

## **WHAT IS ARBITRATION?**

Mandatory arbitration is a court program where all modest sized civil cases, with money damages only, go to a hearing before a panel of three specially trained attorneys. It is an effort to move the file quickly through the court system and resolve the lawsuit before setting the case for trial. In the 17<sup>th</sup> Judicial Circuit (Winnebago and Boone Counties) the program applies to all civil cases seeking money damages greater than \$10,000 and less than \$50,000. Additionally, all small claims cases with a jury demand must go through arbitration. Speedy resolutions are possible because Supreme Court Rule 88 requires that arbitration hearings occur within one year of the filing of the case, except in unusual circumstances.

At the arbitration hearing, the parties present their case to the arbitration panel and the arbitrators make a monetary award based on the evidence. The Illinois Code of Civil Procedure, Illinois Supreme Court Rules and the established rules of evidence all apply in arbitration hearings. The hearing is conducted in a fair and dignified, yet less formal fashion. The arbitrators are empowered not as judges but as adjuncts of the court. Moreover, while the rules of evidence apply, Illinois Supreme Court Rule 90(c) presumes certain documents are more readily admissible in an arbitration hearing. By taking advantage of this rule, the arbitration hearing can usually be completed in two hours or less. The arbitrators deliberate in private immediately after the hearing and make their decision, called an award. An award requires the agreement of at least two arbitrators. The award is filed with the court and a copy is mailed to the parties the same day.

In the event one of the parties is not satisfied with the panel's decision, he or she may reject the award within thirty days by paying a fee, filing a written notice of rejection with the Circuit Clerk, and giving notice of the rejection to all other parties. For an award of \$30,000 or less, the rejection fee is \$200; for an award greater than \$30,000, the rejection fee is \$500. The parties will then proceed to trial before a judge or jury (if a jury was properly requested) as if the arbitration hearing had never occurred.

The Arbitration Program provides a speedier resolution of small civil lawsuits. Statistics reflect that the litigating parties accept a substantial proportion of the arbitration awards. With the help of licensed attorneys properly trained as arbitrators, the program has significantly reduced the length and cost of civil litigation.

## **I. BEGINNING THE ARBITRATION PROCESS**

### **1. How do I file an Arbitration ("AR") case?**

Each Arbitration Case is unique in its content and consequently, there is no standard "fill in the blank" complaint form available. Litigants who choose to represent themselves (called "*pro-se*") in an arbitration case will need to prepare the appropriate complaint themselves or consult with an attorney. The Self-Help Center, located in the Law Library of both the Winnebago County Courthouse and the Boone County Courthouse, is available for research purposes.

Necessary forms for filing an Arbitration ("AR") case include:

- Affidavit – Military Service (1 per defendant)
- Appearance
- Complaint (No standard form available)
- Summons – Arbitration (1 original and 1 copy per defendant)

These forms can be downloaded from <http://www.cc.co.winnebago.il.us/court-forms-winnebagocounty/> or are available in the Self-Help Center.

Upon completion of the forms necessary for your case, you will need to efile your forms. Approved service providers may be found at <http://efile.illinoiscourts.gov/service-providers.htm>

You may file with the provider of your choice; however, the Winnebago County Circuit Clerk's Office staff has been trained to assist with Odyssey eFileIL. Please note that you will first be required to register and set up a payment option. A filing fee will be due. A person unable to pay the filing fee may complete an *Application for Waiver of Court Fees* and, if approved by the court, may secure a waiver of court fees.

Upon review of your submitted filing, you will receive an email with your acceptance or rejection information. If you have opened a new case, you will then need to submit your summons to be issued via eFileIL. (See paragraph 2 below.) You will need one summons per party, and you will be responsible for having it correctly served. If you choose to use the Winnebago County Sheriff's Office for service, you will need to select the appropriate fee in the Optional Services section of the eFiling page.

The case will then be assigned the next appropriate First Return court date or Case Management date.

It is your duty to follow the events of the case and appear for the court dates. Failure to do so may result in the case being dismissed.

### **2. What is an arbitration summons?**

A summons is a pre-printed legal form that tells a defendant that he or she is being sued. It contains the date the defendant must come to court (the "return date"). The arbitration division

has its own unique summons. The Office of the Circuit Clerk issues the arbitration summons, as well as any necessary alias summons. An "alias summons" is another summons issued by the clerk when the first attempt to serve a summons was unsuccessful. The plaintiff will be responsible for having the summons served on the defendant. If you choose to use the Winnebago County Sheriff's Office for service, you will need to select the appropriate fee in the Optional Services section of the efilng page.

