

## **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 small claims jury proceedings and all civil cases seeking money damages exclusively greater than \$10,000 and less than the jurisdictional limit approved for that particular circuit by the Illinois Supreme Court. In DuPage County the limit is currently \$50,000. Cases may also be transferred to the arbitration calendar from other court calls or 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 the panel of arbitrators who then deliberate the issues and make an award on the same day as 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, the filing of the proper form with the Clerk of the Circuit Court, 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 a speedier resolution of small civil lawsuits than had previously been possible. The parties accept the vast majority of the arbitration awards. In addition, the members of the DuPage County bar, as arbitrators, have played a major role in helping to reduce the length and cost of litigation in this circuit.

**TABLE OF CONTENTS**

	Page
I. ARBITRATION FACILITIES.....	1
II. ARBITRATION CASES.....	1
III. ARBITRATORS.....	4
IV. MOTIONS.....	7
V. DISCOVERY.....	8
VI. THE ARBITRATION HEARING.....	11
VII. THE ARBITRATION AWARD AND THE JUDGMENT ON THE AWARD.....	18
VIII. REJECTION OF THE AWARD AND TRIAL DE NOVO.....	22
MANDATORY ARBITRATION SUPREME COURT RULES 86 – 95.....	25
SUPREME COURT RULE 218 PRETRIAL PROCEDURE.....	39
SUPREME COURT RULE 222 LIMITED AND SIMPLIFIED DISCOVERY IN CERTAIN CASES.....	42
SUPREME COURT RULE 281 DEFINITION OF SMALL CLAIM.....	49
RULES OF THE 18 <sup>TH</sup> JUDICIAL CIRCUIT COURT ARTICLE 13: MANDATORY ARBITRATION.....	51
ARTICLE 16: SMALL CLAIMS.....	63
ARTICLE 8: 8.03 INITIAL CASE MANAGEMENT CONFERENCE EXEMPTION.....	64

**I. ARBITRATION FACILITIES**

**1. Where is the Alternative Dispute Resolution (ADR) Center?**

The DuPage County **ADR Center** is located on the second floor of the **DuPage County Bar Center, 126 South County Farm Road, 2A, Wheaton, Illinois 60187.**

**2. If I have any questions regarding the process, who do I call?**

ADR Center, Tel. **(630) 653-5803** FAX **(630) 462-3726**  
TDD Illinois Relay Service **1-800-526-0844.**

**II. ARBITRATION CASES**

**1. What type of cases will be assigned to arbitration?**

In the 18<sup>th</sup> Judicial Circuit, all small claims jury proceedings shall be subject to mandatory arbitration and any civil action if each claim therein is exclusively for money damages in an amount exceeding \$10,000, but not exceeding \$50,000, exclusive of costs and interest. Attorney's fees are considered a claim for relief and are included in the \$50,000 limit. [Illinois Supreme Court Rule 86(b)] Cases may also be transferred to the arbitration calendar from other calls or divisions upon the motion of the court or any party.

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

Yes. All eligible actions are subject to mandatory arbitration before a panel of three attorney/arbitrators. Any party attending the arbitration hearing who is not debarred may, within thirty (30) days and upon payment of the proper fee to the Clerk of the Court and notice to all other parties, file a rejection of the award and proceed to trial before a judge or jury (depending on whether a jury demand was properly filed).

**3. What happens in cases where the claim is 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 to 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 authorized by the Supreme Court for that circuit (currently \$50,000) irrespective of defenses.

**4. 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. 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 court rules.

**5. If a case was filed as an arbitration case, but should be a law division case, how do I transfer the case to the "L" calendar?**

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

**6. What if a counter-claim is filed in a small claims 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. However, all small claims jury proceedings are subject to mandatory arbitration.

**7. What is done with the lawsuit when the defendant has filed bankruptcy?**

In a case where a defendant has filed bankruptcy, any party may move to have the matter set on the arbitration judge's bankruptcy stay calendar. Upon the granting of the motion, the case will be set for review in six months time.

**8. For what types of cases will arbitration not be available?**

Generally, it will not be available for the following:

- |                             |                   |
|-----------------------------|-------------------|
| Forcible Entry and Detainer | Replevin          |
| Confession of Judgment      | Trover            |
| Detinue                     | Registration of   |
| Ejectment                   | Foreign Judgments |

However, if damages remain the only issue, the matter *may* be sent to the arbitration calendar.

### III. ARBITRATORS

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

Local Rule 13.02 (a) provides that any licensed attorney shall be eligible for appointment as an arbitrator by filing an application with the arbitration administrator certifying that he/she is: in good standing with the Illinois Attorney Registration and Discipline Commission (ARDC); has completed a court-approved training seminar on arbitration practices and procedures; has been 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 located within DuPage County.

In order to be considered for the position of chair, an attorney must fill out an additional application indicating a minimum of five (5) years recent trial experience or having performed twenty (20) or more arbitration hearings. The application will be reviewed and approved by the supervising judge.

#### 2. 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 center each hearing day, 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.

#### 3. Do I have to pay the arbitrators?

No. The State of Illinois pays the arbitrators from the Mandatory Arbitration Fund. This fund was created by the legislature and allows for an \$8 fee (\$10 in Cook County) to be collected on every appearance filed in a civil action within the Circuit.

#### 4. How are the arbitrators chosen?

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

#### 5. 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.

#### 6. Can 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. [Illinois Supreme Court Rule 87 (c)] There is no provision made in the 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 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.

**7. 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/her place, the arbitration hearing can continue before 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.

**8. 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.

**IV. MOTIONS**

**1. What days and times are arbitration motions heard?**

Arbitration motions are heard before the arbitration judges in the DuPage County Judicial Center, 505 North County Farm Road, Wheaton, Illinois 60187. Please refer to the each arbitration judge’s schedules for the specific days and times for motions.

**2. Who is the Arbitration Judge?**

The supervising judge of arbitration and the judge assigned to all small claims jury proceedings hear the majority of the arbitration cases.

