

MCR 3.602
Arbitration

STATE BAR OF MICHIGAN POSITION
By vote of the Representative Assembly on April 16, 2005

MCR 3.602 should be amended as proposed by the Civil Procedure and Courts Committee.

- (a) yes
- (b) no

Synopsis

The Civil Procedure and Courts Committee recommends that the current arbitration court rule be amended to provide three procedural revisions: to substitute “motion” or “complaint” for “applicant” (an undefined term within the court rules or the Arbitration Act), clarify post-arbitration actions and set timing deadlines consistent with the Federal Arbitration Act.

Proposed MCR Amendment

MCR 3.602 (Arbitration)

(A) Application of Rule [Unchanged]

(B) Proceedings to Compel or to Stay Arbitration.

~~(1) In a pending action an application to the court for an order under this rule must be by motion, which shall be heard in the manner and on the notice provided by these rules for motions. An initial application for an order under this rule, other than in a pending action, must be made by filing a complaint as in other civil actions.~~

(1) A request for an order to compel or to stay arbitration under this Rule must be by motion, which shall be heard in the manner and on the notice provided by these rules for motions. If there is not already a pending action between the necessary parties, the party seeking the requested relief must first file a complaint as in other civil actions.

(2) On ~~application~~ motion of a party showing an agreement to arbitrate that conforms to the arbitration statute, and the opposing party's refusal to arbitrate, the court may order the parties to proceed with arbitration and to take other steps necessary to carry out the arbitration agreement and the arbitration statute. If the opposing party denies the existence of an agreement to arbitrate, the court shall

summarily determine the issues and may order arbitration or deny the ~~application~~ motion.

(3) On ~~application~~ motion, the court may stay an arbitration proceeding commenced or threatened on a showing that there is no agreement to arbitrate. If there is a substantial and good faith dispute, the court shall summarily try the issue and may enter a stay or direct the parties to proceed to arbitration.

(4) ~~An application~~ A motion to compel arbitration may not be denied on the ground that the claim sought to be arbitrated lacks merit or is not filed in good faith, or because fault or grounds for the claim have not been shown.

(C) Action Involving Issues Subject to Arbitration; Stay. Subject to MCR 3.310(E), an action or proceeding involving an issue subject to arbitration must be stayed if an order for arbitration or ~~an application~~ a motion for such an order has been made under this rule. If the issue subject to arbitration is severable, the stay may be limited to that issue. If ~~an application~~ a motion for an order compelling arbitration is made in the action or proceeding in which the issue is raised, an order for arbitration must include a stay.

(D)-(I) [Unchanged]

(J) Vacating Award.

(1) A request for an order to vacate an arbitration award under this Rule must be by motion. If there is not already a pending action between the necessary parties, the party seeking the requested relief must first file a complaint as in other civil actions. A complaint to vacate an arbitration award must be filed no later than 21 days after the date of the arbitration award.

~~(1)~~ (2) On ~~application~~ motion of a party, the court shall vacate an award if:

- (a) the award was procured by corruption, fraud, or other undue means;
- (b) there was evident partiality by an arbitrator, appointed as a neutral, corruption of an arbitrator, or misconduct prejudicing a party's rights;
- (c) the arbitrator exceeded his or her powers; or
- (d) the arbitrator refused to postpone the hearing on a showing of sufficient cause, refused to hear evidence material to the controversy, or otherwise conducted the hearing to prejudice substantially a party's rights.

The fact that the relief could not or would not be granted by a court of law or equity is not ground for vacating or refusing to confirm the award.

~~(2)~~ (3) ~~An application~~ A motion to vacate an award must be ~~made~~ filed within 21-90 days after ~~delivery of a copy of the award to the applicant~~ the date of the award, except that if it is predicated on corruption, fraud, or other undue means, it must be ~~made~~ filed within 21 days after the grounds are known or should have been known.

~~(3)~~ (4) In vacating the award, the court may order a rehearing before a new arbitrator chosen as provided in the agreement, or, if there is no such provision, by the court. If the award is vacated on grounds stated in subrule (J)(1)(c) or (d), the court may order a rehearing before the arbitrator who made the award. The

time within which the agreement requires the award to be made is applicable to the rehearing and commences from the date of the order.

~~(4)~~ (5) If the ~~application~~ motion to vacate is denied and there is no motion to modify or correct the award pending, the court shall confirm the award.

(K) Modification or Correction of Award.

(1) A request for an order to modify or correct an arbitration award under this Rule must be by motion. If there is not already a pending action between the necessary parties, the party seeking the requested relief must first file a complaint as in other civil actions. A complaint to correct or modify an arbitration award must be filed no later than 21 days after the date of the arbitration award.

~~(1)~~ (2) On ~~application made~~ motion of a party filed within ~~21~~ 90 days after ~~delivery of a copy of the date~~ of the award ~~to the applicant~~, the court shall modify or correct the award if:

(a) there is an evident miscalculation of figures or an evident mistake in the description of a person, a thing, or property referred to in the award;

(b) the arbitrator has awarded on a matter not submitted to the arbitrator, and the award may be corrected without affecting the merits of the decision on the issues submitted; or

(c) the award is imperfect in a matter of form, not affecting the merits of the controversy.

~~(2)~~ (3) If the ~~application~~ motion is granted, the court shall modify and correct the award to effect its intent and shall confirm the award as modified and corrected. Otherwise, the court shall confirm the award as made.

~~(3)~~ (4) ~~An application~~ A motion to modify or correct an award may be joined in the alternative with ~~an application~~ a motion to vacate the award.

(L)-(N) [Unchanged]

Additional Commentary

The proposed amendment contains two material revisions. Both relate to procedure only, not the substantive grounds upon which an award can be vacated or confirmed or the issue of enforcing arbitration agreements.

First, the current version of the Rule uses the word “application” to describe a type of proceeding in the circuit court. “Application” is not a defined term within the Michigan Court Rules or in the Arbitration Act, MCL 600.5025. The proposed changes eliminate the term “application,” and substitute the word “motion” or “complaint,” depending on whether there is already a pending action.

Second, the current version of the Rule does not provide clear guidance on how to bring a post-arbitration action (to either confirm or vacate) under two possible procedural scenarios: (1) where an action was already filed and remains open with the court (perhaps

a lawsuit to compel arbitration was filed and the case was left open pending conclusion of the arbitration), and (2) where there is not an open case with the court when the time comes to either confirm or vacate the award. In the former scenario, the proposed revision replaces “application” with “motion.” In the latter scenario, the proposed revision clarifies that a complaint must first be filed, and then also a motion (consistent with the spirit of the existing text of MCR 3.602(B)(1), which is also clarified). The amendment also sets timing deadlines consistent with the time frame allowed under the Federal Arbitration Act. Synchronizing the state and federal time periods aids the uniformity of the law and practice and can be important if an action is removed to federal court and to avoid potential arguments about preemption.

The Civil Procedure and Courts Committee urges the Representative Assembly to approve the amendment to MCR 3.602 and transmit it to the Michigan Supreme Court with a recommendation that the Court adopt the amendment.