17th JUDICIAL CIRCUIT
COURT-ANNEXED
MANDATORY ARBITRATION PROGRAM

ARBITRATOR REFERENCE MANUAL

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AN ARBITRATOR'S GUIDE TO COURT-ANNEXED MANDATORY ARBITRATION HEARING PROCEDURES

A. OVERVIEW OF COURT-ANNEXED MANDATORY ARBITRATION

Illinois' system of mandatory court-annexed arbitration is derived both from an act passed by the General Assembly (Public Act 84-844; 735 ILCS 5/2-1001A et. seq.) and from rules adopted by the Illinois Supreme Court (Illinois Supreme Court Rules 86-95). While the process of arbitration itself is not new or unique in the private sector, the court-annexed model is notably different in that it is mandatory for certain classes of cases, but the outcome is non-binding. When utilized in the private sector, arbitration tends to be entered voluntarily by the disputing parties, usually with an agreement that the decision will be binding and conclusive. In Illinois and elsewhere, policy makers have determined that courts should require arbitration for some types of civil disputes because it can contribute to a reduction of court congestion, costs, and delay as well as help diminish the financial and emotional costs of litigation for parties. The goal of the process, therefore, is to deliver a high quality, low cost, expeditious hearing in eligible cases, resulting in an award that will enable, but not mandate, parties to resolve their dispute without resorting to a formal trial.

The objective of the program and the program rules is to submit modest-sized claims to arbitration because such claims tend to be amenable to closer management and faster resolution in an informal alternative process. There are safeguards designed to insure the fairness of the process. These safeguards include the right to petition the court for an order transferring the case out of arbitration before the arbitration hearing takes place and the right to reject an award believed unacceptable.

Cases eligible for the arbitration process are defined by Illinois Supreme Court Rule 86 as civil actions in which each claim is exclusively for money damages not exceeding the monetary limit authorized by the Supreme Court of Illinois. Each circuit has been granted the authority to focus its arbitration program on particular types of cases within this general classification. Please consult the local rules of the circuit for this information.

Many of the prehearing procedures that pertain to this class of lawsuits generally still apply. Illinois Supreme Court Rule 86(e) states that the Code of Civil Procedure applies to arbitration cases unless otherwise stated in the arbitration rules. For example, prehearing motions are raised and decided in much the same way that they are raised and decided in non-arbitration cases. However, discovery is limited in

arbitration cases, and Rule 89 states that all discovery must be completed prior to the arbitration hearing. Rule 89 also allows circuits to shorten the timelines for discovery discussed in Illinois Supreme Court Rule 222.

The time-span between the date of filing to hearing before an arbitration panel is intended to be tightly controlled by the court, and Supreme Court Rule 88 provides that all arbitration cases shall have a hearing within one year of the date of filing. Faster dispositions are possible in this system because the parties are assured when the lawsuit commences that a hearing date will be set quickly and will be adhered to except in unusual circumstances. As a result, attorneys familiar with the program approach their arbitration cases with an expectation that the process will be expedited and that a disposition will occur in a relatively short period of time.

The essence of the process is, of course, the arbitration hearing. This hearing is conducted in a fair and dignified, yet less formal fashion, by a panel of three specially trained attorneys. The attorney-arbitrators are empowered not as judges but as adjuncts of the court with authority to administer oaths, rule on the admissibility of evidence, and decide questions of fact and law in reaching an award in the case. While the rules of evidence apply in arbitration hearings, Illinois Supreme Court Rule 90(c) makes certain types of documents presumptively admissible. By taking advantage of the streamlined mechanism available for using documentary evidence in an arbitration hearing, presentations of evidence typically can be abbreviated to meet the objective of completing hearings in about two hours. The arbitrators conduct their deliberations in private but must announce their award on the same day the hearing occurred. An award requires the concurrence of at least two arbitrators.

An award can be a finding in favor of any party in an arbitration case, and the supreme court rules extend the right of rejection to all parties. However, five conditions attach to the exercise of this right to reject the award. First, the party who desires to reject the award must have been present at the arbitration hearing in order to preserve that right. Second, that party must have participated in the arbitration process in good faith. Third, the party wanting to reject the award must file a rejection notice with the court within 30 days of the date the award was filed. Fourth, the party seeking to reject the award must not be in violation of Supreme Court Rule 237(b). Fifth, except for indigent parties, the party who initiates the rejection must pay the appropriate fee to the clerk of the court. It is intended that this fee will be a disincentive that will discourage frivolous rejections. At the same time, no party who is sincerely dissatisfied with the outcome in arbitration will be denied his/her right to have the case decided at trial. If no rejection is filed within the time allowed, the arbitration award may be entered as a judgment of the circuit court on the motion of any party.

B. ARBITRATOR APPOINTMENT, QUALIFICATION AND COMPENSATION

1. ARBITRATOR QUALIFICATIONS

Arbitrator qualifications are discussed in Illinois Supreme Court Rule 87. Each circuit may also establish additional qualifications within the guidelines set forth in [Illinois Supreme Court Rule 87]. Most circuit rules provide that a licensed attorney in good standing or retired judge is eligible for appointment as an arbitrator.

Arbitrator candidates must file an application with the Arbitration Administrator certifying that she or he has engaged in the active practice of law for the minimum number of years mandated by local rules and that he/she has read the Illinois Supreme Court Rules relating to arbitration.

Arbitrators must complete a court-approved training in arbitration practices and procedures prior to serving on the arbitration panel. Each circuit may also require that the attorney maintain an office and/or law practice within the circuit to be eligible to serve as an arbitrator. No government employee (federal, state or local) may serve as an arbitrator.

2. OATH OF OFFICE AND ARBITRATOR INDEMNIFICATION

Keeping with the principle that arbitrators are serving in a quasi-judicial capacity, an oath of office is administered by the Supervising Judge for Arbitration or the Arbitration Administrator. [Illinois Supreme Court Rule 87(d)]. Furthermore, the arbitrators are required to sign a written oath of office. The State of Illinois representation and indemnification statutes apply to attorneys acting as arbitrators in a court-annexed mandatory arbitration program.

3. COMPENSATION

Each arbitrator is compensated in the amount of $100.00 per hearing. [Illinois Supreme Court Rule 87(e)] When an arbitrator reports for service, he/she will be requested to sign a payment voucher. At the end of the week, this voucher is sent to the Administrative Office of Illinois Courts and processed for payment to the arbitrator as requested. Arbitrators have the option of being paid individually or through their law firm. It is important that the Arbitration Center be advised of the arbitrator's correct address and proper tax identification number or any changes of that number. If an arbitrator is notified that his/her service is not required prior to the day of the scheduled service, that arbitrator will not be compensated. It takes approximately 4 - 6 weeks for arbitrators to receive their payment from the State.

4. OBLIGATIONS OF THE ARBITRATOR

Arbitrators should be familiar with pertinent statutory provisions, rules, and case law concerning arbitration. Arbitrators should also consider volunteering to serve on short notice as emergency arbitrators. In the event an arbitrator cannot serve on the assigned date, notice should be given to the Arbitration Administrator, as soon as possible, so that arrangements for a substitute arbitrator can be made. Arbitrators are expected to be available from 8:15 a.m. until 1:15 p.m., to hear two, two-hour cases or one, four-hour case.

C. ARBITRATOR DISQUALIFICATION, RECUSAL AND CHALLENGE

1. ARBITRATOR RECUSAL AND DISQUALIFICATION

The cornerstone of the arbitration process is the ability to provide a fair and impartial hearing. Consequently, one of the most important and often difficult decisions an arbitrator must make is whether or not to recuse himself/herself from hearing a case. This decision should not be taken lightly.

The threshold question is whether the arbitrator has any contact or relationship with anyone connected with the case which would diminish the arbitrator's ability to be impartial and render a fair decision. The arbitrator should review the names of all parties, witnesses and attorneys in order to make this determination. The arbitrator may recuse himself/herself if the arbitrator feels there may be a conflict, or if grounds appear to exist for disqualification pursuant to the Code of Judicial Conduct. [Illinois Supreme Court Rules 61 - 68].

An arbitrator must disqualify himself/herself if, within the previous seven years, the arbitrator has represented a party, or within the previous three years associated with any representative of a party in the controversy that he or she will hear as an arbitrator. Likewise, an arbitrator must withdraw from hearing a case if he or she was associated or ever served as an attorney in the matter to be heard.

The fact that the arbitrator knows one of the attorneys involved in the case being heard is not, in itself, grounds for recusal. Arbitrators must use their conscience and discretion when making the decision whether or not to recuse themselves. They must ask themselves whether their impartiality could reasonably be questioned and whether they can honestly give the parties a fair hearing. The fact that three arbitrators comprise a panel insures a degree of impartiality, since, even if one member is perceived to have a bias, there are two other votes. It must be kept in mind that the goal remains to have a panel whose impartiality is above question.

The only restriction upon the composition of the panel is that one member must be a qualified chairperson, and no two attorneys from the same law firm may serve on the same panel.

2. ARBITRATOR RECUSAL CHECKLIST

The following checklist is helpful in determining whether an arbitrator should hear a case or recuse herself/himself:

- Are you prejudiced or do you have a bias for or against a party or attorney to the dispute?
- Do you have personal knowledge of an evidentiary fact?
- Have you or a member of your firm previously been involved in the case as counsel?
- Have you been associated with an attorney or firm who has filed an appearance in this case within the last **three** years?
- Have you represented any party in the case within the last **seven** years?
- Do you or a member of your household have a substantial financial interest in the subject matter in controversy?
- Do you or a member of your household have any other interest that could be substantially affected by the outcome of the proceeding?
- Are you and another member of your current firm assigned to the same panel?

If the answer to any of these questions is yes, the arbitrator should recuse herself or himself from hearing the case. The fact that three arbitrators comprise a panel also ensures a degree of impartiality, since even if one member is perceived to have a bias, there are three votes. However, the goal is to have a panel whose impartiality is above question.

3. CHANGE OF VENUE FROM THE ARBITRATION PANEL

There is no provision in the rules which allows for a substitution of arbitrators or change of venue from the panel or any of its members. The only remedy to perceived bias or prejudice on the part of any member of the panel or error by the panel in the determination of its award is to reject the award and proceed to trial. [See Committee Comments to Supreme Court Rule 87(c)].

In the event that an arbitrator must recuse himself or herself after a hearing has started, an arbitration hearing can continue before two panelists if all the parties consent in writing. [Illinois Supreme Court Rule 87(b)]. Otherwise, an emergency arbitrator will be called in by the Arbitration Administrator from the list of attorneys who have volunteered to be called on short notice to act as emergency arbitrators.

4. EX-PARTE COMMUNICATIONS

Arbitrators are subject to the provisions of the Code of Judicial Conduct and therefore may not discuss pending litigation with the parties until a final order has been entered in the case and the time for appeal has expired. Consequently, communications between the parties and the arbitrators after a hearing is prohibited. The rationale behind this rule is that the arbitration hearing should not be treated as a practice run for trial, nor should the arbitrators be allowed to coach the parties on the presentation of their case.

5. ARBITRATORS MAY NOT TESTIFY

Arbitrators may not be called to testify as to what transpired during the hearing, and no reference to the arbitration hearing may be made at trial. [Illinois Supreme Court Rule 93(b)]. In the event an arbitrator is subpoenaed to testify, the Arbitration Administrator should be notified immediately so that the Illinois Attorney General's Office can be informed and take any appropriate actions.

D. CASE JURISDICTION

1. ELIGIBLE ACTIONS

All civil actions where the claim is exclusively for money damages in an amount exceeding $10,000, but not exceeding $50,000, exclusive of interest and costs, are subject to mandatory arbitration. [Illinois Supreme Court Rule 86(b)].

The question of whether a panel has jurisdiction to hear a case rarely occurs, since that issue is normally disposed of by the court before the case is assigned to arbitration. On occasion, the issue of jurisdiction does arise. When this happens, it is important to remember that the panel has the authority to hear cases exclusively for money damages and may not make an award exceeding the monetary limit authorized by the Supreme Court for the arbitration program, exclusive of interest and costs. [Illinois Supreme Court Rules 86(b) and 92(b)].

2. LAW DIVISION CASES

Law Division cases may be ordered to arbitration at a status call or pretrial conference when it appears to the court that no claim in the action has a value in excess of the monetary limit authorized by the Supreme Court irrespective of defenses. [Illinois Supreme Court Rule 86(d)].

It is also possible to file a case in the Law Division and then seek to amend the damages to under the monetary limit authorized by the Supreme Court to qualify for arbitration. An appropriate motion to amend damages and to transfer an assigned "L"

case to the arbitration calendar must be made before the Law Division judge in accordance with local circuit court rules.

If an action is filed as an arbitration case but appears to be appropriately a Law Division case, the case pending in arbitration may be transferred to the "L" calendar by filing an appropriate motion with the Supervising Judge for Arbitration in accordance with local circuit court rules. The arbitration panel does not have the authority to enter an order transferring the case and will be limited to making an award not exceeding the monetary limit authorized by the Supreme Court, exclusive of interest and costs.

3. CHANCERY CASES

Cases which contain a prayer for relief other than money damages are not assigned to arbitration. They include forcible entry and detainer, confession of judgment, detinue, ejectment, replevin, trover and registration of foreign judgment. However, a chancery case may be reassigned to the arbitration calendar if a judge has disposed of the equitable relief sought and refers the money damages issue under the monetary limit authorized for arbitration.

4. SMALL CLAIMS CASES

Small claims actions with timely filed jury demands shall be subject to Mandatory Arbitration unless otherwise ordered by the assigned trial judge. [Local Rule 2.13]

E. AUTHORITY OF THE ARBITRATION PANEL

1. POWERS OF THE ARBITRATORS

Illinois Supreme Court Rule 90(a) provides that the arbitrators shall have the power to administer oaths and affirmations to witnesses, to determine the admissibility of evidence, to decide the law and facts of the case and to enter an award not exceeding the monetary limit authorized by the Supreme Court, exclusive of interest and costs. The authority and power of the arbitrators exists only in relation to the conduct of the hearing at the time it is held. Issues that may arise in the proceeding of a case prior, ancillary, or subsequent to the hearing must be resolved by the court. [See Committee Comments to Supreme Court Rule 90(b)]. Therefore, any motion involving the issuance of an order must be made before the Supervising Judge for Arbitration in advance of the arbitration hearing date.

When the Supreme Court propounded the rules for arbitration, it was assumed that all litigants would comply with the rules in good faith. After several years, it became apparent that some frequent litigators followed the letter, but not the spirit, of the rules. In response to that abuse of the system, the Illinois Supreme Court promulgated Rule 91(b) which allows the panel to make a **unanimous** finding that a party to the

hearing did not participate in the hearing in good faith and in a meaningful manner. It is up to the panel to determine the limits of good faith and meaningful participation. Attorneys may suggest to the panel that a Rule 91 (b) finding should be in order, but the panel must make a determination on their own. If the panel so finds and notes in the award, the opposing party may move for sanctions as provided by Illinois Supreme Court Rule 219 (c), which may also include debarring the party against whom the finding was made from rejecting the award.

2. PROVINCE OF THE ARBITRATION PANEL

Arbitration hearings are conducted by a panel of three attorney-arbitrators. The chairperson of the panel rules on objections to evidence or other issues which arise during the hearing. The chairperson must have a minimum of three years of trial practice or be a retired judge. [Illinois Supreme Court Rule 87(a)]. The qualification of three years of trial practice was intended to be a minimal standard, and each circuit may establish additional qualifications for chairpersons and other members of the panel.

NOTE: The 17th Circuit Rules require five years of trial practice in order to be eligible to serve as a chairperson.

3. ROLE OF THE CHAIRPERSON

Each circuit will determine how the chairperson is selected. The Arbitration Administrator will designate the arbitrator who will serve as chairperson of the panel. It is possible to have more than one person who is qualified to be a chairperson serving on a panel. However, only the designated chairperson of the panel rules on the admissibility of evidence.

The chairperson administers oaths and affirmations to witnesses and determines the admissibility of evidence. Additionally, it is the responsibility of the chairperson to insure the case is completed in the time allotted. When there are multiple parties or counterclaims the court file should be carefully reviewed to determine the precise issues and then obtain an agreement from the parties as to the amount of time allocated to the presentation of each party's case. Once the chairperson obtains the agreement there should be no hesitation in enforcing the agreement or reminding the parties of the agreed time allocation.

The chairperson is encouraged to ask if any stipulations have been reached by the parties prior to the hearing. Past experience indicates that there are very few discussions between attorneys prior to the hearing to determine if stipulations are possible. Using the court file information and knowledge of the locale, the chairperson may obtain agreement from the parties regarding certain background facts regarding the claim. This allows the parties to avoid tedious background testimony and to proceed with the salient points of testimony. It also gives the

litigants a feeling that the panel has taken an interest in their case, is familiar with the controversy, and will be a good panel to resolve the dispute.

4. QUESTIONING WITNESSES AND ASSISTANCE OF COUNSEL

Since the arbitrators are serving in the capacity of a finder of fact and law, and not as advocates, arbitrators should refrain from taking an active role in the questioning of parties or witnesses other than for clarification purposes. Clarification should be about matters already testified to but where the response was unclear or perhaps not heard. Arbitrators are required to follow the law as it is given and follow the rules of evidence when ruling. *The arbitrators should never ask questions that establish the necessary elements of a claim that were omitted by the litigants.* This may be difficult when the litigant is *pro se*, but nevertheless must be strictly adhered to.

F. ARBITRATION HEARING OUTLINE

The chairperson will normally conduct arbitration proceedings in the following order:

INTRODUCTIONS

1. Introduce the panel members

2. Ask counsel to introduce themselves and their clients

3. Briefly explain that the case is being heard pursuant to court order in accordance with Illinois Supreme Court Rules 86-95 and that the Code of Civil Procedure and rules of evidence will be observed as in any other judicial proceeding.

ADMINISTER OATHS OR AFFIRMATIONS TO THE WITNESSES

1. Swear in the witnesses who will be testifying:

   "Do you solemnly swear or affirm that the testimony you are about to give in this proceeding will be the truth, the whole truth, and nothing but the truth?"

2. Swear in any interpreter:

   "Do you swear or affirm that you will make a true and impartial interpretation using your best skills and judgment in accordance with the standards prescribed by law and the Illinois Interpreter Code of Ethics and that you will repeat the statements of such person to the court and all statements made from English to the party's native

language fully and accurately?"

PRELIMINARY MATTERS

1. Ask counsel to estimate the number of witnesses and the time for the presentation of their case. Remind the parties they have a total of two hours for the presentation of the case, unless a request for a four hour hearing has been previously made to the arbitration administrator or presiding judge.

   The chairperson of the panel is charged with the expeditious conduct of the hearing. Parties should be allowed to develop testimony on the issues of the controversy. However, direct and cross-examination should be circumscribed if it becomes redundant, irrelevant or excessive and time consuming.

2. In order to determine which issues are in dispute, ask for any stipulations as to the facts, liability and/or damages.