**3. If a case was filed as a law division case, but is really an arbitration matter, how do I put it on the arbitration-hearing schedule?**

If a case is in the law division, it may be transferred to the arbitration calendar by making the appropriate motion before the law division judge to whom the case was assigned.

**4. If a case was filed as an arbitration case, but is really a law division case, how do I have it transferred to the law division?**

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

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

Yes. Local Rule 13.03 (f) provides that counsel *shall give immediate* notification to the arbitration administrator by phone, fax or personal service, or if time permits, mail of any disposition of a case which had been assigned a hearing date. Sanctions may be imposed for failure to do so.

**6. Can arbitrators hear motions?**

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

Any other motions pertaining to the case must be brought at the appropriate time and in the appropriate manner before the arbitration judge. Arbitrators **MAY NOT** hear and determine motions for continuance of the hearing.

**V. DISCOVERY**

**1. Are there special rules governing discovery in arbitration?**

Yes. Arbitration cases are subject to the disclosure provisions of Supreme Court Rule 222. All litigants are well advised to read and comply with this Rule. However, the time lines in Rule 222 are not consistent with those in Rule 89 and the goal of arbitration is to move the cases

more quickly through the system. Supreme Court Rule 89 has been amended as follows: "such discovery shall be conducted in accordance with Rule 222, except that the time lines may be shortened by local rule". Litigants are also advised to read and comply with Circuit rule 13.04(b). See Appendix.

No discovery is to be conducted after the hearing except by leave of court and for good cause shown.

**2. Do I have to bring all my witnesses or can I present certain types of evidence without the maker being present?**

It is up to each litigant to present the evidence. Supreme Court Rule 90 (c) provides that items such as hospital reports, doctor's reports, drug bills and other medical bills as well as bills for property damage, estimates of repair, earnings reports, expert opinions [now opinion witnesses pursuant to Supreme Court Rule 213 (g)], and depositions of witnesses are admissible without the maker being present. *In order to take advantage of this rule, a written notice of the intent to offer those 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.*

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

No. Any documents that are filed pursuant to Rule 90(c) are *presumptively* admitted; i.e., no further foundation needs to be laid for their admittance. However, the

documents are still subject to objections according to the usual rules of evidence.

**4. Can I call the maker of a document my opponent seeks to introduce as a witness?**

Yes, Supreme Court Rule 90(e) provides that any other party may subpoena the author or maker of a document admissible under Rule 90(c), at the expense of the party issuing the subpoena and examine the author or maker as if under cross-examination. The provisions of the Code of Civil Procedure relative to subpoenas are applicable.

**5. Can I subpoena witnesses to appear just as I could in a trial?**

Yes. Subpoena practice in arbitration cases is conducted in the same fashion as that followed in a non-arbitration case. A subpoena to testify at an arbitration hearing is in essentially the same form provided for in the Code of Civil Procedure. It is the duty of the 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. Arbitration subpoena forms are available at the clerk's office.

**6. 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 same party or parties as established by the Code of Civil Procedure and the Circuit Rules.

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

In most instances, no. Supreme Court Rule 89 provides that discovery may be conducted in accordance with established 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.

**8. Are there any other rules pertinent to the Arbitration process?**

Yes. Arbitration cases may be subject to the Initial Case Management Conference required by Supreme Court Rule 218(a). However, 18<sup>th</sup> Judicial Circuit Rule 8.03 exempts non-jury arbitration cases from the effects of Supreme Court Rule 218(a). Pursuant to 18<sup>th</sup> Judicial Circuit Rule 8.03, in arbitration jury cases, the Case Management Conference need not be held unless and until a rejection is filed.

**VI. THE ARBITRATION HEARING**

**1. When will a hearing date be assigned?**

Cases will be assigned to the arbitration calendar by the arbitration judge when all parties to the action have appeared before the court.

**2. Who issues the summons?**

The Office of the Circuit Clerk of the 18<sup>th</sup> Judicial Circuit Court issues the arbitration summons as well as any necessary aliases.

**3. How long should a hearing last?**

It is anticipated that the majority of cases heard by an arbitration panel will require two (2) hours or less for the presentation of the evidence. Pursuant to Circuit Rule 13.03(g), any party seeking a hearing in excess of two hours must obtain an Order of Court and tender that Order to the Arbitration Administrator at least ten (10) days prior to the arbitration. The arbitration judge will set the case for a 9:00 a.m. hearing and the arbitration administrator will make the appropriate arrangements for the longer hearing.

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

No. However, the ADR Center contacts the plaintiff, as the master of the case, a week before the hearing to make sure the case is still proceeding in order to have a panel available to hear the case.

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

The attorneys for each party, or the party itself if not represented by an attorney, are required to sign in when they enter the ADR Center. The arbitration administrator calls the cases at their assigned time.

**6. What should the parties do if they believe that the hearing will take more than two hours?**

Circuit Rule 13.03(g) provides that any party seeking a hearing in excess of two (2) hours must obtain an Order of Court and tender that Order to the arbitration administrator at least ten (10) days prior to the arbitration. The arbitration judge will set the case for a 9:00 a.m. hearing and the arbitration administrator will make the appropriate arrangements for the longer hearing. All cases requiring more than two (2) hours *must* start at 9:00 a.m.

**7. What if I want the date extended? Do I need to seek the arbitration judge's approval? If both parties agree, do they need to come to court to change the date?**

The arbitration judge may continue a hearing date for good cause shown. Motions to continue should be set on the motion call before the arbitration judge. Notice of such a motion **MUST** be given to the arbitration administrator. [Circuit Rule 13.03(d)] If the motion is granted, the arbitration administrator **MUST** be notified of the new date and time for a case. The arbitrators **CANNOT** for any reason continue a case. Even if both parties agree to the continuance, the arbitration judge must sign the order granting the continuance and assigning the new date.

