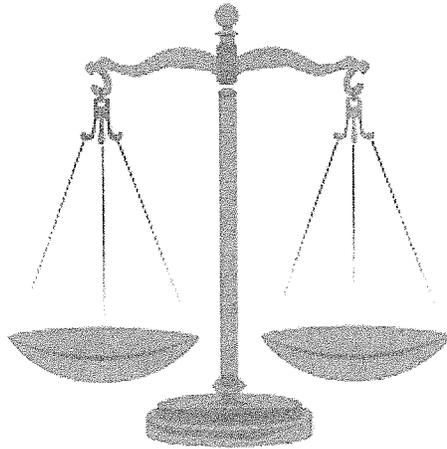


ELEVENTH JUDICIAL CIRCUIT  
COURT-ANNEXED MANDATORY ARBITRATION PROGRAM

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



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Revised February 2018

Eleventh Judicial Circuit  
Mandatory Arbitration Program  
200 West Front Street, Suite 400B  
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# **AN ARBITRATOR'S GUIDE TO COURT-ANNEXED MANDATORY ARBITRATION HEARING PROCEDURES**

## **A. INTRODUCTION**

### **1. Overview of Court-Annexed Mandatory Arbitration**

Illinois's 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 form trial.

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.

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. These 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.

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 either party in an arbitration case and the Supreme Court Rules extend the right of rejection to all parties. However, four 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 thirty days of the date the award was filed. And fourth, except for indigent parties, the party who initiates the rejection must pay a fee to the clerk of the court of either \$200 for cases with an award of up to \$30,000 or \$500 for those cases with an award of over \$30,000. 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.

## **2. Outline of the Order of Proceedings**

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

### **A. 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

### **B. ADMINISTER OATHS OR AFFIRMATIONS TO THE WITNESSES**

1. Swear 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 interpreters:

“Do you solemnly swear or affirm that throughout your service in this matter, you will interpret accurately, impartially and to the best of your ability?”

### **C. 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 2 hours for the presentation of the case, unless a request for additional time 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 of 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.

#### **D. 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 rebuttal and closing arguments
6. Defendant's closing arguments
7. Plaintiff's rebuttal argument

#### **E. 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)*.

## **F. 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. The failure of any party to appear in person or by counsel should be noted on the award.

## **G. 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 circuit clerk.
2. Adjourn the hearing.
3. Decide the issues of liability and damages.

## **H. 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 attorney's fees (if prayed for) and costs of suit, have been addressed 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 costs."

2. In the event of consolidated cases, indicate the award entered on each of the cases.
  3. If the award is being made ex parte, indicate on the award form that plaintiff or defendant did not appear in person or by counsel.
- I. RETURN FILE, EXHIBITS AND COMPLETED AWARD FORM TO THE ARBITRATION ADMINISTRATOR.**

### **3. Arbitrator Recusal Checklist**

The following checklist is helpful in determining whether an arbitrator should hear a case or recuse her/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 as 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 her or himself from hearing the case. If a potential minor conflict is disclosed to the parties and both parties consent to have the case heard by the arbitrator, that consent should be committed to writing or annotation made on the award.

## **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 she/he 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.

## **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 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 per hearing. *Illinois Supreme Court Rule 87(e)*.

Upon completion of each day's arbitration proceedings, the Arbitration Administrator will process the necessary voucher through the Administrative Office of the Illinois Courts for payment of arbitrators.

## **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 serve the entire morning and hear as many cases as possible.

## **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 her/himself 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 herself or himself if the arbitrator feels there may be a conflict. She or he may withdraw if grounds appear to exist for disqualification pursuant to the Code of Judicial Conduct.

An arbitrator must disqualify herself or himself if, within the previous 7 years, the arbitrator has represented a party, or within the previous 3 years associated with any representative of a party in the controversy that she or he will hear as an arbitrator. Likewise, an arbitrator must withdraw from hearing a case if she or he 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 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. Change of Venue from the Arbitration Panel**

An arbitrator may recuse himself or herself if the arbitrator feels there may be a conflict, or withdraw if grounds appear to exist for disqualification pursuant to the Code of Judicial Conduct. *Illinois Supreme Court Rule 87(c)*. 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 a list of attorneys who have volunteered to be called on short notice to act as emergency arbitrators.

### **3. 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.

### **4. Arbitrators May Not Testify**

Arbitrators may not be called to testify as to what transpired before the arbitrators, 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**

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 pre-trial 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**

All civil actions where the claim is exclusively for money damages in an amount exceeding \$10,000 but not exceeding the monetary limit authorized by the Supreme Court for arbitration, exclusive of interest and costs, are subject to mandatory arbitration. *Illinois Supreme Court Rule 86(b)*. (Recently, some jurisdictions have begun funneling small claims cases in which a jury demand has been made into their arbitration programs. When this practice has been approved by the Supreme Court, local rules will reflect such. Please consult the local rules of your jurisdiction).

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.

## **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.

### **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(b)*. 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.

### **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 be a chairperson serving on a panel. However, only the designated chairperson of the panel rules on the admissibility of evidence.

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

### **4. Questioning Witnesses and Assistance of Counsel**

Because arbitrators serve as finders of fact and law, and not as advocates, arbitrators are discouraged from taking an active role in the questioning of parties or witnesses other than for purposes of clarification. Arbitrators are required to follow the applicable law and follow the rules of evidence when ruling. The members of the panel must remain impartial at all times and not advocate for one side or the other. Pro se parties should be treated with respect and courtesy but should be held to the rules of procedure.

## **E. CONDUCT 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 2 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 2 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 Proceedings**

Arbitration hearings are open to the public. However, a record is not made of the proceedings. 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**

Translators are required to be provided by the parties with the exception of interpreters for the deaf. In the event an interpreter for the deaf is required, notice must be given to the Arbitration Administrator at least two weeks in advance of the hearing.

## **4. 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.

## **5. 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 of opinion 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 thirty-day 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.

## **6. 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 thirty-day requirement.

## **7. The Submission of Voluminous Documents or Depositions**

Committee Comments to the 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 of 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.

## **8. Opinion Witnesses**

Written opinions or testimony of an opinion witness at the arbitration hearing will be admitted into evidence provided written notice is given thirty days prior to the date of the hearing, accompanied by a statement containing the identity of the opinion 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).

### **9. 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 the 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, 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.

### **10. Adverse Examination of Parties or Agents**

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

### **11. 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)*.

### **12. 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 debaring 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.

### **13. Motions at the Arbitration Hearing**

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 decide the law and facts of the case. 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. The arbitrators do not have the authority to issue an order of any kind. They cannot hear motions for dismissal, summary judgment, sanctions, default judgments, continuance, amendment to the complaint or transfer of a case. 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(a)*. 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.

### **14. 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. Most circuits have rules concerning the recovery of exhibits.

### **15. 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 may not have access to a law library at the Arbitration Center.

Because the arbitration hearings are set for a concise presentation, any memorandum of law should be brief (1 to 3 pages) and to the point so as to minimize the arbitrators' deliberation time. As a courtesy, memoranda of law should be exchanged in advance of the hearing to allow opposing counsel to respond and avoid surprise.

### **16. 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 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 therefor 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.

#### **ABSENCE OF A PARTY AT THE ARBITRATION HEARING**

## **1. Ex Parte Awards**

Illinois Supreme Court Rule 91 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 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 is still required to put forth evidence in support of his/her case. In the event neither party appears, an ex parte award may be entered under Rule 91 or the court may dismiss the case for want of prosecution.

## **2. Default Judgments or D.W.P.**

The arbitration panel does not have the authority to enter a default judgment; therefore any such motion must be brought before the Supervising Judge for Arbitration prior to the arbitration hearing. The arbitration panel may enter an ex-parte award under Illinois Supreme Court Rule 91 in the event that defendant fails to appear at the arbitration hearing, or the court may dismiss (D.W.P.) the case if neither party appears at the arbitration hearing.

## **3. Filing an Appearance or Answer at the Arbitration Hearing**

The filing of a written appearance or answer instanter at the arbitration hearing is inappropriate and will only be allowed upon leave of court. In exceptional circumstances, the Supervising Judge for Arbitration will be contacted for a ruling on the issue.

## **4. Parties Arriving Late to the Arbitration Hearing**

When both 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 to wait 15 minutes after the scheduled hour before proceeding to an ex parte hearing and award.

If one of the parties has called the Arbitration 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.

### **5. Vacating a Judgment Made on an Ex Parte Award**

The party failing to appear may petition the court to vacate the judgment in accordance with 735 ILCS 5/2-1301 or 735 ILCS 5/2-1401. The court may, in its discretion, order the matter set for rehearing in arbitration. However, under Illinois Supreme Court Rule 91, costs, fees and other sanctions may be assessed upon the party seeking to vacate the judgment.

### **H. 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 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 counter-claims, statutory or contractual attorney fees, or other relief sought. The award may not exceed the monetary limit authorized by the Supreme Court, exclusive of interest and costs. *Illinois Supreme Court Rule 92*. 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 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, against Defendant, ABC Company, plus costs.”

or

“Award in favor of defendant John Jones, parties to pay their own costs.”

In cases involving multi-party 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 counter-plaintiff or counter-defendant, 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/Counter-plaintiff, ABC Company, on the counter-claim in the amount of \$3,000.”

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 thirty-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 and written oath forms are completed, they should be delivered to the Arbitration Administrator.

# Appendix A

# **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 among 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 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 this 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 evaluations 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 jurisdictions 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 had 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 should 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 caused 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 a circuit rule. The list shall consist of a sufficient number of members of the bar engaged in the practice of law and retired judges within the circuit in which the court is situated.

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

one member or associate of a firm or office association of attorneys shall be appointed to the same panel.

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

(d) Oath of Office. Each arbitrator shall take an oath of office in each county or circuit in which the arbitrator intends to serve on an arbitration panel. The oath shall be in conformity with the form provided in Rule 94 herein and shall be executed by the arbitrator when such arbitrator's name is placed on the list of arbitrators. Arbitrators previously listed as arbitrators shall be relisted on taking the oath provided in Rule 94.

(e) Compensation. Each arbitrator shall be compensated in the amount of ~~\$75~~ \$100 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 10 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 (Pittsburgh) 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 has 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 minimal 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 had 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 fee 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.

Adopted May 20, 1987, effective June 1, 1987.

### **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 is 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 June 1, 1987; amended March 26, 1996, effective immediately.