THE HEARING

1. Plaintiff's opening statement

2. Defendant's opening statement

3. Plaintiff's case-in-chief

   (a) Direct examination
   (b) Cross-examination
   (c) Redirect
   (d) Offer of evidence
   (e) Plaintiff rests

4. Defendant's case-in-chief

   (a) Direct examination
   (b) Cross-examination
   (c) Redirect
   (d) Offer of evidence
   (e) Defendant rests

5. Plaintiff's closing arguments

6. Defendant's closing arguments

7. Rebuttal

ABSENCE OF A PARTY AT THE HEARING

The arbitration hearing shall proceed in the absence of a party who, after due notice, fails to be present. The panel shall require the present party to submit such evidence as the panel may require for the making of an award. [Illinois Supreme Court Rule 91(a)]. The failure of any party to appear in person or by counsel should be noted on the award.

SETTLEMENT OF A CASE AT TIME OF THE HEARING

If an attorney for a party appears at the arbitration hearing and represents that the case has been settled, the panel may enter an award which reflects the attorney's name and the representation of the settlement. Additionally, the Arbitration Administrator has a form that can be filled out and submitted to the Supervising Judge dismissing the case or setting the file for status on settlement. The arbitrators are to sign the form thus acknowledging that all three were present and ready to proceed to hearing.

CONCLUDING THE HEARING

1. Thank counsel and parties for their participation. Indicate that the panel will deliberate and make an award and that a written copy of the award will be sent to the parties by the arbitration administrator. Remind counsel and parties that exhibits presented at hearing should be retrieved from the ADR Center within one week of the hearing.

2. Adjourn the hearing.

3. Decide the issues of liability and damages.

MAKING THE AWARD

1. The arbitration award should identify the parties by name, as well as their designation as plaintiff or defendant.

   Example: "Award in favor of defendant, XYZ Company."

   Ensure that all claims, including attorneys fees (if prayed for) have been addressed in the award. Further, arbitrators are required to consider the question of costs when making their award. Arbitrators must examine the pleadings in the case and, if costs are requested, they must decide if costs are to be awarded and, if so, in what amount. The amount of costs awarded should be included in the award.

Example: "Award in favor of the plaintiff, John Doe, and against the defendant, XYZ Company, in the amount of four thousand dollars ($4,000), plus two hundred eighty dollars ($280) in costs."

2. In the event of consolidated cases, indicate the award entered on each of the cases. Typically, the Administrator will give you an Award for each case.

3. If the award is being made ex-parte, please indicate on the award form that plaintiff or defendant did not appear either in person or by counsel.

4. 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 therefore, shall be stated on the award.

G. THE FINER POINTS OF THE ARBITRATION HEARING

To eliminate any doubts as to the standards to be applied by the arbitrators during the course of the arbitration hearing, Illinois Supreme Court Rules 86(e) and 90(b) specifically provide that the Code of Civil Procedure, Illinois Supreme Court Rules, and established rules of evidence shall apply to the proceeding. The chairperson will rule on all matters arising during the hearing but is not authorized to enter an order of any kind. In unusual circumstances requiring judicial intervention, the Arbitration Administrator may contact the Supervising Judge for Arbitration.

1. TIME MANAGEMENT

Arbitration hearings are scheduled for a concise presentation of the controversy (a maximum of two hours). Many circuit rules provide that the plaintiff contact all parties to determine the approximate time required for hearing. Parties requiring more time should file a motion requesting additional time before the Supervising Judge for Arbitration or make arrangements with the Arbitration Administrator in writing in advance of the hearing date. A case requesting more than two hours will be set on the 8:30 a.m. hearing schedule.

The chairperson of the panel is charged with the expeditious conduct of the hearing. Parties should be allowed to develop testimony on the issues of the controversy. However, direct and cross-examination may be circumscribed if it becomes redundant, irrelevant, or excessively time consuming.

2. COURT REPORTERS AND RECORD OF THE PROCEEDING

Arbitration hearings are open to the public. However, a record is not made of the proceeding. Many circuit rules allow for a stenographic record of the hearing to be made at the party's own expense. If a party has a stenographic record made, a copy must be furnished to any other party requesting it, upon payment of a proportionate share of the total cost of making the record.

3. TRANSLATORS AND INTERPRETERS FOR THE DEAF

Any party requiring the services of a language interpreter, or assistance for the deaf or hearing impaired, during the hearing shall notify the Arbitration Administrator not less than thirty (30) days prior to the hearing. Local Rule 2.07 [Rule 5(e)].

4. FILING AN APPEARANCE OR ANSWER AT THE HEARING

The filing of an appearance or answer instanter at the arbitration hearing is inappropriate and will only be allowed upon leave of court.

5. ESTABLISHED RULES OF EVIDENCE

The Code of Civil Procedure and Rules of Evidence are applicable to the arbitration hearing. One rule unique to arbitration is Illinois Supreme Court Rule 90(c), which allows for the presumptive admissibility of many documentary forms of evidence without the formalities of foundation and authentication. This rule promotes the policy of "paper not people" at the arbitration hearing so as to facilitate a quick and efficient hearing of the issues.

6. DOCUMENTS PRESUMPTIVELY ADMISSIBLE

Illinois Supreme Court Rule 90(c) provides that certain documents are presumptively admissible. These include hospital bills, hospital reports, doctors' reports, drug bills, and other medical bills, as well as bills for property damage, estimates of repair, written estimates of value, earnings reports, reports and statements of witnesses, and depositions of witnesses. Under the rule, these documents are admissible without the maker being present or the need to prove foundation. In order to take advantage of the presumptive admissibility of these documents, at least 30 days' written notice of the intention to offer the documents into evidence must be provided to every other party, accompanied by a copy of the document. However, notwithstanding the proper exchange of documents, the documents offered under Rule 90 must still be admissible under the rules of evidence.

Committee Comments to this rule indicate that the emphasis should be placed on the integrity of evidence rather than its formal method of introduction. However, regardless of the presumptive admissibility of the documents, the arbitrators will be required to apply the test under established rules of evidence otherwise relating to

credibility and to determine the weight to be given such evidence. Consequently, even though some documents may be admitted as presumptively admissible under Rule 90, counsel is not precluded from objecting to their introduction on other grounds under the established rules of evidence.

The 90(c) packet must include a summary sheet detailing the money damages and specifying whether each bill is paid or unpaid. Furthermore, effective July 1, 2008, Supreme Court Rule 90 (c) was amended to provide that "The pages of any Rule 90 (c) package submitted to the arbitrators should be numbered consecutively from the first page to the last page of the package in addition to any separate numbering of the individual documents comprising such package." 17th Judicial Circuit Local Rules provide that only the Notice of Intent pursuant to Supreme Court Rule 90 (c) shall be filed with the Circuit Clerk's office. Parties are not to file the supporting attachments or exhibits that are going to be offered at the hearing.

7. THE INTRODUCTION OF NON-TIMELY RULE 90 DOCUMENTS

In the event that the documentary evidence offered under Rule 90 has not been submitted in a timely manner, the documents may be offered into evidence with the proper foundation. Due to time limitations and the desire to make the arbitration hearing a meaningful proceeding, stipulations to evidence are encouraged if a party has not complied with the 30-day requirement.

8. THE SUBMISSION OF VOLUMINOUS DOCUMENTS OR DEPOSITIONS

Committee Comments to Illinois Supreme Court Rule 90(c) indicate that the blanket submission of voluminous records or depositions will not be tolerated. The panel will not be expected to pore over these documents to attempt to sort out relevant or material issues. In the event a voluminous document is submitted to the panel, the chairperson should instruct counsel to stipulate to the relevant portion they wish the panel to consider. Furthermore, the Rule requires that the pages of any 90(c) package should be numbered consecutively from the first page to the last page.

9. EXPERT WITNESSES

Written opinions or testimony of an expert witness at the arbitration hearing will be admitted into evidence provided written notice is given 30 days prior to the date of hearing, accompanied by a statement containing the identity of the expert witness, his/her qualifications, the subject matter, the basis of his/her conclusions, and his/her opinion as well as any other information required by Rule 222 (d)(6).

10. RIGHT TO SUBPOENA MAKER OF THE DOCUMENT

Subpoena practice in arbitration cases is conducted in essentially the same manner as that followed in non-arbitration cases. [Illinois Supreme Court Rule 90(e)]. Any other party may subpoena the author or maker of a document admissible under this rule at

that party's expense and examine the author or maker as if under cross-examination. The provisions of the Code of Civil Procedure relative to subpoenas, 735 ILCS 5/2-1101 (2000), apply to arbitration, and it is the duty of a party requesting the subpoena to modify the form to show that the appearance is set before an arbitration panel and to give the time, date and place set for the hearing. Witness fees and costs shall be in the same amount and shall be paid by the same party or parties as provided for in trial in the circuit court.

11. ADVERSE EXAMINATION OF PARTIES OR AGENTS

An adverse party or agent may be called and examined as if under cross-examination at the insistence of an adverse party. The custom is to arrange for appearance of such witnesses by agreement. [Illinois Supreme Court Rule 90(f)].

12. COMPELLING APPEARANCE OF PARTIES OR WITNESS AT HEARING

The provisions of Illinois Supreme Court Rule 237 concerning the service of subpoenas and notice to parties of the appearance of witnesses are applicable to an arbitration hearing. The presence of a party may be waived by stipulation or excused by court order for good cause shown not less than seven days prior to the hearing. [Illinois Supreme Court Rule 90(g)].

13. FAILURE OF A PARTY TO COMPLY WITH A SUBPOENA OR RULE 237 NOTICE

A party who fails to comply with an Illinois Supreme Court Rule 237(b) notice to appear at an arbitration hearing is subject to sanctions by the court pursuant to Illinois Supreme Court Rule 219(c). Those sanctions may include an order debarring that party from maintaining a claim, counterclaim, etc. The 1993 amendment to Rule 90(g) clarified that Rule 237(b) notice to appear at an arbitration hearing carries equivalent importance to one requiring an appearance at trial such that a court may, in an appropriate case, debar a party who fails to comply from rejecting the award.

The amendment also allows a party who received a notice to appear an opportunity to be excused in advance from appearing for good cause or by stipulation. For example, in a case where the party is willing to stipulate to the issue of liability and the only question which remains is damages, the party served with a Rule 237 notice may be excused by stipulation of the parties. If a party fails to appear pursuant to a Rule 237 notice, the panel may note the fact on the award form.

14. OBJECTIONS TO EVIDENCE

Illinois Supreme Court Rule 90(a) makes a rather broad grant of power to the arbitration panel governing the conduct of the hearing. The chairperson has the power to determine the admissibility of evidence according to the established rules of evidence.

Regardless of the presumptive admissibility of certain documents submitted under Supreme Court Rule 90(c), the arbitrators will be required to apply the test under established rules of evidence otherwise relating to credibility and to determine the weight to be given such evidence. Consequently, even though some documents may be presumptively admissible under Rule 90(c), counsel is not precluded from objecting to their introduction under the established rules of evidence.

15. MOTIONS AT THE ARBITRATION HEARING

The Illinois Supreme Court Rules make a broad grant of power to the arbitrators over the conduct of the hearing including the authority to rule on the admissibility of evidence as well as to decide the law and facts of the case. The authority and power of the arbitrators exists only in relation to the conduct of the hearing at the time it is held. This authority implies that the arbitrators may exclude witnesses upon request of counsel and rule on motions concerning the admissibility of evidence for purposes of the arbitration hearing only. Issues that may arise in the proceedings of a case prior, ancillary or subsequent to the hearing must be resolved by the court. [See Committee comments to Ill. Sup. Ct. Rule 90(b)]. Therefore, any motion involving the issuance **of an order *must* be made before the Supervising Judge for Arbitration in** advance of the arbitration hearing date. Arbitrators cannot hear motions for dismissal, summary judgment, sanctions, default judgments, continuance, amendment to the complaint or transfer of a case.

16. EXHIBITS

The offering of exhibits is conducted much in the same manner as in a trial. However, counsel should remember that it may be helpful to the panel if three sets of exhibit materials are prepared so that each member of the panel has a copy. All exhibits admitted into evidence are retained by the arbitration panel until they have made an Award. Thereafter, the 17th Judicial Circuit requires that exhibits be picked up from the ADR Center within seven days of the date of the hearing.

17. MEMORANDUM OF LAW

A short, written memorandum of law on any complex or unsettled point of law should be prepared in triplicate so that it may be presented to the panel at the hearing. In addition, copies of the cases cited should be attached, since the arbitrators do not have access to a law library at the ADR Center.

Because the arbitration hearings are set for a concise presentation, any memorandum of law should be brief (one to three pages) and to the point so as to minimize the arbitrator's deliberation time. As a courtesy, memorandum of law should be exchanged in advance of hearing to allow opposing counsel to respond and avoid surprise.

18. FAILURE TO PARTICIPATE IN AN ARBITRATION HEARING IN A MEANINGFUL MANNER

All parties to the arbitration hearing must participate in the hearing in good faith and in a meaningful manner. Committee Comments to the Illinois Supreme Court Rule 91 note that to permit any party or counsel to ignore the arbitration hearing or to exhibit an indifference to its conduct would permit a mockery of this deliberate effort on behalf of the public, the bar, and judiciary to attempt to achieve an expeditious and less costly resolution to private controversies.

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 for such finding shall be stated on the award. The award shall be prima facie evidence that the party failed to participate in the arbitration hearing in good faith and in a meaningful manner. A court, when presented with a petition for sanctions or remedy therefore based on the award finding, may order sanctions as provided in Illinois Supreme Court Rule 219(c), including but not limited to, an order debarring the party from rejecting the award and costs and attorney fees incurred for the arbitration hearing. [Illinois Supreme Court Rule 91(b)].

Like any evidentiary narrative, the lack of good faith finding should be complete and specific. The factual basis should chronicle every reason for the panel's finding. Those reasons must be in the form of facts, not conclusions. The findings should also include a recitation of specific facts in this case which have lead the panel to the conclusion that there has not been good faith participation.

In drafting its factual basis, the panel should put itself into the shoes of the petitioner. What facts or what evidence would be both relevant and material to the issues in a petition for sanctions? What facts will the petitioner need to show in order to prevail? Those facts should be included in the findings. The panel does not fulfill its obligation either to the arbitration system or to the party by entering a finding of no good faith against their opponent and failing to substantiate the claim.

Prior to the adoption of these sanctions, there were complaints by arbitrators that some parties and lawyers would attend arbitration hearings but refuse to participate. The arbitration process, and this rule in particular, was not intended to force parties to settle cases. Settlement, by definition, must be voluntary and not compelled. However, court-annexed mandatory arbitration is a dispute resolution process under the auspices of the court. Parties and lawyers must not be allowed to abuse the arbitration process so as to make it meaningless. Arbitration must not be perceived as just another hurdle to be crossed in getting the case to trial. Good faith participation, as required by this rule, was therefore intended to assure the integrity of the arbitration process.

H. ABSENCE OF A PARTY AT THE ARBITRATION HEARING

1. EX-PARTE AWARDS

Illinois Supreme Court Rule 91(a) provides that the hearing shall proceed in the absence of a party who, after due notice, fails to be present. The panel shall require the other party or parties to submit such evidence as the panel may require for making an *ex-parte* award.

A party's failure to appear at the arbitration hearing acts as a waiver of that party's right to reject the award and a consent to the entry of a judgment on the award by the court.

If plaintiff fails to appear at the arbitration hearing, an *ex-parte* award is normally entered in favor of the defendant for plaintiff's failure to sustain its burden of proof. If the defendant fails to appear, plaintiff still has the burden of proof and must present such evidence as may be necessary to prove the case. An *ex-parte* award will be entered based on the panel's determination of the evidence. If neither plaintiff nor defendant appear at the hearing, an *ex-parte* award may be entered under Rule 91(a), or the court may enter an order dismissing the case for want of prosecution.

2. DEFAULT JUDGMENTS.

The arbitration panel does not have the authority to enter a default judgment; and therefore, any such motion must be brought before the Supervising Judge for Arbitration prior to the arbitration hearing. Pursuant to Local Rule 10.07, all dispositive motions shall be filed with the clerk of the court and scheduled for hearing before the judge to whom the case is assigned on a date not later than thirty (30) days prior to the scheduled arbitration hearing, except by prior leave of court and for good cause shown.

3. PARTIES ARRIVING LATE TO THE ARBITRATION HEARING

When parties appear on the scheduled hearing date, they are assigned to an arbitration panel. The Arbitration Administrator should be notified immediately if a party will be late on the day of hearing; otherwise, an absent party will be found to be in default. It is the practice of the Arbitration Center to wait fifteen (15) minutes after the prescribed hearing time before proceeding to an *ex-parte* hearing and award.
If one of the parties has called the ADR Center and has indicated that he or she will be late, the case may be held at the discretion of the panel and Arbitration Administrator pending arrival of the missing party. However, the party causing the delay will have that time deducted from their presentation of the case.

4. VACATING A JUDGMENT MADE ON AN EX-PARTE AWARD

If a party which failed to appear desires a full hearing, they must wait until judgment is entered on the award and then petition the Court to vacate the judgment pursuant to 735 ILCS 5/2-1301 or 735 ILCS 5/2-1401. An award, because it is not a court order, may not be vacated. The Court, in its discretion, may order the matter set for rehearing in arbitration. However, under Illinois Supreme Court Rule 91(a), costs, fees and other sanctions may be assessed upon the party seeking to vacate the judgment.

I. THE AWARD

Illinois Supreme Court Rule 92(b) provides that the panel shall make an award promptly upon termination of the arbitration hearing. The first issue for determination by the panel is whether all parties participated in the hearing in good faith. If so, it shall be noted upon the award form. If the panel finds unanimously that one or more parties did not participate in good faith, that also shall be noted on the award form along with written findings supporting such notation. The second issue for determination by the panel is whether the award will be in favor of the plaintiff or the defendant. If the plaintiff has failed to meet his or her burden of proof, the panel may enter an award in favor of the defendant. If the plaintiff has met the necessary burden, the panel may then address the issue of damages.

The award must dispose of all claims for relief including any counterclaims, statutory or contractual attorneys fees, or other relief sought including court costs. If the parties ask for and are entitled to attorney's fees and prove them up either by testimony or affidavit, they must be addressed in the award. The prevailing party is entitled to costs and the costs should be itemized in the award. The court **may not** change the award based on the fact that the panel did not determine a specific claim for relief. The award may not exceed $50,000, exclusive of interest and costs. [Illinois Supreme Court Rule 92(b)]. The award shall be signed by the arbitrators or the majority of them. A dissenting vote without further comment may be noted.

The arbitration award should be written in clear and understandable language so as to avoid any potential confusion concerning the panel's decision. **Note that the panel is not entering a judgment but is making an award.** The following are examples of language that can be used in the drafting of an arbitration award:

> "**Award is made in favor of the Plaintiff, XYZ Company, in the amount of $5,000.00, plus costs in the amount of $_____, against Defendant, ABC Company."**

-or-

> "**Award in favor of defendant John Jones, with costs assessed against the Plaintiff, Peter Smith, in the amount of $_____."**

In cases involving multiple plaintiffs or defendants, the arbitrators must indicate by name which party or parties the award is being made in favor of or against so as to avoid confusion.

Likewise, when making an award in favor of a counterplaintiff or counterdefendant, the parties should be indicated by name.