**8. What should I do if I am going to be late on the day of the hearing? Who do I call?**

The arbitration administrator should be notified immediately if a party will be late on the day of the hearing. Time may be extended for good cause shown. If no notice is given, the hearing will proceed in accordance with the rules.

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

No. If the case starts after the scheduled time due to the fault of one of the parties, that party will be penalized by having that amount of time deducted from his or her presentation. If the hearing starts after the scheduled time due to the fault of the ADR Center or one of the arbitrators, the parties will not be penalized.

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

If a party fails to appear at the hearing, 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 Supreme Court Rule 91(a), the non-appearing party waives the right to reject the award and consents to entry of a judgment on the award.

**11. Is there a place where the attorneys can confer with their clients before the hearing?**

Yes. The ADR Center has one conference room for use by attorneys and their clients. Also, when available, any of the six hearing rooms may be used for conference rooms.

**12. What are the options if one party mis-diaries the hearing date or time or appears at the wrong location and does not appear at the hearing as scheduled by the court?**

See answer to 10 above. The judgment entered on the *ex-parte* award may be vacated. See Supreme Court Rule 91(a). Pursuant to the Rule, costs and fees may be assessed against the party that did not appear. The costs may include, but are not limited to payments of filing fees and service of summons fees, attorney's fees, witnesses' fees, stenographic fees, and any other out-of-pocket expenses incurred by any party or witness.

**13. What happens if a party does not comply with a Rule 237 subpoena?**

Pursuant to Supreme Court Rule 90(g), the provisions of Rule 237, and thus the sanctions provided in Rule 219, are equally applicable to arbitration hearings. The arbitrators are instructed to note the failure to comply with Rule 237 on the award. Rule 90(g) further provides that sanctions for failure to comply with a Rule 237 request may include an order debarring that party from rejecting the award.

**14. 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 any relevant pleading, such as an answer, the arbitrators may determine that all allegations in the complaint are admitted and proceed on the issue of damages only.

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

The case will be dismissed for want of prosecution by the arbitration judge.

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

Supreme Court Rule 91(b) provides that all parties to an arbitration hearing must participate in good faith and in a meaningful manner. If the panel unanimously finds that a party has failed to participate in the hearing in good faith and in a meaningful manner, they may so state on the appropriate Rule 91(b) form or on the award along with the factual basis therefor. Any other party may bring a motion for sanctions before the arbitration judge. Sanctions against the non-good faith participant may include those as provided in Rule 219(c), an order debaring that party from rejecting the award, and costs and attorney's fees incurred for the arbitration hearing and in the prosecution of the petition for sanctions.

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

As a courtesy to the panel, you should make three (3) copies of your Rule 90(c) documents and any other evidence which you plan to present to the panel. The ADR Center is not responsible for documents left with it; and therefore, litigants are encouraged not to leave any original documents at the ADR Center.

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

The arbitration administrator stores them on the premises. According to Circuit Rule 13.13, it is the duty of the attorneys or parties to advise the panel and the arbitration administrator that they are leaving exhibits.

Such exhibits must be retrieved from the ADR Center by the attorneys or parties within seven (7) days after the **entry of judgment**. All exhibits not retrieved shall be destroyed. It should be noted that the ADR Center is not responsible for the documents. Litigants are **STRONGLY URGED** to make copies of original documents and leave the copies, **NOT THE ORIGINALS**, with the panel while they make their deliberations.

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

No. 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 and to decide the law and facts of the case. The chair of the panel shall make rulings on objections to evidence or on other issues that arise during the hearing. The remedy of rejection of the award and the right to proceed to trial is determined to be the appropriate remedy for 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.

**20. Will a court reporter be present to make a transcript of the hearing?**

A court reporter is not provided. Circuit Court Rule 13.05(b) provides that any party at that party's expense may make a stenographic record of the hearing. If a party has a stenographic record transcribed, notice thereof shall be given to all other parties and a copy shall be furnished to any party upon payment of a proportionate share of the total cost of making the stenographic record. Testimony from the arbitration hearing has limited use in any later trial of the matter.

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

**1. Will the determination of the award be made the same day as the hearing?**

Yes. The panel will make an award promptly upon termination of the hearing. The award shall dispose of all claims for relief, including attorney's fees and interest. The award may not exceed the sum authorized for that particular circuit. DuPage County's authorized sum is \$50,000, which includes any claim for attorney's fees and is exclusive of costs and interest. The arbitrators or the majority of them shall sign the award. A dissenting vote without further comment may be noted on the award.

Usually, the award is filed the day of the hearing with the Clerk of the Court. The Clerk of the Court is responsible for serving notice of the award and the entry of the same on the record to all parties, which have filed an appearance in the matter.

**2. Will the panelists announce the award to the parties on the day of the hearing?**

The panel does not announce the award to the parties. Litigants may leave a fax number, and the ADR Center will fax the award on the day of the hearing. It is the duty of the Clerk of the Court to mail a copy of the award to all litigants who have filed an appearance.

**3. Is the award of the arbitrators binding?**

No. Pursuant to Supreme Court Rule 93, any party who was present at the hearing either in person or through counsel, except one that has been debarred from rejecting the award, may within thirty (30) days of the filing of the award, and upon the payment of the proper fee and notice to all other parties, file a rejection of the award with the Clerk of the Court.

**4. When does the 30-day period to reject the award begin to run?**

The 30-day period begins to run from the date the award is filed with the Clerk of the Court. As the status hearing is typically 35-40 days after the hearing, *a rejection of the award CANNOT be filed at the status hearing.*

**5. What if I believe there is a mistake in the award?**

Supreme Court Rule 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 by one of the parties within the 30-day rejection period, may correct the same. If such a motion is

made, it will stay the proceedings, including the running of the 30-day rejection period, until the court decides the matter.

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

The arbitration award is NOT final. In order to be so, the arbitration judge must enter a judgment on the award. Pursuant to Supreme Court Rule 92(c), if no rejection is filed within the 30-day period after the hearing, any party may thereafter move the court to enter a judgment on the award. Typically, this is done at the status hearing.