### 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 a 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 doomed 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 Hearings**

**(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 debaring 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.

Adopted May 20, 1987, effective June 1, 1987; amended April 7, 1993, effective June 1, 1993; amended March 26, 1996, effective immediately; amended March 28, 2002, effective July 1, 2002; 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, eff. July 1, 2017.

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.

Administrative Order  
*In re* Discovery Rules

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 debaring 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.

(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 debaring 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.

## 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 juridical 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 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 constitute a waiver of a party's right to recover costs upon entry of judgment.

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

(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.

#### 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 independent of the course of the proceedings in the action subsequent to the award; 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 arbitrator's 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 debaring 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, eff. July 1, 2017.

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

**STATE OF ILLINOIS  
IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT  
FORD/MCLEAN COUNTY**

) )  
) )  
Plaintiff, ) )  
) )  
vs. ) )  
) )  
) )  
) )  
Defendant. ) ) Case No. \_\_\_\_\_

All parties participated in good faith.

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

FINDINGS: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**AWARD OF ARBITRATORS**

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

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Date: \_\_\_\_\_

\_\_\_\_\_  
Chairperson/Arbitrator

\_\_\_\_\_  
Arbitrator

Dissent: \_\_\_\_\_

\_\_\_\_\_  
Arbitrator

**STATE OF ILLINOIS  
IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT  
FORD/MCLEAN COUNTY**

) )  
) )  
Plaintiff, ) )  
) )  
vs. ) )  
) )  
) )  
) )  
Defendant. ) ) Case No. \_\_\_\_\_

**NOTICE OF AWARD**

NOTICE IS HEREBY GIVEN TO ALL PARTIES OF RECORD:

On \_\_\_\_\_, 20\_\_\_\_\_, an Arbitration Award was filed with the Clerk of the Circuit Court for the Eleventh Judicial Circuit, Ford/McLean County, a copy of which is attached hereto.

Within 30 days of filing the Arbitration Award, any party who was present at the Arbitration Hearing, either in person or by counsel, may reject the Arbitration Award by strictly complying with the following provisions of Illinois Supreme Court Rule 93. A party who rejects the Arbitration Award must:

1. File a Notice of Rejection with the Clerk of the Circuit Court, together with a certificate of service that the Notice of Rejection has been served on all other parties.
2. Send a copy of the Notice of Rejection to all other parties to the action.
3. Pay the appropriate Rejection Fee to the Clerk of the Circuit Court.

Your right to reject the Arbitration Award and proceed to trial expires 30 days after filing of the Arbitration Award. If no party files a timely Notice of Rejection of Award, any party may move the Court to enter judgment on the award.

A copy of this notice has been sent by regular mail, postage pre-paid at Paxton/Bloomington, Illinois, addressed to each of the parties appearing, at their last known address or their attorney of record.

Date: \_\_\_\_\_

\_\_\_\_\_  
Clerk/Deputy Clerk of the Circuit Court  
Ford/McLean County

**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, eff. July 1, 2017.

**Rules 96-98 Reserved.**

# Appendix B

## **APPENDIX B**

### **CODE OF JUDICIAL CONDUCT**

#### **Committee Commentary**

##### **Preface**

Prior to 1964, Illinois left the matter of judicial ethics to the individual conscience of the judge, subject to the impeachment power of the General Assembly and the requirement that each judge run for reelection at the expiration of his term of office. On January 1, 1964, the effective date of the amendment to the judicial article of the 1870 Constitution, the Courts Commission was established to investigate, prosecute and adjudicate complaints of judicial misconduct against judicial officers. Concomitantly, the Illinois Judicial Conference adopted advisory Canons of Judicial Ethics.

In January 1970, the Illinois Supreme Court adopted the first rules of judicial conduct, effective March 15 of that year. With the adoption of the 1970 Constitution of Illinois, the present system for the enforcement of judicial ethics through the Judicial Inquiry Board and the Courts Commission was established. This first judicial code was based on the efforts of the Supreme Court Committee on Judicial Ethics. The report recommended that the matter be kept under constant surveillance, particularly "in view of the current work of the American Bar Association in this area and the approaching Constitutional Convention in the state."

With the adoption of a new code of judicial ethics by the American Bar Association in 1972, a joint Illinois State Bar Association and Chicago Bar Association committee submitted a report recommending that the new ABA Code be made the basis of a new Illinois code of judicial ethics. This report was studied by a committee of the Illinois Judicial Conference, whose report in 1975 led to several amendments to the Illinois code in 1976.

The initial determination of the present committee was to propose the adoption of a new code based on the ABA canons. There was general agreement that revisions of the existing code would be sufficient to keep Illinois in the forefront of the modern movement toward full but fair regulation of judicial ethics. Indeed, the comprehensiveness and wisdom of that code is reflected in the fact that it was the committee's conclusion that the adoption of the ABA canons would work no significant substantive changes in the existing law. The unanimous decision of the committee to recommend that the ABA canons be adopted as the foundation of the Illinois rules was primarily predicated on two interrelated factors: the desire for uniformity with rules governing judicial officers in other States and the need for a body of interpretative decisions to guide judicial officers when the application of a rule in a particular factual situation is not clear. With regard to the latter problem, an additional benefit lies in the fact that the ABA has established a Standing Committee on Ethics and Professional Responsibility which renders opinions on matters of proper professional or judicial conduct.

It was, of course, not feasible to recommend that the ABA canons be adopted verbatim. Specific provisions of the Illinois Constitution and statutes as well as circumstances unique to Illinois required that the canons be modified in accord with any superseding legal requirements and extraordinary circumstances. The committee commentary is primarily concerned with these modifications; however, wherever appropriate, the ABA commentary has been incorporated into the committee commentary.

For an excellent background commentary on the ABA canons themselves see Thode, *Reporter's Notes to Code of Judicial Conduct* (ABA 1973).

### **Preamble**

Our legal system is based on the principle that an independent, fair and competent judiciary will interpret and apply the laws that govern us. The role of the judiciary is central to American concepts of justice and the rule of law. Intrinsic to all provisions of this code are precepts that judges, individually and collectively, must respect and honor the judicial office as a public trust and strive to enhance and maintain confidence in our legal system. The judge is an arbiter of facts and law for the resolution of disputes and a highly visible symbol of government under the rule of law.

The Code of Judicial Conduct is intended to establish standards for ethical conduct of judges. It consists of broad statements called canons, specific rules set forth in lettered subsections under each canon, and Committee Commentary. The text of the canons and the rules is authoritative. The Committee Commentary, by explanation, and example, provides guidance with respect to the purpose and meaning of the canons and rules. The Commentary is not intended as a statement of additional rules.

The canons and rules are rules of reason. They should be applied consistent with constitutional requirements, statutes, other court rules and decisional law and in the context of all relevant circumstances. The Code is to be construed so as not to impinge on the essential independence of judges in making judicial decisions.

The Code is designed to provide guidance to judges and candidates for judicial office and to provide a structure for regulating conduct through disciplinary agencies. It is not designed or intended as a basis for civil liability or criminal prosecution. Furthermore, the purpose of the Code would be subverted if the Code were invoked by lawyers for mere tactical advantage in a proceeding.

The canons are not standards of discipline in themselves, but express the policy consideration underlying the rules contained within the canons. The text of the rules is intended to govern conduct of judges and to be binding upon them. It is not intended, however, that every transgression will result in disciplinary action. Whether disciplinary action is appropriate, and the degree of discipline to be imposed, should be determined through a reasonable and reasoned application of the text of the rules and should depend on such factors as the seriousness of the transgression, whether there is a pattern of improper activity and the effect of the improper activity on others or on the judicial system.

The Code of Judicial Conduct is not intended as an exhaustive guide for the conduct of judges. They should also be governed in their judicial and personal conduct by general ethical standards. The Code is intended, however, to state basic standards which should govern the conduct of all judges and to provide guidance to assist judges in establishing and maintaining high standards of judicial and personal conduct.

Adopted August 6, 1993, effective immediately.

## Terminology

“Candidate.” A candidate is a person seeking public election for or public retention in judicial office. A person becomes a candidate for judicial office as soon as he or she makes a public announcement of candidacy, declares or files as a candidate with the election authority, or authorizes solicitation or acceptance of contributions or support.

“Court personnel” does not include the lawyers in a proceeding before a judge.

“*De minimis*” denotes an insignificant interest that could not raise reasonable question as to a judge’s impartiality.

“Economic interest” denotes ownership of a more than *de minimis* legal or equitable interest, or a relationship as officer, director, advisor or other active participant in the affairs of a party, except that:

- (i) ownership of an interest in a mutual or common investment fund that holds securities is not an economic interest in such securities unless the judge participates in the management of the fund or a proceeding pending or impending before the judge could substantially affect the value of the interest;
- (ii) service by a judge as an officer, director, advisor or other active participant in an educational, religious, charitable, fraternal or civic organization, or service by a judge's spouse, parent or child as an officer, director, advisor or other active participant in any organization does not create an economic interest in securities held by that organization;
- (iii) a deposit in a financial institution, the proprietary interest of a policyholder in a mutual insurance company, of a depositor in a mutual savings association or of a member in a credit union, or a similar proprietary interest, is not an economic interest in the organization unless a proceeding pending or impending before the judge could substantially affect the value of the interest;
- (iv) ownership of government securities is not an economic interest in the issuer unless a proceeding pending or impending before the judge could substantially affect the value of the securities.

“Fiduciary” includes such relationships as executor, administrator, trustee, and guardian.

“He.” Whenever this pronoun is used it includes the feminine as well as the masculine form.

“Judge” includes circuit and associate judges and judges of the appellate and supreme court.

“Knowingly,” “knowledge,” “known” or “knows” denotes actual knowledge of the fact in question. A person’s knowledge may be inferred from circumstances.

“Law” denotes court rules as well as statutes, constitutional provisions and decisional law.

“Member of a candidate’s/judge’s family” denotes a spouse, child, grandchild, parent, grandparent or other relative or person with whom the candidate maintains a close familial relationship.

“Member of the judge’s family residing in the judge’s household” denotes any relative of a judge by blood or marriage, or a person treated by a judge as a member of the judge’s family, who resides in the judge’s household.

“Political organization” denotes a political party or other group, the principal purpose of which is to further the election or appointment of candidates to political office.

“Public election.” This term includes primary and general elections; it includes partisan elections, nonpartisan elections and retention elections.

“Require.” The rules prescribing that a judge “require” certain conduct of others are, like all of the rules in this Code, rules of reason. The use of the term “require” in that context means a judge is to exercise reasonable direction and control over the conduct of those persons subject to the judge’s direction and control.