### **3. What is the date on the summons? Do I need to appear in court?**

The Office of the Circuit Clerk sets the next date to return to court (the "return date") when the complaint is filed and the summons is issued. The return date appears on every summons. All parties must appear in court on every return date unless otherwise excused by Order of Court.

If the plaintiff fails to appear on the original or continued return date, the Court may dismiss the case.

If the defendant fails to appear in court on the original or continued return day, the Court may find the defendant in default and enter a judgment against that defendant.

### **4. What if I am the Plaintiff and I do not have service on a Defendant by the return of service date?**

A plaintiff who has failed to obtain service on any defendant by the return date must still appear in court on that return date. Plaintiff may request the judge to issuance an "*alias summons*". Plaintiff must then go to the clerk's office, obtain the alias summons, and have it properly served.

### **5. What if I am the Defendant and have been served with a summons?**

Read the summons carefully and follow the instructions on the summons. It is important that you appear in court on the return date written on the summons.

If any defendant wants to contest the claims made by the plaintiff, the defendant must file an *appearance* and an *answer* with the Office of the Circuit Clerk, along with the payment of the appropriate filing fee. You can find the appearance and answer forms at <http://www.cc.co.winnebago.il.us/court-forms-winnebagocounty/>.

A person unable to afford the filing fee may complete an *Application for Waiver of Court Fees* and, if approved by the court, receive a waiver of court fees.

## II. ARBITRATION CASES

### 1. What type of cases are assigned to arbitration?

In the Winnebago and Boone Counties, the program applies to all civil cases seeking money damages greater than \$10,000 and less than \$50,000, excluding court costs and interest. Additionally, Small Claims ("SC") cases are transferred into mandatory arbitration by the court if any party files a jury demand.

### 2. Must I go through arbitration before I can go to trial?

Yes. All actions subject to mandatory arbitration must first have an arbitration hearing before a panel of three specially trained attorneys (the arbitration panel) before the case can go to trial.

### 3. Could a case be filed in the Law Division ("L") and then amended below the jurisdictional limit of \$50,000 in order to qualify for arbitration?

Yes, but an appropriate motion to amend damages and to transfer a law division case to the arbitration division must be made before the law division judge in accordance with court rules.

### 4. If a case was filed as an Arbitration ("AR") case, but should be a Law Division ("L") case, how do I transfer the case to the Law Division?

A case pending in arbitration may be transferred to the law division by filing an appropriate motion with the arbitration judge in accordance with court rules.

## III. THE ADR CENTER

Arbitration hearings for both Boone and Winnebago Counties are held at the Alternative Dispute Resolution (ADR) Center. The ADR Center is located at 308 West State Street, Suite 25, Rockford, IL, 61101, one block east of the Winnebago County Courthouse, in the lower level of the building known as Stewart Square.

### 1. If I have any questions regarding the process, whom do I call?

In the event you have a question about the arbitration process, you may contact the ADR Center at (815) 987-7739, or by email to [ADR@17thcircuit.illinoiscourts.gov](mailto:ADR@17thcircuit.illinoiscourts.gov).

In the event you have a question about how to file papers, court fees, or how to set a case on the motion call, contact the Circuit Clerk's office at (815) 319-4550 for Winnebago County files or (815) 544-0317 for Boone County files.

For additional resources, visit the Self-Help Center on the third floor of the Winnebago County Courthouse, located in the law library, or at (815) 319-4256.

## IV. MOTIONS

### 1. What is a "motion" and how do I file one?

A "motion" is the manner in which a party requests the court to do something, such as rule on an issue or change a court date. A motion of this nature is typically in writing. The original written motion must be filed with the Office of the Circuit Clerk along with another form called a "notice of motion". A notice of motion is simply a form that tells everyone the date, time, and place where a motion will be heard; the clerk will tell you what date and times are available for your motion. Any party filing a motion must send a copy of the motion *and* a copy of the notice of motion to all of the parties in a case.

