Court-Annexed Mandatory Arbitration Program

UNIFORM ARBITRATOR REFERENCE MANUAL

Updated October 2018

An Arbitrator's Uniform Guide
to
Court-Annexed Mandatory Arbitration Procedures

2018 Updated Edition

prepared and compiled by the:

Alternative Dispute Resolution Coordinating Committee of the Illinois Judicial Conference

Acknowledgments

Illinois Supreme Court

Honorable Lloyd A. Karmeier, Chief Justice

Hon. Robert R. Thomas
Honorable Thomas L. Kilbride
Honorable Lloyd A. Karmeier
Honorable Rita B. Garman
Honorable Anne M. Burke
Honorable P. Scott Neville, Jr.

Marcia M. Meis, Director
Administrative Office of the Illinois Courts

The members of the Illinois Supreme Court wish to acknowledge the hard work and dedication of prior and current members of the Alternative Dispute Resolution Coordinating Committee, staff of the Administrative Office of the Illinois Courts, Arbitration Administrators, Chief Circuit Judges, and law clerks who made the initial publication and this update of this An Arbitrator's Uniform Guide to Court-Annexed Mandatory Arbitration Procedures possible.

Table of Contents

Section 1: Introduction....2

Section 2: Administrative Regulations and Arbitrator Service....5
Common Questions and Answers....5

Section 3: Cases Eligible for Mandatory Arbitration....17

Section 4: Arbitration Proceedings....19

Section 5: The Arbitration Award....23

Section 6: Applicable Illinois Statutes....27

- 735 ILCS 5/2-1001A through 1009A Mandatory Arbitration System....29
- 735 ILCS 5/2-1116 Limitation on Recovery in Tort Actions; Fault....30
- 735 ILCS 5/2-1117 Joint Liability....31

Section 7: Applicable Illinois Supreme Court Rules....32

- SCR 86 through 95 Mandatory Arbitration Rules....34
- SCR 216 and SCR 237 Hearing and Evidence Rules....43
- SCR 61 through 66 Illinois Code of Judicial Conduct....45

Section 8: Local Rules and Procedures....58

Section 9: Selected Case Law Outline....61

Section 10: Checklists....96
1. Mandatory Arbitration Proceedings Checklist....97
2. Arbitrator Recusal Checklist....101
3. Good Faith/Bad Faith Participation....105

Section 11: Jury Instructions....106

Section 12: Evidence Scenarios....113

Section 1

Introduction to Mandatory Arbitration In Illinois

INTRODUCTION

Court-Annexed Mandatory Arbitration in Illinois is derived both from an act passed by the General Assembly (735 ILCS 5/2-1001A *et seq*.) and from rules adopted by the Illinois Supreme Court (Illinois Supreme Court Rules 86-95). The court-annexed model of arbitration is notably different from private sector arbitrations in that it is not only mandatory for certain classes of cases, but also the outcome is non-binding.

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 requiring a formal trial. The conduct, participation, and expertise of judges, arbitrators, parties and their counsel have been instrumental in promoting this goal.

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 county/circuit has been granted the authority to focus its arbitration program on particular types of cases within this general classification. (*Please consult the local rules of the county/circuit for this information.)*

Many of the usual pre-hearing procedures generally still apply to mandatory arbitration eligible cases. Illinois Supreme Court Rule 86(e) states that the Code of Civil Procedure applies unless otherwise stated in the arbitration rules. For example, pre-hearing motions are raised and decided in much the same way that they are raised and decided in non-arbitration cases. However, Rule 89 states that discovery will be in accordance with Illinois Supreme Court Rule 222 but the timeline may be shortened by local rule. Further, all discovery must be completed prior to the arbitration hearing and no discovery shall be permitted after the hearing, except upon leave of court and good cause shown.

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

Mandatory arbitration hearings are to be conducted in a fair and dignified, yet less formal fashion, by a panel of three specially trained attorneys and/or retired judges. 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 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 pursuant to Illinois Supreme Court Rule 92(b), the arbitrators 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.

Supreme Court rules extend the right of rejection to all parties as provided for in Illinois Supreme Court Rule 93. However, that rule attaches four conditions 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 and in a meaningful manner.

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.

Fourth, except for indigent parties, the party who initiates the rejection must pay a fee of $200.00 for rejecting awards less than $30,000.00 or a fee of $500.00 for rejection of awards

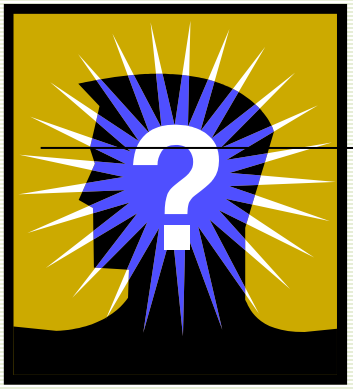
greater than $30,000.00 to the clerk of the court. It is intended that this fee will be a disincentive that will discourage frivolous rejections. At the same time, no party who is sincerely dissatisfied with the outcome in arbitration will be denied his/her right to have the case decided at trial. Pursuant to Illinois Supreme Court Rules 93 and 95, 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

The objective of the program and the program rules is to submit certain claims to arbitration that would tend to be amenable to closer management and faster resolution in an informal alternative process. There are safeguards designed to insure the fairness of the process. These safeguards include the right to petition the court for an order transferring the case out of arbitration before the arbitration hearing takes place and the right to reject an award believed to be unacceptable. This being said, however, the *Committee Comments* to Supreme Court Rule 91 state, in part, that a consistent theme throughout the rules governing Mandatory Arbitration is the need for the parties and their counsel to take the proceedings seriously; specifically the concern that no party make "a mockery of this deliberate attempt on behalf of the public, the bar and the judiciary to attempt to achieve an expeditious and less costly resolution to private controversies." The intention is to avoid allowing the arbitration process to be reduced to merely "another hurdle to be crossed in getting the case to trial."

It is this theme that is prevalent in the various sections of this statewide, uniform manual. It has already been established that parties involved in appropriate lawsuits, and their counsel, have come to appreciate the benefits of the arbitration program and the early uncertainty has significantly diminished. The expanded goal, then, is to move forward with developments through legislation and case law to achieve the ultimate result consistently. This manual provides arbitrators with resources for understanding the program, analyzing the case before them, applying the appropriate law and drafting the most thorough and effective award possible.

The objective of providing this uniform manual is to ensure that arbitrators statewide share the same understanding of the purpose of the arbitration program and implement their responsibilities and decisions in a manner consistent with this goal.

Section 2



Administrative Regulations and Arbitrator Service

Common Questions and Answers

Administrative Regulations and Arbitrator Service

Common Questions and Answers

The following section contains information relative to the administrative aspects of the Mandatory Arbitration Program.

"*Administrative Regulations and Arbitrator Service"* addresses the requirements and details for being an arbitrator. This includes information regarding training, compensation, scheduling, and attorney status.

"Common Questions and Answers" addresses questions that might arise from parties, practicing attorneys and the arbitrators themselves. This includes information regarding the arbitration facilities, cases, motions, hearings and awards among other frequently asked questions.

Administrative Regulations and Arbitrator Service

Completion of a Training Seminar – Arbitrators must complete a training seminar in arbitration practices and procedures prior to service on an arbitration panel. Some circuits may also offer/require refresher training seminars. *(See local rules.)*

Compensation – Arbitrators are paid $100.00 per hearing as provided by SCR 87(e). Arbitrators will not be paid if a hearing does not occur or if an award is not filed with the Arbitration administrative staff.

Oath of Office – Pursuant to Illinois Supreme Court Rule 97(d), arbitrators are required to take an oath of office. The form of oath can be found at Illinois Supreme Court Rule 94. Oaths are kept on file for reference. Arbitrators are covered by the Illinois Indemnification Act (5 ILCS 350/.01 *et seq.)*

Number of Hearings per Day of Service – The procedure for determining the number of hearings per day and the scheduling process for arbitrators is based on the average caseload for that circuit and governed by local rule.

Check-In with Arbitration Administration Staff – Arbitrators should check in and sign vouchers in the manner designated by local rule. Case assignments will also be given pursuant to local rule.

Arbitrator Confirmation/Cancellation – Arbitrators should call to confirm or cancel their services at the earliest convenience. Administrative staff may leave inquiry or reminder calls depending on the procedure in each circuit. *(See local rule).*

Active Status with the ARDC – An arbitrator must maintain "active" status with the ARDC in order to remain on the arbitrator list. Attorneys should also make sure any Continuing Legal Education requirements are fulfilled. *(See local rules for any exceptions)*.

Arbitrator Inactivation/Reactivation – Requests by an arbitrator for inactivation or reactivation must be made in writing to the Arbitration Administrator. The Arbitration Administrator also has the authority to inactivate an arbitrator for failure to comply with requirements and/or other cause as provided by local rules. Reactivation may require participation in a refresher training course. (*See Illinois Supreme Court Rules 790-798 and any relevant local rule(s)*)

Contact Information Changes – Arbitrators should immediately notify the Arbitration Administrator in writing of any changes in the arbitrators contact information.

Emergency Arbitrator List – Each circuit may have its own need and requirements for emergency arbitrators. Arbitrators should consult the Administrator or local rules for information about being on the "emergency list."

Common Questions and Answers

The following are some common questions that might arise for arbitrators in a general sense or in the course of hearing a case to which they are assigned. Some of these issues are covered in more detail in other sections of this manual. Some of these issues are governed by local rule in the appropriate county/judicial circuit. This will be indicated in the answer.

Arbitration Facilities

1. Where is the arbitration center?

   Some counties/judicial circuits have arbitration centers located in the same building as the courtroom where arbitration matters are heard. Some counties/judicial circuits have arbitration centers located in an entirely separate building. See the Circuit's website and/or local rules for the location of the arbitration center in that county.

2. If parties have any questions regarding the arbitration process, who do they contact?

   Each county has an Arbitration Administrator who will be able to answer any procedural questions. Arbitration Administrators cannot provide legal advice. See Addendum A at the end of this section for the name of the Administrator in that county.