“Third degree of relationship.” The following persons are relatives within the third degree of relationship: great-grandparent, grandparent, parent, uncle, aunt, brother, sister, child, grandchild, great-grandchild, nephew or niece.

Adopted August 6, 1993, effective immediately.

## **Rule 61**

### **CANON 1**

#### **A Judge Should Uphold the Integrity and Independence of the Judiciary**

An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining, and enforcing, and should personally observe, high standards of conduct so that the integrity and independence of the judiciary may be preserved. The provisions of this Code should be construed and applied to further that objective.

Adopted December 2, 1986, effective January 1, 1987; amended August 6, 1993, effective immediately; amended October 15, 1993, effective immediately.

#### **Committee Commentary**

This canon is substantially identical to the 1972 version of the ABA canon.

## **Rule 62**

### **CANON 2**

#### **A Judge Should Avoid Impropriety and the Appearance of Impropriety in All of the Judge's Activities**

A. A judge should respect and comply with the law and should conduct himself or herself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

B. A judge should not allow the judge's family, social, or other relationships to influence the judge's judicial conduct or judgment. A judge should not lend the prestige of judicial office to advance the private interests of others; nor should a judge convey or permit others to convey the impression that they are in a special position to influence the judge. A judge should not testify voluntarily as a character witness.

Adopted December 2, 1986, effective January 1, 1987; amended October 15, 1993, effective immediately.

#### Committee Commentary

This canon is substantially identical to ABA Canon 2. Public confidence in the judiciary is eroded by irresponsible or improper conduct by judges. A judge must avoid all impropriety and appearance of impropriety. A judge must expect to be the subject of constant public scrutiny. A judge must therefore accept restrictions on his or her conduct that might be viewed as burdensome by the ordinary citizen and should do so freely and willingly.

The testimony of a judge as a character witness injects the prestige of judicial office into the proceeding in which the judge testifies and may be misunderstood to be an official testimonial. This canon, however, does not afford a judge a privilege against testifying in response to an official summons.

#### Rule 63

#### CANON 3

#### A Judge Should Perform the Duties of Judicial Office Impartially and Diligently

The judicial duties of a judge take precedence over all the judge's other activities. The judge's judicial duties include all the duties of the judge's office prescribed by law. In the performance of these duties, the following standards apply:

##### A. Adjudicative Responsibilities.

(1) A judge should be faithful to the law and maintain professional competence in it. A judge should be unswayed by partisan interests, public clamor, or fear of criticism.

(2) A judge should maintain order and decorum in proceedings before the judge.

(3) A judge should be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and others with whom the judge deals in an official capacity, and should require similar conduct of lawyers, and of staff, court officials, and others subject to the judge's direction and control.

(4) A judge shall accord to every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard according to law. A judge may make reasonable efforts, consistent with the law and court rules, to facilitate the ability of self-represented litigants to be fairly heard.

(5) A judge shall not initiate, permit, or consider *ex parte* communications, or consider other communications made to the judge outside the presence of the parties concerning a pending or impending proceeding except that:

(a) Where circumstances require, *ex parte* communications for scheduling, administrative purposes or emergencies that do not deal with substantive matters or issues on the merits are authorized; provided:

(i) the judge reasonably believes that no party will gain a procedural or tactical advantage as a result of the *ex parte* communication, and

(ii) the judge makes provision promptly to notify all other parties of the substance of the *ex parte* communication and allows an opportunity to respond.

(b) A judge may consult with court personnel whose function is to aid the judge in carrying out the judge's adjudicative responsibilities or with other judges.

(c) A judge may, with the consent of the parties, confer separately with the parties and their lawyers in an effort to mediate or settle matters pending before the judge.

(d) A judge may initiate or consider any *ex parte* communications when expressly authorized by law to do so.

(e) A judge may consult with members of a Problem Solving Court Team when serving as a Judge in a certified Problem Solving Court as defined in the Supreme Court "Problem Solving Court Standards."

(6) A judge shall devote full time to his or her judicial duties, and should dispose promptly of the business of the court.

(7) A judge should abstain from public comment about a pending or impending proceeding in any court, and should require similar abstention on the part of court personnel subject to the judge's direction and control. This paragraph does not prohibit judges from making public statements in the course of their official duties or from explaining for public information the procedures of the court.

(8) Proceedings in court should be conducted with fitting dignity, decorum, and without distraction. The taking of photographs in the courtroom during sessions of the court or recesses between proceedings, and the broadcasting or televising of court proceedings is permitted only to the extent authorized by order of the Supreme Court. This rule is not intended to prohibit local circuit courts from using security cameras to monitor their facilities. For the purposes of this rule, the use of the terms "photographs," "broadcasting," and "televising" include the audio or video transmissions or recordings made by telephones, personal data assistants, laptop computers, and other wired or wireless data transmission and recording devices.

(9) A judge shall perform judicial duties without bias or prejudice. A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, including but not limited to bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status, and shall not permit staff, court officials and others subject to the judge's direction and control to do so.

(10) Proceedings before a judge shall be conducted without any manifestation, by words or conduct, of prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status, by parties, jurors, witnesses, counsel, or others. This section does not preclude legitimate advocacy when these or similar factors are issues in the proceedings.

B. Administrative Responsibilities.

(1) A judge should diligently discharge the judge's administrative responsibilities, maintain professional competence in judicial administration, and facilitate the performance of the administrative responsibilities of other judges and court officials.

(2) A judge should require staff, court officials and others subject to the judge's direction and control to observe the standards of fidelity and diligence that apply to the judge.

(3) (a) A judge having knowledge of a violation of these canons on the part of a judge or a violation of Rule 8.4 of the Rules of Professional Conduct on the part of a lawyer shall take or initiate appropriate disciplinary measures.

(b) Acts of a judge in mentoring a new judge pursuant to M.R. 14618 (Administrative Order of February 6, 1998, as amended June 5, 2000) and in the discharge of disciplinary responsibilities required or permitted by canon 3 or article VIII of the Rules of Professional Conduct are part of a judge's judicial duties and shall be absolutely privileged.

(c) Except as otherwise required by the Supreme Court Rules, information pertaining to the new judge's performance which is obtained by the mentor in the course of the formal mentoring relationship shall be held in confidence by the mentor.

(4) A judge should not make unnecessary appointments. A judge should exercise the power of appointment on the basis of merit, avoiding nepotism and favoritism. A judge should not approve compensation of appointees beyond the fair value of services rendered.

(5) A judge should refrain from casting a vote for the appointment or reappointment to the office of associate judge, of the judge's spouse or of any person known by the judge to be within the third degree of relationship to the judge or the judge's spouse (or the spouse of such a person).

#### C. Disqualification.

(1) A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances where:

(a) the judge has a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge of disputed evidentiary facts concerning the proceeding;

(b) the judge served as a lawyer in the matter in controversy, or a lawyer with whom the judge previously practiced law served during such association as a lawyer concerning the matter, or the judge has been a material witness concerning it;

(c) the judge was, within the preceding three years, associated in the private practice of law with any law firm or lawyer currently representing any party in the controversy (provided that referral of cases when no monetary interest was retained shall not be deemed an association within the meaning of this subparagraph) or, for a period of seven years following the last date on which the judge represented any party to the controversy while the judge was an attorney engaged in the private practice of law;

(d) the judge knows that he or she, individually or as a fiduciary, or the judge's spouse, parent or child wherever residing, or any other member of the judge's family residing in the judge's household, has an economic interest in the subject matter in controversy or in a party to the proceeding, or has any other more than *de minimis* interest that could be substantially affected by the proceeding; or

(e) the judge or the judge's spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person:

(i) is a party to the proceeding, or an officer, director, or trustee of a party;

(ii) is acting as a lawyer in the proceeding;

(iii) is known by the judge to have a more than *de minimis* interest that could be substantially affected by the proceeding; or,

(iv) is to the judge's knowledge likely to be a material witness in the proceeding.

(2) A judge shall keep informed about the judge's personal and fiduciary economic interests, and make a reasonable effort to keep informed about the personal economic interests of the judge's spouse and minor children residing in the judge's household.

#### D. Remittal of Disqualification.

A judge disqualified by the terms of Section 3C may disclose on the record the basis of the judge's disqualification and may ask the parties and their lawyers to consider, out of the presence of the judge, whether to waive disqualification. If following disclosure of any basis for disqualification other than personal bias or prejudice concerning a party, the parties and lawyers, without participation by the judge, all agree that the judge should not be disqualified, and the judge is then willing to participate, the judge may participate in the proceeding. This agreement shall be incorporated in the record of the proceeding.

Adopted December 2, 1986, effective January 1, 1987; amended June 12, 1987, effective August 1, 1987; amended November 25, 1987, effective November 25, 1987; amended August 6, 1993, effective immediately; amended October 15, 1993, effective immediately; amended March 26, 2001, effective immediately; amended April 1, 2003, effective immediately; amended December 5, 2003, effective immediately; amended April 16, 2007, effective immediately; amended June 18, 2013, eff. July 1, 2013; amended Dec. 8, 2015, eff. Jan. 1, 2016; amended Feb. 2, 2017, eff. immediately.

#### Committee Commentary

(April 1, 2003)

New subpart (B)(3)(b) is a modified version of the ABA Model Code of Judicial Conduct, Canon 3D(3) (1990).

New subpart (B)(3)(c) is the identical language currently contained in M.R. 14618 (Administrative Order of February 6, 1998, as amended June 5, 2000) subparagraph (b)(4) on confidentiality.

#### Committee Commentary

The provisions of this canon relate to judicial performance of adjudicative responsibilities, judicial performance of administrative responsibilities and the circumstances and procedure for judicial disqualification.

Paragraph A(4) and subsections C and D were amended, effective August 6, 1993, to incorporate the provisions of the Model Code of Judicial Conduct adopted by the ABA in 1990.

Paragraphs A(1) through A(3). The duty to hear all proceedings fairly and with patience is not inconsistent with the duty to dispose promptly of the business of the court. Courts can be efficient and business-like while being patient and deliberate.