The amount of the award for or against each party must be specifically set forth, particularly when different parties may be awarded different amounts:

> "**We further make an award in favor of Defendant/Counterplaintiff, ABC Company, on the counterclaim in the amount of $3,000.00, each party to bear their own costs.**"

If one party fails to appear at the arbitration hearing, the panel should indicate that the award is being made ex-parte. If the award contains an obvious or unambiguous error in math or language, any party can bring a motion before the Supervising Judge for Arbitration for correction of the award as provided for in Illinois Supreme Court Rule 92(d). The filing of such a motion will stay the 30-day period for rejection of the award until disposition of the motion. The parties may not contact the arbitrators directly for clarification or call an arbitrator to testify as to what transpired at the arbitration hearing. [Illinois Supreme Court Rule 93(b)]. Once the award is completed, the award and court file should be delivered to the Arbitration Administrator.

AN ARBITRATOR'S GUIDE TO THE ESTABLISHED RULES OF EVIDENCE

A. INTRODUCTION

The pleadings in a case assigned to Mandatory Arbitration will define the issues to be decided at the hearing. The Mandatory Disclosure Statement required of the parties by Supreme Court Rule 222 in tort and contract cases will also be helpful in defining the issues. The parties should make sure that their Disclosure Statements are properly filed with the Circuit Clerk so that they are accessible to the arbitrators before the hearing commences.

1. RELEVANT EVIDENCE – Rule 401 and Rule 402

The issues to be decided will define what is ***relevant evidence***. **Relevant evidence** means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.[1]

As a GENERAL RULE, ALL RELEVANT EVIDENCE IS ADMISSIBLE, except as otherwise provided by law. Evidence which is not relevant is not admissible.

Otherwise irrelevant, and even inadmissible, evidence may be received in evidence by the arbitrators if:

1) The parties STIPULATE to the admissibility and receipt in evidence of testimony, documents, or objects, etc.

2) The evidence becomes RELEVANT by a party's laying a foundation establishing the testimony, documents, or objects as RELEVANT.

2. PRESUMPTIVE ADMISSIBILITY UNDER RULE 90(c)

Illinois Supreme Court Rule 90(c) provides that certain documents are PRESUMPTIVELY ADMISSIBLE; they include hospital bills, hospital records, doctors' reports, drug bills, and other medical bills, bills for property damage, estimates of repair, written estimates of value, earnings reports, written statements of witnesses, and the depositions of a witness, upon 30 days' written notice of intention to offer the documents into evidence, accompanied by a copy of the document. Where there has been compliance with Supreme Court Rules 90(c) and 222, the documents should be received in evidence. Neither AUTHENTICATION nor FOUNDATION are required. However, the documents are still subject to objection and cross-examination by any other party.

Remember, compliance with Rule 90(c) does not excuse non-compliance with Rule 222. A document must be properly disclosed under Rule 222 before it becomes subject

to presumptive admissibility under Rule 90(c).

SUPREME COURT RULE 90(c) DOCUMENTS PRESUMPTIVELY ADMISSIBLE

All documents referred to under this provision shall be accompanied by a summary cover sheet listing each item that is included detailing the money damages incurred by the categories as set forth in this rule and specifying whether each bill is paid or unpaid. If at least 30 days' written notice of the intention to offer the following documents in evidence is given to every other party, accompanied by a copy of the document, a party may offer in evidence, *without foundation or other proof* (emphasis added):

1) bills (specified as paid or unpaid), records and reports of hospitals, doctors, dentists, registered nurses, licensed practical nurses and physical therapists, or other health care providers;

2) bills for drugs, medical appliances and prostheses (specified as paid or unpaid):

3) property repair bills or estimates, when identified and itemized, setting forth the charges for labor and material used or proposed for use in the repair of the property;

4) a report of the rate of earnings and time lost from work or lost compensation prepared by an employer;

5) the written statement of an opinion witness, the deposition of a witness, the statement of a witness which the witness would be allowed to express if testifying in person, if the statement is made by affidavit or by certification as provided in section 1-109 of the Code of Civil Procedure;

6) any other document not specifically covered by any of the foregoing provisions and which is otherwise admissible under the rules of evidence.

See also Supreme Court Rule 90(d) for additional requirements for opinions of expert witnesses.

Any evidence which falls within Supreme Court Rule 90(c) is PRESUMPTIVELY ADMISSIBLE. Any other evidence offered must meet the requirements of the ESTABLISHED RULES OF EVIDENCE [Supreme Court Rule 90(b)].

3. DIRECT EXAMINATION

DIRECT EXAMINATION GENERAL RULE: Leading question should not be used on the direct examination of a witness except as may be necessary to develop the witness'

testimony. [Ill. R. Evid. 611(c)].

DEFINITION OF A LEADING QUESTION: A question that contains the answer desired of the witness, e.g., "Was the color of the defendant's car red?" instead of "What color was the defendant's car?"

EXCEPTION: If the witness' memory is exhausted, the witness is HOSTILE, or the witness is identified with an opposing party as an ADVERSE WITNESS, then the witness may be examined as if under cross-examination, i.e., leading questions may be used.

Whether the witness is HOSTILE or ADVERSE is determined by the presence of one or more of the following conditions:

The attitude of the witness; the witness' interest in the outcome (i.e., an agent or employee of the opponent); the content of the witness' testimony indicates surprise or affirmative damage to the party calling the witness.[2]

4. CROSS-EXAMINATION – Rule 611(b) and (c)

CROSS-EXAMINATION GENERAL RULE: Ordinarily leading questions should be permitted on cross-examination.

SCOPE: Cross-examination should be limited to the subject matter of the DIRECT EXAMINATION and matters affecting the credibility of the witness. The Court may, in the exercise of discretion, permit inquiry into additional matters as if on direct examination.

5. REDIRECT EXAMINATION

The real purpose of REDIRECT is REHABILITATION and should be limited to matters brought out for the first time on cross-examination. The offering party should have the opportunity on REDIRECT to meet such matters and try to explain away. It should not be an opportunity to say the same thing that was said on DIRECT examination (i.e., to reinforce direct) nor to add material that could have been but was not offered on direct. This will be extremely important because of the time constraints on the arbitration hearing.

6. OFFER OF PROOF

In the event the arbitrator rules certain evidence inadmissible, either testimony of a witness or objects such as photos or other items, a party may make an OFFER OF PROOF in one of the following ways:

1) Ask the witness what his or her testimony would have been if the objection had been overruled;

2) Counsel may make a statement as to what the substance of the witness' testimony would have been but for the ruling.

GENERAL RULE: Allow the OFFER OF PROOF to be made. Even though there is no transcript for a review proceeding, the primary purpose of the OFFER OF PROOF is to provide the arbitrator with the most informed opportunity to make the proper ruling. After hearing the OFFER OF PROOF, the arbitrator may have a different opinion as to the relevance or admissibility of the proposed evidence.

B. EVIDENCE SCENARIOS

Each of these hypothetical evidence problems assumes that the offering party has NOT complied with Supreme Court Rule 90(c). Hence the Arbitrator will have to make a ruling pursuant to the established rules of evidence for Illinois. These examples are illustrative, but not exhaustive, of the typical types of evidentiary rulings which arbitrators may face. (Please note: the hypothetical fact patterns provided below are for purposes of illustration and should not be relied upon as authority when making rulings.)

1. SUBSEQUENT REMEDIAL MEASURES

a. The Plaintiff seeks to admit proof that the Defendant, two days after the incident, repaired defects in the steps upon which Plaintiff allegedly fell and was injured.

OBJECTION: Not relevant.

RULING: SUSTAINED. Proof of subsequent remedial measures is not admissible on the issue of negligence.[3]

b. The Plaintiff seeks to admit evidence of a subsequent remedial repair by the Defendant of a manhole as proof that Defendant owned the property.

OBJECTION: Not relevant because it is proof of a subsequent remedial repair.

RULING: OVERRULED. Proof of subsequent remedial repairs is admissible on an issue other than negligence of the defendant, i.e., proof of ownership, control, feasibility of precautionary measures, or impeachment.[4]

2. SIMILAR HAPPENINGS

a. Plaintiff seeks to admit Defendant's records which show that two other accidents occurred under substantially similar conditions on the steps of Defendant's building.

OBJECTION: Not relevant.

RULING: OVERRULED. The records are admissible to show the probability that defendant had notice of the existence of a dangerous condition.[5]

b. Defendant apartment building owner seeks to introduce his own maintenance records to show the lack of any other similar accidents.

OBJECTION: Not relevant.

RULING: SUSTAINED. The records are inadmissible on the issue of absence of notice to the defendant of a defective condition.[6]

c. Plaintiff, in a suit to recover for lost profits for Defendant's alleged breach of a real estate contract, offers proof of the sale prices of other similar real estate in the same area.

OBJECTION: Not relevant.

RULING: OVERRULED. Admissible as a proper method of proving fair market value.[7]

3. CHARACTER, HABIT; ROUTINE BUSINESS PRACTICES – Rule 406

a. Defendant offers the testimony of a long-time friend who will testify concerning Defendant's reputation in the community as a careful person as proof that he was not negligent on the occasion at issue.

OBJECTION: Not relevant.

RULING: SUSTAINED. Proof of another's character, or character trait, i.e., a careful person, is not admissible in a civil case unless the character or trait of character is an essential element of the cause of action, claim or defense.[8]

b. In an action for negligence against a car wash owner for damages sustained to Plaintiff's auto which jumped the conveyor track while being washed, Plaintiff seeks to testify that he has, for the past three years, washed his car at the same car wash every week, and that each time he reads the posted instructions, next drives his car onto the conveyer, then puts it in Park and before he leaves the vehicle again checks to see that it is in Park.

OBJECTION: Not relevant.

RULING: ADMISSIBLE. Proof of the Plaintiff's habit or routine practice established by evidence of sufficient pattern of repeated responses in the same situation is admissible as is evidence of his character as a careful person and as proof that he acted in conformity with that character trait on this occasion. [9]

c. The Defendant insurance company seeks to have an office manager testify that

the company has a routine practice of mailing notices of noncoverage, which indicate that the proposed insured is not covered by insurance until after receipt of the insured's premium check; that this procedure is followed immediately upon a telephone request from a proposed insured for coverage; and, that the records indicate that the practice was followed in the instant case.

OBJECTION: Hearsay.

RULING: OVERRULED, ADMISSIBLE. The routine practice of an organization, coupled with proof that the practice was in fact followed on the occasion in issue, is admissible.[10]

4. OFFERS OF COMPROMISE OR SETTLEMENT– Rule 408; PAYMENT OF MEDICAL EXPENSES – Rule 409

The Plaintiff in a personal injury action testifies that at the scene of the accident the Defendant offered to pay for her medical expenses and property damage as proof of Defendant's admission of liability and that defendant did pay part of her medical expenses.

OBJECTION: Payment of medical expenses and offers to settle are inadmissible on the issue of liability for the injury.

RULING: SUSTAINED. Furnishing or offering or promising to furnish a valuable consideration in compromising or attempting to compromise a claim is not admissible when offered to prove liability. Payment of medical and similar expenses are not admissible to prove liability.[11]

5. EVIDENCE OF INTOXICATION

Plaintiff, in an action alleging negligence and willful and wanton conduct of the Defendant, seeks to have a bystander testify that when Defendant emerged from his vehicle after the collision with Plaintiff's car, he smelled from alcohol.

OBJECTION: Evidence of the use of alcohol is not admissible.

RULING: SUSTAINED. Evidence of the use of alcohol is not admissible unless the offering party is prepared to prove intoxication.[12]

6. TRAFFIC CONVICTIONS; PLEAS OF GUILTY – Rule 410

Plaintiff seeks to introduce that Defendant, after a plea of not guilty and bench trial, was convicted for speeding at the time of the alleged accident.

OBJECTION: Traffic offense convictions are not admissible because of the great volumes of cases handled by these courts, and traffic courts do not operate so

as to assure the reliability of their judgments.

RULING: SUSTAINED. Traffic offense convictions are not admissible unless entered on a plea of guilty. The nature of traffic court proceedings is that they are often perfunctory in nature and such convictions are frequently uncontested. Courts are reluctant to admit them.[13]

7. ORIGINAL WRITING; BEST EVIDENCE RULE

a. Plaintiff Realtor, in a suit to recover a real estate commission, seeks to introduce a copy of the Real Estate Listing Agreement as evidence of the terms of the contract with the Seller-Defendant. The Realtor testifies that each person was given a copy of the contract as his original at the time of execution and that this is a Realtor's copy.

OBJECTION: This is not the original document, and the Best Evidence or Original Writing Rule requires that the original be produced.

RULING: OVERRULED. Copies which the parties by their conduct treat as originals are admissible, i.e., contracts executed in multiple copies.[14] A duplicate is admissible to the same extent as an original unless (1) a genuine question is raised as to the authenticity of the original or (2) in the circumstances it would be unfair to admit the duplicate in lieu of the original. [Ill. R. Evid. 1003]

b. An attorney in a suit for fees testifies from memory about the time and services rendered to his client.

OBJECTION: The attorney's written time records are the Best Evidence of the services and time rendered.

RULING: OVERRULED. The facts of the attorney's time and services exist independently of the written time records, and the attorney may testify.[15]

c. Plaintiff seeks to introduce a copy of a contract after testifying that the original is in the possession of the Defendant.

OBJECTION: The Best Evidence Rule requires Plaintiff to produce the original.

RULING: SUSTAINED, *unless* Plaintiff can show that the original was under the control of the party against whom offered, that party was put on notice, by the pleadings or otherwise, [and] that the contents would be a subject of proof at the hearing.[16] [Ill. R. Evid. 1004 (3)]

8. POLICE REPORTS – Rule 236 and S. Ct. Rule 803(8)

The Plaintiff seeks to introduce the investigative report of a police officer, who arrived immediately after the accident, as to what the parties and witnesses said regarding how the accident occurred. Plaintiff argues the report is admissible.

OBJECTION: Hearsay

RULING. SUSTAINED. Police investigative and accident reports are inadmissible as Business Records. [16]

9. REFRESHED RECOLLECTION – Rule 612

The officer who investigated the accident, upon testifying, cannot recall the exact positions and locations of the vehicles involved, but he did write this information in his Accident Report. The Defendant seeks to mark the Accident Report as an exhibit and show it to the officer, so that he may testify regarding what he observed.

OBJECTION: This is a Police Report and is inadmissible.

RULING: OVERRULED. The witness, after a showing that his independent memory of what he observed is exhausted, may review his written Police Report, put it down, and testify from his refreshed recollection.[17]

10. PAST RECOLLECTION RECORDED – Rule 803(5)

The same police officer, after refreshing his memory from his written report, still cannot testify from his refreshed recollection as to the details of the locations of the cars or his analysis as to how the accident occurred. (Assume he has been qualified to give such an opinion.) Defendant seeks to have the officer read from his report.

OBJECTION: Police reports are inadmissible by Statute and Supreme Court Rule. Also, this is hearsay since it is an out-of-court statement being used to prove the truth of the matter asserted in the report.

RULING: OVERRULED. After an attempt to refresh the witness' memory has failed, and the arbitrator finds that the officer has no independent recollection about a matter covered in the writing, the officer may read from the report as an exception to the Hearsay Rule. This is Past Recollection Recorded. The document itself is also admissible.[18]

11. MEDICAL RECORDS; BUSINESS RECORDS -- S. Ct. Rule 236

The Plaintiff seeks to introduce his medical records from the hospital, where he was treated for the injuries sustained in the incident, by having a doctor testify that he treated Plaintiff, supervised Plaintiff's treatment by the persons who entered their treatment notes in the records, and that these entries are made in the normal course of his and the hospital's treatment of patients.

OBJECTION: Hearsay, and Medical Records are inadmissible.

RULING: OVERRULED. Medical records are now admissible under Supreme Court Rule 236 as a Business Record. A proper foundation for the records' admissibility has been laid by testimony that the records were kept in the regular course of business at the time of the acts or events or within a reasonable time thereafter and that the person testifying either supervised or has personal knowledge of their recordation or method of recordation.

12. HEARSAY; NON-HEARSAY; EXCEPTIONS TO HEARSAY

THE SELF-QUOTING WITNESS.

The Plaintiff offers the testimony of a witness, a passenger in Defendant's vehicle, who testifies that just before the collision with plaintiff, he told the Defendant he was exceeding the speed limit because he had just passed a 45 mph sign, and his speedometer was reading 60.

OBJECTION: Hearsay. This is an out-of-court statement being offered to prove the truth of the matter asserted.

RULING: SUSTAINED. The statement is hearsay and inadmissible even though the declarant is available to be cross-examined. The declarant's testimony is an out-of-court statement being introduced to prove the truth of the matter asserted.

13. STATE OF MIND – Rule 803(3)(B)

In an action by a broker to recover damages for alleged failure of Defendant to pay his brokerage fee, Defendant testifies that he had discussions with his wife about his pending offers to buy the land before listing with Plaintiff and also that he had no conversations with his wife concerning using the Plaintiff as his broker. The issue was whether Defendant had listed with Plaintiff or was awaiting the results of independent offers to buy before listing with Plaintiff.

OBJECTION: These are self-serving statements and hearsay.

RULING: OVERRULED. Where the state of mind of a person at a particular time

is relevant to a material issue in the case, his declaration made at a time when no motive to misrepresent existed are admissible as proof of that issue, even when not made in the presence of the adverse party.[19]

14. ADMISSION BY A PARTY OPPONENT – Rule 801(2)

The Plaintiff, in an action against the owner of a trucking company for injuries sustained as a result of a truck's defective brakes, testifies that the driver of the truck, Defendant's employee, shortly after the incident and at the scene of the accident, said, "The truck's brakes were bad man, really bad. When I made out my maintenance report two months ago, I warned the company that they were dangerous."

OBJECTION: This is hearsay. It is an out-of-court statement being admitted to prove the truth of the matter asserted, i.e., that the defendant owner had knowledge that the brakes were in need of repair and did nothing.

RULING: OVERRULED. The statement by an agent, here the employee-driver, if within the scope of his employment or express or implied authority, is binding on the owner as an ADMISSION and is not hearsay.[20]

15. EXCITED UTTERANCE – Rule 803(2)

Plaintiff testified that immediately after the accident with the Defendant Company's truck and while lying on the road feeling all numb, Defendant's employee truck driver, not available at trial, rushed up to Plaintiff and said, "Man, am I sorry. I just didn't see the red light."

OBJECTION: Hearsay.

RULING: OVERRULED. Admissible as an EXCITED UTTERANCE exception to the Hearsay Rule. An excited utterance is one made where there is an occurrence sufficiently startling to cause a spontaneous and unreflecting statement, an absence of time to fabricate, and the statement relates to a startling event such as an auto accident.[21]

16. STATEMENTS OF MEDICAL DIAGNOSIS – Rule 803(4)

The Plaintiff's treating physician testified that on the first occasion he saw and treated Plaintiff, Plaintiff told him, "The speeding red car hit me head on."

OBJECTION: Hearsay.

RULING: OVERRULED. Statements made to a physician for the purpose of diagnosis and statement are admissible as an Exception to the Hearsay Rule.

Here the doctor needed to know the extent of the impact to make a proper diagnosis.[22]

17. PHOTOGRAPHS

Plaintiff testifies that Group Exhibits 1 through 10 are photos of his injuries and property damage taken by his wife one day after the accident. He states that they accurately depict both his injuries and the property damage as they looked at the time of the occurrence in issue and offers them in evidence.

