

**ELEVENTH JUDICIAL CIRCUIT
COURT-ANNEXED MANDATORY ARBITRATION PROGRAM**

QUESTION AND ANSWER BOOK

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Chief Judge, Eleventh Judicial Circuit

Honorable Matthew Fitton
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WHAT IS ARBITRATION

Court-annexed arbitration was established in Illinois as a mandatory, but non-binding, form of alternative dispute resolution. The program is a deliberate effort on the part of the judiciary, bar and public to reduce the length and cost of litigation in Illinois.

The program applies to all civil cases seeking money damages exclusively greater than \$10,000 and less than \$50,000. Other civil cases may also be transferred to the arbitration calendar from other court divisions.

These arbitration eligible cases are litigated before a panel of three attorney/arbitrators in a hearing resembling a traditional bench trial. Each party makes a concise presentation of its case to a panel of arbitrators who then deliberate the issues and make an award on the same day of the hearing.

The parties to the dispute then have thirty (30) days to decide whether or not to accept the arbitrators' award. In the event one of the parties is not satisfied with the panel's decision, he or she may, upon the payment of the proper fee, upon the filing of the proper form with the Circuit Clerk, and the giving of notice to all other parties, reject the award. The parties will then proceed to trial before a judge as if the arbitration hearing had never occurred.

The Arbitration Program has provided speedier resolution of small civil lawsuits than had previously been possible. The parties accept the vast majority of arbitration awards. In addition, the members of the Bar Associations of the Eleventh Judicial Circuit, as arbitrators, have played a major role in helping reduce the length and cost of litigation in this circuit.

ARBITRATION FACILITIES

Where is the Arbitration Dispute Resolution (ADR) Center?

The ADR Center is located at 200 W. Front Street, Suite 400 B, Bloomington, IL

How do I contact the ADR Center?

You may contact the Arbitration Administrator (Rachel Bunner) at (309) 827-7584 or email at Arbitration@mcleancountyil.gov

ARBITRATION CASES

What types of cases will be assigned to arbitration?

A civil case will be subject to mandatory arbitration if each claim in the case is for money damages in an amount exceeding \$10,000 but less than \$50,000, exclusive of costs and interest. Attorney's fees are considered a claim for relief and are included in the \$50,000 limit. Cases may be transferred to the arbitration calendar from other divisions upon motion by any party and approval of the judge.

Must I go through arbitration before I can go to trial?

Yes. All eligible actions are subject to mandatory arbitration. Following an arbitration hearing, and within thirty (30) days of the arbitration award, any party may file a rejection of award form, pay a rejection fee (\$200 for awards of \$30,000 and less and \$500 for awards of more than \$30,000) and provide the rejection notice to all other parties to reject the award. The case will then return to the Civil Division of the Circuit Court for further proceedings and trial.

What happens in cases where the claim was inflated to exceed the jurisdictional limit (\$50,000) to avoid arbitration?

Supreme Court Rule 86(d) provides that cases not assigned to the arbitration calendar may be ordered into arbitration at a status call, pre-trial or case management conference when it appears to the court that no claim in the action has a value in excess of the monetary limit, irrespective of defenses.

Could an action be filed in the law division and then amended below the jurisdictional limit (\$50,000) in order to qualify for arbitration?

Yes. The appropriate motion to amend damages and to transfer the Law (L) case to the arbitration calendar must be made before the civil division judge which the case is assigned.

If a case was filed as an arbitration case, but should be a Law division or Small Claims division case, how do I transfer the case to that calendar?

A case pending in arbitration may be transferred to a different calendar by filing the appropriate motion with the arbitration judge.

What if a counter-claim is filed in a small claims (SC) case seeking more than \$10,000 in damages?

A small claims case may be transferred to the arbitration calendar upon the appropriate motion before the small claims judge.

What is done with the case when the defendant has filed bankruptcy?

If a defendant has filed bankruptcy, any party may file a motion to have the matter set on the arbitration judge's dormant calendar. Upon granting of the motion, the case will be set for review every six (6) months.

What types of cases will not be eligible for arbitration?

Generally, only Law Magistrate (LM) cases are eligible where only money damages are claimed. The following case types are not subject to arbitration unless ordered by the court:

- Confession of judgment
- Detinue
- Ejectment
- Eviction (forcible entry and detainer)
- Registration of Foreign Judgment
- Replevin
- Trover

ARBITRATORS

Who will be the arbitrators who will hear my case?

