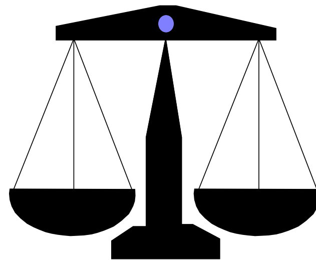
THIRD JUDICIAL CIRCUIT
COURT-ANNEXED MANDATORY ARBITRATION PROGRAM
MADISON COUNTY

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



Hon. David A. Hylla
Chief Judge

Hon. David W. Dugan
Supervising Judge

Ms. Kathleen C. Harris
Arbitration Administrator

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

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

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.

The objective of the program and the program rules is to submit modest-sized claims to arbitration because such claims tend to be amenable to closer management and faster resolution in an informal alternative process. There are safeguards designed to ensure 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 time lines for discovery discussed in Illinois Supreme Court Rule 222.

The time 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. 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 of $200 to the clerk of the

court for awards of $30,000 or less or $500 for awards greater than $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, so help you God?"

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 on the issues of the controversy. However, direct and cross-examination should be circumscribed if it becomes redundant, irrelevant, or excessive and time consuming.

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

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 closing arguments

6. Defendant’s closing arguments

7. Plaintiff’s rebuttal

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 the defendant, XYZ Company."

Ensure that all claims, including attorneys 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, please indicate in the award form that the plaintiff or defendant did not appear in person or by counsel.

4. 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 an appearance in this case within the last three years?
- Have you represented any party in the case within the last seven years?

- Do you or a member of your household have a substantial financial interest in the subject matter in controversy?

- Do you or a member of your household have any other interest that could be substantially affected by the outcome of the proceeding?

- Are you and another member of your current firm assigned to the same panel?

If the answer to any of these questions is yes, the arbitrator should recuse 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 a notation made on the award.

B. ARBITRATOR APPOINTMENT, QUALIFICATION, AND COMPENSATION

1. Arbitrator Qualifications

Arbitrator qualifications are discussed in Illinois Supreme Court Rule 87 and Rule 2 of the Third Judicial Circuit Rules Governing Court-Annexed Mandatory Arbitration.

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 our 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. All applicants must maintain a law office or residence in Madison County or be a retired judge.

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 hearings, 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 day 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 him/herself from hearing a case. This decision should not be taken lightly.

The threshold question is whether the arbitrator has any contact or relationship with anyone connected with the case which would diminish the arbitrator's ability to be impartial and render a fair decision. The arbitrator should review the names of all parties, witnesses, and attorneys in order to make this determination. The arbitrator may recuse 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 him/herself 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. Likewise, an arbitrator must withdraw from hearing a case if he/she was associated or ever served as an attorney in the matter to be heard.

The fact that the arbitrator knows one of the attorneys involved in the case being heard is not, in itself, grounds for recusal. Arbitrators must use their conscience and discretion when making the decision whether or not to recuse themselves. They must

ask themselves whether their impartiality could reasonably be questioned and whether they can honestly give the parties a fair hearing.

The 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 him/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 be 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 him/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

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. 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 the three attorney-arbitrators. The chairperson of the panel rules on objections to evidence or other issues which arise during the hearing.

3. Role of the Chairperson

The arbitrators will designate the arbitrator who will serve as chairperson of the panel. The designated chairperson of the panel rules on the admissibility of evidence.

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 law as it is given 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.

F. 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). It is the responsibility of counsel to advise the Arbitration Administrator at least 14 days in advance of the hearing date in the event additional hearing time is anticipated and the lengths of such additional time.

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 Proceeding

Arbitration hearings are open to the public. 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. Translators and Interpreters for the Hearing Impaired

Any party requiring the services of a language interpreter during the hearing shall be responsible for providing same. Any party requiring the services of an interpreter or

other assistance for the deaf or hearing impaired shall notify the Arbitration Administrator of said need not less than seven (7) days prior to 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.

5. Documents Presumptively Admissible

Illinois Supreme Court Rule 90(c) provides that certain documents are presumptively admissible. These include hospital bills, hospital reports, doctor's 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.