Paragraph A(5). This paragraph was amended, effective August 6, 1993, to adopt the provisions of Canon 3B(7) of the 1990 ABA Model Code of Judicial Conduct relating to *ex parte* communications. Paragraph A(5) differs in that it modifies ABA Canon 3B(7) by deleting the sentence which provides: "A judge may obtain the advice of a disinterested expert on the law applicable to a proceeding before the judge if the judge gives notice to the parties of the person consulted and the substance of the advice, and affords the parties reasonable opportunity to respond." The committee believed that such a procedure

would be too close to the former practice of using masters in chancery which was abolished by the 1962 amendment of the judicial article. Furthermore both bar association committees were concerned with the possibility of a judge seeking advice from a law professor. The committee does not believe that the deletion of this provision affects the obligation of a judge to disclose any extrajudicial communication concerning a case pending before the judge to the parties or their attorneys. The proscription against communications concerning a proceeding includes communications from lawyers, law teachers, and other persons who are not participants in the proceeding.

To the extent reasonably possible, all parties or their lawyers shall be included in communications with a judge.

Whenever presence of a party or notice to a party is required by paragraph A(5), it is the party's lawyer, or if the party is unrepresented the party, who is to be present or to whom notice is to be given.

Certain *ex parte* communication is approved by paragraph A(5) to facilitate scheduling and other administrative purposes and to accommodate emergencies. In general, however, a judge must discourage *ex parte* communication and allow it only if all the criteria stated in paragraph A(5) are clearly met. A judge must disclose to all parties all *ex parte* communications described in subparagraph A(5)(a) regarding a proceeding pending or impending before the judge.

A judge must not independently investigate facts in a case and must consider only the evidence presented.

A judge may request a party to submit proposed findings of fact and conclusions of law, so long as the other parties are apprised of the request and are given an opportunity to respond to the proposed findings and conclusions.

A judge must make reasonable efforts, including the provision of appropriate supervision, to ensure that paragraph A(5) is not violated through law clerks or other personnel on the judge's staff.

Paragraph A(6). The ABA 1972 canon provides that "[a] judge should dispose promptly of the business of the court." The committee agreed with the ISBA/CBA joint committee recommendation that the language of the Illinois Constitution (art. VI, §13(b)) which requires that a judge should devote full time to his or her judicial duties should be incorporated into this paragraph. Prompt disposition of the court's business requires a judge to devote adequate time to judicial duties, to be punctual in attending court and expeditious in determining matters under submission, and to insist that court officials, litigants and their lawyers cooperate with the judge to that end.

Paragraph A(7). ABA Canon 3A(6) is adopted without substantive change. It was the view of the committee that, with regard to matters pending before the judge, a judicial officer should discuss only matters of public record, such as the filing of documents, and should not comment on a controversy not pending before the judge but which could come before the judge. "Court personnel" does not include the lawyers in a proceeding before a judge. The conduct of lawyers is governed by Rule 3.6 of the Illinois Rules of Professional Conduct.

Paragraph A(8). The Illinois Supreme Court allows extended media coverage of proceedings in the supreme and appellate courts subject to certain specified conditions. Except to the extent so authorized, however, the existing prohibition of the taking of photographs in the courtroom during sessions of the court or recesses between proceedings, and the broadcasting or televising of court proceedings, other than those of a ceremonial nature, is retained. While this prohibition does not extend to areas immediately adjacent to the courtroom, it does not preclude orders regulating or restricting the use of those areas by the media where the circumstances so warrant.

Paragraph A(9). A judge must refrain from speech, gestures or other conduct that could reasonably be perceived as sexual harassment and must require the same standard of conduct of others subject to the judge's direction and control.

A judge must perform judicial duties impartially and fairly. A judge who manifests bias on any basis in a proceeding impairs the fairness of the proceeding and brings the judiciary into disrepute. A judge must be alert to avoid behavior that may be perceived as prejudicial.

Paragraph B(3). A modified version of the ABA canon was recommended even though Illinois Supreme Court Rule 61(c)(10) only referred to an obligation to refer an attorney's unprofessional conduct in matters before the judge to the proper authorities. Thus the rule here is broader, in that it is not limited to matters before the judge, and in that it extends the obligation to unprofessional conduct of other judges. In the case of misconduct by lawyers, the Rules of Professional Conduct, Rule 8.4, contains the circumstances of misconduct that are covered by paragraph B(3). This canon requires a judge to take or initiate appropriate disciplinary measures where he or she has knowledge of a violation of Rule 8.4. Where misconduct by an attorney is involved, a finding of contempt may, in appropriate circumstances, constitute the initiation of appropriate disciplinary measures. Furthermore, in both cases, the rule does not preclude a judge from taking or initiating more than a single appropriate disciplinary measure. Additionally, a judge may have a statutory obligation to report unprofessional conduct which is also criminal to an appropriate law enforcement official.

Paragraph B(4). It is the position of the committee that this ABA canon implicitly includes the provision of Illinois Supreme Court Rule 61(c)(11) that a judge "should not offend against the spirit of this standard by interchanging appointments with other judges, or by any other device." Appointees of the judge include officials such as receivers and guardians, and personnel such as clerks, secretaries, and bailiffs. Consent by the parties to an appointment or an award of compensation does not relieve the judge of the obligation prescribed by this paragraph.

Paragraphs C(1)(a) through C(l)(c). When originally adopted on December 2, 1986, the existing ABA canon was modified in two ways. The words "or his lawyer" were added to paragraph C(l)(a) to expressly mandate disqualification in the case of personal bias or prejudice toward an attorney rather than a party. This modification was later incorporated by the ABA into its 1990 revision. More significantly a new subparagraph, C(1)(c), was added in 1986 regulating disqualifications when one of the parties is represented by an attorney with whom the judge was formerly associated and when one of the parties was a client of the judge. These modifications were in substantial accord with the joint committee recommendations. Hence ABA subparagraphs (c) and (d) were renumbered and are now subparagraphs (d) and (e) respectively.

Paragraphs C(1)(d) and (1)(e). The fact that a lawyer in a proceeding is affiliated with a law firm with which a relative of the judge is affiliated does not of itself disqualify the judge. Under appropriate circumstances, the fact that "the judge's impartiality might reasonably be questioned" under Canon 3C(1), or that the relative is known by the judge to have an interest, or its equivalent, in the law firm that could be "substantially affected by the outcome of the proceeding" under Canon 3C(l)(e)(iii) may require the judge's disqualification.

Paragraph D. A remittal procedure provides the parties an opportunity to proceed without delay if they wish to waive the disqualification. To assure that consideration of the question of remittal is made independently of the judge, a judge must not solicit, seek or hear comment on possible remittal or waiver of the disqualification unless the lawyers jointly propose remittal after consultation as provided in the rule. A party may act through counsel if counsel represents on the record that the party has been consulted and consents. As a practical matter, a judge may wish to have all parties and their lawyers sign the remittal agreement.

## APPENDIX

M.R. No. 2634.

Order entered April 16, 2007; amended February 2, 2017.

Any security cameras installed in the courtrooms in the various circuits shall be in accordance with the following standards; (1) security cameras are to be placed in areas of the courtroom such that there is no video recording of the jury or witnesses; (2) audio recordings of the proceedings are prohibited in connection with security cameras; (3) use of such cameras is limited to security purposes and any video tape produced therefrom shall remain the property of the court and may not be used for evidentiary purposes by the parties or included in the record on appeal; (4) security cameras shall be monitored by designated court personnel only; and (5) signs shall be posted in and outside of the courtroom notifying those present of the existence of the court surveillance.

All recordings from security cameras monitoring court facilities are the property of the local circuit courts and are deemed to be in the possession of the local circuit courts notwithstanding actual possession by another party.

#### **Rule 64**

#### **CANON 4**

#### **A Judge May Engage in Activities to Improve the Law, the Legal System, and the Administration of Justice**

A judge, subject to the proper performance of his or her judicial duties, may engage in the following law-related activities, if in doing so the judge does not cast doubt on his or her capacity to decide impartially any issue that may come before him or her.

A. A judge may speak, write, lecture, teach (with the approval of the judge's supervising, presiding, or chief judge), and participate in other activities concerning the law, the legal system, and the administration of justice.

B. A judge may appear at a public hearing before an executive or legislative body or official on matters concerning the law, the legal system, and the administration of justice, and he or she may otherwise consult with an executive or legislative body or official, but only on matters concerning the administration of justice.

C. A judge may serve as a member, officer, or director of a bar association, governmental agency, or other organization devoted to the improvement of the law, the legal system, or the administration of justice. He or she may assist such an organization in planning fund-raising activities; may participate in the management and investment of the organization's funds; and may appear at, participate in, and allow his or her title to be used in connection with a fund-raising event for the organization. Under no circumstances, however, shall a judge engage in direct, personal solicitation of funds on the organization's behalf. Inclusion of a judge's name on written materials used by the organization for fund-raising purposes is permissible under this rule so long as the materials do not purport to be from the judge and list only the judge's name, office or other position in the organization and, if comparable designations are listed for other persons holding a similar position, the judge's judicial title.

D. A judge may make recommendations to public and private fund-granting agencies on projects and programs concerning the law, the legal system, and the administration of justice.

Adopted December 2, 1986, effective January 1, 1987; amended June 4, 1991, effective August 1, 1991; Committee Commentary amended October 15, 1993, effective immediately; amended September 30, 2002, effective immediately; amended May 24, 2006, effective immediately; Committee Commentary amended Dec. 19, 2014, eff. immediately.

#### Committee Commentary

A judge may serve on a committee that includes other judges, attorneys and members of the community for the purpose of developing programs or initiatives aimed at improving the outcomes for juveniles involved in the juvenile court system, or adults in the criminal court system. Such programs may include diversion, restorative justice and problem-solving court programs, among others.

This canon regulates the permissible scope of a judicial officer's law-related activities. As a judicial officer and person specially learned in the law, a judge is in a unique position to contribute to the improvement of the law, the legal system, and the administration of justice, including revision of substantive and procedural law and improvement of criminal and juvenile justice. To the extent that the judge's time permits, he or she is encouraged to do so through appropriate channels.

Extrajudicial activities are governed by Canon 5.

For the distinction between those organizations devoted to the improvement of the law, the legal system, and the administration of justice referred to in paragraph C and other civic or charitable organizations, see Thode at page 76.

#### Rule 65

##### CANON 5

##### A Judge Should Regulate His or Her Extrajudicial Activities to Minimize the Risk of Conflict With the Judge's Judicial Duties

A. Avocational Activities. A judge may write, lecture, teach, and speak on nonlegal subjects, and engage in the arts, sports, and other social and recreational activities, if such avocational activities do not detract from the dignity of the judge's office or interfere with the performance of the judge's judicial duties.