Illinois Supreme Court rules provide that any licensed attorney shall be eligible for appointment as an arbitrator by filing an application with the circuit court and certifying that he or she is in good standing with the Illinois Attorney Registration and Disciplinary Commission (ARDC); has completed a court-approved training seminar on arbitration practices and procedures; has engaged in the practice of law in Illinois for a minimum of one (1) year or is a retired judge; and resides in, practices in or has an office within the Eleventh Judicial Circuit. In order to be considered for the position of chair, an attorney must have engaged in active trial practice for a minimum of five (5) years or be a retired judge.

Will I have a choice of arbitrators?

No. Arbitrators are selected at random to insure against prejudice or bias. When the arbitrators arrive at the ADR Center they review their assigned files for a conflict of interest. Whether there is a conflict of interest is a matter of discretion with each arbitrator, though they are bound by the Code of Judicial Ethics.

Do I have to pay the arbitrators?

No. The State of Illinois pays the arbitrators from the Mandatory Arbitration Fee Fund. This fund was created by the legislature and allows for an \$8 fee to be collected on every appearance filed in a civil action within the Circuit.

How are the arbitrators chosen?

Arbitrators are chosen at random in advance of the hearing date. Arbitrators are assigned at random to avoid prejudice or bias. Arbitrators may also be called on an emergency basis to fill in for those arbitrators unable to attend on their scheduled day.

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 litigants at the beginning of the hearing.

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 [SCR 87 (c)]. There is no provision within the rules for a substitution of arbitrators or change of venue from a panel or any of its members. The remedy of rejection of the award and the right to proceed to trial has been determined to be the appropriate response to a perceived bias or prejudice on the part of any member of the panel or error by the panel in the determination of its award.

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

If an arbitrator discovers a conflict after the hearing has started and no arbitrator is available to take his or 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 put on hold until the emergency arbitrator arrives. If neither of the two options above are available, the arbitration may be continued to another date.

If I do not understand the meaning of the award, may I contact the arbitrators?

No. the arbitrators are bound by the Code of Judicial Conduct, and therefore, cannot have *ex parte* communications with any of the parties.

MOTIONS

Who is the Supervising Judge for Arbitration?

- In Ford County, it is the Resident Circuit Judge. The Ford County Circuit Court can be contacted at (217) 379-2814.
- In McLean County, contact the ADR Center at (309) 827-7584 for this information

On what day and at what time are arbitration motions heard?

There is no fixed day or time. Persons wishing to schedule a motion should contact the Supervising Judge for a hearing date and time prior to filing of the motion. Written notice of any motion must be provided to all parties in the case.

If the case has been disposed of by being dismissed by the parties, default, summary judgment or stipulation of the parties, do I have to notify the ADR Center?

Yes. Counsel or the parties must provide the Administrative Assistant for Arbitration with immediate notice of any order affecting the arbitration hearing. Failure to provide such notice may result in the imposition of an *ex parte* award.

Can arbitrators hear motions?

The arbitrator's authority to hear motions is limited. Their authority exists only in relation to the conduct of the hearing at the time it is held. Arbitrators can only hear motions related to excluding witnesses; rulings on admissibility of evidence; and motions for directed findings. Motions for continuance of the hearing **CANNOT** be heard by the arbitrators.

All other motions, including continuance motions, must be brought before the supervising judge for arbitration.

EVIDENCE / DISCOVERY / WITNESSES

Are there special rules governing discovery in arbitration?

Yes. Arbitration cases are subject to SCR 222 and to the time limits outlined in SCR 89. All parties are advised to read and comply with these Rules.

Do I have to bring all my witnesses to the hearing or can I present certain types of evidence without the person who wrote or created the evidence being present?

It is up to each party to present evidence. SCR 90 (c) outlines certain documents and reports are admissible without the creator or author be present. In order to take advantage of this rule, ***a written notice of the intent to offer these documents along with a copy of the documents MUST BE sent to all other parties at least 30 days prior to the scheduled arbitration hearing date.***

If I file my documents in accordance with SCR 90 (c), are they automatically admitted into evidence?

No. Any documents filed pursuant to SCR 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.

May I call the author or creator of a document my opponent seeks to introduce as a witness?

Yes. SCR 90 (e) provides any other party may subpoena the author or creator of a document admissible under SCR 90 (c), at the expense of the party issuing the subpoena, and examine the author or creator as if under cross-examination. The provisions of the Illinois Code of Civil Procedure relative to the issuance, service and payment of subpoenas are applicable.

May I subpoena witnesses to appear just as I could at trial?

Yes. Subpoenas are governed in the same manner in arbitration as in any other civil case. It is the duty of the party who wishes the witness to appear to have a proper subpoena issued and to provide the proper date, time and location to appear. Subpoena forms are available through the Circuit Clerk's office.

Do the same rules for witness fees apply to arbitration hearings as to a trial?