Arbitration Cases

1. What types of cases will be assigned to arbitration?

   A civil action shall be subject to mandatory arbitration if each claim therein is exclusively for money damages in an amount determined by that circuit and approved by the Illinois Supreme Court for that particular circuit. (See Illinois Supreme Court Rule 86). Attorney's fees are considered a claim for relief and must be part of the arbitration award where applicable. There is currently no clear authority on whether attorney's fees are included in the set limit and a division among circuits may exist. Arbitrators can get guidance from some existing case law (see Arbitration Proceedings section) and from the Supervising Judge for Arbitration in their circuit. Cases may also be transferred to the arbitration calendar from other calls or divisions upon the motion of the court or any party.

2. What is done with a 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 before the Supervising Arbitration judge for a stay. If the issue of bankruptcy is presented for the first time at the arbitration hearing, the arbitrators should request a file stamped copy of the bankruptcy order and provide it to the Administrator for further guidance.

Arbitrators

1. Who will be the arbitrators that will hear the cases?

   Local rules provide that licensed attorneys in good standing with the Illinois Attorney Registration and Disciplinary Commission or retired judges are eligible for appointment as arbitrators by meeting the requirements as set out by local rule. (See Administrative Regulations and Arbitrator Service in this section.) Panel chairs must be must have been engaged in trial practice of for at least three years or by a retired judge. (See Illinois Supreme Court Rule 87(b)).

2. Can parties request to change arbitrators if they think there is a prejudice, conflict or other problem?

   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 87[c]). There is no provision in the rules for substitution of arbitrators or change of venue from the panel or its members. However, an arbitrator must conduct the hearing in a fair and impartial manner with no regard to a party and/or attorney's race, creed, color, religion, or sexual orientation.

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

   The details of this will be governed by local rule and administrative directives, however, generally the hearing will continue with a two-member panel as long as everyone agrees. An emergency arbitrator may be called or, if there are other hearings that have not yet begun, it might be possible to switch panel members with another panel. These types of situations should always be brought to the attention of the administrator as soon as possible for proper direction.

4. If a party does not understand the meaning of an award, can the party contact the arbitrator?

   No. The arbitrators are bound by the Code of Judicial Conduct and, therefore, cannot have any ex-parte communications with any of the parties. Arbitrators may not discuss pending litigation with the parties until a final order has been entered 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.

5. Can an arbitrator be called upon to testify about something that occurred at the hearing?

   ***No. Arbitrators may not be called upon to testify as to what transpired before them and no reference to the arbitration hearing may be made at trial. (See 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. Illinois Supreme Court Rule 93(b) also*

mandates that no reference to the fact of the conduct of the arbitration hearing may be made at trial.

6. Can arbitrators assess costs?

Costs shall be determined by the arbitration panel pursuant to law. The failure of the arbitration panel to address costs shall not constitute a waiver of a party's right to recover costs upon entry of judgment. (See Illinois Supreme Court Rule 92(e)

Motions

1. Can the 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. Therefore, the arbitrators can hear and determine motions to exclude witnesses, motions in limine and rule on the admissibility of evidence. Any other motions pertaining to the case must be brought at the appropriate time and in the appropriate manner in front of the Supervising Judge of Arbitration. Arbitrators MAY NOT hear and determine motions for continuance of the hearing. Motions for continuances MUST be brought before the Supervising Judge of Arbitration on the normal arbitration motion call.

Discovery

1. What is required regarding witnesses and presentation of evidence at the actual arbitration hearing?

It is up to each litigant to determine how the evidence is presented. Supreme Court Rule 90(c) provides that items such as hospital reports, doctors' reports, drug bills and other medical bills as well as bills for property damage, estimates of repair, earnings reports, expert opinions and depositions of witnesses are admissible without the maker being present. A written notice of the intent to offer those documents along with copies of the documents must be sent to all other parties at least 30 days prior to the scheduled arbitration hearing date pursuant to the rule. (See additional 90(c) discussion in the Arbitration Proceedings section.)

2. If documents are filed in compliance with SCR 90(c) , are they automatically admitted into evidence?

No. Any documents filed pursuant to SCR 90(c) are presumptively admitted, meaning that 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. Objections to the 90(c) packets may be made before the Presiding Judge prior to the arbitration hearing or to the Chairperson at the commencement of the arbitration hearing.

3. Can the maker of a document submitted by an opponent in a case be called by the other side as a witness?

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

4. Can people be subpoenaed to appear just as they can be at trial?

   Yes. Subpoena practice in arbitration cases is conducted in essentially the same fashion as that followed in non-arbitration cases. A subpoena to testify at an arbitration hearing is 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 them the time and place for the hearing.

The Arbitration Hearing

1. How long should a hearing last?

   The majority of cases heard by an arbitration panel will require two hours or less for presentation of evidence. ***Pursuant to local rule****, if a party determines that more than the allotted two hours will be needed, a motion should be made before the Supervising Judge of Arbitration to request the extra time The Arbitration Administrator and staff should be notified, once the request is granted, for scheduling purposes. Without a specific order by the Supervising Judge, every hearing must be completed in the two hour time allotted.*

2. If a party is late, will they 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 deducting that amount of time from his/her presentation. Arriving late does not necessarily constitute "bad faith". The arbitration panel must consider all factors as provided by the applicable case law when making a determination of bad faith. This determination may also be made by the Supervising Judge of Arbitration at an appropriate hearing. (See Case Law Outline on good faith participation.) If the hearing starts after the scheduled time due to the fault of the Arbitration Center or one of the arbitrators, the parties will not be penalized.

3. What happens if one party does not show up?

   If a party fails to appear at a hearing, the hearing will proceed ex-parte and the appropriate order will be entered. The Administrator may wait 15 minutes at his/her discretion for a party to appear before commencing the hearing. Pursuant to Supreme Court Rule 91, the non-appearing party waives the right to reject the award and consents to entry of judgment on the award. ****Please note that some of these provisions may be modified subject to local rule.***

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

   Supreme Court Rule 90(g), the provisions of SCR 237 and the sanctions provided in SCR 219 are equally applicable to arbitration hearings. The arbitrators are instructed to note on the award a party's failure to comply with Rule 237. Rule 90(g) further provides that sanctions for failure to comply with a Rule 237 request may include an order barring that party from rejecting the award when an appropriate motion is made before the Supervising Judge of Arbitration.

5. What happens if neither of the parties appears for the arbitration hearing?

   The arbitrators will enter an award for the defendant based on the fact that the plaintiff did not present any evidence in the case.

6. What happens if one of the parties appears but does not present his/her 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 good faith and in a meaningful manner, it may recite this finding on the award along with the factual basis for the finding.

7. Should the Rule 90(c) documents be left with the panel?

   No. As a courtesy to the panel, three copies of the Rule 90(c) documents as well as any other evidence to be presented to the panel should be provided. The Arbitration Center is not responsible for documents left by parties and litigants are encouraged not to leave behind any original documents.

8. What happens to the exhibits after a hearing?

   See local rules for this information.

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

   *A court reporter is not provided. However, any party may make arrangements for a stenographic record of the hearing at his/her own expense. * See local rules for other provisions regarding court reporters and the use of transcripts.*

10. Are language interpreters provided at hearing?

Yes. The party or parties requiring an interpreter need to make prior arrangements to have one present at the hearing. Consult local rules for further information.

The Arbitration Award, Rejection, 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 will **dispose of all claims** for relief, **including attorney's fees, costs, and interest.** The award may not exceed the sum authorized for that particular jurisdiction excluding interest and costs. (See Illinois Supreme Court Rule 92(b) *(Some circuits' local rules may vary on this provision.) The award shall be signed by the arbitrators. A dissenting vote without further comment may be noted on the award.*

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

   No. The panel does not announce the award to the parties. Each jurisdiction has a procedure regarding the way in which the parties may find out the award. Parties should check with the Arbitration Center staff as to the procedure.

3. Is the award of the arbitrators binding?

   No. Pursuant to SCR 93, within 30 days after filing the award with the Clerk of the Court, any party who was present at the arbitration hearing, either in person or by counsel, except a party who may have been barred from rejecting the award for some reason, may file with the Clerk a written Notice of Rejection of the award and may request to proceed to trial. Certificate of service on all other parties must be included in the Notice of Rejection. The party rejecting the award will also be assessed a $200.00 rejection fee at the time the notice is filed for cases where the award was less than $30,000.00 or rejection fee of $500.00 for cases where the award was greater than $30,000. (

4. Is the arbitration award a final order?

   No. The Supervising Judge must enter a judgment on the award for it to be a final order. This is done on a scheduled court date provided other matters such as potential rejection of the award and any other necessary hearings have taken place and been determined.

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

   The 30-day period begins to run from the day that the award is filed with Clerk of the Court, usually the same day as the hearing.

6. What if the parties settle the matter within 24 hours prior to the hearing?

   This procedure, as well as some other procedures, is governed by local rule, often simply due to the geographic location of the Arbitration Center in relation to the courtroom of the Presiding Judge of Arbitration. The Arbitration Administrator can provide that information to parties and their attorneys for that jurisdiction.