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 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 pour over these documents to attempt to sort out relevant or material issues. In the event a voluminous document is submitted to the panel, the chairperson should instruct counsel to stipulate to the relevant portion they wish the panel to consider.

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 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 that author or maker of a document admissible under this rule at that party's expense and examine the author or maker as if under cross-examination. The provisions of the Code of Civil Procedure relative to subpoenas, 735 ILCS 5/2-1101 (1993), 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 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 insistence 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 Witnesses 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 debarring that party from maintaining a claim, counterclaim, etc. The 1993 amendment to Rule 90(g) clarified that Rule 237(b) notice to appear at an arbitration hearing carries equivalent importance to one requiring an appearance at trial such that a court may, in an appropriate case, debar a party who fails to comply from rejecting the award.

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

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 can not 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. Rule 5(i) of the Third Judicial Circuit Rules Governing Court-Annexed Mandatory Arbitration provides 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 Arbitration Administrator within seven (7) days following the court ordered motion date for entry of judgment. All exhibits not retrieved shall be destroyed.

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 system.

If a panel of arbitrators unanimously finds that a party has failed to participate in the hearing in good faith and in a meaningful manner, the panel's finding and factual basis for such finding shall be stated on the award. The award shall be *prima facie* evidence that the party failed to participate in the arbitration hearing in good faith and in a meaningful manner. A court, when presented with a petition for sanctions or remedy therefore based on the award finding, may order sanctions as provided in Illinois Supreme Court Rule 219(c), including but not limited to, an order debarring the party

from rejecting the award and costs and attorney fees incurred for the arbitration hearing. Illinois Supreme Court Rule 91(b).

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

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

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

G. **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.

2. Default Judgments or Dismissal for Want of Prosecution

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 (dismiss for want of prosecution) the case if neither party appears at the arbitration hearing.

3. Filing an Appearance or Answer at the Arbitration Hearing

The filing of an 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.

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

> "Award is made in favor of the Plaintiff XYZ Company, in the amount of $10,000, 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

SUPREME COURT RULES 86 – 95
FOR MANDATORY ARBITRATION

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.

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 be a retired judge. Not more than one member or associate of a firm or office association of attorneys shall be appointed to the same panel.

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

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

Arbitrators previously listed as arbitrators shall be relisted on taking the oath provided in Rule 94.

(e) Compensation. Each arbitrator shall be compensated in the amount of $100 per hearing.

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.

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.

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; [FN1]

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

(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, [FN2] 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, [FN3] shall be applicable to arbitration hearings as upon the trial of a case.

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

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

[Rule 90(c) Cover Sheet]

IN THE CIRCUIT OF COUNTY, ILLINOIS

Plaintiff)

```
                             )
                             )  No.
                             )
v.                           )
                             )
                             )
Defendant                    )
                             )
```

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

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

I. Healthcare Provider Bills Amount Paid Amount Unpaid

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

II. Other Items of Compensable Damages

1.
2.
3.
4.
5.

____

Attorney for Plaintiff

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, [FN1] 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 debarring that party from rejecting the award, and costs and attorney fees incurred for the arbitration hearing and in the prosecution of the petition for sanctions, against that party.

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.

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.

Rule 94. Form of Oath, Award and Notice of Award

The oath, award of arbitrators, and notice of award shall be in substantially the following form:

In the Circuit Court of the __________ Judicial Circuit, __________ County, Illinois.

(Or, in the Circuit Court of Cook County, Illinois)

OATH

I do solemnly swear (or affirm) that I will support, obey, and defend the Constitution of the United States and the Constitution of the State of Illinois and that I will faithfully discharge the duties of my office.

____
Name of Arbitrator Date

AWARD OF ARBITRATORS

In the Circuit Court of the __________ Judicial Circuit, __________ County, Illinois.

(Or, in the Circuit Court of Cook County, Illinois)

```
A.B., C.D., etc.                )
(naming all plaintiffs),        )
A.B., C.D., etc.                )
(naming all plaintiffs),        )
          Plaintiffs            )
     v.                         )    No. _______________
H.J., K.L., etc.                )    Amount Claimed ____
(naming all defendants),        )
H.J., K.L., etc.                )    Amount Claimed ____
(naming all defendants),        )
          Defendants            )
```

[ ] All parties participated in good faith.
[ ] did NOT participate in good faith based upon the following findings.