B. Civic and Charitable Activities. A judge may participate in civic and charitable activities that do not reflect adversely upon the judge's impartiality or interfere with the performance of the judge's judicial duties. A judge may serve as an officer, director, trustee, or nonlegal advisor of an educational, religious, charitable, fraternal, or civic organization not conducted for the economic or political advantage of its members, subject to the following limitations:

- (1) A judge should not serve if it is likely that the organization will be engaged in proceedings that would ordinarily come before the judge or will be regularly engaged in adversary proceedings in any court.

(2) A judge should not solicit or permit his or her name to be used in any manner to solicit funds or other assistance for any such organization. A judge should not allow his or her name to appear on the letterhead of any such organization where the stationery is used to solicit funds and should not permit the judge's staff, court officials or others subject to the judge's direction or control to solicit on the judge's behalf for any purpose, charitable or otherwise. . However, a judge may be a speaker or the guest of honor at an organization's fund-raising events and may allow event-related promotional materials, invitations, and other communications to mention such participation by the judge.

#### C. Financial Activities.

(1) A judge should refrain from financial and business dealings that tend to reflect adversely on the judge's impartiality, interfere with the proper performance of the judge's judicial duties, exploit the judge's judicial position, or involve the judge in frequent transactions with lawyers or persons likely to come before the court on which the judge serves.

(2) Subject to the requirements of subsection (1), a judge may hold and manage investments, including real estate, and engage in the activities usually incident to the ownership of such investments, but a judge should not assume an active role in the management or serve as an officer, director, or employee of any business.

(3) A judge should manage his or her investments and other financial interests to minimize the number of cases in which the judge is disqualified. As soon as the judge can do so without serious financial detriment, the judge should divest himself or herself of investments and other financial interests that might require frequent disqualification.

(4) Neither a judge nor a member of the judge's family residing in the judge's household should accept a gift, bequest, favor, or loan from anyone except as follows:

(a) a judge may accept a gift incident to a public testimonial to the judge; books supplied by publishers on a complimentary basis for official use; or an invitation to the judge and the judge's spouse to attend a bar-related function or activity devoted to the improvement of the law, the legal system, or the administration of justice;

(b) a judge or a member of the judge's family residing in the judge's household may accept ordinary social hospitality; a gift, bequest, favor, or loan from a relative; a wedding or engagement gift; a loan from a lending institution in its regular course of business on the same terms generally available to persons who are not judges; or a scholarship or fellowship awarded on the same terms applied to other applicants;

(c) a judge or a member of the judge's family residing in the judge's household may accept any other gift, bequest, favor, or loan only if the donor is not a party or other person whose interests have come or are likely to come before the judge, including lawyers who practice or have practiced before the judge.

(5) Information acquired by a judge in the judge's judicial capacity should not be used or disclosed by the judge in financial dealings or for any other purpose not related to the judge's judicial duties.

D. Fiduciary Activities. A judge should not serve as the executor, administrator, trustee, guardian, or other fiduciary, except for the estate, trust, or person of a member of the judge's family, and then only if such service will not interfere with the proper performance of the judge's judicial duties. As a family fiduciary a judge is subject to the following restrictions:

(1) The judge should not serve if it is likely that as a fiduciary the judge will be engaged in proceedings that would ordinarily come before the judge, or if the estate, trust, or ward becomes involved in adversary proceedings in the court on which the judge serves or one under its appellate jurisdiction.

(2) While acting as a fiduciary a judge is subject to the same restrictions on financial activities that apply to the judge in his or her personal capacity.

E. Arbitration. A judge should not act as an arbitrator or mediator.

F. Practice of Law. A judge should not practice law.

G. Extrajudicial Appointments. A judge should not accept appointment to a governmental committee, commission, or other position that is concerned with issues of fact or policy on matters other than the improvement of the law, the legal system, or the administration of justice. A judge, however, may represent his or her country, State, or locality on ceremonial occasions or in connection with historical, educational, and cultural activities.

Adopted December 2, 1986, effective January 1, 1987; amended October 15, 1993, effective immediately; amended May 24, 2006, effective immediately; amended December 7, 2011, effective immediately.

#### Committee Commentary

This canon governs the permissible scope of a judicial officer's extrajudicial activities. Avocational, civic and charitable, financial, and fiduciary activities are regulated as well as practice as an arbitrator or lawyer and the propriety of accepting extrajudicial appointments. ABA Canon 5(C)(6), which provides that "[a] judge is not required by this Code to disclose his income, debts, or investments except as provided in this Canon and Canons 3 and 6," was deleted as inconsistent with the present Illinois disclosure requirements which are retained in this code. The remaining subparagraphs were renumbered. In adapting the ABA canons to Illinois, certain adjustments were required in this canon because of the impact of article VI, section 13(b), of the Illinois Constitution, which prohibits a judicial officer from holding "a position of profit."

Paragraph (A). Complete separation of a judge from extrajudicial activities is neither possible nor wise; he should not become isolated from the society in which he lives.

Paragraph (B)(1). The changing nature of some organizations and of their relationship to the law makes it necessary for a judge regularly to reexamine the activities of each organization with which the judge is affiliated to determine if it is proper for the judge to continue the judge's relationship with it. For example, in many jurisdictions charitable hospitals are now more frequently in court than in the past.

Similarly, the boards of some legal aid organizations now make policy decisions that may have political significance or imply commitment to causes that may come before the courts for adjudication.

Paragraph (B)(2). This subparagraph is largely based on Illinois Supreme Court Rule 64. The major difference is that the ABA canon would allow a judicial officer to be listed on the letterhead of such an association as an officer, director or trustee. This canon will not allow that where the letterhead is used to solicit funds. The provision prohibiting a judge from allowing judicial staff to solicit on the judge's behalf for any purpose, charitable or otherwise, is a replacement for the provision of the ABA canon that provides that the judge should not use or permit the use of "the prestige of his office for that purpose."

Paragraph (C)(2). This subparagraph retains the language of Illinois Supreme Court Rule 63. See also 705 ILCS 60/1.

Paragraph (C)(3). This is ABA Canon 5(C)(3). The committee noted that this canon requires divestment of an investment only when it would cause frequent disqualification, and, even in that case, the divestment need not be made until the asset can be disposed of without serious financial detriment.

Paragraph (C)(4). This subparagraph combines ABA Canon 5(C)(4)(c) and the requirements of present Illinois Supreme Court Rule 61(c)(22). The ABA provisions regarding reporting are deleted since that is covered by Canon 6 of this code and by the Illinois Governmental Ethics Act (5 ILCS 420/1–101 *et seq.*).

Paragraph (D)(2). A judge's obligation under this canon and his or her obligation as a fiduciary may come into conflict. For example, a judge should resign as trustee if it would result in detriment to the trust to divest it of holdings whose retention would place the judge in violation of Canon 5(C)(3).

Paragraphs (E), (F) and (G). Valuable services have been rendered in the past to the States and the nation by judges appointed by the executive to undertake important extrajudicial assignments. The appropriateness of conferring these assignments on judges must be reassessed, however, in light of the demands on judicial manpower created by today's crowded dockets and the need to protect the courts from involvement in extrajudicial matters that may prove to be controversial. Judges should not be expected or permitted to accept governmental appointments that could interfere with the effectiveness and independence of the judiciary.

## **Rule 66**

### **CANON 6**

#### **Nonjudicial Compensation and Annual Statement of Economic Interests**

A judge may receive compensation for the law-related and extrajudicial activities permitted by this Code; if the source of such payments does not give the appearance of influencing the judge in his or her judicial duties or otherwise give the appearance of impropriety, subject to the following restrictions:

A. Compensation. Compensation should not exceed a reasonable amount nor should it exceed what a person who is not a judge would receive for the same activity.

B. Expense Reimbursement. Expense reimbursement shall be limited to the actual cost of travel, food, and lodging reasonably incurred by the judge and, where appropriate to the occasion, by the judge's spouse. Any payment in excess of such an amount is compensation.

C. Annual Declarations of Economic Interests. A judge shall file a statement of economic interests as required by Rule 68, as amended effective August 1, 1986, and thereafter.

Adopted December 2, 1986, effective January 1, 1987; amended June 4, 1991, effective August 1, 1991; amended April 1, 1992, effective August 1, 1992; amended October 15, 1993, effective immediately; amended December 13, 1996, effective immediately; amended September 30, 2002, effective immediately.

## Rule 67

### CANON 7

#### A Judge or Judicial Candidate Shall Refrain From Inappropriate Political Activity

A. All Judges and Candidates.

(1) Except as authorized in subsections B(1)(b) and B(3), a judge or a candidate for election to judicial office shall not:

(a) act as a leader or hold an office in a political organization;

(b) publicly endorse or publicly oppose another candidate for public office;

(c) make speeches on behalf of a political organization;

(d) solicit funds for, or pay an assessment to a political organization or candidate.

(2) A judge shall resign from judicial office upon becoming a candidate for a non-judicial office either in a primary or in a general election.

(3) A candidate for a judicial office:

(a) shall maintain the dignity appropriate to judicial office and act in a manner consistent with the integrity and independence of the judiciary, and shall encourage members of the candidate's family to adhere to the same standards of political conduct in support of the candidate as apply to the candidate;

(b) shall prohibit employees and officials who serve at the pleasure of the candidate, and shall discourage other employees and officials subject to the candidate's direction and control from doing on the candidate's behalf what the candidate is prohibited from doing under the provisions of this Canon;

(c) except to the extent permitted by subsection B(2), shall not authorize or knowingly permit any other person to do for the candidate what the candidate is prohibited from doing under the provisions of this Canon;

(d) shall not:

(i) make statements that commit or appear to commit the candidate with respect to cases, controversies or issues within cases that are likely to come before the court; or

(ii) knowingly misrepresent the identity, qualifications, present position or other fact concerning the candidate or an opponent; and

(e) may respond to personal attacks or attacks on the candidate's record as long as the response does not violate subsection A(3)(d).

#### B. Authorized Activities for Judges and Candidates.

(1) A judge or candidate may, except as prohibited by law:

(a) at any time,

(i) purchase tickets for and attend political gatherings;

(ii) identify himself or herself as a member of a political party; and

(iii) contribute to a political organization;

(b) when a candidate for public election

(i) speak to gatherings on his or her own behalf;

(ii) appear in newspaper, television and other media advertisements supporting his or her candidacy;

(iii) distribute pamphlets and other promotional campaign literature supporting his or her candidacy; and

(iv) publicly endorse or publicly oppose other candidates in a public election in which the judge or judicial candidate is running.