7. Can the trial judge be advised of the award by the parties?

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

Addendum A

CIRCUIT	ARBITRATION ADMINISTRATOR	CONTACT INFORMATION
Third Circuit	Kathleen C. Harris	Madison County Wood River Facility 101 E. Edwardsville Road, Suite 200 Wood River, IL 62095 618/296-4730 kcharris@illinoiscourts.gov
Eleventh Circuit	Rachel Bunner	Arbitration Center 200 W. Front Street, Suite 400-B Bloomington, IL 61701 309/827-7584 rachel.bunner@mcleancounty.gov
Twelfth Circuit	Lisa Burton	Arbitration Center 57 N. Ottawa, 3rd Floor Joliet, IL 60432 815/727-8540 lisa.burton@willcountyillinois.com
Fourteenth Circuit	Victoria Bluedorn	Arbitration Center 1617 Second Avenue, Suite 100 Rock Island, IL 61201 309/5583289 vbluedorn@co.rock-island.il.us
Sixteenth Circuit	Mary Barnette	Kane County Arbitration Center 100 S. Third Street Geneva, IL 60134 630/232-3437 barnettemary@co.kane.il.us
Seventeenth Circuit	Christine Hawley	Boone & Winnebago Arbitration Center 308 W. State Street, Suite 25 Rockford, IL 61101 815/987-7739 chawley@wincoil.us

CIRCUIT	ARBITRATION ADMINISTRATOR	CONTACT INFORMATION
Eighteenth Circuit	Suzanne Armstrong	Arbitration Center 126 S. County Farm Road, Suite 2A Wheaton, IL 60187 630/407-2870 suzanne.armstrong@18thjudicial.org
Nineteenth	Delta Hawkins	Lake County Arbitration Centers 415 W. Washington, Suite 106 Waukegan, IL 60085 847/377-3700 dhawkins@lakecountyil.gov
Twentieth Circuit	Administrator Position Vacant as of February 1, 2018	Arbitration Center 19 Public Square, Suite 400 Belleville, IL 62220 618/236-8605 bwerle@co.st-clair.il.us
Twenty Second Circuit	Agnes Kretowicz	McHenry County Arbitration Center 666 Russell Court, Ste. 309 Woodstock, IL 600098 815/331-0661 axkretowicz@co.mchenry.il.us
Cook County	Kimberly Atz O'Brien	Arbitration Center 222 N. LaSalle Street, 13th Floor Chicago, IL 60601 312/793-0130 kobrien@illinoiscourts.gov

Section 3

Cases Eligible for Mandatory Arbitration

Cases Eligible for Mandatory Arbitration

A civil action shall be subject to Mandatory Arbitration if each claim therein is exclusively for money damages in an amount determined by that circuit/jurisdiction and approved by the Illinois Supreme Court. Attorney's fees are considered a claim for relief.

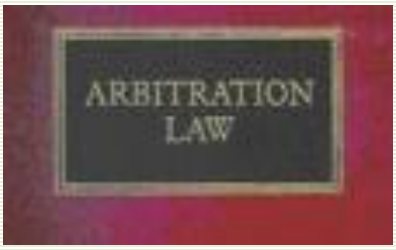
Cases may also be transferred to the Mandatory Arbitration calendar from other calls or divisions upon the motion of the court or by any party. Parties may amend damages in order to qualify for Mandatory Arbitration or the court may determine that no claim in the action exceeds the jurisdictional amount for arbitration. Chancery cases may be transferred if the court has disposed of the equitable relief sought and only issues for monetary damages remain.

Although local rules will govern the types of cases for which Mandatory Arbitration is available, generally the following types of cases are excluded:

- *Confession of Judgment*
- *Ejectment*
- *Registration of Foreign Judgments*
- *Detinue*
- *Replevin*
- *Trover*

Local rules determine whether *pro se* or small claims cases will be eligible for Mandatory Arbitration.

Section 4



Arbitration Proceedings

Arbitration Proceedings

The following section contains information relative to the actual arbitration hearing and how it should proceed from beginning to end.

The section begins with information regarding the authority of the arbitration panel. Following that is a comprehensive outline of an arbitration proceeding including everything from arrival in the hearing room through entry of the award.

New and experienced arbitrators can refer to this outline to obtain information at any stage of the hearing should questions regarding parties, witnesses, discovery, motions or good faith participation arise.

AUTHORITY OF THE ARBITRATION PANEL

1. Powers of the Arbitrators

Illinois Supreme Court Rule 90(a) provides that the arbitrators shall have the power to administer oaths and affirmations to witnesses, to determine the admissibility of evidence, to decide the law and facts of the case and to enter an award not exceeding the monetary limit authorized by the Supreme Court, exclusive of interest and costs.

The authority and power of the arbitrators exists only in relation to the conduct of the hearing at the time it is held. Issues that may arise in the proceeding of a case prior, ancillary, or subsequent to the hearing must be resolved by the court. (See Committee Comments to Supreme Court Rule 90(b)). Therefore, any motion involving the issuance of an order must be made before the Supervising Judge for Arbitration in advance of the arbitration hearing date.

2. Province of the Arbitration Panel

Illinois Supreme Court Rule 87(b) mandates that arbitration hearings are conducted by a panel of three attorney-arbitrators or such lesser number as may be agreed upon by the parties, appointed from the list of available arbitrators, as prescribed by circuit rule,. The chairperson of the panel rules on objections of evidence or other issues which arise during the hearing. The chairperson must have a minimum of three years of trial practice or be a retired judge. (Illinois Supreme Court Rule 87(a)). The qualification of three years of trial practice was intended to be a minimal standard, and each circuit may establish additional qualifications for chairpersons and other members of the panel. Please consult local rules to ascertain what, if any, additional criteria may be required to serve as an arbitrator.

3. Role of the Chairperson

Each circuit will determine how the chairperson is selected. The Arbitration Administrator will designate the arbitrator who will serve as chairperson. It is possible to have more than one person who is qualified to be a chairperson serving on a panel. However, only the designated chairperson of the panel rules on the admissibility of evidence. *See* Illinois Supreme Court Rule 90(a).

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.

Section 5

The Arbitration Award

Drafting the Arbitration Award

The following guidelines ensure that all essential aspects necessary for a complete and effective arbitration award are encompassed.

Each jurisdiction has produced its own *"award form."* Arbitrators in each jurisdiction should follow the instructions on the award form provided to them while implementing these uniform guidelines in order to comply with the Mandatory Arbitration rules.

Some sample award forms from select counties are included in this section.

Drafting a Complete and Effective Award

- Detail each claim on a chart
- Avoid extraneous verbiage
- Dispose of money damage claim to prevailing party first
- Use individual names and status in claim, not just "plaintiff" or "defendant"
- Distinguish between multiple defendants with "as to" language
- General statement okay as to "remaining claims"
- For comparative negligence, use "award," "reduced by," and "net"
- Note any non-appearance in violation of SCR 237
- Include consolidated case numbers in caption

DRAFTING A COMPLETE AND EFFECTIVE AWARD

1. Use the Award Form in the Illinois Supreme Court Rule Article I Forms Appendix at www.illinoiscourts.gov.

2. When the hearing commences, ask each attorney/party what claims they are presenting and/or defending and against whom. MAKE A CHART DETAILING EACH CLAIM.

3. When drafting the award, you need not use any extraneous verbiage such as "after hearing all of the evidence, we hereby find...." Simply construct an award as follows:
"For ____Name____ and against _____Name_____ For $ _____ ." Utilize any extra space to provide constructive information regarding the hearing.

4. If the prevailing party is to be awarded money damages, always draft the award disposing of that claim first.

5. Never draft the award by simply using titles such as plaintiff, defendant, counter-plaintiff, etc. Use individual names and then indicate status in the claim if necessary.

6. If there are several defending parties to a claim, but not every one of them is liable, you should say "as to ____status/name___ only." This implies that the remaining defendants are not liable. You may then "find in favor of all other defending parties" to the claim.

7. If, after hearing all of the evidence, the panel is not convinced that all of the claims have been sufficiently proven, but you can definitely determine that a specific litigant is entitled to money damages against another litigant on at least one claim, then first dispose of that claim specifically. You may then make a general statement such as "award in favor of the defending party on any remaining claim(s), counter-claim(s), cross-claim(s), 3rd party claim(s) etc."

8. Where comparative negligence is at issue, the award can be drafted as follows: "Award in favor of name (plaintiff) against name (defendant) in the amount of $ _____ , reduced by ____%, for a net award of $_____ ."

9. If a party does not appear personally pursuant to a Rule 237 Notice, please be sure to note this fact in the body of the award.

Section 6

Applicable Illinois Statutes

Applicable Statutes

The following section contains the full text of all of the statutes that are in any way applicable to mandatory arbitration and arbitration proceedings.

These statutes include:

735 ILCS 5/2-1001A – 1009A	*Mandatory Arbitration System*
735 ILCS 5/2-1116	*Limitations on Recovery in Tort Actions; Fault*
735 ILCS 5/2-1117	*Joint Liability*

MANDATORY ARBITRATION SYSTEM

(735 ILCS 5/2-1001A)

Sec. 2-1001A. Authorization. The Supreme Court of Illinois, by rule, may provide for mandatory arbitration of such civil actions as the Court deems appropriate in order to expedite in a less costly manner any litigation wherein a party asserts a claim not exceeding $50,000 or any lesser amount as authorized by the Supreme Court for a particular Circuit, or a judge of the circuit court, at a pretrial conference, determines that no greater amount than that authorized for the Circuit appears to be genuinely in controversy.
(Source: P.A. 88-108.)

(735 ILCS 5/2-1002A)

Sec. 2-1002A. Implementation by Supreme Court Rules. The Supreme Court shall by rule adopt procedures adapted to each judicial circuit to implement mandatory arbitration under this Act.
(Source: P.A. 84-844.)

(735 ILCS 5/2-1003A)

Sec. 2-1003A. Qualification, Appointment, and Compensation of Arbitrators. The qualification and the method of appointment of arbitrators shall be prescribed by rule. Arbitrators shall be entitled to reasonable compensation for their services. Arbitration hearings shall be conducted by arbitrators sitting in panels of three or of such lesser number as may be stipulated by the parties.
(Source: P.A. 84-844.)

(735 ILCS 5/2-1004A)

Sec. 2-1004A. Decision and Award. Following an arbitration hearing as prescribed by rule, the arbitrators' decision shall be filed with the circuit court, together with proof of service on the parties. Within the time prescribed by rule, any party to the proceeding may file with the clerk of the court a written notice of the rejection of the award. In case of such rejection, the parties may, upon payment of appropriate costs and fees imposed by Supreme Court Rule as a consequence of the rejection, proceed to trial before a judge or jury. Costs and fees received by the clerk of the circuit court pursuant to this Section shall be remitted within one month after receipt to the State Treasurer for deposit into the Mandatory Arbitration Fund.
(Source: P.A. 85-408; 85-1007, eff. Jan. 1, 1986. Amended by P.A. 85-408, § 2, eff. Sept. 15, 1987; P.A. 85-1007, § 1, eff. Jan. 21, 1988.)