If the hearing was *ex-parte*, the party appearing may move at any time after the award has been filed with the Clerk of the Court for an entry of judgment on the award. [See Supreme Court Rule 91(a)]

**7. Can the parties enter a stipulation for an amount different from the award after the award is entered?**

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

**8. What happens if neither party asks for judgment on the award to be entered?**

At the time the arbitration judge sets the case for hearing the arbitration judge also sets a status date approximately 35-40 days after the arbitration hearing. The parties receive a copy of the court order setting the arbitration hearing and

status date. Typically, one of the parties will move for judgment on the award at the status date. The status date is mandatory for all parties. If neither party attends the status date, the arbitration judge may dismiss the case for want of prosecution.

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

Yes. The parties may voluntarily dispose of the matter at any time prior to the entry of judgment. However, recent case law indicates that a plaintiff may not circumvent the effects of Supreme Court Rule 91 by not appearing at a hearing and subsequently moving to voluntarily non-suit the matter. A stipulation to dismiss may even be presented at the status hearing.

**10. What if the parties settle the matter within 24 hours of the hearing?**

If the parties settle the matter within twenty-four (24) hours of the hearing, the parties will be required to appear before the arbitration judge at the scheduled motion call on or before the arbitration hearing date to submit the appropriate stipulations and/or orders disposing of the case. The parties are required to notify the ADR Center immediately of any settlement or disposition of a case scheduled for hearing. Copies of any dispositive orders may be mailed, delivered or faxed to the ADR Center. Failure to notify the ADR Center on or before the hearing date will result in the case being dismissed for want of prosecution (DWP).

## VIII. REJECTION OF THE AWARD AND TRIAL DE NOVO

### 1. Is there a cost to reject the award?

Yes. Pursuant to Supreme court Rule 93(a), WITHIN 30 DAYS AFTER the filing of the award with the Clerk of the Court, and upon payment of the sum of \$200 to the Clerk of the Court, if the award was \$30,000 or less or \$500 if the award was greater than \$30,000, any party *who was present* at the arbitration hearing, either in person or by counsel, and who has not been debarred from rejecting the award, may file with the Clerk of the Court 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 such notice on all other parties.

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

No. Supreme Court Rule 93(b) prohibits an arbitrator from being called as a witness at any subsequent trial of the matter.

### 3. Can I advise the trial judge of the award?

No. Supreme Court Rule 93 prohibits any reference in 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.

### 4. Who may reject the arbitration award?

Supreme Court Rule 93(a) provides that any party who was present at the arbitration hearing, either in person or by counsel, may, upon payment of the appropriate rejection fee, 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 the rejection of an award.

**MANDATORY ARBITRATION  
SUPREME COURT RULES**

**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.

**SUPREME COURT RULES**

MANDATORY ARBITRATION RULES 86 – 95  
RULE 218 PRETRIAL PROCEDURE  
RULE 222 LIMITED AND SIMPLIFIED  
DISCOVERY IN CERTAIN CASES  
RULE 281 DEFINITION OF SMALL CLAIM

(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 {735 ILCS 5/1-101 et seq.} 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 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 re-listed 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 the 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 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 735 ILCS 5/1-109 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.

**(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, 735 ILCS 5/2-1101, 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 the parties or agents, 735 ILCS 5/2-1102, shall be applicable to arbitration hearings as upon the trial of the 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.  
 )  
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**

<b>Provider Bills</b>	<b>Amount Paid</b>	<b>Amount Unpaid</b>
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 A 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 the 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, 735 ILCS 5/2-1301 or 5/2-1401, 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 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 the 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 EIGHTEENTH JUDICIAL CIRCUIT**

**DU PAGE 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

**IN THE CIRCUIT COURT OF THE EIGHTEENTH  
JUDICIAL CIRCUIT**

**DU PAGE COUNTY, ILLINOIS**

A. B., C. D. etc. )  
 (naming all plaintiffs), )  
 )  
 Plaintiffs, ) No.  
 v. )  
 H. J., K. L. etc. )  
 (naming all defendants), ) Amount Claimed  
 )  
 Defendants. ) **AWARD OF ARBITRATORS**

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: \_\_\_\_\_

**IN ADDITION TO THE ABOVE AWARD,** Costs in the amount of \$ \_\_\_\_\_ are awarded to \_\_\_\_\_ itemized as follows: \_\_\_\_\_.

Chair/Arbitrator (Print Name)	Signature	ARDC No.
Arbitrator (Print Name)	Signature	ARDC No.
Arbitrator (Print Name)	Signature	ARDC No.

**DISSENT As To The Award:**

Arbitrator (Print Name)	Signature	ARDC No.
-------------------------	-----------	----------

**Dated:** \_\_\_\_\_

**IN THE CIRCUIT COURT OF THE EIGHTEENTH  
JUDICIAL CIRCUIT**

**DU PAGE COUNTY, ILLINOIS**

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

**NOTICE OF AWARD**

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 EIGHTEENTH JUDICIAL CIRCUIT  
DU PAGE, COUNTY, ILLINOIS**

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

**RULE 218. PRETRIAL PROCEDURE**

(a) *Initial Case Management Conference.* Except as provided by local circuit court rule, which on petition of the chief judge of the circuit has been approved by the Supreme Court, the court shall hold a case management conference within 35 days after the parties are at issue and in no event more than 182 days following the filing of the complaint. At the conference counsel familiar with the case and authorized to act shall appear and the following shall be considered:

- (1) the nature, issues, and complexity of the case;
- (2) the simplification of the issues;
- (3) amendments to the pleadings;
- (4) the possibility of obtaining admissions of fact and of documents which will avoid unnecessary proof;
- (5) limitations on discovery including:
  - (i) the number and duration of depositions which can be taken;
  - (ii) the area of expertise and the number of expert witness who can be called; and

- (iii) deadlines for the disclosure of witnesses and the completion of written discovery and depositions;
- (6) the possibility of settlement and scheduling of a settlement conference;
- (7) the advisability of alternative dispute resolution;
- (8) the date on which the case should be ready for trial;
- (9) the advisability of holding subsequent case management conferences; and
- (10) any other matters which may aid in the disposition of the action.