OBJECTION: Not admissible. The Plaintiff did not take the photos, and he cannot testify to their accurateness. There is no proper foundation for their admission.

RULING: OVERRULED. A proper foundation has been laid by:

1) Testimony that Plaintiff observed his injuries and the damage the photos portray at the time of, or shortly after, the accident;

2) The fact that the photos were taken at a time relevant to the case or at a later date;

3) The fact that the photos depict the same condition as it existed at the time relevant to the case; i.e., at the time of the accident.[23]

18. TELEPHONE CALLS – Rule 901(b)(6)

Plaintiff, who has known Defendant and his family for five years and spoken to them many times in person, testifies as to the length of the relationship and extent of conversations and that three days after Plaintiff slipped and fell on snow and ice accumulated on Defendant's property, Defendant called him on the phone and stated, "I'm sorry my husband didn't shovel that snow and ice ten days ago. I told him it was slippery and that I was afraid someone was going to get hurt."

OBJECTION: Hearsay. Also, Plaintiff cannot testify that it was Defendant who called. Defendant will offer evidence that such a call was never made.

RULING: OVERRULED. A person may be identified by voice. A voice may be authenticated by someone who heard the call and was familiar with the caller's voice so as to identify the caller.[24]

19. CRIMINAL CONVICTIONS – Rule 609

Defendant on cross-examination denies he was convicted of the felony charge of forgery in 2018. Plaintiff seeks to admit a certified copy of Defendant's 2018 Conviction for Felony Forgery in the Circuit Court of Cook County Criminal Division as impeachment evidence against Defendant.

OBJECTION: Convictions are not admissible in civil cases, and this is not the proper way to prove such a conviction.

RULING: OVERRULED. Any felony conviction within the last ten years, or a misdemeanor conviction for a crime involving deceit or dishonesty within the last ten years, is admissible to impeach the credibility of a witness or party.[25]

20. CERTIFIED COPIES

A certified copy of a court record is a proper form of evidence. 735 ILCS 5/8-1202 (2000) provides: "The papers, entries and records of courts may be proved by a copy thereof certified under the signature of the clerk having the custody thereof, and the seal of the court, or by a judge of the court if there is no clerk."

See also Illinois Rules of Evidence Rule 902 and Rule 1005; also, 735 ILCS 5/8-101 and Federal Rules of Evidence 609.

Also admissible are the following:

- Certified Municipal Records, 735 ILCS 5/8-1202;
- Certified Corporate Records, 735 ILCS 5/8-1204;
- Official Certificate of Land Offices, 735 ILCS 5/8-1208;
- Certified State Land Patents, 735 ILCS 5/8-1210;
- Certified Deposition Transcripts, Ill. Sup. Ct. R. 207 (6);
- Certified Public Aid Records, 305 ILCS 5/10-13.4;
- Certified Copies of Vital Statistic Records, 410 ILCS 535/1 to 410 ILCS 535/25.

Additionally, the following documents are SELF-AUTHENTICATING because they are accepted as authentic in normal everyday affairs:

- Interstate Commerce Commission Printed Schedules, Classifications and Tariffs, 735 ILCS 5/8-1201;
- Illinois Statutes, Foreign Statutes, and Acts of Congress, 735 ILCS 5/8-1104;
- Uniform Commercial Code, 810 ILCS 5/1-202 (1993);
- Mortality and Annuity Tables;
- Ancient Documents (Those more than 30 years old);
- Reports of Courts, 735 ILCS 5/8-1106.

21. IMPEACHMENT

a. Plaintiff is asked on cross-examination whether his brake lights were functioning when he stopped at the stop light just before Defendant collided with the rear of Plaintiff's car. He states: "I do not recall." Defendant offers questions and answers from Plaintiff's deposition when Plaintiff responded to an identical question with the answer, "No, they were not functioning."

OBJECTION: This is not a prior inconsistent statement and is not proper impeachment.

RULING: SUSTAINED. Plaintiff's failure to recall facts at the hearing cannot be impeached by prior testimony that on another occasion he remembered. The purpose of impeachment is to show that the witness lied or is not credible, not to prove the truth of the prior statement. This ruling could be otherwise if there is evidence that the failure to recall is feigned.

b. Plaintiff answers on cross-examination that his brake lights were on when Defendant hit him from the rear. Defendant seeks to introduce questions and answers Plaintiff gave at his deposition when Plaintiff said in answer to the question, "Were your brake lights on at the time of the collision with Defendant's vehicle?" Answer: "I don't recall."

OBJECTION: Not impeaching. Plaintiff didn't recall and now he does.

RULING: OVERRULED. Plaintiff's answer at trial is inconsistent with his failure to recall at a time closer to the event in question. It should be received. The arbitrator may give it whatever weight appropriate on the issue of the credibility of the witness.

22. EXPERT WITNESS-- Rule 702

The Defendant offers a doctor who testifies that he examined the Plaintiff, but did not treat him, reviewed the Plaintiff's treating chiropractor's records, and from his examination and the notes regarding Plaintiff's complaints of whiplash, he has an opinion to a reasonable degree of medical certainty that the Plaintiff is malingering, and his complaints are feigned.

OBJECTION: This nontreating physician is not qualified to give such an opinion.

RULING: OVERRULED. A nontreating physician can base his opinion on subjective complaints and the history the patient gives him. Who is qualified as an expert is within the sound discretion of the Court.[26]

23. LAY WITNESS OPINION TESTIMONY -- Rule 701

Plaintiff offers to testify that after he looked in both directions before entering the intersection, he saw the Defendant's truck barreling toward him at 60 miles per hour.

OBJECTION: This is lay opinion testimony about a matter that requires expert knowledge.

RULING: OVERRULED.[28] Lay witness testimony in the form of opinions or inferences are permitted if those opinions or inferences are rationally based on the perception of the witness and helpful to a clear understanding of the witness' testimony or the determination of the fact in issue and are not within the scope of Rule 702 on expert testimony.

END NOTES

[1] Illinois Rules of Evidence Rule 401.
[2] Supreme Court Rule 238. 735 ILCS 5/2-1102 (2000).
[3] Hodges v. Percival, 132 Ill. 53, 23 N.E. 423 (1890); Lundy v. Whiting Corp., 93 Ill. App. 3d 244, 417 N.E. 2d 154, 48 Ill. Dec. 752 (1st Dist. 1981); Howe v. Medaris, 183 Ill. 288, 55 N.E. 724 (1899); Day v. Barber-Colman Co., 10 Ill. App. 2d 494, 135 N.E. 2d 231 (1956).
[4] Evidence of repairs made or precautions taken after an accident may be admissible, as an exception to the General Rule, to show that control of the premises is in Defendant, where there is a dispute on the issue of control. Larson v. Commonwealth Edison Co., 33 Ill. 2d 316, 211 N.E. 2d 247 (1965); Practicability of enclosing equipment. Supolski v. Ferguson & Lange Foundry Co., 272 Ill. 82, 111 N.E. 544 (1916); Post-occurrence changes are admissible in products liability cases to establish feasibility of alternative design. Davis v. International Harvester Co., 167 Ill. App. 3d 814, 521 N.E. 2d 1282, 118 Ill. Dec. 589 (2nd Dist. 1988); See also: Sutkowskki v. Universal Marion Corp., 5 Ill. App. 3d 313, 281 N.E. 2d 749 (3rd Dist. 1972); Evidence of post-occurrence changes admissible to show Defendant acted with conscious disregard for safety of others or as proof of wilful and wanton conduct. Collins v. Interroyal Corp., 126 Ill. App. 3d 244, 466 N.E. 2d 1191, 81 Ill. Dec. 389 (1st Dist. 1984); Contra: Schaffner v. Chicago & North Western Transp. Co., 129 Ill. 2d 1, 541 N.E. 2d 643 (1989). Cleary and Graham's HANDBOOK OF ILLINOIS EVIDENCE (5th Ed. 1190) Sec. 407.1.
[5] Ballweg v. City of Springfield, 114 Ill. 2d 107, 499 N.E. 2d 1373, 102 Ill. Dec. 360 (1986) substantially similar happenings admissible to show notice of dangerousness.
[6] Evidence of no accidents inadmissible to show absence of notice, Mobile & Ohio Railroad Co. v. Vallowe, 214 Ill. 124, 73 N.E. 416 (1905)
[7] Department of Public Works & Bldgs. v. Klehm, 56 Ill. 2d 121, N.E. 2d (1973).
[8] Holtzman v. Hoy, 118 Ill. 534, 8 N.E. 832 (1886). But see McCure v. Suter, 63 Ill. App. 3d 378, 379 N.E. 2d 1376, 20 Ill. Dec. 308 (2nd Dist. 1978). Evidence of swimming regulations at similar campground admitted as custom and usage. Custom held to be relevant in determining the standard of care.
[9] Illinois Rules of Evidence Committee Commentary: Rule 406 confirms the clear direction of prior Illinois law that the evidence of the habit of a person or of the routine practice of an organization, whether corroborated or not and regardless of eyewitnesses, is relevant to prove that the conduct of the person or organization on a particular occasion was in conformity with the habit or routine practice.
[10] Webb v. Pacific Mut. Life Ins. Co., 348 Ill. App. 411, 109 N.E. 2d 258 (1st Dist. 1952). Evidence of business practice admissible to show practice followed on occasion in issue.
[11] 735 ILCS 5/8-1901 (2000); Boey v. Quaas, 139 Ill. App. 3d 1066, 487 N.E. 2d 1222, 94 Ill. Dec. 345 (5th Dist. 1986). Settling Defendant allowed to testify so as to disclose terms of settlement with Plaintiff. Held admissible on issue of credibility of testimony of settling defendant; Sawicki v. Kim, 112 Ill. App. 3d 641, 445 N.E. 2d 63, 67 Ill. Dec. 771 (2nd Dist. 1983). Reference in opening statement to Defendant's offer to pay $100 to settle the matter and an offer to reduce her bill for medical services reversible error.
[12] Evidence of use of alcohol not permitted except where the offering party is prepared to prove actual intoxication. Benuska v. Dahl, 87 Ill. App. 3d 911, 410 N.E. 2d 249, 43 Ill. Dec. 249 (2nd Dist. 1980); Ballard v. Jones, 21 Ill. App. 3d 496, 316 N.E. 2d 281 (1st Dist. 1974).

[13] Hengels v. Gilski, 127 Ill. App. 3d 894, 469 N.E. 2d 708, 83 Ill. Dec. 101, (1st Dist. 1984); O'Dell v. Dowd, 102 Ill. App. 3d 189, 429 N.E. 2d 548, 57 Ill. Dec. 650 (4th Dist. 1981). Traffic conviction for driving too fast for conditions is admissible as an admission in later civil case when entered on plea of guilty. See also Cleary and Graham's HANDBOOK OF ILLINOIS EVIDENCE, Sec. 802.4 (5th Ed. 1990).

[14] 735 ILCS 5/8-401 (2000); Supreme Court Rule 236 (1991) amended 4-1-92, effective 8-1-92; Hayes v. Wagner, 220 Ill. 256, 77 N.E. 211 (1906); People v. Chicago, R.I. & P. Ry. Co., 329 Ill. 467, 160 N.E. 841 (1928). Duplicate originals of Election Notices and Ballots made from same reliable printing process through mechanical means, i.e., printing, are admissible as originals, without accounting for the absence of any other duplicate originals.

[15] In re Marriage of Collins, 154 Ill. App. 3d 655, 506 N.E. 2d 1000, 107 Ill. Dec. 109 (2d Dist. 1987).

[16] Illinois Supreme Court Rule 237 (b) (1991) Electric Supply Corp. v. Osher, 105 Ill. App. 3d 46, 433 N.E. 2d 732, 60 Ill. Dec. 690, (1st Dist. 1982); But notice may not be necessary if from the nature of the case an opponent must know party will rely on a writing in his possession. Maxcy-Barton Organ Co. v. Glen Bldg. Corp., 355 Ill. 228, 189 N.E. 326 (1934).

[17] Illinois Supreme Court Rule 236 amended 4-1-92, effective 8-1-92; Jacobs v. Holley, 3 Ill. App. 3d 762, 279 N.E. 2d 186 (2nd Dist. 1972).

[18] Hall v. Checker Taxi Co., 109 Ill. App. 2d 445, 248 N.E. 2d 721 (1st Dist. 1969); Rowlett v. Hamann, 112 Ill. App. 2d 121, 251 N.E. 2d 358 (1st Dist. 1969).

[19] Taylor v. City of Chicago, 114 Ill. App. 3d 715, 449 N.E. 2d 272, 70 Ill. Dec. 398 (1st Dist. 1983); Rowlett, supra. Wilsey v. Schlawin, 35 Ill. App. 3d 892, 342 N.E. 2d 417 (1st Dist. 1975).

[20] Hackett v. Ashley, 71 Ill. App. 3d 179, 389 N.E. 2d 246, 27 Ill. Dec. 434 (3d Dist. 1979); People v. Coleman, 116 Ill. App. 3d 28, 451 N.E. 2d 973, 71 Ill. Dec. 819 (3d Dist. 1983).

[21] Taylor v. Checker Cab Co., 34 Ill. App. 3d 413, 339 N.E. 2d 769 (1st Dist. 1975); Cornell v. Langland, 109 Ill. App. 3d 472, 440 N.E. 2d 985, 65 Ill. Dec. 130 (1st Dist. 1982) where statement by managing golf pro at defendant's club to Plaintiff's husband that hole was shorter than 315 yards marked was admissible as an admission against club in action to recover for injuries suffered when Plaintiff was hit by other golfer's drive. Golf pro was "overseer" of the course and had authority to deal with patrons concerning safety of others.

[22] People v. Staten, 143 Ill. App. 3d 1039, 493 N.E. 2d 1157, 1160, 98 Ill. Dec. 136 (2nd Dist. 1986). To be admissible as an excited utterance exception to the hearsay rule, there must be an occurrence or event sufficiently startling to cause a spontaneous and unreflecting statement, an absence of time to fabricate, and a relationship between the statement and the occurrence or event.

[23] Greinke v. Chicago City Ry., 234 Ill. 564, 85 N.E. 327 (1908); Welter v. Bowman Dairy Co., 318 Ill. App. 305, 47 N.E. 2d 739 (1943); Ryan v. Monson, 33 Ill. App. 2d 406, 179 N.E. 2d 449 (4th Dist. 1961).

[24] Chgo. City Rwy. Co. v. Smith, 226 Ill. 178, 80 N.E. 716 (1907); People v. Donaldson, 24 Ill. 2d 315, 181 N.E. 2d 131 (1962); Stevens v. Illinois Central R. Co., 306 Ill. 370, 137 N.E. 859 (1923).

[25] Bell v. McDonald, 308 Ill. 329, 139 N.E. 613 (1923).

[26] People v. Montgomery, 47 Ill. 2d 510, 268 N.E. 2d 695 (1971), which adopted Federal Rule of Evidence 609; Smith v. Andrews, 54 Ill. App. 2d 51, 203 N.E. 2d 160, Cert. Den'd 382 U.S. 1029 (1964). Proof of conviction for felony rape admissible as prima facie evidence in later civil case of fact that Defendant committed rape. This is judicial admission exception to the Hearsay Rule. People v.

Spates, 77 Ill. 2d 193, 395 N.E. 2d 563, 32 Ill. Dec. 333 (1979). A misdemeanor that has as its basis deception, dishonesty or false statement, or bears a reasonable relation to testimonial deceit, can be used for impeachment.
[27] Nowakowski, v. Hoppe Tire Co., 39 Ill. App. 3d 155, 163, 349 N.E. 2d 578, 586 (1st Dist. 1976).
[28] Peterson v. Lou Bachrodt Chevrolet Co., 76 Ill. 2d 353, 392 N.E. 2d 1 (1979). Non expert can give an opinion in miles per hour on speed of a vehicle. See Robinson v. Greeley & Hansen, 114 Ill. App. 3d 720, 449 N.E. 2d 250 (2nd Dist. 1983). Nonexpert not allowed to express an opinion on the ultimate legal issue, i.e., whether the entrance to a sewer lift station was dangerous.

Evidence Reference Texts

Cleary and Graham, Handbook of Illinois Evidence (5th Edition 1990)
Goodman, Illinois Trial Evidence (1987)
Hunter, Trial Handbook for Illinois Lawyers (7th Edition 1997)
McCormick, Evidence (4th Edition 1992)

APPENDIX A

ILLINOIS SUPREME COURT RULES ON MANDATORY ARBITRATION

Introductory Comments

Objectives

The Committee, from its inception, was duly aware of the formidability of its undertaking in the light of the novelty to the Illinois bar of the concept as well as the procedure for the conduct of nonbinding court-annexed arbitration as a method for dispute resolution. It finds, even at this date, approximately one year after the effective date of the enabling legislation, after the publication of numerous articles, the consideration of proposed rules by three major bar associations and public hearings, that the vast majority of the Illinois bar is unaware of the existence of this act and the imminence of this procedure as an integral part of the State judicial system.

The clarity, the reasonableness and the fairness of the rules to be recommended were a foremost consideration by the Committee to address both the fact of the foregoing novelty as well as the apprehension usually attendant to the introduction of a new procedure to be learned and put into practice. Equally, if not more so, was the Committee dedicated to achieving a product worthy of acceptance and promulgation by this court.

At the time of our appointment, there were in effect in approximately 16 jurisdictions rules for the conduct of mandatory arbitration programs, any set of which conceivably could have served as a viable model for adoption and use in Illinois. However, the focus of our effort in relation to a set of specific rules was to recommend that which would induce support from all affected sectors of the bar and the public, and which would manifest itself as a feasible vehicle for an early, economical and fair resolution of monetary disputes.

Toward these ends, it was our intention in the conduct and course of deliberations to obtain a product refined from the use and experience of the full panoply of models in existence and that of Pennsylvania in particular.

Background and Sources

When the Committee began its deliberations, there were amongst its members four judges who had previously served on a Judicial Conference Study Committee, whose recommendations served as the basis for the present mandatory Arbitration Act. These four judges, as a result of the prior study, had available to them for use in the work of this Committee a considerable bank of knowledge of existing arbitration systems. A national conference on mandatory arbitration sponsored by the National Institute for Dispute Resolution held in Washington,

D.C., May 29-31, 1985, provided the chair of this Committee with a further opportunity to discuss the development of these programs with representatives of other jurisdictions.

To enable those members of this Committee who had not served on the Study Committee to become equally informed, a visit was arranged for them to attend and observe the operation of the mandatory arbitration program at Philadelphia, Pennsylvania, and to meet with judicial and administrative personnel so engaged. For two days -- December 9 and December 10, 1985 -- several members of the Committee, State Senator Arthur Berman and four members of the Chicago bar, knowledgeable in the field of voluntary arbitration, attended actual hearings being conducted at the Arbitration Center and meetings with supervisory judges and administrators. On December 10, a round-table discussion was arranged for our contingent with 14 practitioners of Philadelphia, representing plaintiff and defense bars, insurance carriers and the metropolitan transit system. Without exception those members of the Committee who had not previously been knowledgeable of this process as well as the other attendees from Illinois, were imbued with enthusiasm for the prospect of a similar program available to Illinois and immensely impressed with the apparent effectiveness as well as the wide-scale acceptance of the procedure in Philadelphia.