(735 ILCS 5/2-1005A)

Sec. 2-1005A. Judgment of the Court. If no rejection of the award is filed, a judge of the circuit court may enter the award as the judgment of the court.
(Source: P.A. 84-844.)

(735 ILCS 5/2-1006A)

Sec. 2-1006A. Uniform Arbitration Act. The provisions of the Uniform Arbitration Act shall not be applicable to the proceedings under this Part 10A of Article II.
(Source: P.A. 84-1308, Amended by P.A. 84-1308, Art. II, § 107, eff. Aug. 25, 1986.)

(735 ILCS 5/2-1007A)

Sec. 2-1007A. The expenses of conducting mandatory arbitration programs in the circuit court, including arbitrator fees, and the expenses related to conducting such other alternative dispute resolution programs as may be authorized by circuit court rule for operation in counties that have implemented mandatory arbitration, shall be determined by the Supreme Court and paid from the State Treasury on the warrant of the Comptroller out of appropriations made for that purpose by the General Assembly.
(Source: P.A. 89-532, eff. 7-19-96.)

(735 ILCS 5/2-1008A) Repealed by P.A. 97-1099, § 10, eff. Aug. 24, 2012

(735 ILCS 5/2-1009A)

Sec. 2-1009A. Filing Fees. In each county authorized by the Supreme Court to utilize mandatory arbitration, the clerk of the circuit court shall charge and collect, in addition to any other fees, an arbitration fee of $8, except in counties with 3,000,000 or more inhabitants the fee shall be $10, at the time of filing the first pleading, paper or other appearance filed by each party in all civil cases, but no additional fee shall be required if more than one party is represented in a single pleading, paper or other appearance. Arbitration fees received by the clerk of the circuit court pursuant to this Section shall be remitted within one month after receipt to the State Treasurer for deposit into the Mandatory Arbitration Fund, a special fund in the State treasury for the purpose of funding mandatory arbitration programs and such other alternative dispute resolution programs as may be authorized by circuit court rule for operation in counties that have implemented mandatory arbitration, with a separate account being maintained for each county. Notwithstanding any other provision of this Section to the contrary, the Mandatory Arbitration Fund may be used for any other purpose authorized by the Supreme Court.
(Source: P.A. 94-91, eff. 7-1-05; 94-839, eff. 6-6-06; 95-707, eff. 1-11-08.)

(735 ILCS 5/2-1116)

Sec. 2-1116. Limitation on recovery in tort actions. In all actions on account of bodily injury or death or physical damage to property, based on negligence, or product liability based on strict tort liability, the plaintiff shall be barred from recovering damages if the trier of fact finds that the contributory fault on the part of the plaintiff is more than 50% of the proximate cause of the injury or damage for which recovery is sought. The plaintiff shall not be barred from recovering damages if the trier of fact finds that the contributory fault on the part of the plaintiff is not more than 50% of the proximate cause of the injury or damage for which recovery is sought, but any damages allowed shall be diminished in the proportion to the amount of fault attributable to the plaintiff.

(Source: P.A. 84-1431.) (Text of Section **WITHOUT** the changes made by P.A. 89-7, which has been held unconstitutional in the case of *Best v. Taylor Machine Works*, 179 Ill.2d 367 (1997).

(735 ILCS 5/2-1117)

Sec. 2‑1117. Joint liability. Except as provided in Section 2‑1118, in actions on account of bodily injury or death or physical damage to property, based on negligence, or product liability based on strict tort liability, all defendants found liable are jointly and severally liable for plaintiff's past and future medical and medically related expenses. Any defendant whose fault, as determined by the trier of fact, is less than 25% of the total fault attributable to the plaintiff, the defendants sued by the plaintiff, and any third party defendant except the plaintiff's employer, shall be severally liable for all other damages. Any defendant whose fault, as determined by the trier of fact, is 25% or greater of the total fault attributable to the plaintiff, the defendants sued by the plaintiff, and any third party defendants except the plaintiff's employer, shall be jointly and severally liable for all other damages.
(Source: P.A. 93‑10, eff. 6‑4‑03; 93‑12, eff. 6‑4‑03.)

(735 ILCS 5/2-1118)

Sec. 2-1118. Exceptions. Notwithstanding the provisions of Section 2-1117, in any action in which the trier of fact determines that the injury or damage for which recovery is sought was caused by an act involving the discharge into the environment of any pollutant, including any waste, hazardous substance, irritant or contaminant, including, but not limited to smoke, vapor, soot, fumes, acids, alkalis, asbestos, toxic or corrosive chemicals, radioactive waste or mine tailings, and including any such material intended to be recycled, reconditioned or reclaimed, any defendants found liable shall be jointly and severally liable for such damage. However, Section 2-1117 shall apply to a defendant who is a response action contractor. As used in this Section, “response action contractor” means an individual, partnership, corporation, association, joint venture or other commercial entity or an employee, agent, sub-contractor, or consultant thereof which enters into a contract, for the performance of remedial or response action, or for the identification, handling, storage, treatment or disposal of a pollutant, which is entered into between any person or entity and a response action contractor when such response action contractor is not liable for the creation or maintenance of the condition to be ameliorated under the contract.

Notwithstanding the provisions of Section 2-1117, in any medical malpractice action, as defined in Section 2-1704, based upon negligence, any defendants found liable shall be jointly and severally liable.
(Source: P.A. 84-1431, Art. 5, § 1, eff. Nov. 25, 1986).

Section 7

Applicable Illinois Supreme Court Rules

Applicable Supreme Court Rules

The following section contains the full text of all of the Supreme Court Rules that are in any way applicable to mandatory arbitration, the proceedings and the arbitrators. These Rules can also be found on the Illinois Courts website at www.illinoiscourts.gov

These Supreme Court Rules include:

Sup Ct. R. 86 – 95	*Supreme Court Rules for Mandatory Arbitration*
Sup Ct. R. 61 – 66	*Illinois Code of Judicial Conduct*
Sup Ct. R. 216	*Admission of Fact or Genuineness of Documents*
Sup Ct. R. 237	*Compelling Appearance of Witnesses at Trial*

Rule 86. Actions Subject to Mandatory Arbitration

(a) Applicability to Circuits. Mandatory arbitration proceedings shall be undertaken and conducted in those judicial circuits which, with the approval of the Supreme Court, elect to utilize this procedure and in such other circuits as may be directed by the Supreme Court.

(b) Eligible Actions. A civil action shall be subject to mandatory arbitration if each claim therein is exclusively for money in an amount or of a value not in excess of the monetary limit authorized by the Supreme Court for that circuit or county within that circuit, exclusive of interest and costs.

(c) Local Rules. Each judicial circuit court may adopt rules for the conduct of arbitration proceedings which are consistent with these rules and may determine which matters within the general classification of eligible actions shall be heard in arbitration.

(d) Assignment from Pretrials. Cases not assigned to an arbitration calendar may be ordered to arbitration at a status call or pretrial conference when it appears to the court that no claim in the action has a value in excess of the monetary limit authorized by the Supreme Court for that circuit or county within that circuit, irrespective of defenses.

(e) Applicability of Code of Civil Procedure and Rules of the Supreme Court. Notwithstanding that any action, upon filing, is initially placed in an arbitration track or is thereafter so designated for hearing, the provisions of the Code of Civil Procedure and the rules of the Supreme Court shall be applicable to its proceedings except insofar as these rules otherwise provide.

Adopted May 20, 1987, effective June 1, 1987; amended December 30, 1993, effective January 1, 1994.

Rule 87. Appointment, Qualification and Compensation of Arbitrators

(a) List of Arbitrators. A list of arbitrators shall be prepared in the manner prescribed by a circuit rule. The list shall consist of a sufficient number of members of the bar engaged in the practice of law and retired judges within the circuit in which the court is situated.

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

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

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

name is placed on the list of arbitrators. Arbitrators previously listed as arbitrators shall be relisted on taking the oath provided in Rule 94.

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

Adopted May 20, 1987, effective June 1, 1987; amended December 3, 1997, effective January 1, 1998; amended March 1, 2001, effective immediately; amended January 25, 2007, corrected January 26, 2007, effective immediately February 1, 2007.

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 o the parties or their attorneys of record. The hearing shall be held on the scheduled date and within one year of the date of filing of the action, unless continued by the court upon good cause shown. The hearing shall be held at a location provided or authorized by the court.

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

Rule 89. Discovery

Discovery may be conducted in accordance with established rules and shall be completed prior to the hearing in arbitration. However, such discovery shall be conducted in accordance with Rule 222, except that the timelines may be shortened by local rule. No discovery shall be permitted after the hearing, except upon leave of court and good cause shown.

Adopted May 20, 1987, effective June 1, 1987; amended March 26, 1996, effective immediately.

Rule 90. Conduct of the Hearings

(a) Powers of Arbitrators. The arbitrators shall have the power to administer oaths and affirmations to witnesses, to determine the admissibility of evidence and to decide the law and the facts of the case. Rulings on objections to evidence or on other issues which arise during the hearing shall be made by the chairperson of the panel.

(b) Established Rules of Evidence Apply. Except as prescribed by this rule, the established rules of evidence shall be followed in all hearings before arbitrators.