Findings:

____

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

___________ Dissents as to the Award

Date of Award: ___________

NOTICE OF AWARD

In the Circuit Court of the ___________ Judicial Circuit, ___________ County, Illinois.

(Or, in the Circuit Court of Cook County, Illinois)

```
A.B., C.D., etc.                    )
(naming all plaintiffs),            )
A.B., C.D., etc.                    )
(naming all plaintiffs),            )
          Plaintiffs                )
     v.                             )    No. _______________
H.J., K.L., etc.                    )    Amount Claimed ____
(naming all defendants),            )
H.J., K.L., etc.                    )    Amount Claimed ____
(naming all defendants),            )
```

```
                Defendants               )
```

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

Dated this ___ day of __________, 20 ___.

____

Clerk of the Circuit Court

Rule 95. Form of Notice of Rejection of Award

The notice of rejection of the award shall be in substantially the following form:

In the Circuit Court of the ____________________ Judicial Circuit, ____________ County, Illinois.

(Or, in the Circuit Court of Cook County, Illinois.)

```
A.B., C.D. etc.            )
(naming all plaintiffs),   )
Plaintiffs                 )
          v.               )  No. _______________
H.J., K.L. etc.            )  Amount Claimed ____
(naming all defendants),   )
Defendants                 )
```

NOTICE OF REJECTION OF AWARD

To the Clerk of the Circuit Court:

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

```
________________________________________
By:  ___________________________________
     (Certificate of Notice of Attorney)
```

APPENDIX B

CIRCUIT COURT RULES FOR MANDATORY ARBITRATION FOR MADISON COUNTY

THIRD JUDICIAL CIRCUIT RULES GOVERNING
COURT–ANNEXED MANDATORY ARBITRATION
For Madison County

The Court-Annexed Mandatory Arbitration Program of the Third Judicial Circuit is governed by Illinois Supreme Court Rules 86 through 95 for the Conduct of Mandatory Arbitration Proceedings as authorized by 735 ILCS 5/2-1001A *et.seq*. The following assignments and rules are adopted pursuant to Supreme Court Rule 86(c) subject to approval of the Illinois Supreme Court to become effective on January 1, 2007. Because arbitration proceedings are governed by both Supreme Court and local court rules, reference is made in each Local Rule to the Supreme Court Rule controlling the subject.

A. Supervising Judge for Arbitration.

The Chief Judge shall appoint 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.

RULE 1. ACTIONS SUBJECT TO COURT–ANNEXED MANDATORY ARBITRATION (S.CT.RULE 86)

(a) Court-annexed mandatory arbitration proceedings are undertaken and conducted in the Madison County, Third Judicial Circuit, pursuant to approval of the Supreme Court of Illinois. 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.

(b) 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 Third 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 Manual on Record Keeping.

(c) 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.

(d) Small claims cases exclusively for money in which either party makes a jury demand shall be assigned to the mandatory arbitration docket at the time a jury demand is filed.

(e) 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 60 days nor more than 180 days from the date of assignment to arbitration, as determined by the Court considering the status of the case, the period of time necessary to afford the parties adequate preparation time and status of the arbitration calendar.

RULE 2. APPOINTMENT, QUALIFICATION AND COMPENSATION OF ARBITRATORS (S.CT.RULE 87)

(a) Illinois-licensed Illinois attorneys in good standing who have been in practice at least five (5) years or 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. Applicants shall be certified as arbitrators 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 Madison County.

(b) The Administrative Assistant for Arbitration shall maintain an alphabetical list of approved arbitrators to be called for service on a random basis. The Administrator shall also maintain a list of those persons who have indicated on their application a willingness to serve on an emergency basis. Such individuals, when appointed, shall also be assigned on a rotating basis. The lists shall designate the arbitrators who are approved to serve as chairpersons.

