M.R. 3140

IN THE
SUPREME COURT
OF
THE STATE OF ILLINOIS

Order entered March 1, 2001.

(Deleted material is struck through and new material is underscored.)

Effective immediately, Supreme Court Rules 87, 94, 212, 381 and 383 are amended as follows:

Amended Rule 87

Rule 87. Appointment, Qualification and Compensation of Arbitrators

(a) List of Arbitrators. A list of arbitrators shall be prepared in the manner prescribed by a circuit rule. The list shall consist of a sufficient number of members of the bar engaged in the practice of law and retired judges within the circuit in which the court is situated.

(b) Panel. The panel of arbitrators shall consist of three members of the bar, or such lesser number as may be agreed upon by the parties, appointed from the list of available arbitrators, as prescribed by circuit rule, and shall be chaired by a member of the bar who has engaged in trial practice for at least three years or by a retired judge. Not more than one member or associate of a firm or office association of attorneys shall be appointed to the same panel.

(c) Disqualification. Upon appointment to a case, an arbitrator shall notify the court and withdraw from the case if any grounds appear to exist for disqualification pursuant to the Code of Judicial Conduct.

(d) Oath of Office. Each arbitrator shall take an oath of office in each county or circuit in which the arbitrator intends to serve on an arbitration

panel. The oath shall be in conformity with the form provided in Rule 94 herein and shall be executed by the arbitrator when such arbitrator's name is placed on the list of arbitrators.

Arbitrators previously listed as arbitrators shall be relisted on taking the oath provided in Rule 94.

(e) Compensation. Each arbitrator shall be compensated in the amount of $75 per hearing.

Adopted May 20, 1987, effective June 1, 1987; amended December 3, 1997, effective January 1, 1998; amended March 1, 2001, effective immediately.

Amended Rule 94

Rule 94. Form of Oath, Award and Notice of Award

The oath, award of arbitrators, and notice of award shall be in substantially the following form:

In the Circuit Court of the ______________ Judicial Circuit, _______________ County, Illinois.

(Or, in the Circuit Court of Cook County, Illinois)

~~A.B., C.D. *etc.*~~)
~~(naming all plaintiffs),~~)
~~Plaintiffs,~~)
)
5.) No. _________
)
H.J., K.L. *etc.*) Amount Claimed ________
(naming all defendants),)
Defendants,)

OATH

~~We~~ I do solemnly swear (or affirm) that ~~we~~ I will support, obey, and defend the Constitution of the United States and the Constitution of the State of Illinois and that I will faithfully discharge the duties of my office.

____

~~Chairperson~~ Name of Arbitrator Date

* * *

Adopted May 20, 1987, effective June 1, 1987; amended March 1, 2001, effective immediately.

Amended Rule 212

Rule 212. Use of Depositions

(a) Purposes for Which Discovery Depositions May Be Used. Discovery depositions taken under the provisions of this rule may be used only:

(1) for the purpose of impeaching the testimony of the deponent as a witness in the same manner and to the same extent as any inconsistent statement made by a witness;

(2) as an admission made by a party or by an officer or agent of a party in the same manner and to the same extent as any other admission made by that person;

(3) if otherwise admissible as an exception to the hearsay rule; ~~or~~

(4) for any purpose for which an affidavit may be used; or

(5) upon reasonable notice to all parties, as evidence at trial or hearing against a party who appeared at the deposition or was given proper notice thereof, if the court finds that the deponent is neither a retained opinion witness nor a party, the deponent's evidence deposition has not been taken, and the deponent is unable to attend or testify because of death or infirmity, and if the court, based on its sound discretion, further finds such evidence at trial or hearing will

do substantial justice between or among the parties.

(b) Use of Evidence Depositions. The evidence deposition of a physician or surgeon may be introduced in evidence at trial on the motion of either party regardless of the availability of the deponent, without prejudice to the right of either party to subpoena or otherwise call the physician or surgeon for attendance at trial. All or any part of other evidence depositions may be used for any purpose for which a discovery deposition may be used, and may be used by any party for any purpose if the court finds that at the time of the trial:

(1) the deponent is dead or unable to attend or testify because of age, sickness, infirmity or imprisonment;

(2) the deponent is out of the county, unless it appears that the absence was procured by the party offering the deposition, provided, that a party who is not a resident of this State may introduce his own deposition if he is absent from the county; or

(3) the party offering the deposition has exercised reasonable diligence but has been unable to procure the attendance of the deponent by subpoena; or finds, upon notice and motion in advance of trial, that exceptional circumstances exist which make it desirable, in the interest of justice and with due regard for the importance of presenting the testimony of witnesses orally in open court, to allow the deposition to be used.

(c) Partial Use. If only a part of a deposition is read or used at the trial by a party, any other party may at that time read or use or require him to read any other part of the deposition which ought in fairness to be considered in connection with the part read or used.

(d) Use After Substitution, Dismissal, or Remandment. Substitution of parties does not affect the right to use depositions previously taken. If any action in any court of this or any other jurisdiction of the United States is dismissed and another action involving the same subject matter is afterward brought between the same parties or their representatives or successors in interest, or if any action is remanded by a court of the United States to a court of this State, all depositions lawfully taken and duly filed in the former action, or before remandment, may be used as if taken in the later action, or after remandment.