(c) Documents Presumptively Admissible. All documents referred to under this provision shall be accompanied by a summary cover sheet listing each item that is included detailing the money damages incurred by the categories as set forth in this rule and specifying whether each bill is paid or unpaid. If at least 30 days' written notice of the intention to offer the following documents in evidence is given to every other party, accompanied by a copy of the document, a party may offer in evidence, without foundation or other proof:

(1) bills (specified as paid or unpaid), records and reports of hospitals, doctors, dentists, registered nurses, licensed practical nurses and physical therapists, or other health-care providers;

(2) bills for drugs, medical appliances and prostheses (specified as paid or unpaid);

(3) property repair bills or estimates, when identified and itemized setting forth the charges for labor and material used or proposed for use in the repair of the property;

(4) a report of the rate of earnings and time lost from work or lost compensation prepared by an employer;

(5) the written statement of any expert witness, the deposition of a witness, the statement of a witness which the witness would be allowed to express if testifying in person, if the statement is made by affidavit or by certification as provided in section 1–109 of the Code of Civil Procedure;

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

The pages of any Rule 90(c) package submitted to the arbitrators should be numbered consecutively from the first page to the last page of the package in addition to any separate numbering of the pages of individual documents comprising such package.

(d) Opinions of Expert Witnesses. A party who proposes to use a written opinion of any expert witness or the testimony of any expert witness at the hearing may do so provided a written notice of such intention is given to every other party not less than 30 days prior to the date of hearing, accompanied by a statement containing the identity of the expert witness, the expert's qualifications, the subject matter, the basis of the expert's conclusions, and the expert's opinion as well as any other information required by Rule 222(d)(6).

(e) Right to Subpoena Maker of the Document. Any other party may subpoena the author or maker of a document admissible under this rule, at that party's expense, and examine the author or maker as if under cross-examination. The provisions of the Code of Civil Procedure relative to subpoenas, section 2-1101, shall be applicable to arbitration hearings and it shall be the duty of a party requesting the subpoena to modify the form to show that the appearance is set before an arbitration panel and to give the time and place set for the hearing.

(f) Adverse Examination of Parties or Agents. The provisions of the Code of Civil Procedure relative to the adverse examination of parties or agents, section 2-1102, shall be applicable to arbitration hearings as upon the trial of a case.

(g) Compelling Appearance of Witness at Hearing. The provisions of Rule 237, herein, shall be equally applicable to arbitration hearings as they are to trials. The presence of a party may be waived by stipulation or excused by court order for good cause shown not less than seven days

prior to the hearing. Remedies upon a party's failure to comply with notice pursuant to Rule 237(b) may include an order 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.

Adopted May 20, 1987, effective June 1, 1987; amended April 7, 1993, effective June 1, 1993; amended March 26, 1996, effective immediately; amended March 28, 2002, effective July 1, 2002; amended December 5, 2003, effective January 1, 2004; amended October 14, 2005, effective January 1, 2006; amended June 4, 2008, effective July 1, 2008.

Rule 90(c) Cover Sheet (Please note that this form is now located at the Illinois Supreme Court Rule Article I Forms Appendix at www.illinoiscourts.gov).

IN THE CIRCUIT COURT OF COUNTY, ILLINOIS

Plaintiff		)
		)
	v.	)
		)
Defendant		)

NOTICE OF INTENT
PURSUANT TO SUPREME COURT RULE 90c

Pursuant to Supreme Court Rule 90(c), the plaintiffs intend 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

Adopted May 20, 1987, eff. June 1, 1987; amended April 7, 1993, eff. June 1, 1993; amended March 26, 1996; amended March 28, 2002, eff. July 1, 2002; amended December 5, 2003; eff. January 1, 2004.

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 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 that a party thereafter moves, or files a petition to the court, to vacate the judgment as provided therefore under the provisions of the Code of Civil Procedure for the vacating of judgments by default, Sections 2-1301 and 2-1401, the court, in its discretion, in addition to vacating the judgment, may order the matter for rehearing in arbitration and may also impose the sanction of costs and fees as a condition for granting such relief.

(b) Good Faith Participation. All parties to the arbitration hearing must participate in the hearing in good faith and in a meaningful manner. If a panel of arbitrators unanimously finds that a party has failed to participate in good faith and in a meaningful manner, the panel's finding and factual basis therefore 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 therefore, may order sanctions as provided in Rule 219(c), including but not limited to, an order debarring a party from rejecting the award, and costs and attorney fees incurred for the arbitration hearing and in the prosecution of the petition for sanctions, against that party.

Adopted May 20, 1987, eff. June 1, 1987; amended April 7, 1993, eff. June 1, 1993.

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 interests 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 Award. In the event none of the parties files a notice of rejection of the award and requests to proceed to trial within the time required herein, any party thereafter may move the court to enter judgment on the award.

(d) Correction of Award. Where the record and the award disclose an obvious and unambiguous error in mathematics or language, the court, on application of a party within the 30-day period allowed for rejection of an award, may correct the same. The filing of such an application shall stay all proceedings, including the running of the 30-day period for rejection of the award, until disposition of the application by the court.

(e) Costs. Costs shall be determined by the arbitration panel pursuant to law. The failure of the arbitration panel to address costs shall not constitute a waiver of a party's right to recover costs upon entry of judgment.

Adopted May 20, 1987, eff. June 1, 1987; amended December 30, 1993, eff. January 1, 1994; amended December 5, 2016, eff. Jan. 1, 2017.

Rule 93. Rejection of Award (Please note that this form is now located at the Illinois Supreme Court Rule Article I Forms Appendix at www.illinoiscourts.gov).

(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 parties. The filing of a single rejection shall be sufficient to enable all parties except a party who has been debarred from rejecting the award to proceed to trial on all issues of the case without the necessity of each party filing a separate rejection. The filing of a notice of rejection shall not be effective as to any party who is debarred from rejecting an award.

(b) Arbitrator May Not Testify. An arbitrator may not be called to testify as to what transpired before the arbitrators and no reference to the fact of the conduct of the arbitration hearing may be made at trial.

(c) Waiver of Costs. Upon application of a poor person, pursuant to Rule 298, herein, the sum required to be paid as costs upon rejection of the award may be waived by the court.

Adopted May 20, 1987, eff. June 1, 1987; amended April 7, 1993, eff. June 1, 1993; amended December 3, 1996, eff. Jan. 1, 1997.

Rule 94. Form of Oath, Award and Notice of Award (Please note that this form is now located at the Illinois Supreme Court Rule Article I Forms Appendix at www.illinoiscourts.gov).

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),
Plaintiffs,

No._____
v. Amount Claimed_____

H., J., K., L., etc. (naming all defendants), Amount Claimed
Defendants.

[] All 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),
Plaintiffs

v. No._____
Amount Claimed_____

H., J., K., L., etc. (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 _____, 20___.

_____
Clerk of the Circuit Court

Adopted May 20, 1987, eff. June 1, 1987; amended March 1, 2001, effective immediately; amended October 20, 2003, eff. December 1, 2003.

Rule 95. Form of Notice of Rejection of Award (Please note that this form is now located at the Illinois Supreme Court Rule Article I Forms Appendix at www.illinoiscourts.gov).

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. _____
Amount Claimed _____

H.J., K.L. *etc*. (naming all defendants)

NOTICE OF REJECTION OF AWARD

To the Clerk of the Circuit Court:

Notice is given that_____rejects the award of the arbitrators entered on this cause on_____, 20___, and hereby requests a trial of this action.

By: _____

(Certificate of Notice of Attorney)

Adopted May 20, 1987, effective June1, 1987.

Rule 216. Admission of Fact or Genuineness of Documents

(a) Request for Admission of Fact. A party may serve on any other party a written request for the admission by the latter of the truth of any specified relevant fact set forth in the request. A copy of the request for admission shall be served on all parties entitled to notice.

(b) Request for Admission of Genuineness of Document. A party may serve on any other party a written request for admission of the genuineness of any relevant documents described in the request. Copies of the documents shall be served with the request unless copies have already been furnished.

(c) Admission in the Absence of Denial. Each of the matters of fact and the genuineness of each document of which admission is requested is admitted unless, within 28 days after service thereof, the party to whom the request is directed serves upon the party requesting the admission either (1) a sworn statement denying specifically the matters of which admission is requested or setting forth in detail the reasons why he cannot truthfully admit or deny those matters or (2) written objections on the ground that some or all of the requested admissions are privileged or irrelevant or that the request is otherwise improper in whole or in part. If written objections to a part of the request are made, the remainder of the request shall be answered within the period designated in the request. A denial shall fairly meet the substance of the requested admission. If good faith requires that a party deny only a part, or requires qualification, of a matter of which an admission is requested, he shall specify so much of it as is true and deny only the remainder. Any objection to a request or to an answer shall be heard by the court upon prompt notice and motion of the party making the request.

(d) Public Records. If any public records are to be used as evidence, the party intending to use them may prepare a copy of them insofar as they are to be used, and may seasonably present the copy to the adverse party by notice in writing, and the copy shall thereupon be admissible in evidence as admitted facts in the case if otherwise admissible, except insofar as its inaccuracy is pointed out under oath by the adverse party in an affidavit filed and served within 28 days after service of the notice.

(e) Effect of Admission. Any admission made by a party pursuant to request under this rule is for the purpose of the pending action and any action commenced pursuant to the authority of section 13-217 of the Code of Civil Procedure (735 ILCS 5/13-217) only. It does not constitute an admission by him for any other purpose and may not be used against him in any other proceeding.

(f) Number of Requests. The maximum number of requests for admission a party may serve on another party is 30, unless a higher number is agreed to by the parties or ordered by the court for good cause shown. If a request has subparts, each subpart counts as a separate request.

(g) Special Requirements. A party must: (1) prepare a separate document which contains only the requests and the documents required for genuine document requests; (2) serve this document separate from other documents; and (3) put the following warning in a prominent place on the first page in 12-point or larger boldface type: **"WARNING: If you fail to serve the response required by Rule 216 within 28 days after you are served with this document, all the facts set forth in**

the requests will be deemed true and all the documents described in the requests will be deemed genuine."

Amended July 1, 1985, effective August 1, 1985; amended May 30, 2008, effective immediately; amended October 1, 2010, effective January 1, 2011; amended Jan. 4, 2013, eff. immediately; amended Mar. 15, 2013, eff. May 1, 2013; amended May 29, 2014, eff. July 1, 2014.