A **Notice of Motion form** is available at [http://www.cc.co.winnebago.il.us/assets/1/21/CC-1901\\_V2\\_Notice\\_of\\_Motion.pdf](http://www.cc.co.winnebago.il.us/assets/1/21/CC-1901_V2_Notice_of_Motion.pdf).

A **Motion form** is available at [http://www.cc.co.winnebago.il.us/assets/1/21/CC-220\\_V3\\_Motion.pdf](http://www.cc.co.winnebago.il.us/assets/1/21/CC-220_V3_Motion.pdf).

### 2. When does the arbitration judge hear AR case types?

In Winnebago County, the arbitration motion call is on Thursday mornings with the following schedule:

- 9:00 am First returns and alias returns
- 9:30 am Judge set status
- 10:00 am Motions
- 10:30 am Judge set arguments and the Judgment on Award (JOA) call

In Boone County, the arbitration motion call is on Friday mornings at 9:00 am.

The Office of the Circuit Clerk can assist you in determining the next available date.

### 3. How do I change the date of the arbitration hearing?

You must file a "motion to continue". The arbitration judge may continue, or reschedule, a hearing date for "good cause". You should plan ahead, and be sure that your motion can be scheduled and heard by the arbitration judge *not less than seven days* prior to the arbitration hearing.

Following the steps in paragraph 1 above, to file a motion to continue an arbitration hearing, you must file with the Office of the Circuit Clerk:

- 1) A *Notice of Motion* which **must** be sent in a timely manner to all parties involved in the lawsuit indicating that you want to appear in court to ask the court for a change in the hearing date; and

- 2) A *Motion to Continue* that must be attached to the Notice of Motion, outlining the reasons for the continuance.

If the motion is granted, you should notify ADR Center of the new date and time for the case.

#### **4. Can arbitrators hear motions?**

The arbitrators' authority to hear motions is limited. Their authority and power exist only in relation to the conduct of the hearing at the time it is being held. Thus, the arbitrators can hear and determine motions to exclude witnesses, motions on the admissibility of evidence, and motions for a directed finding.

Any other motions pertaining to the case must be brought before the arbitration judge prior to the arbitration hearing.

**NOTE:** Arbitrators *MAY NOT* hear and determine motions for continuance of the hearing or dismissal of the case.

### **V. DISCOVERY**

#### **1. What is discovery?**

Discovery is the formal process of exchanging information between the parties about the witnesses and the evidence they want to present at hearing or at trial. Discovery enables all parties to know what evidence will be presented.

#### **2. Are there special rules governing discovery in arbitration?**

Yes. Arbitration cases are subject to Illinois Supreme Court Rule 222. The rule helps simplify the discovery process. The Rule requires the parties to disclose specific information about the claims and defenses of their case. Fortunately, the disclosure requirements of Rule 222 are set forth in a form called *Supreme Court Rule 222 Arbitration Disclosures*. This form can be found in the Self Help Center located in the Law Library or with the Arbitration forms at <http://www.cc.co.winnebago.il.us/court-forms-winnebago-county/>. All litigants are well advised to comply with this rule. Failure to file or serve the disclosure statement as provided by the Supreme Court Rule, or as the Court may order prior to the arbitration hearing, may result in the imposition of sanctions, including the barring of evidence at hearing or trial.

#### **3. When do I file my Supreme Court Rule 222 Disclosure?**

The arbitration judge will give you an order designating the time by which you are to file your *Rule 222 Arbitration Disclosure* form.

#### **4. Do I have to bring all my witnesses to the arbitration hearing?**

It is up to each party to present any evidence that you want the panel to hear. You should

consider bringing any witness who has knowledge of the event claimed to the hearing.

**5. Can I present certain types of evidence without the maker being present?**

It is up to each litigant to present the evidence. Illinois Supreme Court Rule 90(c) provides that items such as 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, statements of witnesses, depositions of witnesses, and expert opinions [now opinion witnesses pursuant to Supreme Court Rule 213(g)] are admissible without the maker being present.

In order to take advantage of Supreme Court Rule 90(c), **you must send to all parties:**

- 1) a written notice of your intention to offer the documents into evidence, and
- 2) a copy of each document,

at least 30 days before the arbitration hearing. This is called a Rule 90(c) package.