Amended February 19, 1982, effective April 1, 1982; amended May 28, 1982, effective July 1, 1982; amended March 1, 2001, effective immediately.

Committee Comments

(Revised ~~May 1982~~ March 1, 2001)

Paragraphs (a), (b) and (c)

Paragraphs (a), (b), and (c), of this rule are derived from former Rule 19--10. The language is unchanged except that in subparagraph (a)(4) the rule codifies the prevailing practice that permits use of discovery depositions for any purpose for which an affidavit may be used, and paragraph (b) was amended in 1982 to include the provision regarding the use of evidence depositions of physicians and surgeons.

Subparagraph (a)(5) was added in 2001 to permit a discovery deposition to be introduced in evidence at trial or hearing under specified circumstances.

Paragraph (d)

Paragraph (d) of this rule is derived from former Rule 19--10(5). The language has been changed to make it clear that depositions taken in the Federal court prior to remandment are to be treated in the same fashion as depositions taken in the Federal court in a case dismissed in that court and subsequently filed in the State court.

Amended Rule 381

Rule 381. Original Actions in the Supreme Court Pursuant to Article VI, Section 4(a), of the Constitution

(a) Motion for Leave to File; Only Issues of Law Considered. Proceedings in the supreme court in original actions in cases relating to revenue, *mandamus*, prohibition, or *habeas corpus*, and as may be necessary to the complete determination of any case on review, shall be instituted by filing a motion, supported by explanatory suggestions, for leave to file a complaint seeking appropriate relief. Only issues of law will be considered. The proposed complaint shall be sworn to and shall contain or have attached to it the lower court records or other pertinent material that will fully present the issues of law. If the motion is filed when the

court is not in session and the case arises from the second, third, fourth, or fifth judicial district, the movant shall file the original and one copy with the clerk in Springfield and send a copy to each justice of the court at the justice's district chambers. If the case arises from the first judicial district (Cook County), the movant shall file the original motion and five copies with the clerk in the Chicago satellite office and send a copy to each justice from the second, third, fourth, and fifth districts at the justice's district chambers.

(b) Service of Process. A copy of the motion together with the proposed complaint shall be served upon the other party or parties, including the nominal party or parties, and proof of service shall be filed at the time the motion is filed.

(c) Judge a Nominal Party. In an original action to review a judge's judicial act the judge is a nominal party, only, in the proceeding, and need not respond to the motion or complaint unless instructed to do so by the court. The judge's failure to do so will not admit any allegation. Counsel for the prevailing party may file appropriate papers for that party but shall not file any paper in the name of the judge.

(d) Objections to Motion. The respondent shall have ~~seven~~ 7 days after personal or facsimile service of the motion, or 14 days after mailing of the motion if service is by mail, or within such further time as the court or a judge thereof may allow to file any objections to the motion, and service shall be made upon the movant and proof of service filed with the clerk of the court. Oral argument on the motion shall be permitted as the court may allow.

(e) Briefs. If the motion is allowed, briefs conforming to the requirements of Rules 341 through 344 shall be filed in support of the pleadings, within the time fixed by the court on motion of any party or on its own motion. On notice to the court and the other party or parties, the plaintiff or defendant may allow his or her original papers to stand as his or her brief without order of court.

Amended effective May 27, 1969, and July 1, 1971; amended January 5, 1981, effective February 1, 1981; amended February 19, 1982, effective April 1, 1982; amended February 27, 1987, effective April 1, 1987; amended December 17, 1993, effective February 1, 1994; amended March 1, 2001, effective immediately.

Amended Rule 383

Rule 383. Motions for Supervisory Orders

(a) A motion requesting the exercise of the Supreme Court's supervisory authority shall be supported by explanatory suggestions and shall contain or have attached to it the lower court records or other pertinent material that will fully present the issues, authenticated as required by Rule 328.

(b) A copy of the motion, explanatory suggestions, and all supporting papers must be served upon the other parties, including the nominal party or parties, and proof of service filed at the time the motion is filed.

(c) A person whose act is the subject of this proceeding shall be designated as a respondent. A respondent need not respond to the motion unless instructed to do so by the court, and failure to respond will not admit any of the allegations contained in the motion. The prevailing party or parties below shall file appropriate papers for that respondent but shall not file any paper in the name of the respondent.

(d) The prevailing party below shall have ~~seven~~ 7 days after personal or facsimile service of the motion, or 14 days after mailing of the motion if service is by mail, or within such further time as the court or a judge thereof may allow to file any objections to the motion, and service shall be made upon the movant and proof of service filed with the clerk of the court.

(e) Illegible copies of papers shall not be received. If the motion is filed when the court is not in session and the case arises from the second, third, fourth, or fifth judicial district, the movant shall file the original and one copy with the clerk in Springfield and send a copy to each justice of the court at the justice's district chambers. If the case arises from the first judicial district (Cook County), the movant shall file the original motion and five copies with the clerk in the Chicago satellite office and send a copy to each justice from the second, third, fourth, and fifth districts at the justice's district chambers.

(f) Oral argument shall be permitted only if requested by the court.

Adopted August 9, 1983, effective October 1, 1983; amended February 27, 1987, effective April 1, 1987; amended December 17, 1993, effective February 1, 1994; amended March 1, 2001, effective immediately.