**(b) *Subsequent Case Management Conferences.***

At the initial and any subsequent case management conference, the court shall set a date for a subsequent management conference or a trial date.

**(c) *Order.*** At the case management conference, the court shall make an order which recites any action taken by the court, the agreements made by the parties as to any of the matters considered, and which specifies as the issues for trial those not disposed of at the conference. The order controls the subsequent course of the action unless modified.

All dates set for the disclosure of witnesses, including rebuttal witnesses, and the completion of discovery shall be chosen to ensure that discovery will be completed not later than 60 days before the date on which the trial court reasonably anticipates the trial will commence unless otherwise agreed by the parties. This rule is to be liberally construed to do substantial justice between and among the parties.

**(d) *Calendar.*** The court shall establish a pretrial calendar on which actions shall be placed for consideration, as above provided, either by the court on its own motion or on motion of any party.

**RULE 222. LIMITED AND SIMPLIFIED DISCOVERY  
IN CERTAIN CASES**

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

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

(c) **Time for Disclosure; Continuing Duty.** The parties shall make the initial disclosure required by this rule as fully as then possible in accordance with the time lines set by local rule, provided however that if no local rule has been established pursuant to Rule 89 then within 120 days after the filing of a responsive pleading to the complaint, counter-

complaint, third-party complaint, etc., unless the parties otherwise agree, or for good cause shown, if the court shortens or extends the time. Upon service of a disclosure, a notice of disclosure shall be promptly filed with the court. The duty to provide disclosures as delineated in this rule and its subsections shall be a continuing duty, and each party shall seasonably supplement or amend disclosures whenever new or different information or documents become known to the disclosing party.

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

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

- (1) The factual basis of the claim or defense. In the event of multiple claims or defenses, the factual basis for each claim or defense.
- (2) The legal theory upon which each claim or defense is based including, where necessary for a reasonable understanding of the claim or defense, citations of pertinent legal or case authorities.

- (3) The names, addresses, and telephone numbers of any witnesses whom the disclosing party expects to call at trial with a designation of the subject matter about which each witness might be called to testify.
- (4) The names, addresses, and telephone numbers of all persons whom the party believes may have knowledge or information relevant to the events, transactions, or occurrences that gave rise to the action, and the nature of the knowledge or information each such individual is believed to possess.
- (5) The names, addresses, and telephone numbers of all persons who have given statements, whether written or recorded, signed or unsigned, and the custodian of the copies of those statements.
- (6) The identity and address of each person whom the disclosing party expects to call as an expert witness at trial, plus the information called for by Rule 213(f).
- (7) A computation and the measure of damages alleged by the disclosing party and the document or testimony on which such computation and measure are based and the names, addresses, and telephone numbers of all damage witnesses.

- (8) The existence, location, custodian, and general description of any tangible evidence or documents that the disclosing party plans to use at trial and relevant insurance agreements.
- (9) A list of the documents or, in the case of voluminous documentary information, a list of the categories of documents, known by a party to exist whether or not in the party's possession, custody or control and which that party believes may be relevant to the subject matter of the action, and those which appear reasonably calculated to lead to the discovery of admissible evidence, and the dates(s) [*sic*] upon which those documents will be made, or have been made, available for inspection and copying. Unless good cause is stated for not doing so, a copy of each document listed shall be served with the disclosure. If production is not made, the name and address of the custodian of the document shall be indicated. A party who produces documents for inspection shall produce them as they are kept in the usual course of business.

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

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

- (1) Each party may propound to any other party a total of 30 interrogatories and supplemental interrogatories in the aggregate, including subsections. Interrogatories may require the disclosure of facts upon which a party bases a claim or defense, the enumeration, with proper identification, of all persons having knowledge of relevant facts, and the identification of trial witnesses and trial exhibits.
- (2) ***Discovery Depositions.*** No discovery deposition shall exceed three hours, absent agreement among the parties. Except as otherwise ordered by court, the only individuals whose discovery depositions may be taken are the following:

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

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

- (3) **Evidence Depositions.** No evidence depositions shall be taken except pursuant to leave of court for good cause shown. Leave of court shall not be granted unless it is shown that a witness is expected to testify on matters material to the issues and it is unlikely that the witness will be available for trial, or other exceptional circumstances exist. Motions requesting the taking of evidence depositions shall be supported by affidavit. Evidence depositions shall be taken to secure trial testimony, not as a substitute for discovery depositions.
- (4) Requests pursuant to Rule 214 and 215 are permitted, as are notices pursuant to Rule 237.
- (5) Requests pursuant to Rule 216 are permitted except that no request may be filed less than 60 days prior to the scheduled trial date or, if within said 60 days, only by order of court.

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

(h) **Claims of Privilege.** When information or documents are withheld from disclosure or discovery on a claim that they are privileged pursuant to a common law or

statutory privilege, any such claim shall be made expressly and shall be supported by a description of the nature of the documents, communications or things not produced or disclosed and the exact privilege which is being claimed.

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

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

## **RULE 281. DEFINITION OF SMALL CLAIM**

For the purpose of the application of Rules 281 through 288, a small claim is a civil action based on either tort of contract for money not in excess of \$10,000, exclusive of interest and costs, or for the collection of taxes not in excess of that amount.

The order entered December 6, 2005, amending Rule 281 and effective January 1, 2006, shall apply only to cases filed after such effective date.