The "written notice of your intention" is a summary sheet called *Notice of Intent pursuant to Supreme Court Rule 90(c)*. The summary should detail all of your money damages and specify whether each bill is paid or unpaid. A summary sheet form is available in the Self Help Center located in the County Law Library or with the Arbitration forms at <http://www.cc.co.winnebago.il.us/court-forms-winnebagocounty/>. The *Notice of Intent* summary sheet should be filed with the Office of the Circuit Clerk.

However, while the Notice of Intent summary sheet *is* filed with the Circuit Clerk, the attachments, or exhibits, of the 90(c) package should not be filed. [Local Rule 2.07 – Rule 5(f)]. They are often too voluminous and may contain confidential or sensitive information.

***In Conclusion, in order to take advantage of Supreme Court Rule 90(c) a copy of the Notice of Intent summary sheet and all of its attachments or exhibits MUST BE sent to all other parties AT LEAST 30 DAYS PRIOR to the scheduled arbitration hearing.***

**6. If I file my documents in accordance with Supreme Court Rule 90(c), are they automatically admitted into evidence?**

No. Any documents filed pursuant to Supreme Court Rule 90(c) are ***presumptively*** admitted; i.e., no further foundation needs to be laid for their admittance. However, the documents are still subject to objections according to the usual rules of evidence.

**7. May I subpoena witnesses to appear at the arbitration hearing just as I could in a trial?**

Yes. Subpoena practice in arbitration cases is the same as that followed in non-arbitration cases. All subpoena forms can be found in the Office of the Circuit Clerk, the Self-Help Center, or downloaded from <http://www.cc.co.winnebago.il.us/court-forms-winnebagocounty/>.

**8. Do the same rules for witness fees apply to arbitration hearings?**

Yes. The same witness fees and costs that would apply at a trial apply in arbitration hearings.

**9. Can discovery take place after the hearing?**

No discovery shall be permitted after the hearing, except by leave of court for good cause shown. [Supreme Court Rule 89]

**VI. ARBITRATORS**

**1. Who will be the arbitrators that will hear my case?**

Arbitrators are lawyers or retired judges who have been specially trained and certified to act as arbitrators. They are assigned on a specific day to hear cases that have been scheduled for that date.

**2. How are the arbitrators chosen?**

Arbitrators are chosen at random by the arbitration administrator eight weeks in advance of the hearing date. Arbitrators may also be called on an emergency basis to fill in for those arbitrators who are unable to attend on their scheduled day.

**3. Will I have a choice of arbitrators?**

No. Arbitrators are randomly selected. Moreover, about ten days before the hearing date, the ADR Center sends out a "conflicts sheet" to all of the scheduled arbitrators. The conflicts sheet lists the names of all of the court cases scheduled for arbitration hearing that day, their attorneys, and all of the witnesses disclosed by the parties in their Rule 222 disclosure statements. The arbitrators carefully review the conflicts sheet to make sure that they have no relationship with a party or witness. They also make sure that they do not have independent knowledge of the facts of any case. If the arbitrator has a conflict with a file it is reported to the ADR Center so that the arbitrator will not be assigned to hear that case. On hearing day, the arbitration administrator assigns arbitrators to the hearings based on the results of the conflicts check.

**4. When will I know who will be the members of the panel who will hear my case?**

The panel members will introduce themselves to the parties at the beginning of the hearing.

**5. May I ask to change arbitrators if I think there is prejudice, a conflict or other problems?**

No. Arbitrators may recuse themselves if they feel there may be a conflict or withdraw if grounds appear to exist for disqualification pursuant to the Code of Judicial Conduct. There is no provision made in the Supreme Court Rules for a substitution of arbitrators or a change from the panel or any of its members. It has been determined that if you perceive bias or prejudice on

the part of an arbitrator, or if you feel the panel has made an error in the award, your remedy is to reject the award and request to go to trial.

**6. What happens if an arbitrator discovers a conflict after the hearing has started?**

If an arbitrator discovers a conflict after the hearing has started the arbitration administrator will attempt to switch the conflicted arbitrator with an arbitrator from another hearing. If no arbitrator is available to take his/her place, the arbitration hearing can continue with the two remaining panelists if all parties agree. Otherwise, an emergency arbitrator will be called and the hearing will be delayed until the emergency arbitrator arrives.