(c) Three arbitrators appointed pursuant to (a) and (b) shall constitute a panel. The panel shall be chaired by a member of the bar who has engaged in trial practice for at least three years or be a retired judge. Three arbitrators shall constitute a panel unless the parties stipulate to a lesser number.

(d) The Administrative Assistant for Arbitration shall notify the arbitrators of the hearing date at least 60 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.

(e) 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.

(f) 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.

(g) Each arbitrator shall take an oath of office in conformity with the form provided in Supreme Court

Rule 94 in advance of the hearing.

RULE 3. SCHEDULING OF HEARINGS (S.CT.RULE 88)

(a) 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 21 days or more than 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.''

(b) 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 180 days from the filing date or the earliest available hearing date thereafter. If one or more defendants have not been served within 90 days from the date of filing, the Court may in its discretion dismiss the case as to unserved defendants for lack of diligence.

(c) Any party to a case may request advancement or postponement of a scheduled arbitration hearing date by filing a 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.

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

(e) 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.

(f) 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 14 days in advance of the hearing date in the event additional hearing time is anticipated and the length of such additional time.

RULE 4. DISCOVERY (S.CT.RULE 89)

(a) Discovery shall proceed as in all other civil actions and shall be completed not less than thirty (30) days prior to the arbitration hearing.

(b) All parties shall comply completely with the provisions of Supreme Court Rule 222. However, pursuant to Rule 89, time limits may be shortened by local rule or by order of the court.

(c) No discovery shall be permitted after the arbitration hearing, except upon leave of Court and for good cause shown.

RULE 5. CONDUCT OF THE HEARINGS (S.CT.RULE 90)

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

(b) 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.

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

(d) Witness fees and costs shall be in the same amount and shall be paid by the same party or parties, as provided for in trials in the Circuit Court of this circuit.

(e) 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.

(f) 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 or which have been admitted pursuant to a request to admit. 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.

(g) Parties are encouraged to utilize the procedure set out in Supreme Court Rule 90, including the summary cover sheet for Supreme Court Rule 90(c) for admission of documents into evidence without foundation or other proof and Rule 90(d) providing for written notice of any expert witness testimony or written opinion.

(h) Any party requiring the services of a language interpreter during the hearing shall be responsible for providing same. Any party requiring the services of an interpreter or other assistance for the deaf or hearing impaired shall notify the Administrative Assistant for Arbitration of said need not less than seven (7) days prior to the hearing.

(i) 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 court ordered motion date for entry of judgment. All exhibits not retrieved shall be destroyed.

RULE 6. DEFAULT OF A PARTY (S.CT.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, attorneys' fees, witness fees, stenographic fees and any other out-of-pocket expenses incurred by any party or witness.

RULE 7. AWARD AND JUDGMENT ON AWARD (S.CT.RULE 92)

(a) 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.

(b) In the event the panel of arbitrators unanimously finds that a party has violated the good-faith provision 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.

(c) The Administrative Assistant for Arbitration shall provide the form called for by these rules. (S. Ct. Rule 94.)

RULE 8. REJECTION OF AWARD (S.CT.RULE 93)

(a) Rejection of the award shall be in compliance with Supreme Court Rule 93.

(b) The Administrative Assistant for Arbitration shall provide the form of Notice of Rejection of Award. (S. Ct. Rule 95)

RULE 9. DUTIES OF SUPERVISING JUDGE FOR ARBITRATION

It shall be the duty of the supervising judge for arbitration for each county to:

(a) Hear motions to interpret all Rules.
(b) Hear motions to advance or postpone hearing.
(c) Hear motions to consolidate cases.
(d) Hear motions to vacate judgments.
(e) Hear motions to enter judgment.
(f) Hear all post-judgment enforcement proceedings.

The Circuit Judges of the Third Judicial Circuit hereby adopt the Mandatory Arbitration Rules on this 26th day of July, 2006.

_______Ann Callis_________
Chief Judge

___Daniel Stack______	____Lola Maddox______
___Charles Romani___	____A. A. Matoesian____
___Edward C. Ferguson__	____Nicholas G. Byron__
___Don W. Weber_______	____John Knight _______