**RULES OF THE 18<sup>TH</sup> JUDICIAL CIRCUIT COURT  
ARTICLE 13: MANDATORY ARBITRATION**

The mandatory arbitration program in the Circuit Court for the 18<sup>th</sup> Judicial Circuit, DuPage County, Illinois is governed by Supreme Court Rules 86-95 (not chaptered in ILCS) for the conduct of Mandatory Arbitration Proceedings. Pursuant to Supreme Court Rule 86 (c), the Circuit Judges of the 18<sup>th</sup> Judicial Circuit adopt the following Local Rules effective January 23, 1989. Arbitration proceedings and small claims jury proceedings shall be governed by Supreme Court Rules and Article 13. (Amended effective 1/23/06)

**RULES OF THE 18<sup>TH</sup> JUDICIAL  
CIRCUIT COURT**

ARTICLE 13: MANDATORY ARBITRATION  
ARTICLE 16: 16 SMALL CLAIMS  
ARTICLE 8: 8.03 INITIAL CASE MANAGEMENT  
CONFERENCE EXEMPTION

**13.01 CIVIL ACTIONS SUBJECT TO MANDATORY  
ARBITRATION** (*S. Ct. Rule 86*)

(a) Mandatory Arbitration proceedings are undertaken and conducted in the Circuit Court for the 18<sup>th</sup> Judicial Circuit, pursuant to Order of the Illinois Supreme Court of December 19, 1988 and written letter from the Illinois Supreme Court dated November 20, 1996.

(b) All civil actions will be subject to Mandatory Arbitration on all claims exclusive for money in an amount exceeding \$10,000 but not exceeding the monetary limit authorized by the Supreme Court for the 18<sup>th</sup> Judicial Circuit, exclusive of interest and costs. These civil actions shall be assigned to the Arbitration Calendar of the Circuit Court of the 18<sup>th</sup> Judicial Circuit at the time of initial case filing with the Clerk of the Circuit Court, DuPage County, Illinois. (Amended effective 1/23/06)

(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 the monetary limit authorized by the Supreme Court for the 18<sup>th</sup> Judicial Circuit but is not within the monetary limits of Small Claims Court, irrespective of defenses. However, all small claims jury proceedings are subject to Mandatory Arbitration pursuant to 16.04 of these Rules. (Amended effective 1/23/06)

(d) When a civil action not originally assigned to the Arbitration Calendar is subsequently assigned to the Arbitration Calendar, pursuant to Supreme Court Rule 86(d), the Supervising Judge or the judge to whom the case is assigned shall promptly assign an arbitration hearing date. Except by agreement of counsel for all parties, and subject to approval by the court, the arbitration hearing date shall be not less than sixty (60) days nor more than one hundred eighty (180) days from the date of the assignment to the Arbitration Calendar. An extension may be granted upon good cause shown.

**13.02 APPOINTMENT, QUALIFICATION AND  
COMPENSATION OF ARBITRATORS AND  
PROHIBITION FROM POST-HEARING  
CONTACT WITH ARBITRATORS (S. Ct. Rule 87)**

(a) Applicants shall be eligible for appointment as arbitrators by filing an application form with the Arbitration Administrator certifying that the applicant:

- (1) Has attended an approved mandatory arbitration training; and
- (2) Has read and is informed of the rules of the Supreme Court and the Act relating to mandatory arbitration; and
- (3) Is presently licensed to practice law in Illinois and is in good standing; and
- (4) Has engaged in the practice of law in Illinois for a minimum of one (1) year, or is a retired judge pursuant to Supreme Court Rule 87(b); and
- (5) Resides in, practices in or maintain offices in the 18<sup>th</sup> Judicial Circuit, DuPage County, IL.

(b) Those attorneys who certify that they have engaged in trial practice in Illinois for a minimum of five years, who are retired judges pursuant to Supreme Court Rule 87 (b), or have heard twenty arbitration cases may apply to serve as chairs. The Supervising Judge shall review applications.

(c) The Arbitration Administrator shall maintain a database of qualified arbitrators who shall be assigned to serve on a rotating basis. The Arbitration Administrator shall also maintain a list of those persons who have indicated on their applications a willingness to serve on an emergency basis. Emergency arbitrators shall also serve on a rotating basis.

(d) Each panel will consist of three arbitrators, one of whom is chair-qualified. In cases where the ad damnum is in excess of \$15,000 the Arbitration Administrator shall endeavor to provide two chair-qualified panelists. Where the ad damnum is in excess of \$30,000, the Arbitration Administrator shall endeavor to provide two chair-qualified panelists, one of which is chair-qualified in the area of that case designation. In certain circumstances the parties may stipulate using the prescribed form to a two-arbitrator panel. In no instance shall a hearing proceed with only one arbitrator.

(e) Only one member or associate of a firm, office, or association of attorneys shall be appointed to the panel. Upon assignment to a case, an arbitrator shall notify the Arbitration Administrator of any conflict and withdraw from the case if any grounds for disqualification appear to exist pursuant to the Illinois Code of Judicial Conduct.

(f) The Arbitration Administrator shall notify the arbitrators of the day they are scheduled to serve as a panelist at least sixty (60) days prior to the hearing date. Those arbitrators who habitually cancel their dates may be deleted from the program.

(g) The Supervising Judge and the Arbitration Administrator may from time to time review the eligibility of each attorney to serve as arbitrators.

(h) Each arbitrator shall take an oath of office in conformity with the form provided in Supreme Court Rule 94 in advance of the hearing.

(i) Upon completion of each day's arbitration

hearings, arbitrators shall file a voucher with the Arbitration Administrator for submission to the Administrative Office of the Illinois Courts for payment.

(j) An arbitrator may not be contacted, nor publicly comment, nor respond to questions regarding a particular arbitration case heard by that arbitrator during the pendency of that case.

### 13.02.1 DILIGENCE DATE

If service of process has not been had on a defendant, the court may set the case for a diligence date approximately six (6) months after the initial return date. The plaintiff must request the issuance of an alias summons and otherwise establish the exercise of diligence during the diligence period or the case may be dismissed pursuant to Supreme Court Rule 103(b). Except for good cause shown, no more than one diligence date will be given. Summons shall not issue for a return date beyond the diligence date set by a court. Any summons issued beyond that date without leave of court shall be considered a nullity.