**7. If I do not understand the meaning of the award, may I contact the arbitrators? Can I ask the arbitrators what I did wrong?**

No. The arbitrators are bound by the Code of Judicial Conduct and cannot have *ex parte* communications with any of the parties, or their attorneys. *Ex-parte* is a legal term meaning one of the involved parties is not present. Arbitrators may not be contacted, nor respond to questions regarding a particular arbitration case heard by that arbitrator, during the pendency of that case, until a final order is entered and the time for appeal has expired.

## **VII. THE ARBITRATION HEARING**

**1. When will the arbitration hearing date be assigned?**

The arbitration judge will assign a date for the arbitration hearing when all parties to the action have appeared before the court.

**2. How long should will the hearing last?**

The majority of cases heard by an arbitration panel will require two hours or less. However, if the parties feel two hours is not sufficient time for presentation of the evidence, the parties may request a four-hour hearing.

**3. Will I get any further notice of the arbitration hearing date after it is set?**

No. However, the ADR Center attempts to contact all counsel of record, or the party himself or herself if not represented by counsel, a week before the hearing to make sure the case is still proceeding. Therefore, it is important that all of your contact information, including email, is current in the court file.

**4. What if I want to continue the arbitration hearing date when I get to the hearing?**

Arbitrators **cannot** continue a case. Even if both parties agree to the continuance, only the arbitration judge can grant the continuance and assign a new date. See "MOTIONS" above, paragraph 3, for the proper way to request a continuance.

## **5. What if the parties resolve the matter before the arbitration hearing?**

If the parties settle or resolve the matter prior to the hearing date, the parties should notify the ADR Center immediately. [Local Rule 2.07 – Rule 3(d)] Failure to do so may result in the imposition of sanctions. The arbitration administrator has the ability to cancel the hearing and set the case for status on the settlement before the arbitration judge.

## **6. What is the format of the arbitration hearing?**

A. SWEARING OF PARTIES AND WITNESSES. The chairperson of the arbitration panel will administer the oath or affirmation to the witnesses. After the administration of the oath or affirmation to all witnesses, the chairperson will make opening remarks to the parties and counsel to explain the procedures involved in the arbitration hearing.

B. OPENING STATEMENT. Counsel and *Pro se* parties, at their option, may make an opening statement, which summarizes the nature of the action the panel is to hear.

C. WITNESS AND EXHIBITS. Counsel and *Pro se* parties 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.

D. MEMORANDA OF LAW. Counsel and *Pro se* parties should recognize that in preparing a case for arbitration, it might be worthwhile to prepare a short memorandum of law of any point of law that is complex or unsettled. Memoranda of law prepared for the panel should be exchanged with any other party in advance of the hearing.

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

## **7. If I am late, will I still get a two-hour hearing?**

No. If the case starts after the scheduled time due to the fault of one of the parties, the delaying party will be penalized by having that amount of time deducted from his or her presentation.

## **8. What happens if one party does not show up?**

Generally, the arbitration administrator waits fifteen (15) minutes for a party to appear before calling, or starting, the case. If a party fails to appear, the panel may enter an award in favor of the party that did appear after hearing evidence. Furthermore, pursuant to Supreme Court Rule 91(a), the party who did not appear waives the right to reject the award and consents to the entry of a Judgment on the Award.

**9. What are the options if one party calendars the wrong hearing date or time, or appears at the wrong location, and fails to appear at the arbitration hearing?**

See answer to Number 8 above. However, any party may petition or move the Court to vacate the judgment entered on the ex-parte award under the provisions of the Code of Civil Procedure for the vacation of Judgments by Default, sections 2-1301 and 2-1401 [Supreme Court Rule 91(a)]. Pursuant to the Rule, costs and fees may be assessed against the party that did not appear. The costs may include, but are not limited to, payments of filing fees and service of summons fees, attorney's fees, witnesses' fees, stenographic fees, and any other out-of-pocket expenses incurred by any party or witness.

**10. What happens if a party does not comply with a Rule 237 Notice?**

Supreme Court Rule 90(g) provides that the provisions of Supreme Court Rule 237, *Compelling Appearances of Witnesses at Trial*, are applicable to arbitration hearings. A Rule 237(b) notice may require the presence of a party or person at the arbitration hearing, as well as the production of originals of documents or other tangible things previously produced during discovery. If a party fails to comply with a Rule 237 notice, sanctions may include an order debaring that party from rejecting the award. The arbitrators are instructed to note any party's failure to comply with Rule 237 on the award.