(2) A candidate shall not personally solicit or accept campaign contributions. A candidate may establish committees of responsible persons to conduct campaigns for the candidate through media advertisements, brochures, mailings, candidate forums and other means not prohibited by law. Such committees may solicit and accept reasonable campaign contributions, manage the expenditure of funds for the candidate's campaign and obtain public statements of support for his or her candidacy. Such committees are not prohibited from soliciting and accepting reasonable campaign contributions and public support from lawyers. A candidate's committees may solicit contributions and public support for the candidate's campaign no earlier than one year before an election and no later than 90 days after

the last election in which the candidate participates during the election year. A candidate shall not use or permit the use of campaign contributions for the private benefit of the candidate or others.

(3) Except as prohibited by law, a candidate for judicial office in a public election may permit the candidate's name: (a) to be listed on election materials along with the names of other candidates for elective public office, and (b) to appear in promotions of the ticket.

C. Incumbent Judges. A judge shall not engage in any political activity except (i) as authorized under any other provision of this Code, (ii) on behalf of measures to improve the law, the legal system or the administration of justice, or (iii) as expressly authorized by law.

D. Applicability. Canon 7 generally applies to all incumbent judges and judicial candidates. A successful candidate, whether or not an incumbent, is subject to judicial discipline for his or her campaign conduct; an unsuccessful candidate who is a lawyer is subject to lawyer discipline for his or her campaign conduct. A lawyer who is a candidate for judicial office is subject to Rule 8.2(b) of the Rules of Professional Conduct.

JUSTICE HEIPLE, concurring:

First and foremost, Rule 67 and these canons of judicial ethics are intended as a working guide of conduct for judges and judicial candidates. They indicate areas of activity that are deemed to be within and without proper limits of judicial conduct. In between, of course, are uncertain areas which lack definition. What the canons seek is judicial conduct that is in keeping with the high calling of judicial office. They are not intended to facilitate the filing of casual or vindictive charges against judges or judicial candidates.

The application of these canons require a high measure of common sense and good judgment. Matters that are either minor in nature or susceptible to differing interpretations ought not result in charges being filed. Charges of misconduct should be limited to matters that are both clearly defined and commonly accepted as serious.

The canons have attempted to recognize that Illinois has an elective judiciary. As a practical matter, the Illinois judge must involve himself in matters political. That is to say, the judge or candidate must be a participant in the system. A corollary of this activity is the public's right to know whom they are voting for. Realistically speaking, it is not enough for the judge or candidate to merely give name, rank and serial number as though he were a prisoner of war. Rather, the public has a right to know the candidate's core beliefs on matters of deep conviction and principle. While the candidate is not required to disclose these beliefs, he should neither be deterred nor penalized for doing so. In so doing, however, the judge or judicial candidate ought to refrain from stultifying himself as to his evenhanded participation in future cases. Rule 67 attempts to make that clear.

What fair-minded people seek in a judge is a person who will be fair and impartial and who will follow the law. Those considerations overshadow matters of nonjudicial ideology such as socialism, antivivisection, membership in the Flat Earth Society, an obsession with gender neutral language, or whatever. The matter of nonjudicial ideology is of direct and primary concern, of course, when judges begin to act as legislators rather than jurists. Judges who adhere to the rule that their conscience is their guide and that the law must accommodate their conscience are especially deserving of close scrutiny

and concern. Under our Illinois constitutional scheme, however, it is the voters who are to make that call, not a governmental prosecutorial body or an association of lawyers.

JUSTICE McMORROW, dissenting:

I dissent from the adoption of certain portions of new Rule 67 of the Code.

At the time of this writing, Illinois elects its judges. Irrespective of the merits or demerits of the elective process, it is essential to the justice system that judges be "independent, fair, and competent" so as to honor the public trust placed in them by virtue of their position. The purposes of the Code of Judicial Conduct are set forth in the Preamble to the Code. That Preamble, as amended, *inter alia*, provides:

"Our legal system is based on the principle that an independent, fair and competent judiciary will interpret and apply the laws that govern us. The role of the judiciary is central to American concepts of justice and the rule of law. Intrinsic to all provisions of this code are precepts that judges, individually and collectively, must respect and honor the judicial office as a public trust and strive to enhance and maintain confidence in our legal system."

In this Code of Judicial Conduct, the Supreme Court of Illinois has set the standard by which judges are to be guided in their professional conduct. In my opinion, these standards should be high, and should be in keeping with the principles espoused in the Preamble. They are the guidelines which tell judges in this State in what activities they may or may not participate. The primary goal of the Code should be the attainment of a fair and impartial judiciary.

Today, in adopting certain amendments to Rule 67, the majority apparently wishes to accommodate the elective process to which judges are presently subjected. In so doing, the majority has substantially broadened the political activity in which judges may participate. For example, by deleting certain prohibitions which appeared in Rule 67 prior to the amendments, a judge may now *at any time* attend political gatherings, may make unlimited contributions to a political organization, may identify himself or herself as a member of a political party, or may purchase tickets for political dinners or other functions. Rules 67(B)(1)(a)(i), (B)(1)(a)(ii), (B)(1)(a)(iii).

However, our prior Rule 67 was not unduly restrictive. Indeed, no hardship to judges under the former rule has been demonstrated, nor has there been any hue or cry for the changes which have been adopted. I am unaware of any need for judges to make unlimited contributions to a political party, to attend political gatherings, or to identify their political party allegiance. On the contrary, upon election to judicial office, judges are to be impartial; they are to be unbiased with respect to race, gender, and political party affiliation. Upon election, judges should no longer be Democrats or Republicans. Rather, judges are elected to apply the rule of law without respect to political organization affiliation. Although I recognize the need to solicit political organizational support at the time a candidate is seeking election to the judiciary, or at such time as a judge is seeking retention, I am particularly disturbed by the amendments' allowance of a judge to engage in the political activities permitted by these amendments *at any time*.

I submit that the new rule "abandon[s] several important ethical standards that uphold the independence and dignity of judicial office" and will surely cause severe problems in the public perception of judicial candidates. (Report of the Committee on Judicial Performance and Conduct of the

Lawyers' Conference of the Judicial Administration Division of the American Bar Association on the Final Draft of the Model Code of Judicial Conduct 28 (1990) (hereinafter Report of the Committee on Judicial Performance).) In my view, the new standards of the rule are too permissive with respect to the political activities of judicial candidates. The increased permissiveness in judicial candidates' political activities fosters a misguided over-politicization of the judicial election process in this State. In my judgment the time and efforts of the Illinois Supreme Court might be better expended by addressing the myriad of problems confronting the justice system, rather than considering and adopting amendments which allow judges to participate in additional political activity. I dissent from the adoption of these amendments because they are imprudent, unnecessary, and lend themselves to abuse.

In addition, I cannot agree with the majority's new view of the appropriate scope of a judicial candidate's public comment on matters that may or are likely to come before the court, provided the candidate does not "make statements that commit or appear to commit the candidate with respect to cases, controversies or issues within cases that are likely to come before the court." (Rule 67(A)(3)(d)(i).) Ultimately, the new Rule is short-sighted because it places candidates for judicial office in an unseemly position where they may feel compelled to "pander" for votes by publicly adopting views which appear popular to the electorate. See Report of the Committee on Judicial Performance at 31.

The Commentary indicates that this amendment was adopted in response to the decision of the Federal court in *Buckley v. Illinois Judicial Inquiry Board* (7th Cir. 1993), 997 F.2d 224. In that case, the Seventh Circuit Court of Appeals held unconstitutional the portion of our rule that forbids a judicial candidate from "announc[ing] his views on disputed legal or political issues." (134 Ill. 2d R. 67(B)(l)(c).) The Federal court concluded that this "announcement" prohibition invaded a candidate's constitutional rights, because it "reache[d] far beyond speech that could reasonably be interpreted as committing the candidate in a way that would compromise his impartiality should he be successful in the election." *Buckley*, 997 F.2d at 228.

It is indisputable that the constitutional guarantee of freedom of speech must be balanced against the right of the public to a judiciary which will decide the issues presented to it in the courtroom setting, on the basis of the facts and applicable law. A judicial candidate's right to free speech may be restricted where a compelling State interest is present which counterbalances the candidate's ability to speak freely. The integrity and impartiality and independence of the judiciary is, in my opinion, such a compelling State interest to which deference should be paid.

The key words in the amendment which now appear in Rule 67(A)(3)(d)(i) are "commit or appear to commit." These words are subject to varying interpretations and, I submit, are unnecessarily too broad to cure the fault found by the Federal court in the *Buckley* case. I question whether the amendment permitting a judge to speak on issues which may come before the court, provided the judge uses the magic words that the judge "is not committing" will be more problematic than the rule was prior to this amendment.

I also find disturbing the Commentary to the amendments to the effect that a judge or judicial candidate may respond to "false information concerning a judicial candidate [that] is made public." (Rule 67, Committee Commentary.) The Report of the Committee on Judicial Performance stated the following with regard to this provision:

"This new expansion of free speech for judges who might be tempted to come to the aid of another judge or judicial candidate who has been the subject of criticism in a political campaign is totally without

merit. There is no reason for a judge to become involved as a spokesperson or in any other capacity for another judge who has been publicly maligned. Publicly 'correcting' what the judge regards as a misstatement of fact in a judicial campaign is one of the acts presently prohibited by the existing Code, and it should continue to be prohibited.

Most issues of 'fact' in the context of judicial elections are, at best, mixed issues of fact and opinion and at worst are pure issues of opinion. Thus, the 'narrow' exception anticipated by the draftspersons would, in reality, become a large loophole.

The new provision would put enormous pressure on judges to become actively involved in campaigns of other judges or candidates." Report of the Committee on Judicial Performance at 5-6.

I agree with these comments from the Report of the Committee on Judicial Performance regarding this new amendment to Rule 67.

In my opinion, public perception of a fair and impartial judiciary is diminished by adoption of the amendments to which I have made reference. Because the majority permits potential further politicization of the Illinois judiciary by adoption of the above-referenced amendments, I respectfully dissent.

Adopted December 2, 1986, effective January 1, 1987; amended April 20, 1987, effective August 1, 1987; amended August 6, 1993, effective immediately; amended March 24, 1994, effective immediately.

#### Committee Commentary

This canon regulates the extent to which a judicial officer may engage in political activity. Canon 7 adopts as its foundation the provisions of Canon 5 of the ABA Model Code of Judicial Conduct, which was adopted by the ABA in 1990.

Paragraph 7A(1). A judge or candidate for judicial office retains the right to participate in the political process as a voter.

Where false information concerning a judicial candidate is made public, a judge or another judicial candidate having knowledge of the facts is not prohibited by paragraph 7A(1) from making the facts public.