Rule 237. Compelling Appearance of Witnesses at Trial

(a) Service of Subpoenas. Any witness shall respond to any lawful subpoena of which he or she has actual knowledge, if payment of the fee and mileage has been tendered. Service of a subpoena by mail may be proved *prima facie* by a return receipt showing delivery to the witness or his or her authorized agent by certified or registered mail at least seven days before the date on which appearance is required and an affidavit showing that the mailing was prepaid and was addressed to the witness, restricted delivery, with a check or money order for the fee and mileage enclosed.

(b) Notice of Parties et al. at Trial or Other Evidentiary Hearings. The appearance at the trial or other evidentiary hearing of a party or a person who at the time of trial or other evidentiary hearing is an officer, director, or employee of a party may be required by serving the party with a notice designating the person who is required to appear. The notice also may require the production at the trial or other evidentiary hearing of the originals of those documents or tangible things previously produced during discovery. If the party or persons is a nonresident of the county, the court may order any terms and conditions in connection with his or her appearance at the trial or other evidentiary hearing that are just, including a payment of his or her reasonable expenses. Upon a failure to comply with the notice, the court may enter any order that is just, including any sanction or remedy provided for in Rule 219(c) that may be appropriate.

(c) Notice of Parties at Expedited Hearings in Domestic Relations Cases. In a domestic relations case, the appearance at an expedited hearing of a party who has been served with process or appeared may be required by serving the party with a notice designating the party who is required to appear. The notice may also require the production at the hearing of the original documents or tangible things relevant to the issues to be addressed at the hearing. If the party is a nonresident of the county, the court may order any terms and conditions in connection with his or her appearance at the hearing that are just, including payment of his or her reasonable expenses. Upon a failure to comply with the notice, the court may enter any order that is just, including any sanction or remedy provided for in Rule 219(c) that may be appropriate.

Amended June 19, 1968, and amended October 21, 1969, effective January 1, 1970; amended September 29, 1978, effective November 1, 1978; amended June 1, 1995; effective January 1, 1996; amended February 1, 2005, effective July 1, 2005.

CODE OF JUDICIAL CONDUCT

Rule 61. CANON 1

A Judge Should Uphold the Integrity and Independence of the Judiciary

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

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

Rule 62. CANON 2

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

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

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

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

Rule 63. CANON 3

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

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

A. Adjudicative Responsibilities.

(1) A judge should be faithful to the law and maintain professional competence in it. A judge

should be unswayed by partisan interests, public clamor, or fear of criticism.

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

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

(4) A judge shall accord to every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard according to law. A judge shall not initiate, permit, or consider *ex parte* communications, or consider other communications made to the judge outside the presence of the parties concerning a pending or impending proceeding except that:

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

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

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

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

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

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

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

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

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

(7) A judge should abstain from public comment about a pending or impending proceeding in

any court, and should require similar abstention on the part of court personnel subject to the judge's direction and control. This paragraph does not prohibit judges from making public statements in the course of their official duties or from explaining for public information the procedures of the court.

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

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

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

B. Administrative Responsibilities.

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

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

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

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

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

relationship shall be held in confidence by the mentor.

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

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

C. Disqualification.

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

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

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

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

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

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

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

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

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

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

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

D. Remittal of Disqualification.

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

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

Rule 64. CANON 4

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

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

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

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

C. A judge may serve as a member, officer, or director of a bar association, governmental agency, or other organization devoted to the improvement of the law, the legal system, or the administration

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

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

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

CERTIFICATION FOR TEACHING ACTIVITIES

Pursuant to Supreme Court Rule 64, Judge _____ has made known to me that he/she intends to teach or instruct a course in _____during the____ of 20_____ and that the course is _____ semester/quarter hours. As his/her supervising judge, I hereby certify that the teaching or instructing as described to me will not interfere with the proper performance of the judge's judicial duties.

This certification expires at the completion of the above mentioned course.

_____
Supervising Judge

Rule 65. CANON 5

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

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

B. Civic and Charitable Activities. A judge may participate in civic and charitable activities that

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

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

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

C. Financial Activities.

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

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

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

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

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

(b) a judge or a member of the judge's family residing in the judge's household may accept ordinary social hospitality; a gift, bequest, favor, or loan from a relative; a wedding or engagement gift; a loan from a lending institution in its regular course of business on the same terms generally

available to persons who are not judges; or a scholarship or fellowship awarded on the same terms applied to other applicants;

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

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

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

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

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

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

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

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

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

Rule 66 . CANON 6

Non-judicial Compensation and Annual Statement of Economic Interests

A judge may not receive compensation for the law-related and extrajudicial activities permitted by this Code; however, he or she may receive an honorarium and reimbursement of expenses if the source of such payments does not give the appearance of influencing the judge in his or her judicial duties or otherwise give the appearance of impropriety. For purposes of this

canon, "compensation" is a sum of money or other thing of value paid by a person or entity to a judge for services provided or performed. Compensation shall not be construed to include investment or interest income or other income that is unrelated to the work or services provided or performed by the judge; nor shall compensation be construed to include a sum of money or other thing of value paid for writings.

A. Honorarium. An honorarium should not exceed a reasonable amount nor should it exceed what a person who is not a judge would receive for the same activity. The total honoraria received by a judge within a six-month period shall not exceed $5,000.

B. Expense Reimbursement. Expense reimbursement shall be limited to the actual cost of travel, food, and lodging reasonably incurred by the judge and, where appropriate to the occasion, by the judge's spouse.

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

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

Rule 67 CANON 7

A Judge or Judicial Candidate Shall Refrain
From Inappropriate Political Activity

A. All Judges and Candidates.

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

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

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

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

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

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

(3) A candidate for a judicial office:

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

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

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

(d) shall not:

(i) make statements that commit or appear to commit the candidate with respect to cases,

controversies or issues within cases that are likely to come before the court; or

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

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

B. Authorized Activities for Judges and Candidates.

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

(a) at any time,

(i) purchase tickets for and attend political gatherings;

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

(iii) contribute to a political organization;

(b) when a candidate for public election

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

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

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

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

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

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

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

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

Committee Commentary

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 8

Local Rules and Procedures

Local Rules and Procedures

The following section is intended to provide arbitrators with information relative to the local rules of the county/circuit in which they might be part of an arbitration panel.

Each county/circuit should insert a copy of its local rules into this section for reference for the arbitrators.

Insert Local Rules Here

Section 9

Selected Case Law Outline

(Includes various unreported Rule 23 Opinions)

Revised October 2018

Issues and Case Law in Illinois

This **"Selected Case Law"** outline has been prepared as a comprehensive reference guide for anyone navigating a case wherein it is required that parties participate in a meaningful arbitration process. It should be noted that the cases published under Supreme Court Rule 23 are "not precedential and may not be cited by any party except to support contentions of double jeopardy, *res judicata*, collateral estoppel or law of the case." Il. S. Ct. Rule 23(e)

Illinois Supreme Court Rules 86 through 95 govern Mandatory Arbitration. This outline provides citations for the ongoing arbitration case law and a synopsis of each case explaining its applicability to the arbitration process. These cases are categorized under various headings which comprise the issues that arise as a case proceeds through the system on the way to arbitration, as well as issues that arise at the actual arbitration hearing.

Proper orders to enter at each stage of the case relating to issues regarding service of summons, discovery rules, briefing schedules for motions, time limitations and sanctions, resetting of arbitration hearing dates, barring orders, judgment on award orders and trial room assignment orders are all available in courtrooms where arbitration related matters are heard.

A thorough understanding of this information and the process itself will assist in moving a case effectively through the system and allowing Mandatory Arbitration to work. Mandatory Arbitration has proven to be very successful in the resolution of a case prior to the need for a trial. The success rate is the reason why parties are encouraged to treat Mandatory Arbitration seriously and to participate meaningfully in these hearings. Case law also dictates the requirements for "meaningful participation." All types of motions presented in these cases are treated with this concept in mind. Meaningful participation in the Mandatory Arbitration process is critical and strict adherence to discovery rules and arbitration rules will always be enforced.

Table of Contents

Notice of Arbitration Hearing *65*

Arbitrators Must Resolve All Claims *66*

Orders Barring Presentation of Evidence on any Issues at Arbitration Due to Discovery Violations *67*

Good Faith Participation at Arbitration (Supreme Court Rule 91(b)) Failure of Parties to be Present *70*

91(b) Excuses: Failure of Party to be Present after Service of Proper 237 Request *73*

Failure of Party to be Present Without 237 Notice; 91(b) Failure To Participate *77*

Rejections *79*

Judgment on Award *80*

Good Faith Participation: Quality v. Quantity. How Much Participation is Required? *80*

Excessive Arbitration Award *82*

Absence of Prejudice as Factor in Party Not Appearing *82*

Pro Hac Vice – Requirement for Out-of-State Attorneys *83*

Rule 90(c) Evidence Package *83*

Rejecting the Arbitration Award *83*

Bad Faith Finding by Arbitration Panel *85*

Second Arbitration *85*

2-1301 Vacating Judgment *85*

Table of Contents (cont.)

Modifying Arbitration Award *86*

Interpreters at Arbitration *86*

Voluntary Non-Suit, DWPs and Re-filed Actions *87*

Orders Barring Rejections Prior to Arbitration Hearing *87*

Intervention *88*

Waiver of Right to Contest Rejection *88*

Counterclaims and Set Offs After Arbitration *89*

Neither Plaintiff nor Defendant Appear at Arbitration *89*

Monetary Relief Only; No Equitable Relief *89*

Evidentiary Issues *90*

Mandatory Arbitration Case List *91*

NOTICE OF ARBITRATION HEARING

Horn v. Newcomer **1-00-1777 Rule 23**

Plaintiff files personal injury case. Notice of arbitration sent to only one of two plaintiffs' attorneys was inadequate. Both attorneys of record entitled to notice (Hoffman dissents from rule).

Arguilar v. Singleton **1-01-0568 Rule 23**

Once original arbitration date known, continuance of less than 60 days okay.