**11. What happens if neither of the parties appears on the date of the arbitration hearing?**

If neither plaintiff nor defendant appears at the hearing, an *ex-parte* award may be entered under Supreme Court Rule 91(a), or the court may enter an order dismissing the case for want of prosecution.

**12. What happens if one of the parties appears but does not present a case?**

Supreme Court Rule 91(b) provides that all parties to an arbitration hearing must participate in good faith and in a meaningful manner. If arbitrators unanimously decide that a party has not participated in good faith and in a meaningful manner, they must state this on the award, along with the factual basis for the decision. Any other party to the hearing may then file a petition for sanctions against the bad faith party. The court may order sanctions against the bad faith party that could include prohibiting that party from rejecting the award, costs and attorney's fees incurred for the arbitration hearing, and costs and attorney's fees incurred in the prosecution of the petition for sanctions.

**13. Should I leave my Rule 90(c) documents with the panel?**

Yes. As a courtesy to the panel, you should make three copies of your Rule 90(c) documents and any other evidence that you plan to present to the panel. The ADR Center is not responsible for documents left at the Center and therefore, the parties are *strongly urged* to make copies of original documents and leave the copies, **not the originals**, with the panel while panel members make their decision.

**14. What happens to my exhibits after the hearing?**

If you advised the ADR Center that you want your exhibits returned to you, the arbitration administrator will keep them for one week. It is your responsibility to pick-up your exhibits from the ADR center within **seven days** after the hearing. All exhibits not retrieved will be destroyed. Please note that the ADR Center is not responsible for your documents. [Local Rule 2.07 -- Rule 5(a)]

**15. If, during the arbitration hearing, I disagree with a ruling of the arbitrators, may I, at that time, go before the Arbitration Judge for a ruling?**

No. Rejection of the award and the right to proceed to trial has been determined to be the appropriate remedy if you disagree with a ruling during the course of the hearing.

**16. Will an interpreter be provided if needed?**

Yes. 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 this need **no less than thirty days prior to the hearing.**

**17. What if the parties settle the case on the day of the hearing?**

In the 17<sup>th</sup> Judicial Circuit, if the parties settle the case on the day of the arbitration hearing, the parties must still appear before the arbitration panel to report the settlement. The plaintiff will prepare an order to present to the arbitration panel. Unless the order is for an agreed judgment or dismissal of the case, it must include a future court date for “status on the settlement”. The arbitrators will sign the order to show that they were present and ready to proceed with the arbitration hearing. The arbitration administrator will later take the order to the arbitration judge for entry. Blank orders are available at the ADR Center for this purpose. Failure to follow this protocol may result in an *ex-parte* award being entered under Supreme Court Rule 91(a) for neither party appearing at the arbitration hearing, or the court may enter an order dismissing the case for want of prosecution.

**VIII. THE ARBITRATION AWARD AND THE JUDGMENT ON THE AWARD**

**1. Will the Award be made the same day as the hearing?**

Yes, the arbitrators will deliberate immediately after the hearing and make the award before leaving the ADR Center. The Arbitration Administrator will file the *Award* and the *Notice of Award* with the Circuit Clerk and mail a copy to each party, or their attorney of record. The Notice of Award will tell the parties their next court date, which is called the *Judgment on Award* status date. Therefore, it is imperative that you make sure the ADR Center has your current address.

## **2. Is the Award of Arbitrators binding?**

No. Any party, who was present at the hearing either in person or through counsel, has the right to reject the award, except one that has been prohibited by the court from rejecting the award. Any rejection must be done within thirty days of the date on the Award by paying the proper fee, giving notice to all other parties, and filing a *Notice of Rejection of the Award* with the Clerk of the Court. [Supreme Court Rule 95] **SEE SECTION IX BELOW.**

## **3. Is the Award of Arbitrators a final order? If not, how do I make it final?**

The Award of Arbitrators is **NOT** a final order. In order to be so, the arbitration judge must enter a *Judgment on the Award*.

Pursuant to Supreme Court Rule 92(c), if no *Notice of Rejection of the Award* is filed within the 30-day period after the hearing, any party may ask the Court to enter a Judgment on the Award. Typically, this is done at the Judgment on Award status date. However, if the hearing was *ex-parte* because one party did not appear, the appearing party may ask, at any time after the award has been filed with the Clerk of the Court, for an entry of Judgment on the Award [Supreme Court Rule 91(a)].