Subparagraph 7A(1)(a) does not prohibit a candidate for elective judicial office from retaining during candidacy a public office such as State's Attorney, which is not "an office in a political organization."

Subparagraph 7A(1)(b) does not prohibit a judge or judicial candidate from privately expressing his or her views on judicial candidates or other candidates for public office.

A candidate does not publicly endorse another candidate for public office by having that candidate's name on the same ticket.

Subparagraph 7A(1)(d). The ABA provisions that prohibit the following activities were deleted: attending political gatherings (5A(1)(d) of ABA), making contributions to political organizations or candidates (5A(1)(e)), and purchasing tickets for political party dinners or other functions (5A(1)(e)). These provisions were deleted because the ABA provisions adopted in subparagraph 7B(1)(a) were modified to authorize all judges and candidates to engage in such activities at any time. However, the prohibition on the solicitation of funds for, or paying an assessment to, a political organization or candidate, is adopted and renumbered as subparagraph (d).

Subparagraph 7A(3)(a). Although a judicial candidate must encourage members of his or her family to adhere to the same standards of political conduct in support of the candidate that apply to the candidate, family members are free to participate in other political activity.

Subparagraph 7A(3)(d). The ABA clause prohibiting "pledges and promises of conduct in office," found in Canon 5A(3)(d) of the Model Code (which was similar to the language of Canon 7B(1)(c) of our previous rules on political conduct) was deleted. This change was made to clarify the limitations of the rule (see *In re Buckley* (Ill. Cts. Comm'n Oct. 25, 1991), No. 91--CC--1), which gave a broader construction to the rule. Subparagraph 7A(3)(d) prohibits a candidate for judicial office from making statements that commit or appear to commit the candidate with respect to cases, controversies or issues within cases that are likely to come before the court. However, as a corollary, a candidate should emphasize in any public statement the candidate's duty to uphold the law regardless of his or her personal views. See also paragraph 3A(6), the general rule on public comment by judges. Subparagraph 7A(3)(d) does not prohibit a candidate from making pledges or promises respecting improvements in court administration. Nor does this provision prohibit an incumbent judge from making private statements to other judges or court personnel in the performance of judicial duties. This subparagraph applies to any statement made in the process of securing judicial office. See also Rule 8.2 of the Rules of Professional Conduct.

The ABA Model Code of 1990 was modified to remove the provisions pertaining to candidates seeking appointment to judicial or other governmental office that are found in subsection B of Canon 5. Hence ABA subsections C, D and E were renumbered and are now subsections B, C and D of our Canon 7.

Paragraph 7B(1). This paragraph permits judges at any time to be involved in limited political activity. Subsection 7C, applicable solely to judges, would otherwise bar this activity.

Paragraph 7B(2). This paragraph is substantially identical to the Section 5C(2) of the 1990 ABA Model Code. The one difference is that the language prohibiting the candidates from personally soliciting publicly stated support is omitted to allow judicial candidates to appear before editorial boards of newspapers and other organizations. Paragraph 7B(2) permits a candidate to solicit publicly stated support, and to establish campaign committees to solicit and accept public support and reasonable financial contributions. At the start of the campaign, the candidate must instruct his or her campaign committees to solicit or accept only contributions that are reasonable under the circumstances. Though not prohibited, campaign contributions of which a judge has knowledge, made by lawyers or others who appear before the judge, may be relevant to disqualification under subsection C of Canon 3.

Campaign committees established under Section 7B(2) should manage campaign finances responsibly; avoiding deficits that might necessitate post-election fund-raising, to the extent possible.

Paragraph 7B(3). This paragraph provides a limited exception to the restrictions imposed by paragraph 7A(1).

Subsection 7C. Neither subsection 7C nor any other section of the Code prohibits a judge in the exercise of administrative functions from engaging in planning and other official activities with members of the executive and legislative branches of government.

#### **Rule 68**

A judge shall file annually with the Clerk of the Illinois Supreme Court (the Clerk) a verified written statement of economic interests and relationships of the judge and members of the judge's immediate family (the statement).

As statements are filed in the Clerk's office, the Clerk shall cause the fact of that filing to be indicated on an alphabetical listing of judges who are required to file such statements. Blank statement forms shall be furnished to the Clerk by the Director of the Administrative Office of the Illinois Courts (the Director).

Any person who files or has filed a statement under this rule shall receive from the Clerk a receipt indicating that the person has filed such a statement and the date of such filing.

All statements filed under this rule shall be available for examination by the public during business hours in the Clerk's office in Springfield or in the satellite office of the Clerk in Chicago. Original copies will be maintained only in Springfield, but requests for examination submitted in Chicago will be satisfied promptly. Each person requesting examination of a statement or portion thereof must first fill out a form prepared by the Director specifying the statement requested, identifying the examiner by name, occupation, address and telephone number, and listing the date of the request and the reason for such request. The Director shall supply such forms to the Clerk and replenish such forms upon request. Copies of statements or portions of statements will be supplied to persons ordering them upon payment of such reasonable fee per page as is required by the Clerk. Payment may be by check or money order in the exact amount due.

The Clerk shall promptly notify each judge required to file a statement under this rule of each instance of an examination of the statement by sending the judge a copy of the identification form filled out by the person examining the statement.

The contents of the statement required by this rule shall be as specified by administrative order of this court.

Effective March 15, 1970; amended April 1, 1986, effective August 1, 1986.

#### **ADMINISTRATIVE ORDER**

The verified statements of economic interests and relationships referred to in our Rule 68, as amended effective August 1, 1986, shall be filed by all judges on or before April 30, 1987, and on or before April 30, annually thereafter. Such statements shall also be filed by every person who becomes a judge, within 45 days after assuming office. However, judges who assume office on or after December 1 and who file the statement before the following April 30 shall not be required to file the statement due on April 30. The

form of such statements shall be as provided by the Administrative Director of the Illinois Courts, and they shall include all information required by Rule 68 and this order, including:

1. Current economic interests of the judge and members of the judge's immediate family (spouse and minor children residing with the judge) whether in the form of stock, bond, dividend, interest, trust, realty, rent, certificate of deposit, deposit in any financial institution, pension plan, Keogh plan, Individual Retirement Account, equity or creditor interest in any corporation, proprietorship, partnership, instrument of indebtedness or otherwise. Every source of noninvestment income in the form of a fee, commission, compensation, compensation for personal service, royalty, pension, honorarium or otherwise must also be listed. No reimbursement of expenses by any unit of government and no interest in deferred compensation under a plan administered by the State of Illinois need be listed. No amounts or account numbers need be listed in response to this paragraph 1. **In listing his or her personal residence(s) in response to this paragraph 1, the judge shall not state the address(es).** Current economic interests shall be as of a date within 30 days preceding the date of filing the statement.

2. Former economic interests of the type required to be disclosed in response to numbered paragraph 1 which were held by the judge or any member of the judge's immediate family (spouse and minor children residing with the judge) during the year preceding the date of verification. Current economic interests listed in response to numbered paragraph 1 need not be listed. No amounts or account numbers need be listed in response to this paragraph 2. **In listing his or her personal residence(s) in response to this paragraph 2, the judge shall not state the address(es).**

3. The names of all creditors to whom amounts in excess of \$500 are owed by the judge or members of the judge's immediate family (spouse and minor children residing with the judge) or were owed during the year preceding the date of verification. For each such obligation there is to be listed the category for the amount owed as of the date of verification and the maximum category for the amount of each such obligation during the year preceding the date of verification of the statement. The categories for reporting the amount of each such obligation are as follows:

- (a) not more than \$5,000;
- (b) greater than \$5,000 but not more than \$15,000;
- (c) greater than \$15,000 but not more than \$50,000;
- (d) greater than \$50,000 but not more than \$100,000;
- (e) greater than \$100,000 but not more than \$250,000; and
- (f) greater than \$250,000.

Excluded from this requirement are obligations consisting of revolving charge accounts, with an outstanding liability equal to or less than \$5,000.

4. The name of any individual personally known by the judge to be licensed to practice law in Illinois who is a co-owner with the judge or members of the judge's immediate family (spouse and minor children residing with the judge) of any of the economic interests disclosed in paragraphs 1 and 2, and the name of any person who has acted as a surety or guarantor of any of the obligations required to be disclosed in paragraph 3.

5. A list of every office, directorship and salaried employment of the judge and members of the judge's immediate family (spouse and minor children residing with the judge). Exclude unsalaried positions in religious, social or fraternal organizations, and honorary positions.

6. Pending cases in which the judge or members of the judge's immediate family (spouse and minor children residing with the judge) are parties in interest and, to the extent personally known to the judge, pending cases in which a party is an economic entity in which the judge or any member of the judge's

immediate family has an interest. Cases in which a judge has been sued in the judge's official capacity shall not be included.

7. Any fiduciary position, including executorships and trusteeships of the judge or members of the judge's immediate family (spouse and minor children residing with the judge).

8. The name of the donor and a brief description of any gifts received by the judge or members of the judge's immediate family (spouse and minor children residing with the judge). Gifts of transportation, food, lodging or entertainment having a value in excess of \$250 must be reported. All other gifts having a value in excess of \$100 must be reported. Gifts between the judge and the judge's spouse, children, or parents shall not be reported.

9. Any other economic interest or relationship of the judge or of members of the judge's immediate family (spouse and minor children residing with the judge) which could create a conflict of interest for the judge in the judge's judicial capacity, other than those listed in numbered paragraphs 1 to 8 hereof.

Prior to the first Monday in March of each year the Director shall inform each judge by letter of the requirements of this amended rule. The Director shall similarly inform by letter each person who becomes a judge of the requirements of the rule within 10 days of such person assuming office. The Director shall include with such letter instructions concerning the required statements, two sets of the statement forms, and one mailing envelope preaddressed to the Clerk. **The Clerk shall redact personal residence addresses contained in any statement filed pursuant to Supreme Court Rule 68.** The letter, instructions, and statements shall be in substantially the form provided in the Article I Forms Appendix.

**Rules 69-70. Reserved.**

**Rule 71. Violation of Rules**

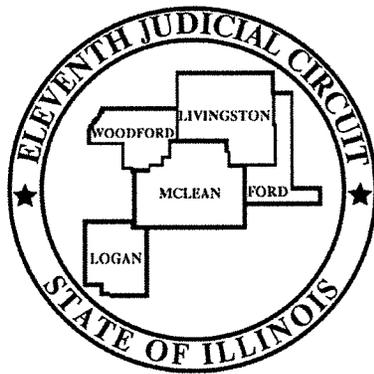
A judge who violates Rules 61 through 68 may be subject to discipline by the Illinois Courts Commission.