In addition to the Philadelphia on-site study by members of this Committee, its chair and member Judge Harris Agnew accompanied by staff attorney, James Woodward, on a later occasion visited four other less populous counties of Pennsylvania to study the use and operation of their mandatory arbitration programs. These visits provided models of local rules and the opportunity to interview judges and practitioners involved as well as to learn their evaluation of the effectiveness of rules in place.

The Committee's chair met with the supervising judge, the administrator and attorney practitioners in the arbitration program at Passaic County, New Jersey, and then repeated this scenario at Pittsburgh. On a later occasion the chair visited with the administrator of the King County (Seattle), Washington, arbitration program and one of its leading practitioners to discuss the effectiveness of their local and statewide rules.

It was uniformly reported to this Committee, from those thoroughly experienced with this procedure, that a full hearing necessary to arrive at award could be achieved in less than three hours. Reports from several jurisdictions were that a full hearing usually required even less than two hours to completion. It was feasible to expect completion of a three-day, 12-person jury trial within that time via the arbitration procedure under similar rules.

The fairness of the rules governing these hearings is evidenced by the high rate of acceptance by litigants, the steady increase in the number of jurisdiction initiating these programs, and their proliferation among judicial districts within a jurisdiction once it has been initiated. The reliability and durability of existing programs are further evidenced by the relatively few amendments to the rules that have been adopted since their inception. When there has been amendment, it usually consisted of an increase in the monetary limit for arbitrability, which

in itself attests to the acknowledgment of the effectiveness of their rules and this mechanism for dispute resolution.

By late summer of 1986, the Committee has reached a consensus for proposed rules for consideration by the general bar and interested members of the private and public sectors. A draft of these proposed rules was widely distributed and responses invited. The Illinois State Bar Association, the Chicago Bar Association and the Chicago Council of Lawyers were specially requested to invite appropriate committees of those associations to consider these rules and formulate responses. The committee arranged and conducted two hearings, one in Chicago and the other in Springfield. At those hearings, representatives of these bar groups, of the judiciary, and of major insurance carrier trade associations, representing the membership of several hundred companies appeared to present their views relative to the draft.

Review of this draft by respected authorities among the judiciary in Philadelphia who served in supervisory positions relative to their arbitrary programs was supportive and complimentary.

Altogether, the review of the proposed draft and the responses received were highly supportive for its acceptance in that form. Nevertheless, the Committee saw fit to consider incorporating, in the rules, recommendations that appeared to have merit and to seek to clarify those provisions that seemed to elicit misunderstanding or confusion.

The last major inquiry by the Committee consisted of a meeting on December 12 sponsored by the National Institute for Dispute Resolution, with eight distinguished attorneys selected by the committee, from out of state, and well informed in the conduct of mandatory arbitration proceedings in their jurisdictions. The inquiry at the meeting centered on the conduct of the hearing itself in an effort to refine the rules to the extent and in such form as would provide the broadest acceptance by all affected thereby.

Not the least of the Committee's efforts were the many meetings attended and the hundreds of hours of discussion and deliberation devoted to this undertaking.

As knowledgeable on this subject, if not more so, than any member of the Committee, Supreme Court Justice Howard C. Ryan, Liaison to the Committee shared his knowledge and wisdom with us throughout the course of our deliberations. Constantly etched in our minds were his astute recommendations that we pay particular heed to the effectiveness of the Pennsylvania rules in the use of general guideline principles, leaving to the circuits the development of more detailed guidelines for local needs.

In aid of the objectives stated and from the foregoing sources, the following recommendations evolved.

Rule 86: ACTIONS SUBJECT TO MANDATORY ARBITRATION

(a) ***Applicability to Circuits***. Mandatory arbitration proceedings shall be undertaken and conducted in those judicial circuits which, with the approval of the Supreme Court, elect to utilize this procedure and in such other circuits as may be directed by the Supreme Court.

(b) ***Eligible Actions***. A civil action shall be subject to mandatory arbitration if each claim therein is exclusively for money in an amount or of a value not in excess of the monetary limit authorized by the Supreme Court for that circuit or county within that circuit, exclusive of interest and costs.

(c) ***Local Rules***. Each judicial circuit court may adopt rules for the conduct of arbitration proceedings which are consistent with these rules and may determine which matters within the general classification of eligible actions shall be heard in arbitration.

(d) ***Assignment from Pretrials***. Cases not assigned to an arbitration calendar may be ordered to arbitration at a status call or pretrial conference when it appears to the court that no claim in the action has a value in excess of the monetary limit authorized by the Supreme Court for that circuit or county within that circuit, irrespective of defenses.

(e) ***Applicability of Code of Civil Procedure and Rules of the Supreme Court***. Notwithstanding that any action, upon filing, is initially placed in an arbitration track or is thereafter so designated for hearing, the provisions of the Code of Civil Procedure and the rules of the Supreme Court shall be applicable to its proceedings except insofar as these rules otherwise provide.

Adopted May 20, 1987, effective June 1, 1987; amended December 30, 1993, effective January 1, 1994.

COMMITTEE COMMENTS

Paragraph (a)

It is implicit from the authority granted to it by the enabling legislation and appropriate to its responsibility for the effective operation of the courts that the Supreme Court shall decide which, if any, circuit shall undertake a mandatory arbitration program. Where available resources permit, and the benefits anticipated are determined, any other circuit, with the approval of the Supreme Court and by virtue of the authority of this rule, can elect to institute such program.

Paragraphs (b) and (c)

Examination of existing statutes and rules in jurisdictions with mandatory arbitration reveals that claims for a specific sum of money or money damages are the cornerstone for this form of disposition. Pennsylvania, by statute, limits this remedy to such civil matters or issues where the amount in controversy, exclusive of interest and costs, does not exceed a certain value and which do not involve title to real property. Within that broad spectrum, further limitation is authorized by rule of court. Most jurisdictions expressly exclude actions involving title to real property or equitable issues.

It was the consensus of the Committee that arbitrable actions should be limited by rule only to those matters involving a claim exclusively for money. Eligibility for arbitration, by the terms of the Act, could be more broadly interpreted. The less complex the issues, the less concern there need be for the level of experience or specialized practice of the arbitrators.

The present volume of cases in litigation potentially arbitrable under this rule, in many of the circuits, could quickly exhaust the resources that would be available to administer the program for all. For this reason, each circuit should be authorized, as is herein permitted, to further limit and define that class of cases, within the general class of arbitrability, that it may wish to submit to this program.

It could prove to be appropriate, in some circuits, until its requirements and resources dictate otherwise, to limit its program solely to actions within the monetary limit, in which jury demands have been filed. Obviously, considerable cost savings could be achieved if such matters could be resolved at a two or three hour hearing as compared to a two or three day trial to a jury.

The initial draft of the Committee excluded from eligible actions small claims as defined by Rule 281. The exclusion of such actions of insubstantial amounts is not unusual in arbitration jurisdictions. Although their inclusion in the conduct of hearings would appear to be an indiscriminate use of manpower and funding resources, the Committee considers that such discretion best be left to the circuit. That court may determine that those small claims cases with jury demands should be arbitrable and thus susceptible to quick and early resolution.

If the amount of claimed interest and costs is determinable by the time of filing and constitutes an integral part of the claim, the amount of the demand, including such items, would determine eligibility for arbitration. If, however, interest and costs are determined by the arbitrators to be includable, and due and owing as of the date of the award, then the amount thereof may be added to the award even though by such addition the arbitrable limit is exceeded.

Paragraph (d)

This paragraph of the rule enables the court to order the matter to hearing in arbitration when it reasonably appears to the court that the claim has a value not in excess of the arbitrable limit although the prayer is for an amount or of a claimed value in excess thereof. Early skepticism on the part of the bar relative to the merits of this form of dispute resolution could serve to cause demands in an amount that would avoid assignment of the claim to an arbitration hearing. Some jurisdictions provide for an early conference call on all civil matters at which time arbitrability would be determined.

Philadelphia County enables the claim to be placed in the arbitration track at time of filing, at which time the date and time of hearing is assigned. The hearing date given is eight months from date of filing. Although the court in Philadelphia County may divert a case from the major case trial track to arbitration, that event is altogether infrequent. The Philadelphia bar has long recognized the benefits and advantages available in its arbitration program and do not see fit to avoid its process.

An undervaluation of the claim at the time of filing or by the court in diverting the claim to arbitration as a result of its undervaluation does not preclude the claimant from the opportunity to eventually realize its potential value. No party need accept as final the award of the arbitrators and any may reject the award and proceed on to trial in which no monetary limit would apply.

A claimant who believes he has a reasonable basis for having the matter removed from an arbitration track may move the court for such relief prior to hearing. Where there are multiple claims in the action, the court may exercise its discretion to determine whether all meet the requirements of eligibility for arbitration and if not whether a severance could be made of any or several without prejudice to the parties.

Paragraph (e)

The concern expressed by some reviewers in response to the initial draft as to whether or not the Code of Civil Procedure and the rules of the Supreme Court would apply to matters that are to be arbitrated cause the Committee to realize that some perceived this procedure as essentially *sui generis*. What we thought apparently went without saying, did not. To avoid any misconception in that regard, the Committee has adopted this part to the rule.

Rule 87: APPOINTMENT, QUALIFICATION AND COMPENSATION OF ARBITRATORS

(a) ***List of Arbitrators***. A list of arbitrators shall be prepared in the manner prescribed by the 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 be 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 $100.00 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 January 25, 2007, corrected January 26, 2007, effective February 1, 2007.

COMMITTEE COMMENTS

Paragraph (a)

Paragraph (a) is substantially modeled after Pennsylvania Rule 1302. The Committee, in its investigation of several programs in that jurisdiction, found that there were some, particularly at Pittsburgh and Philadelphia, where the arbitration lists were adequately filled by volunteers. In other counties, either by reason of the lack of enough volunteers or the view that this was an essential public service, all members of the bar were listed for such service. It is the Committee's recommendation that each circuit engaged in an arbitration program can best determine its method of utilizing its attorney resources. Retired judges are often interested and available for such service and should be considered eligible even though not then engaged in the practice of law.

Paragraph (b)

The Committee has learned of several methods extant for the appointment of arbitrators to hearing panels. Most frequently recommended is the method of random selection. Other methods include: appointment from the list in alphabetical order or in the order of arrival on signing-in on the hearing date. One jurisdiction selects three members with a combined

experience of ten years. The Committee believes that each circuit should determine its own method of appointment.

There also exist variations for the appointment of chairpersons for each panel. In some jurisdictions and districts, the member with the longest number of years in practice becomes the chairperson. In Allegheny County (Pennsylvania), a special list is maintained as the roster for appointment of the chairperson of the panel. This list consists of those who are determined by the arbitration administrator to have the longest and most pertinent experience in the practice. Here again, rather than by specific rule, the Committee recommends that this subject be determined by the circuit.

The qualification for members of the panel other than the chairperson consists of their then being engaged in the practice of law or if the retired judge does not see fit to act as chairperson, he is otherwise eligible to serve as another member of the panel.

In our initial draft of proposed rules, we adopted the phrase "actively engaged in the practice of law." At the hearings held by the Committee, representatives of the Illinois bar raised questions as to the intended meaning of the words "actively engaged." Although Pennsylvania uses those terms as a condition of eligibility and for service, its rules and reports offer no interpretation of what would constitute active engagement in the practice and leaves the interpretation to each judicial district.

The meetings held with out-of-state attorney practitioners have produced the universal recommendation from them that we avoid wherever possible imprecise terms. They called to our attention that there will always be members of the bar whom they refer to as "technocrats," inclined to demand a precise as opposed to a reasonable interpretation. Accordingly and to avoid difficulty in the interpretation of what constitutes "actively engaged" we have omitted the word "actively" in the firm belief it adds nothing substantive to the purpose intended. Leading members of the Philadelphia and Pittsburgh bars fully endorse minimum requirements for qualification to serve on the panel other than that for the chairperson.

The Pennsylvania statewide rule requires that the chairperson be admitted to practice for a minimum of three years. We have determined to add the additional requirement of trial experience. Trial experience brings with it an understanding of the role of the arbiter in a trial setting as well as knowledge of the rules of evidence. Interviews conducted, and hearings held, disclose a prevalent and seemingly valid concern on the part of the practicing bar that arbitrators, particularly the chairperson, be fully conversant with established rules of evidence. This knowledge is more likely to facilitate an expedited hearing and acceptable results. By reason of their experience in this regard, retired judges would seemingly fit this requirement.

Presiding Judge Michael J. O'Malley, at Pittsburgh responding to an inquiry, expressed the following view:

"Experienced trial attorneys serving as arbitrators are extremely valuable. Indeed, we attempt in Pittsburgh to have the chair of each three-member panel be an experienced lawyer. It would be even better if all three has extensive trial experience but it is not an absolute necessity." (Letter to Judge Lerner dated April 22, 1986).

The majority of jurisdictions utilizing a single arbitrator require, as a minimum, five years' admission to the bar.

The following minimal qualifications for years of admission to practice for chairpersons were adopted in the counties, other than Philadelphia, visited by the Committee: Allegheny 5, Bucks 4, Northampton 5, Lancaster 5 and Chester 10.

Although there were members of the Committee who preferred a five-year trial experience qualification for the chairperson, the concern expressed by some that certain circuits might be hard pressed to obtain sufficient volunteers brought about the three-year minimum stated in the rule.

The qualifications stated in this rule are intended to be minimal. Each circuit may opt to enlarge upon those stated herein both as to chairpersons and other members of the panel.

Paragraph (c)

No provision is made in these rules for a substitution of arbitrators or change of venue from the panel or any of its members. The remedy of rejection of an award and the right to proceed to trial is determined to be the appropriate response to perceived bias or prejudice on the part of any member of the panel or error by the panel in the determination of its award. Subdivision (c) requires an attorney who has been appointed to serve as arbitrator to disqualify himself or herself on a particular case if circumstances relating to the parties, their counsel, or the matter in controversy would appear to be grounds for such recusal under the Code of Judicial Conduct. A motion on that basis could be presented to the court to determine the existence of any basis for disqualification and for reassignment to another panel or the substitution of another panelist. Where one of the counsel has raised the question of bias or prejudice of a member of the panel, if that panelist is not replaced or a new panel made available, an award adverse to that counsel will likely be rejected.

Paragraph (d)

As is the case with Pennsylvania, we recommend an official form for this purpose, similar to that of the Pennsylvania rules.

Paragraph (e)

The fees recommended in this rule to be paid to arbitrators is consistent with the amounts now being paid as arbitrators' fees in other jurisdictions. It was the view of the Committee that the fee be standard throughout the circuits utilizing these services; the same level of competency and performance should be expected.

Rule 88: SCHEDULING OF HEARINGS

The procedure for fixing the date, time and place of a hearing before a panel of arbitrators shall be prescribed by circuit rule provided that not less than 60 days' notice in writing shall be given to the parties or their attorneys of record. The hearing shall be held on the scheduled date and within one year of the date of filing of the action, unless continued by the court upon good cause shown. The hearing shall be held at a location provided or authorized by the court or remotely, including by telephone or video conference.

Adopted May 20, 1987, effective June 1, 1987; amended Sept. 29, 2021, eff. Oct.1 , 2021.

COMMITTEE COMMENTS

Each circuit engaged in a mandatory arbitration program is best suited to determine the scheduling of hearings to accommodate its case flow needs and the availability of arbitrator personnel.

The Philadelphia program eminently successful in achieving an efficient program -- at the time it is filed, a case in the arbitration track is assigned a hearing date eight months from the date of filing. Philadelphia has a central facility styled "Arbitration Center," in an office building in the city center, a short distance from most other court facilities. The eight month period has proved to be sufficient to enable the parties to complete their discovery and preparation for hearing. Most matters scheduled for arbitration are settled prior to hearing.

The time within which matters in arbitration should be heard is not intended to be a period of limitations but rather a reasonable expectation. Every jurisdiction studied, many with higher monetary limits for arbitrability, have reported that these cases can be heard within the period of one year without prejudice to the parties.

Experience dictates that the use of courthouse facilities provides a desirable quasi-judicial atmosphere and a ready access to the court for timely rulings. A centralized operation of the program provides greater efficiency in the use of arbitrator's and attorney's time. A central facility also results in better monitoring of the progress of a case diverted to arbitration.

Rule 89: DISCOVERY

Discovery may be conducted in accordance with established rules and shall be completed prior to the hearing in arbitration. However, such discovery shall be conducted in accordance with Rule 222, except that the timelines may be shortened by local rule. No discovery shall be permitted after the hearing, except upon leave of court and good cause shown.

Adopted May 20, 1987, effective July 1, 1987. Amended effective March 26, 1996.

COMMITTEE COMMENTS

The rules for discovery are intended to provide the means to obtain fair and full disclosure of the facts; they are not intended to provide a weapon for abusive tactics. The Committee anticipates a good faith effort on the part of the bar to utilize discovery to an extent and in a manner consistent with the value and complexity of arbitrable claims.

If the amount of the claim is stated to have a value not in excess of $50,000, Supreme Court Rule 222 would apply. Note that the timelines provided in Supreme Court Rule 222(c) for full compliance may be amended by local arbitration rule. Relief from any undue restrictions under the rule should readily be forthcoming from the court; preferably counsel will cooperate to meet their recognized requirements in that regard.

Our study has disclosed relatively little use of depositions for discovery and preparation for the mandatory arbitration hearing. Rather, there has been a more extensive use of interrogatories. We are not aware of the requirement of disclosure statements in the other jurisdictions as are required under our Rule 222. It may be that the content of the disclosure statements, if fully and fairly revealed, may make sufficient the limited number of interrogatories permitted. If the allowance of more interrogatories would obviate the need for taking one or more depositions, the cost savings alone would justify such alternative.

An early and timely disposition of arbitrable matters must be deemed by courts that are tolerant of late attention to discovery. Firmness of the courts in the implementation of this rule will help to insure the successful results that are available from this procedure.

Prohibiting discovery after award places a premium on as early, and as thorough, a degree of preparation as is necessary to achieve a full hearing on the merits of the controversy. Neither side should be encouraged to use this proceeding, i.e., the hearing itself, merely as an opportunity to discover the adversary's case en route to an eventual trial.

If the lapse of time between an award and a requested trial is substantial or if in that period there has been a change in the circumstances at issue, additional discovery would appear to be appropriate and should be granted.

Rule 90: CONDUCT OF THE HEARING

(a) ***Powers of Arbitrators***. The arbitrators shall have the power to administer oaths and affirmations to witnesses, to determine the admissibility of evidence and to decide the law and the facts of the case. Rulings on objections to evidence or on other issues which arise during the hearing shall be made by the chairperson of the panel.

(b) ***Established Rules of Evidence Apply***. Except as prescribed by this rule, the established rules of evidence shall be followed in all hearings before arbitrators.

