restored to the civil calendar in the same position on the list it would have had if there had been no arbitration in the case, unless the Court orders otherwise for good cause.

(c) The case shall be tried as though no arbitration proceedings had occurred. No reference may be made during the trial to the arbitration award, to the fact that there had been arbitration proceedings, to the evidence adduced at the arbitration hearing, or to any other aspect of the

arbitration proceedings, and none of the foregoing may be used as affirmative evidence, or by way of impeachment, or for any other purpose during the trial.