Effective March 15, 1970; amended effective October 1, 1971; amended June 24, 1976, effective July 15, 1976; amended December 2, 1986, effective January 1, 1987.

# Appendix C

**RULES OF THE  
ELEVENTH JUDICIAL CIRCUIT COURT  
STATE OF ILLINOIS**

**FORD, LIVINGSTON, LOGAN, McLEAN  
AND WOODFORD COUNTIES**



***EFFECTIVE: January 1, 2018***

**Rules of the Circuit Court of the Eleventh Judicial Circuit  
may be amended by the Court at any time without notice.**

**RULE 105 COURT-ANNEXED MANDATORY ARBITRATION**

Court-annexed mandatory arbitration proceedings are undertaken and conducted in the Counties of Ford and McLean, Eleventh Judicial Circuit, pursuant to approval of the Supreme Court of Illinois given on March 26, 1996.

- A. Supervising Judge for Arbitration. The Chief Judge shall appoint in each county of the circuit having a court-annexed 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. Administrative Assistant for Arbitration. The Chief Judge shall designate an Administrative Assistant for Arbitration who shall have the authority and responsibilities set forth in these rules. The Administrative Assistant for Arbitration shall serve at the discretion of the Chief Judge under the immediate direction of the Trial Court Administrator.
- C. Arbitration Center. The Chief Judge shall designate an Arbitration Center for arbitration hearings.
- D. Arbitration of Certain Cases. The court-annexed mandatory arbitration program of the Eleventh Judicial Circuit is governed by the Supreme Court Rules for the Conduct of court-annexed mandatory arbitration Proceedings (Supreme Court Rules 86-95). Because arbitration proceedings are governed by both Supreme Court and local court rules, reference is made in the caption of each Local Rule to the Supreme Court Rule controlling the subject.
- E. Actions Subject to Court-Annexed Mandatory Arbitration (Supreme Court Rule 86).
  - 1. Arbitration proceedings are part of the underlying civil action, and therefore, all rules of practice contained in the Illinois Code of Civil Procedure and Illinois Supreme Court Rules shall apply to these proceedings.
  - 2. All civil actions will be subject to court- annexed 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 Eleventh Judicial Circuit at the time of initial case filing with the Circuit Clerk's office. All such cases will be provided with an AR designation pursuant to the AOIC Manual on Record Keeping.
  - 3. Cases not originally assigned to the Arbitration Calendar may be ordered to arbitration on the motion of either party, by agreement of the parties or by Order of Court 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 \$50,000, irrespective of defenses.
  - 4. When a case not originally assigned to the Arbitration Calendar is subsequently so assigned pursuant to Supreme Court Rule 86(d), the Administrative Assistant for Arbitration shall

promptly assign an arbitration hearing date for such case. In such cases, the date of the arbitration hearing shall be not less than sixty (60) days nor more than one-hundred and eighty (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.

F. Appointment, Qualification and Compensation of Arbitrators (Supreme Court Rule 87).

1. Illinois-licensed attorneys in good standing and retired judges shall be eligible for certification and appointment as arbitrators by filing an approved application form with the Administrative Assistant for Arbitration and completing the required arbitrator training seminar. An applicant requesting to be certified as a chairperson shall certify the number of years engaged in the active trial practice of law. Applicants shall be certified as arbitrators and/or chairpersons by the Chief Judge of the circuit. The eligibility of each attorney to serve as an arbitrator may be reviewed periodically by the Administrative Assistant for Arbitration and Supervising Judge. All applicants must maintain a law office or residence in this circuit.
2. The Administrative Assistant for Arbitration shall maintain an alphabetical list of approved arbitrators to be called for service on a random basis. The list shall designate the arbitrators who are approved to serve as chairpersons.
3. Three arbitrators shall constitute a panel at least one of which must be certified as a chairperson. The chairperson must have been engaged in active practice of law for a period of five years or be a retired judge. Other panel members must have engaged in the active practice of law for a minimum of one year. Three arbitrators shall constitute a panel unless the parties stipulate using the prescribed form to a two arbitrator panel. In no instance shall a hearing proceed with only one arbitrator.
4. The Administrative Assistant for Arbitration shall notify the arbitrators of the hearing date at least 30 days prior to the assigned hearing date. The notification period may be less to those arbitrators who have agreed to serve on an emergency basis.
5. Not more than one member or associate of a firm or office shall be appointed to the same panel. Upon appointment to a case, an arbitrator shall notify the Administrative Assistant for Arbitration and withdraw from the case if any grounds for disqualification appear to exist pursuant to the Illinois Code of Judicial Conduct.
6. Upon completion of each day's arbitration hearings, arbitrators shall file a voucher with the Administrative Assistant for Arbitration for submission to the Administrative Office of the Illinois Courts for payment of the prescribed compensation.
7. Each arbitrator shall take an oath of office in conformity with the form provided in Supreme Court Rule 94 in advance of the hearing.

G. Scheduling of Hearings (Supreme Court Rule 88).

1. On or before the first day of each July, the Administrative Assistant for Arbitration 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 twenty-one (21) days or more than forty (40) 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 summons 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 more than one year from the filing date or the earliest available hearing date thereafter. If one or more defendants have not been served within ninety (90) days from the date of filing, the Court may in its discretion dismiss the case as to unserved defendants for lack of diligence.

2. 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 all other parties in the same manner as other motions and a copy of the motion and notice of time of hearing thereon shall likewise be served upon the Administrative Assistant for Arbitration. The motion shall be set for hearing on the calendar of the Supervising Judge for Arbitration and 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.
3. Consolidated actions shall be heard on the date assigned to the latest case involved.
4. Counsel for plaintiff shall give immediate notification in writing to the Administrative Assistant for Arbitration of any settlement of cases or dismissal. Failure to do so may result in the imposition of sanctions.
5. 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 Administrative Assistant for Arbitration at least fourteen (14) days in advance of the hearing date in the event additional hearing time is anticipated and the length of such additional time.

H. Discovery (Supreme Court Rule 89).

1. Discovery shall proceed as in all other civil actions and shall be completed not less than thirty (30) days prior to the arbitration hearing.
  2. All parties shall comply completely with the provisions of Supreme Court Rule 222.
  3. No discovery shall be permitted after the arbitration hearing, except upon leave of Court and for good cause shown.
- I. Conduct of the Hearings (Supreme Court Rule 90).
1. The Supervising Judge for Arbitration shall have full supervisory powers over all questions arising in any arbitration proceedings, including the application of these rules.
  2. A stenographic record of the hearing shall not be made unless a party does so at his/her expense. If a party has a stenographic record transcribed, notice thereof shall be given to all parties and 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.
  3. The statements and affidavits of witnesses shall set forth the name, address and telephone number of the witness.
  4. 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 Court of this circuit.
  5. Hearings shall be conducted in general conformity with procedures followed in civil trials. The chairperson shall administer oaths and affirmations to witnesses. Rulings concerning admissibility of evidence and applicability of law shall be made by the chairperson. At the commencement of the hearing, the attorneys for the parties will provide a brief written statement of the nature of the case which shall include a stipulation as to all of the relevant facts to which the parties agree. The stipulation shall include, if applicable, relevant contract terms, dates, times, places, location of traffic control devices, year, make and model of automobiles and of other vehicles, equipment or goods and products which are involved in the litigation and other relevant and material facts. However, the stipulation may not be used for evidentiary and/or impeachment purposes in any subsequent hearing and the written stipulation shall so state. The time devoted to the presentation of evidence should be limited to those facts upon which the parties genuinely disagree. Parties are encouraged to utilize the procedure set out in Supreme Court Rule 90 for admission of documents into evidence without foundation or other proof.
  6. Pursuant to the Illinois Supreme Court Language Access Policy any party requiring the services of a language interpreter or the services of an American Sign Language interpreter or other assistance for the deaf or hearing impaired during the hearing shall notify the Administrative Assistant for Arbitration of said need not less than seven (7) days prior to the hearing.

7. All exhibits admitted into evidence shall be retained by the panel until entry of the award. It is the duty of the attorneys or parties to retrieve such exhibits from the Administrative Assistant for Arbitration within seven (7) days following the conclusion of the arbitration hearing. All exhibits not retrieved shall be destroyed.
  
- J. Default of a Party (Supreme Court Rule 91). A party who fails to appear and participate in the hearing may have an award entered against him/her upon which the Court may enter judgment. 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.
  
- K. Award and Judgment on Award (Supreme Court Rule 92). The panel shall render its decision and enter an award on the same day of the hearing. The chairperson shall present the award to the Administrative Assistant for Arbitration who shall then file same with the Clerk of the Circuit Court. The Clerk of the Circuit Court shall serve a notice of the award upon all parties who have filed an appearance. In the event the panel of arbitrators unanimously finds that a party has violated the good-faith provisions of Supreme Court Rule 91(b), such finding accompanied by a factual basis shall be noted on a findings sheet. Such finding sheet shall become part of the award.
  
- L. Rejection of the Award (Supreme Court Rule 93) Rejection of the award shall be in compliance with Supreme Court Rule 93.
  
- M. Form of Oath, Award and Notice of Entry of Award (Supreme Court Rule 94) The Administrative Assistant for Arbitration shall provide the forms called for by these rules.
  
- N. Duties of the Supervising Judge for Arbitration.
  1. Hear motions to interpret all rules of the program or court.
  2. Hear motions to advance or postpone hearing.
  3. Hear motions to consolidate cases.
  4. Hear motions to vacate judgments.
  5. Hear motions to enter judgment.
  6. Hear all post-judgment enforcement proceedings.

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

**QUESTION AND ANSWER BOOK**

Honorable Kevin P. Fitzgerald  
Chief Judge, Eleventh Judicial Circuit

Honorable Matthew Fitton  
Presiding Judge, Ford County

Honorable David Butler  
Presiding Judge, McLean County

Rachel Bunner  
Arbitration Administrator

Eleventh Judicial Circuit  
Court-Annexed Mandatory Arbitration Center  
200 W. Front Street, Suite 400 B  
Bloomington, IL 61701  
(309) 827-7584  
[www.mcleancountyil.gov/CircuitCourt](http://www.mcleancountyil.gov/CircuitCourt)

## **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](mailto: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 debarring 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 (l)(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 (l)(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 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 makes 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 within 24 hours of the 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. 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.