In the event plaintiff's counsel does not appear on a return date of an unserved, summons issued with a future diligence date, the court shall take the matter off call. Plaintiff or plaintiff's counsel must appear on the return date of a served summons. Failure to do so may result in a dismissal for want of prosecution.

### 13.03 SCHEDULING OF HEARINGS (*S. Ct. Rule 88*)

(a) On the effective date of these Rules, and on or before the first day of each July thereafter, the Arbitration Administrator will provide the Clerk of the Circuit Court a schedule of available arbitration hearing dates for the next calendar.

(b) Upon the filing of a civil action subject to Article 13, the Clerk of the Circuit Court shall set a return date for the summons not less than twenty-one (21) days nor more than forty (40) days after filing, returnable before the Supervising Judge or the judge to whom the case is assigned. The summons shall require that the plaintiff or the plaintiff's attorney and all defendants or their attorneys shall appear at the time and place indicated. The complaint and all summonses shall state in upper case letters on the upper right-hand corner: "**THIS IS AN ARBITRATION CASE.**"

(c) The Court shall assign an arbitration hearing date on the earliest available date after all parties have been required to appear or answer in accordance with Supreme Court Rule 88.

(d) Any party to a case may request advancement or postponement of a scheduled arbitration hearing date by filing a written motion with the Clerk of the Circuit Court requesting the change. The notice of hearing and motion shall be served upon counsel for all other parties, upon *pro se* parties as provided by Supreme Court Rule and Rules of the Circuit Court of the 18<sup>th</sup> Judicial Circuit, and upon the Arbitration Administrator. Neither the Administrator, the Arbitration Staff, nor the arbitrators may grant a continuance even if by agreement.

The motion shall be set for hearing on the calendar of the Supervising Judge or the judge to whom the case is assigned or any other judge sitting in their place. The motion shall be verified, contain a concise statement of the reason for the change of hearing date, and be subject to Supreme Court Rule 137. The Supervising Judge or the judge to whom the case is assigned may grant such advancement or postponement upon good cause shown. If such advancement or postponement is granted, the party requesting the advancement or postponement shall immediately notify the Arbitration Administrator, by phone and fax, or personal service, or if time permits, mail of the new date and time.

(e) Consolidated cases shall be heard on the hearing date assigned to the latest case.

(f) Upon settlement of any case scheduled for an arbitration hearing, counsel for plaintiff shall immediately notify the Arbitration Administrator of such settlement by phone and fax, or personal service, or if time permits, mail.

(g) It is anticipated that the majority of cases to be heard by an arbitration panel will require a maximum of two hours for presentation and decision. Any party seeking a hearing in excess of two hours must obtain an Order of Court and tender that Order to the Arbitration Administrator at least ten (10) days prior to the arbitration.

**13.04 DISCOVERY** (*S. Ct. Rule 89*)

(a) Discovery shall proceed as in all other civil actions.

(b) All parties shall comply with the provisions of Supreme Court Rule 222. Plaintiff shall file an initial Rule 222 Disclosure Statement with the Clerk of the Court with the initial pleading. Thereafter, defendant or third party defendant, if applicable, shall file an initial Rule 222 Disclosure Statement with the Clerk of the Circuit Court not later than 28 days after their first court appearance or as otherwise ordered by the court. If a case is transferred to the Arbitration call by order of court, all parties shall comply with disclosure not later than 28 days after the date of transfer. Failure to serve the disclosure statement, as provided by rule, or as the court allows may result in the imposition of sanctions as prescribed in Supreme Court Rule 219(c) and Rule 222(g).

**13.05 CONDUCT OF THE HEARINGS** (*S. Ct. Rule 90*)

(a) A stenographic record of the hearing may be made by any party at that party's expense. If a party has a stenographic record transcribed, notice thereof shall be given to all other parties and a copy shall be furnished to any party upon payment of a proportionate share of the total cost of making the stenographic record.

(b) Statements of witnesses shall set forth the name, address and telephone number of witness.

(c) Costs shall be considered by the arbitration panel pursuant to law.

(d) Any party requiring the services of a language interpreter during the hearing shall be responsible for providing it. 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.

(e) Cases should be ready at the scheduled time. The Arbitration Administrator may extend the time for good cause shown. If no notice is given to the Arbitration Administrator, a party who does not answer ready within fifteen minutes of the time called will be found to be in default and the hearing will proceed *ex parte*. If a party calls the Arbitration Center and indicates he or she will be late, the case will be held for a reasonable time. Any time delay will be deducted from the presentation time of the party causing the delay.

**13.06 DEFAULT OF A PARTY** (*S. Ct. Rule 91*)

A defendant who fails to appear at the scheduled arbitration hearing may have an award entered against that defendant, upon which the Court may enter judgment. If a defendant appears and a plaintiff fails to appear, an award may be entered for the defendant and the court may enter judgment on the award.

Costs that may be assessed under Supreme Court Rule 91 if the judgment on the award is vacated or the complaint reinstated may include, but are not limited to, filing fees, attorney fees, witness fees, stenographic costs and any reasonable out-of-pocket expenses incurred by any party or witness for appearing at the arbitration hearing.

**13.07 AWARD AND JUDGMENT ON AWARD** (*S. Ct. Rule 92*)

The panel shall render its decision and enter an award on the same day of the hearing. The Chair shall present the award to the Arbitration Administrator 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.

**13.08 REJECTION OF AWARD** (*S. Ct. Rule 93 and Letter from the Illinois Supreme Court dated November 20, 1996*)

Rejection of the award of the arbitrators shall be in strict compliance with Supreme Court Rule 93.

(a) In all cases where the arbitration award exceeds \$30,000 the rejection fee shall be \$500. The arbitration award shall be marked in such a manner as to make this clear to all attorneys and litigants.

(b) An arbitrator may not be contacted, nor publicly comment, nor respond to questions regarding a particular arbitration case heard by that arbitrator during the pendency of that case.