West v. Malik **1-00-3580 Rule 23**

Notice sent to former office okay, no change of address on file.

Juszczyk v. Flores **334 Ill.App. 3d 122 (1st Dist. 2002)**
(*petition for leave to appeal denied)*

Defense did not receive notice of arbitration. Arbitration judgment is voidable not void due to lack of notice. 2-1401 to vacate judgment denied due to lack of diligence. Knew of judgment 2 ½ months prior to petition.

Meine v. Rathunde **1-02-0130 Rule 23**

Plaintiff files personal injury case. Neither plaintiff nor attorney appear at arbitration. Award for defendant. Plaintiff rejects. Plaintiff claimed lack of notice. No 237 was served on plaintiff. Court barred plaintiff's rejection. Appellate Court affirms. Plaintiff has duty to follow progress of case. Failure of plaintiff to follow progress of case may constitute inept preparation.

Tiller v. Semonis **263 Ill. App. 3d 653 (1st Dist. 1994)**

Failure of a litigant to be notified of the date of an arbitration hearing does not constitute an excuse for failing to appear at the hearing. Litigants must follow progress of own case.

Progressive Insurance Co. v. Ogilvie **1-03-2490 Rule 23**

Litigants must follow progress of own case. Arguments of lack of notice are based on credibility. Court found notice sent.

Padron v. Sotiropoulos **315 Ill. App.3d 1087 (1st Dist. 2000)**

Arbitration hearing need not be held within one year from date of filing nor is 60-day notice of hearing required.

ARBITRATORS MUST RESOLVE ALL CLAIMS

Kolar v. Arlington Toyota Inc. **286 Ill. App.3d 43 (1st Dist. 1996)**

Mandatory arbitration scheme may not be used to supplement trial or to decide certain issues piecemeal, while allowing parties to go to trial on other issues; rather, system is alternative to trial where all issues raised by parties are decided by arbitration panel.

Cruz v. Northwestern Chrysler Plymouth Sales et al. **179 Ill. 2d 271 (1997)**

All issues must be submitted to arbitrators including attorney fees.

MBNA American Bank v. Cardoso **302 Ill. App. 3d 710 (1st Dist. 1998)**

A prevailing defendant who is entitled to costs including attorney fees under the Credit Card Liability Act is precluded from requesting those fees from the circuit court on the judgment on the award date when they failed to request the fees at the arbitration hearing.

Hinkle v. Womack **303 Ill. App. 3d 105 (1st Dist. 1998)**

Arbitration is not just another hurdle. Defendant's non appearance need not result in prejudice to plaintiff. Merely cross examining witnesses and making arguments to rebut a plaintiff's case is not adversarial testing. A court cannot modify the substantive provisions of the arbitration award or grant any monetary relief in addition to the sum awarded by the arbitrators.

Costelo v. Illinois Farmers Ins. Co. **263 Ill App.3d 1052 (1st Dist. 1993)**

Presumption exists that arbitrators considered all of the claims raised by each of the parties in determining their award. Arbitrators' awarding of gross sum of money when controversy submitted to arbitration contains interrelated claims and cross claims for money damages will be presumed to be complete adjustment of all matters of difference.

Father and Son Inc., v. Taylor **301 Ill App.3d 448 (1st Dist. 1998)**

Attorney's fees must be decided by arbitrators.

Winbush v. CHA **321 Ill. App. 3d 1056 (1st Dist. 2001)**

Attorney's fees issue must be presented to arbitration panel.

Progressive Insurance Company v. Damoto **1-01-0460 Rule 23**

If arbitration award is silent as to costs, trial court is prohibited from assessing costs in judgment.

ORDERS BARRING PRESENTATION OF EVIDENCE ON ANY ISSUES AT ARBITRATION DUE TO DISCOVERY VIOLATIONS

Lopez v. Miller **363 Ill. App. 3d 773 (1st Dist. 2006)**

Barring of rejection affirmed for discovery violation.

Glover v. Barbosa **344 Ill. App. 3d 58 (1st Dist. 2003)**

Defendant barred from presenting evidence at arbitration because she failed to comply with discovery. During the six months between the date she was sanctioned and the date of the arbitration hearing, she made no attempt to "comply with discovery" or modify or vacate order.

Anderson v. Pineda **354 Ill. App. 3d 85 (1st Dist. 2004)**

Court considered conflicting opinions in *Glover* and *AMRO v. Bellamy,* 337 Ill. App.3d 369 (1st Dist. 2003) and concluded *Glover* more persuasive and barred rejection based on discovery violations.

Eichler v. Record Copy Service **318 Ill App.3d 790 (1st Dist. 2000)**

Failure to comply or vacate order precludes participation.

Arguelles v. Higgs **1-03-2053 Rule 23**

Court followed the rationale of Eichler that barring order was proper and plaintiff's failure to comply with discovery was proper basis to bar rejection.

Lozano v. Ly **1-01-1331 Rule 23**
(petition for leave to appeal denied)

Barring/compelling order against defendant. Defendant appeared at arbitration although did not testify due to arbitrators honoring barring order. Trial court affirmed (based on **Eichler**) defendant should have complied, updated or sought other relief in one month period before arbitration.

Czernak v. Taylor **1-03-1744 Rule 23**

Barring/compelling order entered against plaintiff for written discovery. Plaintiff did not comply. Barred at arbitration hearing. Trial court barred rejection of award for defendant. Affirmed.

Bianco v. Lee **1-01-3672 Rule 23**

Plaintiffs barred due to discovery violation. Arbitrators honor barring language. Plaintiff unable to present evidence. Award for defendant and plaintiff rejects. Defendant files motion to bar rejection. Court held pre-printed form type language of barring order is a warning that can become a sanction and is proper. Affirmed. (Relies on **Eichler**.)

Gilmore v. City **1-01-1431 Rule 23**

Plaintiff files personal injury case. Compel/bar order entered. At arbitration, plaintiff unable to present evidence due to failure to comply. Plaintiff offered no 90(c) or other evidence. Appellate Court affirmed bar, held plaintiff presented insufficient evidence of compliance with barring order.

Allstate Ins. Co. v. Simons **1-02-2193**
(petition for leave to appeal denied)

Subrogation case. Plaintiff barred for discovery violation. Arbitrators followed order; award and judgment for defendant. Plaintiff rejects. Rejection barred. Appellate Court affirms. Barring order is proper. Plaintiff never vacated order or sought leave to comply late.

Kukis v. Wang **1-00-4249 Rule 23**

Barring order without compliance. Rejection barred. Appellate Court reverses and allows rejection suggesting duty to pursue discovery beyond order.

Nichols v. Bettis **1-02-0388 Rule 23**

Plaintiffs barred for failure to appear for deposition. Arbitration award for defendant rejected. Summary Judgment for defendant. Allegations of agreement not to take depositions argued by plaintiff. Court must follow factors in **Shimanousky**. Insufficient showing of deliberate disregard of court's authority.

GEICO v. Campbell **335 Ill. App. 3d 930 (1st Dist. 2002)**

As a sanction, Plaintiff was barred from providing testimony and or presenting evidence at arbitration hearing for failing to respond to discovery requests. Plaintiff rejection of the award was barred by the trial court. The appellate court affirmed finding there was no abuse of discretion by the trial court because the plaintiff failed to meaningfully participate in the arbitration process by not responding to discovery demands when ordered to do so.

GEICO v. Buford **338 Ill. App. 3d 448 (1st Dist. 2003)**

Barring order against defendant. Defendant failed to comply. Arbitrators barred defendant and entered award for plaintiff. Defendant rejected. Court followed *Eichler* decision since defendant never moved to vacate barring order prior to arbitration. Court reasonably concluded no intent to participate in good faith.

King et al. v. Clay et al. **335 Ill. App 3d 923 (1st Dist. 2002)**

Summary judgment improper after barring order. Defendant should have requested additional compliance with order and set dates.

Mitchell v. Hatch **1-02-0431 Rule 23**

Barring order entered. At arbitration, barring order prevents plaintiff from presenting evidence. Plaintiff argues depositions never reset by defendant. Defendant has no obligation to reset depositions. Insufficient basis on facts to bar rejection.

Amro v. Bellamy **337 Ill. App.3d 369 (1st Dist. 2003)**

Two orders to compel violated. Barring order entered. Defendant not allowed to testify. Award rejected. Motion to bar rejection granted due to lack of discovery compliance, conduct before hearing. Reversed.

United Services v. Lee **1-02-1602-Rule 23**

Rule 237 on named plaintiff's adjuster. Plaintiff's adjuster did not appear. Award entered in favor of plaintiff. Defendant rejected and filed motion to bar plaintiff from presenting evidence at trial for violation of 91(b). Court barred plaintiff based on 91(b). Appellate Court found plaintiff's violation of 237 unreasonable and pronounced disregard for rules. Summary judgment affirmed.

Davenport v. Tyms **324 Ill. App. 3d 1122 (1st Dist. 2001)**

Barring order should not be basis for 91(b) finding. Sanction of barring testimony or evidence should extend to trial if party rejects. (Summary Judgment seems appropriate)

Bachmann v. Kent **293 Ill. App. 3d 1078 (1st Dist. 1997)**

Party barred from presenting evidence or testimony per discovery violation still must appear at arbitration and the unexcused absence of party precludes filing of rejection. Further a rejection of an arbitration award that was signed by the attorney's secretary is improper. The court is under no obligation to allow an attorney to sign a document when that document is already signed in violation of a court rule.

State Farm Insurance v. Gebbie **288 Ill. App. 3d 640 (1st Dist. 1997)**

The fact that defendant's attorney appeared and participated in hearing did not excuse defendant's absence even though the defendant was barred from presenting any evidence at hearing because of his failure to comply with discovery order did not excuse his failure to appear.

Walikonis v. Haslor **306 Ill. App. 3d 811 (2nd Dist. 1999)**

Improper to prospectively bar a party from rejecting the arbitration award based on conduct (discovery abuse) prior to arbitration.