(c) ***Documents Presumptively Admissible***. All documents referred to under this provision shall be accompanied by a summary cover sheet listing each item that is included detailing the money damages incurred by the categories as set forth in this rule and specifying whether each bill is paid or unpaid. If at least 30 days' written notice of the intention to offer the following documents in evidence is given to every other party, accompanied by a copy of the document, a party may offer in evidence, without foundation or other proof:

(1) bills (specified as paid or unpaid), records and reports of hospitals, doctors, dentists, registered nurses, licensed practical nurses and physical therapists, or other health care providers;

(2) bills for drugs, medical appliances and prostheses (specified as paid or unpaid);

(3) property repair bills or estimates, when identified and itemized setting forth the charges for labor and material used or proposed for use in the repair of the property;

(4) a report of the rate of earnings and time lost from work or lost compensation prepared by an employer;

(5) the written statement of any expert witness, the deposition of a witness, the statement of a witness which the witness would be allowed to express if testifying in person, if the statement is made by affidavit or by certification as provided in section 1-109 of the Code of Civil Procedure;

(6) any other document not specifically covered by any of the foregoing provisions, and which is otherwise admissible under the rules of evidence.

The pages of any Rule 90(c) package submitted to the arbitrators should be numbered consecutively from the first page to the last page of the package in addition to any separate numbering of the pages of individual documents comprising such package. A template Notice of Intent Pursuant to Supreme Court Rule 90(c) is provided in the **Article I Forms Appendix**.

(d) ***Opinions of Expert Witnesses***. A party who proposes to use a written opinion of any expert witness or the testimony of any expert witness at the hearing may do so provided a written notice of such intention is given to every other party not less than 30 days prior to the date of hearing, accompanied by a statement containing the identity of the expert witness, the expert's qualifications, the subject matter, the basis of the expert's conclusions, and the expert's opinion as well as any other information required by Rule 222(d)(6).

(e) ***Right to Subpoena Maker of the Document***. Any other party may subpoena the author or maker of a document admissible under this rule, at that party's expense, and examine the author or maker as if under cross-examination. The provisions of the Code of Civil Procedure relative to subpoenas, section 2-1101, shall be applicable to arbitration hearings and it shall be the duty of a party requesting the subpoena to modify the form to show that the appearance is set before an arbitration panel and to give the time and place set for the hearing.

(f) ***Adverse Examination of Parties or Agents***. The provisions of the Code of Civil Procedure relative to the adverse examination of parties or agents, section 2-1102, shall be applicable to arbitration hearings as upon the trial of a case.

(g) ***Compelling Appearance of Witness at Hearing***. The provisions of Rule 237, herein, shall be equally applicable to arbitration hearings as they are to trials. The presence of a party may be waived by stipulation or excused by court order for good cause shown not less than seven days prior to the hearing. Remedies upon a party's failure to comply with notice pursuant to Rule 237(b) may include an order debarring that party from rejecting the award.

(h) ***Prohibited Communication***. Until the arbitration award is issued and has become final by either acceptance or rejection, an arbitrator may not be contacted *ex parte*, nor may an arbitrator publicly comment or respond to questions regarding a particular arbitration case heard by that arbitrator. Discussions between an arbitrator and judge regarding an infraction or impropriety during the arbitration process are not prohibited by this rule. Nothing in this rule shall be construed to limit or expand judicial review of an arbitration award or limit or expand the testimony of an arbitrator at judicial hearing to clarify a mistake or error appearing on the face of an award.

(i) ***Remote Appearances***. The provisions of Rule 241 herein shall be equally applicable to arbitration hearings where evidence will be presented. A party or witness may be allowed to participate remotely, including by telephone or video conference.

Adopted May 20, 1987, effective June 1, 1987; amended April 7, 1993, effective June 1, 1993; amended March 26, 1996, effective immediately; amended December 5, 2003, effective January 1, 2004; amended October 14, 2005, effective January 1, 2006, amended June 4, 2008 effective July 1, 2008; amended June 22, 2017, effective July 1, 2017, amended Sept. 29, 2021, eff. Oct. 1, 2021; amended Feb. 2, 2023, eff. immediately.

From the Article I Forms Appendix

ARTICLE I. GENERAL RULES

Rule 90: CONDUCT OF THE HEARING

[Rule 90(c) Cover Sheet]

IN THE CIRCUIT OF _____ COUNTY, ILLINOIS

, Plaintiff	)	
	)	No.
v.	)	
, Defendant,	)	

NOTICE OF INTENT
PURSUANT TO SUPREME COURT RULE 90(C)

Pursuant to Supreme Court Rule 90(c), the Plaintiff(s) intend to offer the following documents that are attached into evidence at the arbitration proceeding:

I. Healthcare Provider Bills — Amount Paid — Amount Unpaid

1.
2.
3.
4.
5.
6.
7.
8.
9.
10.

II. Other Items of Compensable Damages

1.
2.
3.

_____
Attorney for Plaintiff

Dated:

Link to 17th Circuit form:
CC-236_V2_Rule_90c1.pdf (wincoil.gov)

Committee Comments

(January 1, 2006)

Paragraph (h) is directed toward eliminating the problem of party or attorney use of information/feedback obtained during posthearing ex parte communication. Such communication could hinder the program goal of parties participating in good faith and could possibly influence the decision of the parties to accept or reject an award. This rule is not intended to restrict the ability of a party to communicate ex parte with a nonneutral party-arbitrator when used outside of court-annexed mandatory arbitration.

The order entered March 28, 2002, amending various rules and effective July 1, 2002, shall apply to all cases filed after such effective date as well as all cases pending on such effective date, provided that any discovery order entered in any such case prior to July 1, 2002, shall remain in effect unless and until amended by the trial court.

Order entered November 27, 2002, effective immediately.

Committee Comment

(March 28, 2002)

This rule is amended to conform to the changes in terminology made in Supreme Court Rule 213.

Committee Comments

The conduct of the hearings, the outcome included, will substantially determine the regard and acceptance to be held by the legal community for this procedure as an effective method of dispute resolution for achieving a fair, early, economical and final result. For this reason, more perhaps than for any other of these rules, has the Committee devoted its attention to this rule. Meetings and interviews with out-of-state practitioners, judges and administrators were conducted with the greatest emphasis on the evidentiary aspect of the hearings.

Paragraph (a)

The authority and power of the arbitrators exist only in relation to the conduct of the hearing at the time it is held. Issues that may arise in the proceedings of the case prior, ancillary or subsequent to the hearing must be resolved by the court.

In some jurisdictions, including Pennsylvania, rulings on the evidence are to be made by a majority of the panel. Ohio has recently amended its rule to permit the chairperson to make such rulings. Practitioners familiar with the practice in multiple-person panels, recommend that the ultimate authority reside with the chairperson. In practice one could reasonably expect the chairperson to consult with other members of the panel on difficult questions of admissibility.

Paragraph (b)

Several jurisdictions do not require hearings to be conducted according to the established rules of evidence.

New Jersey provides: "The arbitrator shall admit all relevant evidence and shall not be bound by the rules of evidence."

Ohio's statewide rules make no reference to the nature of the evidence admissible in mandatory arbitration hearings. Cuyahoga County (Cleveland), Hamilton County (Cincinnati) and Stark County (Canton) by local rules provide that the arbitrators shall be the judges of the relevancy and materiality of the evidence and "conformity to legal rules of evidence shall not be necessary."

The State of Washington rules leave to the discretion of the arbitrator the extent to which the rules of evidence will apply.

The States of Arizona, California, Minnesota, New York and Pennsylvania provide, as does this rule, for the application of the established rules of evidence with exceptions similar to those stated under paragraph (c).

It is the view of the Committee that the Illinois practitioner will enjoy a sense of security in that the established rules of evidence will apply to these hearings.

Paragraph (c)

All jurisdictions utilizing court-annexed arbitration have adopted rules substantially and conceptually similar to the provisions at paragraph (c) of this rule. The purpose for allowing presumptive admissibility of documents is to enable the parties to achieve the economy of time and expense available for the conduct of the hearing. The emphasis should be placed on substance and not form; the integrity of the evidence should be more meaningful than its formal method of introduction. The documents described in (c) are generally considered reliable and trustworthy for the purpose of admission. The documents that could be admitted under the general classification in (c)(6) could be photos, maps, drawings and blueprints, weather reports, business records and communications, and the like, so as to relieve the requirements of a foundational predicate for their admission.

The practice of the presumptive admission of documents of the type and nature described in the rule has stood the test of time and of experience in many thousands of hearings; one encounters no reported criticism or suggestion for change.

Regardless of the presumptive admissibility of the documents, the arbitrators will be required to apply the tests under established rules of evidence otherwise relating to admissibility and credibility and to determine, fairly, the weight to be given such evidence. Otherwise, the purpose of this procedure to achieve a fair, economical and early disposition of the controversy must ultimately fail by virtue of the lack of an essential integrity to the hearing itself.

Practitioners may not assume that practice will tolerate the blanket submission of voluminous records, charts or entire depositions with the expectation that the panel must pore over these documents and attempt to sort out that part which may be relevant or material to the issues at hand. Nor should such burden be placed on opposing counsel when such documents have been

provided by notice. It would not be inappropriate or unreasonable, on the part of the panel, if it were to reject such blanket submissions unless proffering counsel specifies the entries or statements therein having relevancy and materiality.

None of the documents eligible for admission without foundation may be so offered unless the intention to do so, and a copy thereof, has been provided to opposing counsel not less than 30 days prior to the hearing. That length of time should be sufficient to enable counsel to verify the authenticity of the document, if prior discovery has not already accomplished that purpose. The Committee is recommending a period of notice longer than any of the arbitration jurisdictions; many provide a 20-day notice and some as few as seven days. We recommend the longer period so that there is less reason for the parties to request a continuance.

If the period of notice given for the submission of documents for presumptive admission is the minimum provided by this rule, and opposing counsel, in the exercise of prudent practice finds need to submit a document in rebuttal, he should apply to the court for leave to do so, unless his adversary will stipulate to a submission in less time than is required by this rule. Under such circumstances the court, in its ruling, should be guided by the degree of diligence and preparation previously undertaken by both counsel.

Whenever possible, counsel should endeavor to avoid delay and needless expense by stipulating to the admission of documents where there is no reasonable basis for believing they will not and should not be admitted.

Paragraph (d)

It is intended under this paragraph to require disclosure of the identity of an opinion witness whose written opinion will be offered under the provisions of paragraph (c)(5) herein, or who will testify at the hearings; and to the extent required under Rule 222, his qualifications, the subject matter of his testimony, and the basis of conclusions and opinions as well as any other information required by Rule 222(d)(6). This information must be provided not less than 30 days prior to the scheduled date of hearing. The longer the period of notice provided to one's adversary, the less justification there would be to delay the hearing by reason of a late and unexpected disclosure.

Paragraph (e)

Although existing practice in other jurisdictions indicates that the option provided under (e) is rarely exercised, opposing counsel is given the right to subpoena the maker of the document as an adverse witness, and examine that witness as if under cross-examination. This provision is not intended to act as a substitute for the right under Rule 237, to require the production of a party at the hearing. In the event the maker sought to be served is not amenable to service of a subpoena, and provided further that counsel has been diligent in attempting to obtain such service, it would be incumbent on counsel to seek to bar its admissibility. Such motion should be made well in advance of the hearing date.

The Explanatory Note to Pennsylvania Rule 1305 states that if a member or author of the document is not subject to the jurisdiction of the court and cannot be subpoenaed, that document would not be presumptively admissible. The use of subpoena under this provision of the rule is rare and this problem does not appear to be one that has been bothersome to the practitioners. The Committee does not believe that there should be a hard and fast rule if such issue should arise but rather that it be decided on a case-by-case basis. This seems to be the prevalent view among practitioners of other jurisdictions. The materiality of the document to the issues should be a significant matter. The courts should also be alert to prevent the attempted use of this process by opposing counsel as an abusive tactic for delay and harassment.

Paragraphs (f) and (g)

Although these provisions of the Code of Civil Procedure and Supreme Court Rule 237 apply to trials, they should be equally applicable to hearings in arbitration. The Committee is advised that in actual practice it has been customary for counsel to arrange for the appearance of such witnesses by agreement.

A party who fails to comply with a Rule 237(b) notice to appear at a trial is subject to sanctions pursuant to Rule 219(c). Those sanctions may include an order debarring that party from maintaining a claim, counterclaim, etc. The 1993 amendment to Rule 90(g) is to make clear that a Rule 237(b) notice to appear at an arbitration hearing carries equivalent importance, such that a court may, in an appropriate case, debar a party who fails to comply from rejecting the award. The amendments also allow a party who received a notice to appear an opportunity to be excused in advance from appearing for good cause or by stipulation. For example, in a case where the party is willing to stipulate to the issue of liability and the only question which remains is damages, the party served with a Rule 237 notice may be excused by stipulation of the parties.

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. 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, 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. For the purposes of this paragraph, being present encompasses appearing in person, by counsel, or remotely, including by telephone or video conference.

(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.

Adopted May 20, 1987, effective June 1, 1987; amended April 7, 1993, effective June 1, 1993, amended Sept. 29, 2021, eff. Oct. 2021.

Committee Comments

Paragraph (a)

There is precedent for such a rule and its consequence in the rules of other jurisdictions. Cuyahoga County (Cleveland), Ohio, has long had a rule which provides that the failure of a party to appear at the hearing either in person or by counsel constitutes a waiver of his right to reject the award and demand trial and further operates as a consent to the entry of judgment on the award.

The Washington rules provide that a party who fails to participate at the hearing without good cause waives the right to a trial.

The court administrator of the Philadelphia Court of Common Pleas, Judge Harry A. Takiff, upon reviewing our initial draft, applauded the inclusion of this rule. Judge Takiff proposed to recommend the adoption of a like rule for the Pennsylvania arbitration programs.

The enactment, by the legislature, establishing the procedure of mandatory court-annexed arbitration as an integral part of the judicial process of dispute resolution and the promulgation of these rules to implement such legislation compels the conclusion that its process must be utilized in arbitrable matters either to finally resolve the dispute or as the obligatory step prior to resolution by trial. To permit any party or counsel to ignore the arbitration hearing or to exhibit an indifference to its conduct would permit a mockery of this deliberate effort on behalf of the public, the bar and judiciary to attempt to achieve an expeditious and less costly resolution of private controversies.

A party who knowingly fails to attend the scheduled hearing, either in person or by counsel, must be deemed to have done so with full knowledge of the consequences that inhere with this rule. Where the failure to attend was inadvertent, relief may be available to the party under the provisions of the Code of Civil Procedure, sections 2-1301 or 2-1401, upon such terms and

conditions as shall be reasonable. See Ill. Ann. Stat., ch. 110, pars. 2-1301, 2-1401, Historical & Practice Notes (Smith-Hurd 1983); also *Braglia v. Cephus* (1986), 146 Ill. App. 3d 241, 496 N.E. 2d 1171.

Paragraph (b)

Prior to the adoption of these sanctions, there were complaints by arbitrators that some parties and lawyers would merely attend but refuse to participate in arbitration. This paragraph was adopted to discourage such misconduct.

The arbitration process, and this rule in particular, was not intended to force parties to settle cases. Settlement, by definition, must be voluntary and not compelled. However, mandatory arbitration is a dispute resolution process under the auspices of the court. Parties and lawyers must not be allowed to abuse the arbitration process so as to make it meaningless.

Arbitration must not be perceived as just another hurdle to be crossed in getting the case to trial. Good-faith participation, as required by this rule, was therefore intended to assure the integrity of the arbitration process.

In drafting Rule 91(b), the committee surveyed the experience of other States, drawing particularly on similar requirements for good-faith participation in the mandatory arbitration rules of Arizona, California and South Carolina.

Rule 92: AWARD AND JUDGMENT ON AWARD

(a) ***Definition of Award***. An award is a determination in favor of a plaintiff or defendant.

(b) ***Determining an Award***. The panel shall make an award promptly upon termination of the hearing. The award shall dispose of all claims for relief. The award may not exceed the monetary limit authorized by the Supreme Court for that circuit or county within that circuit, exclusive of interest and costs. The award shall be signed by the arbitrators or the majority of them. A dissenting vote without further comment may be noted. Thereafter, the award shall be filed immediately with the clerk of the court, who shall serve notice of the award, and the entry of the same on the record, to other parties, including any in default.

(c) ***Judgment on the Award***. In the event none of the parties files a notice of rejection of the award and requests to proceed to trial within the time required herein, any party thereafter may move the court to enter judgment on the award.

(d) ***Correction of the Award***. Where the record and the award disclose an obvious and unambiguous error in mathematics or language, the court, on application of a party within the 30-day period allowed for rejection of an award, may correct the same. The

filing of such an application shall stay all proceedings, including the running of the 30-day period for rejection of the award, until disposition of the application by the court.

(e) ***Costs***. Costs shall be determined by the arbitration panel pursuant to law. The failure of the arbitration panel to address costs shall not be a waiver of a party's right to recover costs upon the entry of a judgment.

Adopted May 20, 1987, effective June 1, 1987; amended December 30, 1993, effective January 1, 1994; amended December 5, 2016, effective January 1, 2017.

COMMITTEE COMMENTS

Paragraph (b)

The most efficient use of panels would require that a sufficient number of matters for hearing be assigned to them for the date of service. It has been the experience at Philadelphia, and other counties of Pennsylvania, that their panels will conduct two or more full hearings on the assigned date of service. The form of the award proposed in Rule 94 is modeled after the official form of Pennsylvania, in its Rule 1312. The Committee recommends that no findings of fact or conclusions of law be required of the panel to be stated in its award. This is the accepted practice in Pennsylvania.

Paragraph (c)

Only the court may enter the judgment in a pending action. Unless the parties stipulate to dismiss the cause after the hearing and award, it is incumbent on a party to move the court to enter judgment after the 30-day period allowed for rejection at Rule 93 herein.

Rule 93: REJECTION OF AWARD

(a) ***Rejection of Award and Request for Trial***. Within 30 days after the filing of an award with the clerk of the court, and upon payment to the clerk of the court of the sum of $200 for awards of $30,000 or less or $500 for awards greater than $30,000, any party who was present at the arbitration hearing, either in person or by counsel, may file with the clerk a written notice of rejection of the award and request to proceed to trial, together with a certificate of service of such notice on all other parties. The filing of a single rejection shall be sufficient to enable all parties except a party who has been debarred from rejecting the award to proceed to trial on all issues of the case without the necessity of each party filing a separate rejection. The filing of a notice of rejection shall not be effective as to any party who is debarred from rejecting an award. For the purposes of this paragraph, being present encompasses appearing in person, by counsel, or remotely, including by telephone or video conference.

(b) ***Arbitrator May Not Testify***. An arbitrator may not be called to testify as to what transpired before the arbitrators and no reference to the fact of the conduct of the arbitration hearing may be made at trial.

(c) ***Waiver of Costs***. Upon application of a poor person, pursuant to Rule 298, herein, the sum required to be paid as costs upon rejection of the award may be waived by the court.

Adopted May 20, 1987, effective June 1, 1987; amended April 7, 1993, effective June 1, 1993; amended December 3, 1996, effective January 1, 1997, amended Sept. 29, 2021, eff. Oct. 1, 2021.

Committee Comments

Paragraph (a)

Delaware and New Jersey rules relative to arbitration programs expressly provide that the sole remedy of a party unwilling to accept the arbitration award is to file a rejection and to proceed on to trial. It is the Committee's view that this should be the interpretation applied by the courts with regard to proceedings after award.