**13.09 FORM OF OATH, AWARD AND NOTICE OF ENTRY OF AWARD** (*S. Ct. Rule 94*)

The Clerk of the Court and the Arbitration Administrator or Assistant Administrator of the ADR Center shall provide the forms called for in the rules in Article 13.

**13.10 FORM OF NOTICE OF REJECTION OF AWARD** (*S. Ct. Rule 95*)

(RESERVED)

**13.11 ADMINISTRATION OF MANDATORY ARBITRATION**

(a) The Chief Judge of the 18<sup>th</sup> Judicial Circuit shall appoint one or more judges from the 18<sup>th</sup> Judicial Circuit to act as Supervising Judge for Arbitration, who shall serve at the pleasure of the Chief Judge.

(b) The Chief Judge of the 18<sup>th</sup> Judicial Circuit shall designate an Arbitration Center for arbitration hearings.

**13.12 DUTIES OF SUPERVISING JUDGE FOR ARBITRATION**

(a) Supervisory authority over questions arising in an arbitration proceeding, including the applicability of rules under Article 13.

(b) Act as liaison between the Circuit Court and the Administrative Office of Illinois Courts.

(c) Review applications for appointment or re-certification as an arbitrator or chair arbitrator, complaints about an arbitrator or the arbitration process, and determine the initial and continued eligibility of arbitrators.

(d) Promote the dissemination of information about the arbitration process, the results of arbitration, developing case law, and new practices and procedures in the area of Arbitration as well as to provide for the continuing education of the arbitrators and the bar.

(e) Periodically meet with the representatives of the DuPage Bar Association to discuss recommendations regarding the improvement of the Arbitration process.

### **13.13 DESTRUCTION OF ARBITRATION HEARING EXHIBITS**

Exhibits admitted into evidence may be retained by the panel until the entry of the award. It is the duty of the attorneys or parties to complete forms informing the Arbitration Administrator that they are leaving such exhibits. Exhibits must be retrieved by the attorneys or parties from the Arbitration Administrator within seven (7) days after the entry of judgment. All exhibits not retrieved shall be destroyed.

## **ARTICLE 16: SMALL CLAIMS**

### **16.01 FORM OF SUMMONS AND COMPLAINT**

(a) An approved summons form provided by the Clerk of the Court, substantially in the form set forth in Supreme Court Rule 101(b), shall be served upon each defendant together with a copy of the complaint.

(b) The form of complaint to be used in small claims actions shall provide for a statement of claim setting forth the elements provided in Supreme Court Rule 282 on approved forms provided by the Clerk of the Court.

### **16.02 (RESERVED)**

### **16.03 RETURN DAY PROCEDURES**

(a) *Failure of Defendant to Appear:* If the defendant fails to appear as required by a duly served summons, the Court may enter judgment for the plaintiff upon a verified complaint or proof by affidavit or testimony upon an unverified complaint.

(b) *Written Appearance by Defendant:* If the defendant files a written appearance on or before the return date, unless the Court orders the filing of a written answer, the defendant's appearance shall stand as an answer denying the allegations of the complaint.

(c) *Plaintiff's Failure to Appear:* If the plaintiff fails to appear on the return date, the case will be dismissed for want of prosecution.

**(d) Plaintiff's Diligence:** The Clerk of the Court shall issue a diligence date for each case classified "SC" or "SR", for 9:00 a.m. seven months from the date of filing and shall notify the plaintiff of that date by affixing it on the complaint. The Plaintiff must request the issuance of an alias summons and otherwise establish the exercise of diligence during the diligence period or the case may be dismissed pursuant to Supreme Court Rule 103 9b). Except for good cause shown, no more than one diligence date will be given. Summons shall not issue for a return date beyond the diligence date set by a court, except with leave of court. Any summons issued beyond that date without leave of court shall be considered a nullity.

In the event plaintiff's counsel does not appear on a return date of an unserved summons issued with a future diligence date, the court shall take the matter off call. Plaintiff or plaintiff's counsel must appear on the return date of a served summons. Failure to do so may result in a dismissal for want of prosecution. (amended eff. 1/13/10)

**(e) Continuances:** Motions for continuances shall be governed in accord with Supreme Court Rule 231 and Local Rule 9.01.

**(f) Case not Tried on the Return Date:** Cases not tried or otherwise disposed of on the return date will be set for trial by order of the Court.

**(g) Pre-Judgment Court Costs:** Any litigant seeking court costs shall, at the time judgment is entered, tender an affidavit specifically and individually listing each and every cost incurred and the amount sought, together with a statement by affiant that these costs have been paid by affiant.

The Court will only take judicial notice of the filing fee and certified mail cost.

#### **16.04 JURY DEMANDS**

Supreme Court Rule 281, small claims actions in which a jury demand is filed, shall be subject to Mandatory Arbitration under Article 13 of these Rules. The judge to whom the case is assigned shall promptly assign an arbitration hearing date before a trial is scheduled.

### **8.03 INITIAL CASE MANAGEMENT CONFERENCE EXEMPTION**

The following case categories are excepted from the "initial case management conference" requirement under Supreme Court Rule 218(A):

- Adoption (AD)
- Arbitration (AR)
  - Non-Jury
- Family (F)
- Mental Health (MH)
- Miscellaneous Remedy (MR)
- Municipal Corporation (MC)
- Order of Protection (OP)
- Ordinance Violation (OV)
- Probate (P)
- Small Claims (SC)
- Tax (TX)

In jury cases requiring arbitration (AR), a case management conference need not be held unless and until a rejection of the arbitration award is filed pursuant to Supreme Court Rule 93. A case management conference shall be held within 45 days of the rejection filing date.

The party rejecting the award shall notice the case before the Court not more than fourteen (14) days after the rejection for the purpose of setting a case management conference.

The rule shall not preclude the Court on its own motion from setting a case management conference on a case that is subject to arbitration.

This booklet provides information regarding the arbitration program and is offered as general information. It should not be legally relied upon without checking the specific statutory provisions and any amendments to local rules.

Revised October 2011