## **4. Can the parties enter a stipulation for an amount different from the Award after the Award is filed?**

Yes. Parties may stipulate, or agree, to an amount different from the award after the arbitration hearing but before the arbitration judge enters a *Judgment on the Award*.

## **5. Can the parties agree to dismiss the case after the Award of Arbitrators has been filed?**

Yes. The parties may voluntarily dismiss the case at any time before the arbitration judge enters a Judgment on Award. (However, case law indicates that a plaintiff may not circumvent the effects of Supreme Court Rule 91 by not appearing at a hearing and subsequently moving to voluntarily non-suit the matter.) An agreed stipulation to dismiss may also be presented by the parties at the Judgment on Award status call.

# **IX. REJECTION OF THE AWARD AND SETTING THE CASE FOR TRIAL**

## **1. How do I reject the arbitration award?**

Supreme Court Rule 93(a) provides that any party who was present at the arbitration hearing, either in person or by counsel, may reject the award. To reject the award, the following must be filed with the Circuit Clerk within 30 days of the date on the award:

- A written notice of rejection of the award and a request to proceed to trial
- A certificate of service of the notice of rejection on all parties
- Payment of the appropriate filing fee

A form Notice of Rejection of Award is available with the Arbitration forms at <http://www.cc.co.winnebago.il.us/court-forms-winnebagocounty/>.

For an award of \$30,000 or less, the rejection fee is \$200; for an award greater than \$30,000, the rejection fee is \$500. Upon application of a poor person pursuant to Supreme Court Rule 298, the rejection fee may be waived by the court.

**2. If another party has rejected the Award, must I also pay a rejection fee?**

No. Per Supreme Court Rule 93, 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.

**3. When will my case be set for trial? Will I get a jury trial or a bench trial?**

If a jury trial has been properly demanded, the judge will assign a date for a jury trial at the Judgment on Award status hearing. Otherwise, the judge will set the case for a bench trial.

**4. If I go to trial, can an arbitrator be called as a witnesses?**

No. Supreme Court Rule 93(b) prohibits an arbitrator from being called as a witness.

**5. Can I use the award from the arbitration hearing at my trial?**

No. Supreme Court Rule 93 prohibits any reference to the arbitration hearing or the award at trial. The award, however, is part of the court record, which the trial judge may review.

\*\*\*\*\*

**DISCLAIMER**

The information in this booklet is produced only as a guide to Mandatory Arbitration. Information may be changed or updated without notice. While we have attempted to make the information in this booklet as accurate as possible there is always a chance of technical inaccuracies or typographical errors. Reference should be made to applicable statutes, Supreme Court Rules and Local Court Rules. Please use official printed documents for any and/or all legal work. The ADR Center and the Clerk of the Circuit Court, its employees, and agents will not be responsible for any loss from the use of or reliance on the information contained in this booklet.

## REFERENCES

### **Illinois Supreme Court Rules 86 through 95**

[http://www.illinoiscourts.gov/SupremeCourt/Rules/Art\\_I/ArtI.htm#86](http://www.illinoiscourts.gov/SupremeCourt/Rules/Art_I/ArtI.htm#86)

### **Illinois Supreme Court Rule 222**

[http://www.illinoiscourts.gov/SupremeCourt/Rules/Art\\_II/ArtII.htm#222](http://www.illinoiscourts.gov/SupremeCourt/Rules/Art_II/ArtII.htm#222)

### **17<sup>th</sup> Judicial Circuit Local Rule 2.07**

[http://www.illinois17th.com/index.php?option=com\\_content&task=view&id=362&Itemid=71#0207](http://www.illinois17th.com/index.php?option=com_content&task=view&id=362&Itemid=71#0207)

### **Approved Statewide Forms**

<http://www.illinoiscourts.gov/Forms/approved/default.asp>

### **Winnebago County Court Forms**

<http://www.cc.co.winnebago.il.us/court-forms-winnebagocounty/>

### **Boone County Court Forms**

<http://boonecircuitclerk.us/page/66/forms>

### **Alternative Dispute Resolution Center**

[http://www.illinois17th.com/index.php?option=com\\_content&task=view&id=17&Itemid=34](http://www.illinois17th.com/index.php?option=com_content&task=view&id=17&Itemid=34)