Even under the Illinois Uniform Arbitration Act, Section 112, it has been interpreted by the Illinois Supreme Court that an arbitration award may not be set aside, upon application to a court, for the arbitrator's errors in judgment or mistakes of law or fact. (*Garner v. Ferguson* (1979), 76 Ill.2d 1, 389 N.E.2d 1181.) Under this section of the U.A.A., a party may apply to the court to vacate the award where the award was procured by corruption, fraud or other undue means; or that an arbitrator was guilty of misconduct prejudicing the rights of any party; or the arbitrators exceeded their powers. The Committee urges the interpretation that such alleged conduct should be addressed to the court for redress in a petition that the sole remedy in relation to the award, as an intermediate mechanism to resolve the dispute, should be to avail oneself of the right to a trial. The enabling act of Illinois expressly provides that the Illinois Uniform Arbitration Act shall not apply to these mandatory arbitration proceedings.

The 1981 official Explanatory Note to Pennsylvania Rule 1308 states:

> "The Rules do not continue the practice of petitioning to set aside an award for corruption or misbehavior. Hearings or depositions on the petition proceedings could delay the proceedings. Rule 1311(b) creates quasi-judicial immunity for the arbitrators with respect to their official actions and they cannot be called to testify. As a practical matter, if the fraud or corruption were proved, remand and the appointment of a new panel could be the only relief. *Trial de novo is preferable since it expedites the proceedings. The court would of course have the power to punish the attorney-arbitrators involved for any professional misconduct that could be proved*." (Emphasis added.) (Our recommended Rule 93(b) incorporates the exact language of Pennsylvania Rule 1311(b).)

Only a party who has attended the hearing in person or by counsel shall have the right to reject the award without regard to the basis for such rejection. The filing of a rejection and request for trial will permit any other party, whose interest has not been otherwise adjudicated, to participate in the trial.

A party who fails to appear at the hearing, although thereby deemed to have waived the right to reject the award, may nevertheless participate in a trial of the cause upon rejection of the award by any other party, provided a judgment has not been entered against him on the award and the judgment has not been vacated.

The assessment of the fee of $200 on the party who files the rejection is an item of cost consistent with the authorization provided therefor by the enabling legislation and is consistent with similar costs imposed in other jurisdictions in relation to the right to proceed further to a trial. This sum amounts to a small measure of the concomitant cost to the public for the conduct of the trial itself and would appear appropriate as an imposition on a party who has already been provided with a full hearing forum to resolve the dispute.

The Committee is unable to reach a consensus on the question of recommending a specific rule on whether or not the $200 fee should be recoverable as a taxable cost. Pennsylvania, as does New York and Ohio, provides by rule that the costs assessed on the rejecting party shall apply to the cost of arbitrators fees and shall not be taxed as costs or be recoverable in any proceeding. The sum of $200 is the same amount imposed by Philadelphia County's rule on a party requesting trial after an award. Other jurisdictions, on the other hand, provide that such fee is recoverable and may be taxed as costs. If clarity in this regard requires a definitive rule, it is the Committee's preference that the rule be stated similarly to that of Pennsylvania; to wit, the sum so paid to the clerk shall not be taxed as costs or recoverable in any proceeding.

Many jurisdictions authorize fee and cost sanctions to be imposed on parties who fail to improve their positions at the trial after hearing. It is hoped that the quality of the arbitrators, the integrity of the hearings, and the fairness of the awards will keep, to a minimum, the number of rejections. Both the Pittsburgh and Philadelphia programs, in Pennsylvania, are prime examples of effective arbitration systems without the use of cost and fee sanctions. Until such time as it becomes evident that there is an abusive use of the right of rejection, the Committee proposes to rely on the integrity of practitioners and their clients to abide a fair decision of the arbitrators. Abuse of this process may be dealt with under existing disciplinary and remedial measures.

In Campbell v. Washington (1991), 223 Ill. App.3d 283, the court interpreted Rule 93 as providing that a party's right to reject an award is preserved when either the party or its attorney appears at the arbitration hearing. Therefore, the court held a trial court could not enter an order requiring *forfeiture* of the right of rejection as a sanction for failure of a party to appear pursuant to notice. The 1993 amendment to Rule 93 makes this rule consistent with other rules (for example, Rules 90(g) and 91(b)) that allow a court to enter an order debarring a party from rejecting the award. The filing of a rejection by a party who is or has been debarred from rejecting is ineffective even if the party was present at the arbitration hearing in person or by counsel.

Paragraph (b)

The majority of jurisdictions prohibit any reference in a subsequent trial to the fact that an arbitration proceeding was held or that an award was made; arbitrators are not permitted to testify regarding the conduct at the hearing. In addition, several of the jurisdictions, California and New Jersey in particular, prohibit recording of the arbitration proceedings or the use of any testimony taken at the hearing at a subsequent trial. However, where a recording of testimony at the hearing is not prohibited, such testimony could be used at trial if otherwise admissible under the established rules of evidence of that jurisdiction.

Paragraph (c)

In some jurisdictions where costs such as herein imposed are waived, it is provided in their rules that such costs may be imposed thereafter as an offset in the event a sufficient sum is recovered by the indigent party upon the trial of the cause.

Rule 94: FORM OF OATH, AWARD AND NOTICE OF AWARD

The oath, award of arbitrators, and notice of award shall be in substantially the same form as the template provided in the **Article I Forms Appendix**.

Adopted May 20, 1987, effective June 1, 1987; amended March 1, 2001, effective immediately; amended October 20, 2003, effective December 1, 2003, amended June 22, 2017, effective July 1, 2017.

Article I Forms Appendix

Rule 94: FORM OF OATH, AWARD AND NOTICE OF AWARD

In the Circuit Court of the ____ Judicial Circuit, _____ County, Illinois
(Or, in the Circuit Court of Cook County, Illinois)

OATH

I do solemnly swear (or affirm) that 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.

_____
Name of Arbitrator Date

AWARD OF ARBITRATORS

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	)	
	)	No. _____
v.	)	
	)	Amount Claimed _____
H.J., K.L. etc.	)	
(naming all defendants),	)	
Defendants	)	

All parties participated in good faith

_____ did NOT participate in good faith based upon the following findings:

Findings:

_____
_____
_____
_____
_____

We, the undersigned arbitrators, having been duly appointed and sworn (or affirmed), make the following award:

_____
_____
_____

_____
_____
_____

_____ Dissents as to the Award

Date of Award: _____

Note: In the 17th Circuit we have our own form Award of Arbitrators that encompasses all of the elements of this recommended form.

NOTICE OF AWARD

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	)	
	)	No. _____
v.	)	
	)	Amount Claimed _____
H.J., K.L. etc.	)	
(naming all defendants),	)	
Defendants	)	

On the ____day of _____, 20___, the award of the arbitrators dated _____, 20 ___, a copy of which is attached hereto, was filed and entered of record in this Cause. A copy of this NOTICE has on this date been sent by regular mail, postage prepaid, addressed to each of the parties appearing herein, at their last known address, or to their attorney of record.

Dated this _____ day of _____, 20 ___.

_____
Clerk of the Circuit Court

Note: In the 17th Circuit we have a standard Notice of Award letter that encompasses all of the elements of this recommended form which is efiled with the Circuit Clerk and that is also mailed United States Postal Service.

Rule 95: FORM OF NOTICE OF REJECTION OF AWARD

The notice of rejection of the award shall be in substantially the same form as the template provided in the **Article I Forms Appendix**.

Adopted May 20, 1987, effective June 1, 1987; amended June 22, 2017, effective July 1, 2017.

Article I Forms Appendix

Rule 95: FORM OF NOTICE OF REJECTION OF AWARD

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	)	
	)	No. _____
v.	)	
	)	Amount Claimed _____
H.J., K.L. etc.	)	
(naming all defendants),	)	
Defendants	)	

NOTICE OF REJECTION OF AWARD

To the Clerk of the Circuit Court:

Notice is given that _____ rejects the award of the arbitrators entered in this cause on _____,
and hereby requests a trial of this action.

_____

By: _____
(Certificate of Notice of Attorney)

17th Circuit form:
https://www.circuitclerk.wincoil.gov/assets/1/7/CC-235_V3_Winn_Notice_of_Rejection.pdf

Rules 96-98: Reserved.

RULE 222: LIMITED AND SIMPLIFIED DISCOVERY IN CERTAIN CASES

(a) ***Applicability***. This rule applies to all cases subject to mandatory arbitration, civil actions seeking money damages not in excess of $50,000, exclusive of interest and costs, and to cases for the collection of taxes not in excess of $50,000. This rule does not apply to small claims, ordinance violations, actions brought pursuant to 750 ILCS (FAMILIES), and actions seeking equitable relief. Except as otherwise specifically provided by this rule, the general rules governing discovery procedures remain applicable to cases governed by this rule.

(b) ***Affidavit re Damages Sought***. Any civil action seeking money damages shall have attached to the initial pleading the party's affidavit that the total of money damages sought does not exceed $50,000. If the damages sought do not exceed $50,000, this rule shall apply. Any judgment on such claim which exceeds $50,000 shall be reduced post-trial to an amount not in excess of $50,000. Any such affidavit may be amended or superseded prior to trial pursuant to leave of court for good cause shown, and only if it is clear that no party will suffer any prejudice as a result of such amendment. Any affidavit filed pursuant hereto shall not be admissible in evidence at trial.

(c) ***Time for Disclosure; Continuing Duty***. The parties shall make the initial disclosure required by this rule as fully as then possible in accordance with the time lines set by local rule, provided however that if no local rule has been established pursuant to Rule 89 then within 120 days after the filing of a responsive pleading to the complaint, counter-complaint, third-party complaint, etc., unless the parties otherwise agree, or for good cause shown, if the court shorten or extends the time. Upon service of a disclosure, a notice of disclosure shall be promptly filed with the court. The duty to provide disclosures as delineated in this rule and its subsections shall be a continuing duty, and each party shall seasonably supplement or amend disclosures whenever new or different information or documents become known to the disclosing party.

All disclosures shall include information and data in the possession, custody and control of the parties as well as that which can be ascertained, learned or acquired by reasonable inquiry and investigation.

(d) ***Prompt Disclosure of Information***. Within the times set forth in section (c) above, each party shall disclose in writing to every other party:

(1) The factual basis of the claim or defense. In the event of multiple claims or defenses, the factual basis for each claim or defense.

(2) The legal theory upon which each claim or defense is based including, where necessary for a reasonable understanding of the claim or defense, citations of pertinent legal or case authorities.

(3) The names, addresses, and telephone numbers of any witnesses whom the disclosing party expects to call at trial with a designation of the subject matter about which each witness might be called to testify.

(4) The names, addresses, and telephone numbers of all persons whom the party believes may have knowledge or information relevant to the events, transactions, or occurrences that gave rise to the action, and the nature of the knowledge or information each such individual is believed to possess.

(5) The names, addresses, and telephone numbers of all persons who have given statements, whether written or recorded, signed or unsigned, and the custodian of the copies of those statements.

(6) The identity and address of each person whom the disclosing party expects to call as an expert witness at trial, plus the information called for by Rule 213(f).

(7) A computation and the measure of damages alleged by the disclosing party and the document or testimony on which such computation and measure are based and the names, addresses, and telephone numbers of all damage witnesses.

(8) The existence, location, custodian, and general description of any tangible evidence or documents that the disclosing party plans to use at trial and relevant insurance agreements.

(9) A list of the documents or, in the case of voluminous documentary information, a list of the categories of documents, known by a party to exist whether or not in the party's possession, custody or control and which that party believes may be relevant to the subject matter of the action, and those which appear reasonably calculated to lead to the discovery of admissible evidence, and the date(s) upon which those documents will be made, available for inspection and copying. Unless good cause is stated for not doing so, a copy of each document listed shall be served with the disclosure. If production is not made, the name and address of the custodian of the document shall be indicated. A party who produces documents for inspection shall produce them as they are kept in the usual course of business.

(e) ***Affidavit re disclosure***. Each disclosure shall be made in writing, accompanied by the affidavit of an attorney or a party which affirmatively states that the disclosure is complete and correct as of the date of the disclosure and that all reasonable attempts to comply with the provisions of this rule have been made.

(f) ***Limited and Simplified Discovery Procedures***. Except as may be ordered by the trial court, upon motion and for good cause shown, the following limited and simplified discovery procedure shall apply:

(1) Each party may propound to any other party a total of 30 interrogatories and supplemental interrogatories in the aggregate, including subsections. Interrogatories may require the disclosure of facts upon which a party bases a claim or defense, the enumeration, with proper identification, of all persons having knowledge of relevant facts, and the identification of trial witnesses and trial exhibits.

(2) ***Discovery Depositions***. No discovery deposition shall exceed three hours, absent agreement among the parties. Except as otherwise ordered by court, the only individuals whose discovery deposition may be taken are the following:

(a) ***Parties***. The discovery depositions of parties may be taken. With regard to corporations, partnerships, voluntary associations, or any other groups or entities, one representative deponent may be deposed.

(b) ***Treating Physicians and Expert Witnesses***. Treating physicians and expert witnesses may be deposed, but only if they have been identified as witnesses who will testify at trial. The provisions of Rule 204 (c) do not apply to treating physicians who are deposed under this Rule 222. The party at whose instance the deposition is taken shall pay a reasonable fee to the deponent, unless the deponent was retained by a party to testify at trial or unless otherwise ordered by the court.

(3) ***Evidence Depositions.*** No evidence depositions shall be taken except pursuant to leave of court for good cause shown. Leave of court shall not be granted unless it is shown that a witness is expected to testify on matters material to the issues and it is unlikely that the witness will be available for trial, or other exceptional circumstances exist. Motions requesting the taking of evidence depositions shall be supported by affidavit. Evidence depositions shall be taken to secure trial testimony, not as a substitute for discovery depositions.

(4) Requests pursuant to Rule 214 and 215 are permitted, as are notices pursuant to Rule 237.

(5) Requests pursuant to Rule 216 are permitted except that no request may be filed less than 60 days prior to the scheduled trial date or, if within said 60 days, only by order of court.

(g) ***Exclusion of Undisclosed Evidence***. In addition to any other sanction the court may impose, the court shall exclude at trial any evidence offered by a party that was not timely disclosed as required by this rule, except by leave of court for good cause shown.

(h) ***Claims of Privilege***. When information or documents are withheld from disclosure or discovery on a claim that they are privileged pursuant to a common law or statutory privilege, any such claim shall be made expressly and shall be supported by a description of the nature of the documents, communications or things not produced or disclosed and the exact privilege which is being claimed.

(i) ***Affidavits Wrongly Filed***. The court shall enter an appropriate order pursuant to Rule 219 (c) against any party or his or her attorney, or both, as a result of any affidavit filed pursuant to (b) or (e) above which the court finds was (a) false; (b) filed in bad faith; or (c) was without reasonable factual support.

(j) ***Applicability Pursuant to Local Rule***. This rule may be made applicable to additional categories of cases pursuant to local rules enacted in any judicial circuit.

Adopted June 1, 1995, effective January 1, 1996; amended March 28, 2002, effective July 1, 2002; amended February 10, 2006; effective July 1, 2006; amended October 1, 2010, effective January 1, 2011.

Appendix B

SUPREME COURT RULES
Article XI - Illinois Code of Judicial Conduct of 2023

https://www.illinoiscourts.gov/rules/supreme-court-rules?a=xi

Preamble, Scope, and Terminology
Adopted July 1, 2022, eff. Jan. 1, 2023

Canon 1
Adopted July 1, 2022, eff. Jan. 1, 2023

Rule 1.1 Compliance with the Law
Rule 1.2 Promoting Confidence in the Judiciary
Rule 1.3 Avoiding Misuse of the Prestige of Judicial Office

Canon 2
Amended May 17, 2023, eff. immediately

Rule 2.1 Giving Precedence to the Duties of Judicial Office
Rule 2.2 Impartiality and Fairness
Rule 2.3 Bias, Prejudice and Harassment
Rule 2.4 External Influence on Judicial Conduct
Rule 2.5 Competence, Diligence and Cooperation
Rule 2.6 Ensuring the Right to be Heard
Rule 2.7 Responsibility to Decide
Rule 2.8 Decorum, Demeanor and Communication with Jurors
Rule 2.9 Ex Parte Communications
Rule 2.10 Judicial Statements on Pending and Impending Cases
Rule 2.11 Disqualification
Rule 2.12 Supervisory Duties
Rule 2.13 Administrative Appointments and Hiring
Rule 2.14 Disability and Impairment
Rule 2.15 Responding to Judicial and Lawyer Misconduct
Rule 2.16 Cooperation with Disciplinary Authorities

Canon 3
Adopted July 1, 2022, eff. Jan. 1, 2023

Rule 3.1 Extrajudicial Activities in General
Rule 3.2 Appearances Before Governmental Bodies and Consultation with Government Officials
Rule 3.3 Testifying as a Character Witness
Rule 3.4 Appointments to Governmental Positions
Rule 3.5 Use of Nonpublic Information
Rule 3.6 Affiliation with Discriminatory Organizations

Rule 3.7 Participation in Education, Religious, Charitable, Fraternal or Civic Organizations and Activities
Rule 3.8 Appointments to Fiduciary Positions
Rule 3.9 Arbitrator or Mediator
Rule 3.10 Practice of Law

Rule 3.11 Financial, Business, or Remunerative Activities
Rule 3.12 Compensation for Extrajudicial Activities
Rule 3.13 Acceptance of Gifts, Loans, Bequests, Favors, Benefits, or Other Things of Value
Rule 3.14 Reimbursement of Expenses and Waivers of Fees or Charges
Rule 3.15 Reporting Requirements

Accompanying Supreme Court Forms > Statement of Economic Interests

Canon 4

Adopted July 1, 2022, eff. Jan. 1, 2023

Rule 4.1 Political and Campaign Activities in Public Elections
Rule 4.2 Reserved
Rule 4.3 Activities of Candidates for Appointive Judicial Office
Rule 4.4 Campaign Committees
Rule 4.5 Activities of Judges who Become Candidates for Nonjudicial Office

APPENDIX C

17TH JUDICIAL CIRCUIT
MANDATORY ARBITRATION PROCEDURES

ARBITRATION PROCESS

I. Introduction

II. Basis for Arbitration and Administration of the Arbitration System

III. Administration

IV. Initiation of an Arbitration Case

V. Advancements, Routine Motions & Changing of Status

VI. Preparation of Hearing

VII. Conduct of Hearing

VIII. Rejection of Award

NOTE: The Materials in this Section are produced only as a guide to Mandatory Arbitration. Reference should be made to the applicable Statutes, Supreme Court Rules and Local Court Rules.

I. INTRODUCTION

A. The arbitration system in the 17th Judicial Circuit Court, County of Winnebago, is in effect as to all cases commenced on or after October 1, 1987. Under this system, all cases are heard at the Alternative Dispute Resolution (ADR) Center, Stewart Square, Suite 25, 308 West State Street, Rockford, IL 61101.

On September 16, 1994, the Illinois Supreme Court approved the 17th Judicial Circuit's court-annexed mandatory arbitration program to include Boone County. Arbitration cases filed in Boone County will also be heard at the ADR Center in Rockford.