Yes. Witness fees and costs shall be in the same amount and shall be paid by the party issuing the subpoena as established by the Code of Civil Procedure.

Can discovery take place after the hearing?

In most instances, no. SCR 89 provides that discovery may be conducted in accordance with establish rules and shall be completed prior to the arbitration hearing.

No discovery shall be permitted after the hearing, except by leave of court for good cause shown.

Are there any other rules pertinent to the arbitration process?

Yes. Arbitration cases may be subject to an initial case management conference (CMC) required by SCR 218 (a).

THE ARBITRATION HEARING

When will an arbitration hearing date be assigned?

Cases will be assigned to the arbitration calendar by the arbitration judge when all parties to the case have appeared before the court. The case will be set for an arbitration hearing at this initial appearance.

Who issues the summons for the hearing?

The Circuit Clerk's office in the county in which the case was filed will issue the arbitration summons or alias summons as necessary.

Will I get any notice of the arbitration hearing date after it is set?

No. It is your responsibility to keep track of the hearing date and time.

How will the arbitration administrator know that the parties are ready for the hearing?

The parties must check in when they enter the ADR Center. The cases will be called at the assigned time. Parties who fail to appear for an arbitration hearing may have a default judgment entered against them.

How long should an arbitration hearing last?

A majority of cases will have two (2) hours or less allowed for their hearing. Pursuant to Eleventh Judicial Circuit Court Rule 105 (G)(5), if the parties determine that more than the allotted two hours are needed, they must provide a request for a longer hearing time at least fourteen (14) days in advance of the arbitration hearing. Requests for extended times may not be approved.

It is suggested that if the parties know that more than two (2) hours will be needed for the arbitration hearing, the parties make that information known to the supervising judge at the time of the initial appearance. In no instance will more than four (4) hours be allowed for an arbitration hearing.

What if I need the date of the arbitration hearing extended? If both parties agree, do they both need to come to court to change the hearing date?

The arbitration judge may only continue a hearing date for good cause shown on the date of the arbitration hearing. Motions to continue prior to that hearing date should be set before the supervising judge for arbitration. Notice of a motion to continue must be provided to all parties and the arbitration administrator. If the motion is granted, the order continuing the case must be provided to the arbitration administrator

If both parties agree to the continuance, one party still must appear before arbitration judge who will sign a continuance order and set a new hearing date.

What should I do if I am late for the hearing?

The arbitration administrator should be notified immediately at (309) 827-7584. If no notice is given, the hearing will proceed in accordance to the rules.

If I am late, will I still get a two (2) hour hearing?

No. The late party will have the time deducted from their portion of the hearing time. If the hearing starts after the scheduled time due to the fault of the staff of the ADR Center or one of the arbitrators, the parties will not be penalized.

What happens if one party does not show up?

If one party does not appear, the hearing will proceed *ex parte* and the appropriate award entered. Generally, the arbitration administrator waits fifteen (15) minutes for a party to appear before calling the case. Pursuant to SCR 91 (a), the party who fails to appear waives the right to reject the award and consents to entry of a judgment on the award. Costs and fees may be assessed against the party who did not appear, and costs may include filing fees, service and summons fees, witness fees, attorney fees and any other out-of-pocket expenses incurred by a party or witness.

An *ex parte* judgment may be vacated under SCR 91 (a) and the Code of Civil Procedure.

What happens if both parties do not appear?

The case will be dismissed for want of prosecution. The absences of the parties will be noted.

What happens if a party does not comply with a subpoena under SCR 237?

Pursuant to SCR 90 (g), the provisions of SCR 237, and thus the sanctions under SCR 219, are applicable to arbitration hearings. Arbitrators are instructed to note the failure to comply with

SCR 237 on any award. SCR 90 (g) also provides that sanctions for failure to comply with SCR 237 may include an order debaring that party from rejecting an award.

What happens if one of the parties has failed to file an appearance or pleading?

The arbitration hearing will proceed as scheduled. If a party has failed to file a relevant pleading, such as an answer, the arbitrators may determine that the allegations in the complaint are admitted and proceed on the issue of damages only.

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

SCR 91 (b) provides that all parties must participate in good faith and in a meaningful manner. If the arbitration panel unanimously finds that a party has failed to participate in good faith and in a meaningful manner, they may so state on the award with the factual basis therein. Any party may bring a motion for sanctions before the supervising judge. Sanctions for failure to participate in good faith may include costs and attorney fees, and an order barring that party from rejecting the award.

Should I leave my arbitration exhibits [SCR 90 (c)] with the arbitration panel?

You should provide three (3) copies of your exhibits or documents to the arbitration panel. The ADR Center will only retain exhibits for 30 days following the hearing, so please retain the original documents.