Effective April 20, 2023, upon filing of the complaint in an arbitration case, which must clearly identify the action as an arbitration matter, the Circuit Clerk shall set a return date for the summons not less than 40 days nor more than 61 days after filing, returnable before the supervising judge for arbitration. The summons shall require the plaintiff or the representative of the plaintiff and all defendants or their representatives to appear, either in person or remotely, at the time and place indicated. The complaint and summonses shall state in upper case letters on the upper right-hand corner "THIS IS AN ARBITRATION CASE."

Upon the return date of the summons and the court finding that all parties have appeared, the court shall assign an arbitration hearing date not less than 180 days from the filing date or the earliest available hearing date thereafter. If one or more defendants have not been served within 90 days from the date of filing, the court may in its discretion dismiss the case as to unserved defendants for lack of diligence.

On the prescribed date and time of the arbitration hearing assigned, the parties shall report to the ADR Center for a hearing before the arbitration panel, or upon prior approval of the Court, may appear remotely, including by telephone or video conference. The panels consist of three specially trained attorneys.

B. By the way of acknowledgment both the Mandatory Arbitration model and the materials presented herein are derived largely from the Philadelphia Court of Common Pleas. The assistance of the Court of Common Pleas in this effort is most appreciated.

II. BASIS FOR ARBITRATION AND ADMINISTRATION OF THE ARBITRATION SYSTEM

A. Statutory Basis. The statutory basis for circuit court arbitration is PA 84-844, effective January 1, 1986. 735 ILCS 5/2-1001A et. seq. (1996)

B. Illinois Supreme Court Rules. Rules governing arbitration are found at Illinois Supreme Court Rule 86 et. seq.

C. 17th Circuit Local Rule. The local rule governing arbitration is 2.07. It is effective as to cases commenced on or after October 1, 1987, as amended effective September 16, 1994 and March 1997. Amended January 1, 1996; March 1, 1997; October 2000; November 2001, January 2002, August 2007, and October 2015.

D. Matter and Amount in Controversy. Arbitration has jurisdiction over all civil actions if each claim is for money in an amount or of a value not in excess of the monetary limit authorized by the Supreme Court for that circuit or county within that circuit, exclusive of interest and costs.

III. ADMINISTRATION

A. Arbitration Administrator

The official responsible for administering the program is the Arbitration Administrator, who serves at the discretion of the Chief Circuit Judge and under the immediate direction of the Trial Court Administrator and the Supervising Judge of Arbitration. The duties of the Arbitration Administrator include the scheduling of cases and the assignment of arbitrators and rooms. Questions concerning arbitration procedures may be directed to the Arbitration Administrator at the ADR Center, 308 West State Street, Suite 25, Rockford, IL, 61101, email at ADR@17thcircuit.illinoiscourts.gov, or telephone at (815) 987-7739.

B. Supervising Judge

In Winnebago County, all legal matters are handled by the Supervising Judge of Arbitration or his/her designee. In Boone County, all arbitration cases are assigned to the judge designated by the Chief Circuit Judge to handle AR cases. He/She then handles all legal matters. Procedural matters will be determined by the arbitration panel.

IV. INITIATION OF AN ARBITRATION CASE

A. Filing. The face sheet, complaint and a summons for arbitration must state in upper case letters in the upper right-hand corner 'THIS IS AN ARBITRATION CASE." A date and time for the return date will be assigned by the circuit clerk upon commencement of the action and will be noted on the summons. The ARBITRATION HEARING DATE will be set by the supervising judge at the above assigned return date 180 days from the date of filing of the complaint. THIS IS THE ONLY NOTICE OF THE HEARING WHICH THE PARTIES WILL RECEIVE.

B. Transfer from "LA" or "MR" case list to arbitration. A motion to transfer an assigned "LA" case (Law Division) or "MR" case (Miscellaneous Remedy) to the arbitration calendar must be made before the "LA" or "MR" judge in accordance with court rules.

C. Small Claims cases with a Jury Demand. All Small Claims cases with a jury demand shall be transferred to the Arbitration Division and be subject to its rules. Local Rule 2.13 (Adopted 10/21/13)

D. Transfer of an arbitration case to the "LA" case list. A case pending in arbitration may be transferred to the "LA" case list (Law Division) by filing an appropriate motion with the Supervising Judge of Arbitration in accordance with court rules.

V. ADVANCEMENTS, ROUTINE MOTIONS AND CHANGE OF STATUS

A. Advancements. Motions for the advancement of an arbitration hearing date will be heard by the Supervising Judge of Arbitration. Uncontested motions may be presented in the form of a stipulation.

B. Routine Motions and Change of Status. The following motions are designated routine and may be filed with the clerk for submission to the Supervising Judge of arbitration for entry of an order in open court. Notice to be given per court rules:

1. Stipulation to Dismiss
2. Uncontested Motions to Dismiss
3. Stipulated Settlements

VI. PREPARATION FOR HEARING

A. General Guidelines for Hearings.

1. WITNESS AND EXHIBITS. Counsel should prepare to conduct the examination of witnesses and to offer exhibits for presentation at an arbitration hearing just as they prepare any case for trial.

2. MEMORANDA OF LAW. Counsel should recognize that in preparing a case for arbitration, it may be worthwhile to prepare a short written memorandum of law of any point of law which is complex or unsettled which may arise during the conduct of the hearing. Memoranda of law prepared for the panel should be exchanged with opposing counsel in advance of the hearing.

3. OPENING STATEMENT. Counsel should also keep in mind the importance of an opening statement which summarizes the nature of the action the panel is to hear.

B. Prehearing Documents Procedure.

1. DOCUMENTARY EVIDENCE ADMITTED. The panel is empowered to receive into evidence without further proof certain documents listed in Illinois Rule 90(c). These documents include: (a) bills, records and reports of hospitals, doctors and other health care providers; (b) bills for drugs, medical appliances and prostheses; (c) bills for or written estimates of value, and damage to, costs of repair of or loss of property; (d) a report of rate of earnings and time lost from work or lost compensation prepared by an employer; and (e) expert witness reports.

2. NOTICE AND COPIES TO OPPONENT. At least 30 days prior to the first date assigned for hearing, counsel must notify and serve upon opposing counsel (or the opposing party if unrepresented by counsel) his intention to offer into evidence any bill, report or estimate which counsel will offer into evidence pursuant to Supreme Court Rule 90.

3. ADDITIONAL INFORMATION REQUIRED WITH CERTIFICATE. In addition to the above certification, a property damage repair estimate must include a statement indicating: (a) whether or not the property was repaired; and (b) whether the estimated repairs were made in full or in part. If repairs were made, a copy of the receipted bill showing the items of repair and the amount paid must be attached to the estimate.

C. Subpoena Practice.

1. FORM. Subpoena practice in arbitration cases is conducted in essentially the same fashion as that followed in nonarbitration cases. A subpoena to testify or for the production of documents or objects shall be substantially in the form provided by the Illinois Civil Practice Act.

2. RIGHT TO SUBPOENA PERSON WHOSE TESTIMONY IS WAIVED. Where a party chooses to offer into evidence a bill, report or estimate pursuant to rule, rather than to present the testimony of the maker, any other party shall have the right to subpoena to appear at the hearing the person whose testimony is waived. Any adverse party may cross-examine the subpoenaed witness as to the document he has prepared, including expert reports, as though he were a witness for the party offering the document.

3. WITNESS FEES AND COSTS. Any party who subpoenas a witness shall be required to pay witness fees and costs in the same amount as provided for in trials in circuit court.

VII. CONDUCT OF HEARING

A. Supervising Judge.

1. POWERS. The Supervising Judge of Arbitration has full supervisory powers over the conduct of arbitration hearings.

2. QUESTIONS. Any questions which arise during the course of an arbitration hearing, including, but not limited to, the interpretation of these rules, shall be referred to the Supervising Judge of Arbitration.

B. Arbitration Hearing Procedure.

1. SWEARING OF PANEL AND WITNESSES. The chairperson shall administer the oath or affirmation to the witnesses. After the administration of the oath or affirmation to all witnesses, the chairperson shall make opening remarks to the parties and counsel to explain the principles and procedures involved in the arbitration of the lawsuits.

2. OPENING STATEMENT. Counsel, at their option, may make an opening address to the panel. Defense counsel may elect to make his opening address at that time or to reserve his remarks until the conclusion of plaintiff's case in chief.

3. CLOSING ARGUMENT. At the conclusion of all testimony, parties or counsel may make appropriate closing arguments.

C. Failure of Party to Appear. If a party fails to appear, the panel may enter an award in favor of the opposing party (Supreme Court Rule 91) after consideration of such evidence as the panel may require for making an award.

D. Stenographic Record. Record of Hearing and cost of Transcript. Any party may elect to have a stenographic or taped recording of the hearing made at that party's expense. Prior notice should be given to the Arbitration Administrator. If opposing counsel wishes to receive a copy of the transcript or recording, he must agree to pay a pro-rata share of the total cost of making the record.

E. Evidence.

1. RULES FOR SUBMISSION. All documents submitted by any party in accordance with the procedures set forth above shall be received by the panel. It is the duty of the attorneys or parties to retrieve such exhibits from the ADR Center, within seven days after the hearing.

2. OBJECTIONS TO SUBMISSIONS. The chairperson shall rule on all objections which arise during the arbitration hearing, pursuant to Supreme Court Rule 90(a).

F. Compensation of Arbitrators. The chairperson and members of a panel of arbitrators receive $100.00 per hearing as compensation. To act as arbitrators, attorneys must sign a voucher with the State of Illinois to be provided by the ADR Center. Upon completion of each day's arbitration hearings, the Arbitration Administrator will process the necessary vouchers through the Administrative Office of the Illinois Courts for payment of arbitrators.

VIII. REJECTION OF AN ARBITRATION AWARD

A. Rejection Procedure

1. NOTICE OF REJECTION. Rejection of an award shall be made by filing with the circuit clerk a Notice of Rejection with certificate of service, along with payment of the appropriate rejection fee, within thirty (30) days of the date of the Award.

2. WAIVER OF COSTS. Upon application of a poor person pursuant to Supreme Court Rule 298, the rejection fee may be waived, or partially waived, by the court.

Other Resources:
https://illinois17th.com/public-info/alternative-dispute-resolution

APPENDIX D

17th JUDICIAL CIRCUIT LOCAL RULES
BOONE AND WINNEBAGO COUNTIES

2.07 Mandatory Arbitration.

A. Supervising Judge for Arbitration.

The chief judge shall appoint in each county of the circuit having a mandatory arbitration program, a judge to act as supervising judge for arbitration, who shall have the powers and responsibilities set forth in these rules and who shall serve at the discretion of the chief judge.

B. Arbitration Administrator.

The chief judge shall designate an arbitration administrator who shall have the authority and responsibilities set forth in these rules. The arbitration administrator shall serve at the discretion of the chief judge under the immediate direction of the court administrator.

C. Arbitration Center.

The chief judge shall designate an arbitration center for arbitration hearings.

D. Mandatory Arbitration of Certain Cases.

The arbitration program of the 17th Judicial Circuit is governed by the Supreme Court Rules for the Conduct of Mandatory Arbitration Proceedings (Supreme Court Rules 86-95 incl.). Pursuant to Supreme Court Rule 86(c), these local rules are adopted, effective October 1, 1987, as amended effective September 16, 1994. Since arbitration proceedings are governed by both sets of rules, reference is made in the caption of each Local Rule to the Supreme Court Rule controlling the subject.

RULE 1. Actions Subject to Mandatory Arbitration (S. Ct. Rule 86).

(a) Mandatory arbitration proceedings are undertaken and conducted in the counties of Winnebago and Boone, 17th Judicial Circuit, pursuant to approval of the Illinois Supreme Court given on June 3, 1987, and September 16, 1994, respectively.

(b) All civil actions, other than claims under Supreme Court Rule 281, will be subject to Mandatory Arbitration, if such claims are solely for money in an amount exceeding $10,000, but not exceeding $50,000, exclusive of interest and costs. Such

cases shall be assigned to the arbitration calendar of the 17th Judicial Circuit at the time of initial case filing with the circuit clerk's office.

(c) Reserved

(d) When a case not originally assigned to the arbitration calendar is subsequently so assigned pursuant to Supreme Court Rule 86(d), the arbitration administrator shall promptly assign an arbitration hearing date for such case. In such cases, the date of the arbitration hearing shall be not less than 60 days nor more than 180 days from the date of assignment to arbitration, as determined by the court considering the status of the case, the period of time necessary to afford the parties adequate preparation time and status of the arbitration calendar.

RULE 2. Appointment, Qualification and Compensation of Arbitrators (S. Ct. Rule 87).

(a) Attorneys shall be eligible for appointment by filing the appropriate form with the arbitration administrator, certifying that they have engaged in the active practice of law for a minimum of one year and maintain a law office within the 17th Judicial Circuit. Retired judges shall also be eligible for appointment. Chairpersons must have been engaged in active trial practice for a period of five years or be a retired judge.

(b) The arbitration administrator shall maintain an alphabetical list of approved arbitrators to be called for service on a rotating basis. The list shall designate the arbitrators who are approved to serve as chairpersons and those arbitrators and chairpersons who are available to serve as substitutes. Each panel will consist of one chairperson and two panel members. Eligible arbitration panel members shall have attended the Arbitration Seminar prior to active service on an arbitration panel. The eligibility of each attorney to serve as an arbitrator may, from time to time, be reviewed by the arbitration administrator or supervising judge. Where possible, the arbitration administrator shall notify such arbitrators of the date at least 60 days prior to the assigned hearing date.

(c) Reserved

(d) Reserved

(e) Upon completion of each day's arbitration hearings, the arbitration administrator will process the necessary voucher through the Administrative Office of the Illinois Courts for payment of arbitrators.

RULE 3. Scheduling of Hearings (S. Ct. Rule 88).

(a) On or before the first day of each July, the arbitration administrator shall provide the circuit clerk's office with a schedule of available arbitration hearing dates for the next calendar year.

Upon the filing of a civil action subject to these rules, the clerk of the circuit court shall set a return date for the summons not less than 40 days nor more than 61 days after filing, returnable before the supervising judge for arbitration. The summons shall require the plaintiff or the representative of the plaintiff and all defendants or their representatives to appear at the time and place indicated. The complaint and all summonses shall state in upper case letters in the upper right-hand corner "THIS IS AN ARBITRATION CASE."

Upon the return date of the summons and the court finding that all parties have appeared, the court shall assign an arbitration hearing date not less than 180 days from the filing date or the earliest available hearing date thereafter. If one or more defendants have not been served within 90 days from the date of filing, the court may in its discretion dismiss the case as to unserved defendants for lack of diligence.

(b) Any party to a case may request advancement or postponement of a scheduled arbitration hearing date by filing written motion with the office of the circuit clerk requesting such change. Such motion and notice of hearing thereon shall be served upon counsel for all other parties in the same manner as other motions, and a copy of the motion and notice of time of hearing thereon on the calendar of the supervising judge for arbitration shall likewise be served upon the arbitration administrator. The motion shall contain a concise statement of the reason for the change of hearing date. The supervising judge may grant such advancement or postponement upon good cause shown.

(c) Consolidated actions shall be heard on the date assigned to the latest case involved.

(d) Counsel shall give immediate notification to the arbitration administrator of any settlement of cases or changes of appearance. Failure to do so may result in the imposition of sanctions.

(e) It is anticipated that the majority of cases to be heard by an arbitration panel will require two hours or less for presentation and decision. It shall be the responsibility of counsel for the plaintiff to confer with counsel for all other parties to obtain an approximation of the length of time required for presentation of the case and advise the arbitration administrator at least seven days in advance of the hearing date in the event additional hearing time is anticipated and the length of such additional time.

RULE 4. Discovery (S. Ct. Rule 89).

(a) All parties shall comply with the provisions of Supreme Court Rule 222. However, unless otherwise ordered by the court, the parties shall file with the court their initial disclosure under Supreme Court Rule 222 within 14 days of the first return court appearance date.

RULE 5. Conduct of the Hearings (S. Ct. Rule 90).

(a) The supervising judge for arbitration shall have full supervisory powers over questions arising in any arbitration proceeding, including the application of these rules.

(b) A stenographic record or a recording of the hearing shall not be made unless a party does so at one's own expense. If a party has a stenographic record or a recording made, a copy shall be furnished to any other party requesting same upon payment of a proportionate share of the total cost of making the record or recording.

(c) The statements of witnesses shall set forth the name, address and telephone number of the witness.

(d) Witness fees and costs shall be in the same amount and shall be paid by the same party or parties, as provided for in trials in the Circuit Courts of Winnebago and Boone Counties.

(e) Any party requiring the services of a language interpreter or assistance for the deaf or hearing impaired during the hearing shall notify the Arbitration Administrator of said need not less then thirty days prior to hearing.

(f) Only the Notice of Intent pursuant to S. Ct. Rule 90 (c) shall be filed with the Circuit Clerk's Office; do not file the supporting attachments or exhibits that are going to be offered into evidence at the hearing.

(g) All exhibits admitted into evidence shall be retained by the panel until the making of the award. It is the duty of the attorneys or parties to retrieve such exhibits from the Arbitration Administrator within seven days of the hearing. All exhibits not retrieved shall be destroyed. The Arbitration Center is not responsible for documents left by the parties and the litigants are encouraged not to leave behind any original documents.

RULE 6. Default of a Party (S. Ct. Rule 91).

(a) A party who fails to appear and participate in the hearing, upon motion to the court by the party present, shall be found to be in default. Costs that may be assessed under Supreme Court Rule 91 upon vacation of a default include, but are not limited to, payment of costs, attorney fees, witness fees, stenographic fees and any other out-of-pocket expenses incurred by any party or witness.

(b) Reserved

RULE 7. Award and Judgment on Award (S. Ct. Rule 92).

(a) Reserved

(b) The panel shall make an award the same day the hearing is terminated. The chairman shall immediately file the award with the clerk of the court, who shall serve notice of the award on all parties.

(c) Reserved

(d) Reserved

RULE 8. Rejection of Award (S. Ct. Rule 93).

Reserved

RULE 9. Form of Oath, Award and Notice of Entry of Award (S. Ct. Rule 94).

(a) The arbitration administrator shall provide the forms called for by these rules.

RULE 10. Form of Notice of Rejection of Award (S. Ct. Rule 95).

Reserved

2.13 MANDATORY ARBITRATION FOR SMALL CLAIMS ACTIONS WITH JURY DEMANDS

A. Applicability to Small Claims

Small claims actions with timely filed jury demands shall be subject to Mandatory Arbitration unless otherwise ordered by the assigned trial judge. The party filing a small claims jury demand shall bring the demand to the attention of the assigned trial judge at that party's first appearance in open court. A small claims matter referred to Mandatory Arbitration shall retain its assigned SC case number.

B. Small Claims Pleadings

On motion of either party, or on the court's own motion, the assigned trial judge may permit limited and simplified discovery and/or may require the filing of an Answer and Supreme Court Rule 222 Disclosures. Once pleadings requirements are satisfied, the small claims action shall be promptly scheduled for arbitration.

C. Arbitration of Small Claims

Arbitration of small claims actions with jury demands shall be conducted in accordance with Illinois Supreme Court Rules 89 - 94. Any party may submit a Rule 90(c) Disclosure Statement. Rule 93 rejection fees shall apply.

(Adopted 10/21/2013)