What happens to my exhibits after the hearing?

The exhibits will be retained as provided under Eleventh Judicial Circuit Rule 105 (1)(7). Exhibits may be retrieved within seven (7) days of the award. All exhibits will be destroyed thirty (30) days after entry of the award.

DO NOT LEAVE THE ORIGINAL DOCUMENTS WITH THE ARBITRATION PANEL – PROVIDE COPIES.

If, during the arbitration hearing, I disagree with the ruling of the arbitrators, may I go, at that time, to the supervising judge for a ruling?

No. If you disagree with the ruling of the arbitration panel or the award, you may reject the award and return to court for further hearings and a trial. Reminder – there is a fee for rejection of an award.

Will there be a court reporter present for the arbitration hearing or can I request one?

No. The only way to have a court reporter present is to hire a private reporting service for the arbitration hearing [Eleventh Judicial Circuit Rule 105 (1)(2)].

THE ARBITRATION AWARD AND JUDGMENT ON THE AWARD

Will the determination of the award be made on the same day as the hearing?

Yes. The panel will make an award promptly following the end of the hearing. The award may not exceed \$50,000 including attorney fees. The arbitrators will shall sign the award. If there is a dissenting vote, it will be noted without further comment on the award.

If you are represented by an attorney, you should receive information about the award from your attorney. The Circuit Clerk will mail or serve a copy of the award on all parties who have filed an appearance within a few days of the hearing.

Is the award of the arbitrators binding?

No. Any party who is present at the hearing, either in person or by counsel, may reject the award within thirty (30) days of the date of the filing of the award. Persons who wish to file a rejection must file with the Circuit Clerk and submit payment of the rejection fee.

When does the thirty (30) day rejection period begin to run?

The 30-day period begins on the date the award is filed with the Circuit Clerk.

What if I believe there is an error in the arbitration award?

SCR 92 (d) provides that when it appears from the record and the award that there is an **obvious and unambiguous error** in language or mathematics, the court, upon application of one of the parties, within the 30-day rejection period, may enter an order correcting the award. If such an application is made, the 30-day rejection period and all other further proceedings are stayed until the court decides the matter.

Is the arbitration award a final order? If not, how do I make it final?

The arbitration award is NOT final. To finalize the award, the supervising judge must enter a judgement on the award. If no rejection is filed within the 30-day period, any party may make a motion to enter a judgment on award.

If the hearing was *ex parte*, the party who appeared may make a motion to enter the judgment at any time after the award is filed with the Circuit Clerk.

Can the parties enter a stipulation for an amount different from the award after the award was entered?

Yes. Parties may stipulate to an amount different from the arbitration award after the hearing but prior to the entry of the judgment.

What happens if neither party requests that a judgment be entered?

A status hearing date will be scheduled with the supervising judge 35-40 days after the arbitration hearing. Typically, one of the parties will file a motion to enter the judgment at the status hearing. If neither party make the motion, no judgement will be entered until a motion is

filed. If neither party appears at the status hearing, the case may be dismissed for want of prosecution.

Can the parties dismiss the action after the hearing and the award are entered?

Yes. The parties can voluntarily dismiss the case at any time prior to the entry of the judgment. A stipulation to dismiss the case may even be presented at the initial hearing before the supervising judge.

What if the parties settle the case prior to the arbitration hearing?

The parties are required to notify the ADR Center immediately of any settlement. Copies of the dismissal of the case must be received by the supervising judge within thirty (30) days of notification of the settlement. Failure to notify the ADR Center will result in the case being dismissed for want of prosecution.

REJECTION OF THE AWARD AND TRIAL DE NOVO

Who may reject the award?

Within thirty (30) days after the filing of the award with the Circuit Clerk, any party **who was present** at the arbitration hearing, in person or by counsel, may file with the Circuit Clerk a written notice of rejection and request to proceed to trial.

The party filing the rejection of the award must also file a certificate of service of the rejection on all other parties. The filing of a single rejection shall be sufficient to enable all parties to proceed to trial on any or all issues of the case – it is not necessary for every party to reject the award. Parties who did not appear at the arbitration or are otherwise barred may not file a rejection.

What is the cost to reject the award?

If the award was \$30,000 or less, the fee is \$200.00;

If the award was more than \$30,000, the fee is \$500.00.

If I go to trial, can the arbitration panel that made the award be called as witnesses?

No. SCR 93 (b) prohibits an arbitrator from being called as a witness at any subsequent trial on the matter.

May I advise the trial judge of the award?

No. SCR 93 prohibits reference in any subsequent trial to the fact that an arbitration proceeding was held or that an award was made. The award, however, is part of the record which the trial judge may review.