Williams v. Martinez **323 Ill. App. 3d 1153 (1st Dist. 2001)**

Supreme Court Rule 237 Notice on Plaintiff. Defendant excused from arbitration. Plaintiffs barred from presenting evidence due to discovery violation. Court really only barred one plaintiff. Court affirmed barring rejection on proper plaintiff, but remanded case on other plaintiff. (Good review of barring order and 91(b)).

Mamolella v. Nandorf **318 Ill. App. 3d 1221 (1st Dist. 2001)**

No 237 on plaintiff. Plaintiff did not attend arbitration. Plaintiff attorney present. No 90(c) material. Plaintiff rejects. Court, as 91(b) sanction, bars testimony of plaintiff at trial. Plaintiff argued traffic delay prevented appearance. Summary Judgment entered since plaintiff could present no evidence.

Yodka v. Gallagher **324 Ill. App. 3d 1142 (1st Dist. 2001)**

Barring order on plaintiff. No evidence presented. Rejection properly barred.

Little v. Beatty **1-01-4241 Rule 23**

Barring order entered. Award for defendant. Case is dismissed for want of prosecution. Re-filed case (under 219(e)) is subject to same bar.

GOOD FAITH PARTICIPATION AT ARBITRATION (SUPREME COURT RULE 91(b) FAILURE OF PARTIES TO BE PRESENT

Nationwide v. Kogut **354 Ill App 3d 1 (1st Dist. 2005)**

Insured did not appear at subrogation action but insurance agent testified. Court held that failure to produce insured at arbitration hearing did not amount to intentional disregard for arbitration process, thus, plaintiff participated in good faith.

State Farm v. Jones **1-05-3218 Rule 23**

Defendant did not appear. Panel found bad faith. Insufficient excuse for non-appearance.

State Farm v. Culbertson **355 Ill. App. 3d 205 (1st Dist. 2005)**

Subrogation action in which both the defendant and claim representative testified but not the insured did not as requested by the Plaintiff. Appellate Court found that the insurer did not act in bad faith at arbitration hearing, even though the insurer did not comply with alleged tort-feasor's request to produce the insured.

Zietara v. Daimler Chrysler **361 Ill. App. 3d 819 (1st Dist. 2006)**

Late appearance by plaintiff car owner did not amount to deliberate disregard for the rules and arbitration process when arbitrators had not finished drafting award and plaintiff should have been allowed to participate in hearing. Arbitrators had authority to exercise discretion and re-commence hearing. Judgment barring plaintiff from rejecting award was reversed.

Givens et al. v. Renteria et al. **347 Ill. App. 3d 934 (1st Dist. 2004)**

Defendant left during arbitration recess that the panel chair mistakenly called an adjournment. . Arbitration proceeded without any further participation by the defense. When arbitrators unanimously find that party failed to participate in mandatory arbitration process in good faith, court will treat their finding as prima facie evidence.

Faircloth v. Livehelper **1-03-1362 Rule 23**

Contract action. Plaintiff had no witnesses at arbitration hearing. Award for defendant. Plaintiff rejects. Trial court bars rejection on basis of lack of good faith participation by plaintiff who went to hearing knowing it could not sustain its burden of proof. Appellate Court affirmed stating that arbitration panel does not have to find bad faith for trial court to enter sanction.

Gripman v. Northwestern **1-03-0791 Rule 23**

Plaintiffs did not appear at arbitration. Excuse of child's illness found to be insufficient.

Finova v. Northwest **312 Ill. App. 3d 1196 (1st Dist. 2000)**

Award for plaintiff. Defendant's rejection is barred. No 237 for defendant's witnesses and good excuse for non-appearance.

Fiala v. Schulenberg & Century 21 **256 Ill. App. 3d 922 (1st Dist. 1993)**

Defendant Century 21 was misled as to their need to appear at arbitration and liability. Thus, court found failure to appear was based on extenuating circumstances and allowed rejection despite non-appearance.

Johnson v. Saenz **311 Ill. App. 3d 693 (2nd Dist. 2000)**

Trial court abused its discretion by barring defendant in personal injury action from rejecting arbitration award, as sanction for her failure to personally appear at mandatory arbitration hearing, where failure to appear by defendant, who was represented at hearing by counsel, was not result of a deliberate and pronounced disregard for court rules, but was reasonable and the result of extenuating circumstances, including language barrier created by defendant's poor command of English language

Ware v. Zaragoza **1-01-1209 Rule 23**

Plaintiff not present due to ill father. 237 for plaintiff. Only attorney attended. Plaintiff's rejection barred.

Starling v. Furey **1-01-4241 Rule 23**

Plaintiff did appear at arbitration. 237 on plaintiff. Arbitration lasted until 9:23 a.m. Plaintiffs arrived but were told hearing was over. Plaintiffs were delayed by major storm, not just traffic. No evidence of deliberate and pronounced disregard.

Gore et al. v. Martino et al. **312 Ill. App. 3d 701 (1st Dist. 2000)**

Plaintiffs arrived 40 minutes late, but prior to time hearing had terminated. Conduct not constitute disregard of process or bad faith in participation.

Nix v. Whitehead **368 Ill. App. 3d 1 (1st Dist. 2006)**

Grace period is not mandatory but rather a guideline. Arrival occurred while arbitrators still present. Defendant had admitted negligence.

State Farm v. Watkins **1-03-2818 Rule 23**

Subrogation action. Plaintiff's insured driver not present. No transcript or brief filed by defense. No bad faith finding by arbitrators. Plaintiff's counsel was present and found to have participated in good faith. 237 does not apply.

Hejduk v. Gandhi **1-01-1210 Rule 23**

Defendant appearing by telephone after 237 without leave of court does not satisfy 237 or 91(b).

State Farm v. Santiago **344 Ill. App. 3d 1010 (1st Dist. 2003)**

Automobile insurer participated in good faith in arbitration of its subrogation claim against alleged tort-feasor and, therefore, was not subject to sanctions, even though it failed to produce the insured's at the arbitration hearing; the insurer presented evidence of damage to the insured vehicle, appeared at the arbitration hearing through counsel and through its adjuster, and called alleged tort-feasor as an adverse witness to establish his negligence, it thus substantially complied with notice to produce, and the alleged tort-feasor bore the responsibility for securing the presence of the insureds by means of subpoena.

Maltese v. Accardo **1-01-3273 Rule 23**

91(b) lack of good faith participation shown when plaintiff only filed 90(c) and called defendant. Plaintiff did not appear after 237. Affidavit relative to absence held insufficient.

Pezza v. Cerniglia **1-03-1362 Rule 23**

Defendants received notice of arbitration the day before. 237 with no date. Defendant's attorney and witness appeared. Rejection allowed.

Richmond v. Bailin **1-03-1812 Rule 23**

Circuit court has no authority to impose sanctions without a motion filed by counsel.

State Farm v. Koscelnik **342 Ill. App. 3d 808 (1st Dist. 2003)**

In arbitration proceedings, parties are required to subject their cases to the type of adversarial testing that would be expected at trial. A trial court need not find intentional obstruction of the arbitration proceeding in order to find bad faith participation on the part of a party to an arbitration hearing, even though plaintiff insurer's conduct during arbitration proceeding in connection with subrogation action did not constitute a deliberate, contumacious, or unwarranted disregard of court's authority, finding that insurer's failure to produce its insured at arbitration hearing constituted bad faith was warranted, where defendant contested liability in automobile collision, and only way that insured could have met its burden of proof was to produce its insured or another eyewitness to collision, other than defendant.

Hall v. Allied **1-01-2257 Rule 23**

Defendants failed to appear in roof repair case. Defendants' attorney present. 237 served on defendants. By failing to appear, defendants did not preserve right to reject arbitration award**.**

Liberty Mutual v. Garcia **1-03-2785 Rule 23**

Subrogation action. Injured employee did not appear. Defendant had admitted negligence and was excused. With only damages being at issue, injured employee not needed. No finding by arbitration panel. 237 did not apply.

91(b) EXCUSES; FAILURE OF PARTY TO BE PRESENT AFTER SERVICE OF PROPER 237 REQUEST

Ziolkowski v. Collins **323 Ill. App. 3d 1154 (1st Dist. 2001)**

237 served on defendant who did not appear in arbitration hearing room. Defense argues that defendant fell asleep in bathroom at arbitration center. Award for plaintiff. Defendant rejects. Rejection barred. Affirmed. Court held insufficient affidavits and insufficient excuse.

Adetona v. Difor **1-02-1372 Rule 23**

Defendant did not appear at arbitration. No 237. Defendant stipulated to negligence. Transcript showed extensive cross of plaintiff and impeachment. Defendant satisfied 91(b) requirement.

Ibeagwa v. Habitat Co. **204 Ill. 2d 660 (2003)**
(Leave to appeal denied)

Plaintiff failed to appear at arbitration. No 237. Judgment for defendant vacated. New arbitration scheduled. Plaintiff failed to appear at second arbitration. Plaintiff rejection barred. Judgment for defendant. Plaintiff filed motion to vacate judgment and offered excuse that train was 17 minutes late. Court held insufficient excuse.

State Farm Insurance v. Nasser **337 Ill. App. 3d 362 (1st Dist. 2003)**

Plaintiff filed a subrogation claim based on rear end accident, seeking property damage and medical payments. The trial court excused the defendant from appearing at the arbitration hearing due to the defendant's admission of negligence and proximate cause. However, neither plaintiff nor the adjuster appeared. The plaintiff's attorney was present and and award was entered for the plaintiff. Trial court granted Defendant's motion to bar plaintiff from producing evidence at trial. Appellate Court reversed holding that defendant had already admitted liability and proximate cause of the accident, leaving the amount of property damage and medical payments the only issues to be proven at the arbitration and because it was undisputed that plaintiff's counsel was present and presented evidence of property damage through its Rule 90(c) package and also that there was no evidence presented concerning medical payments the trial court abused its discretion in finding that plaintiff had participated in bad faith.

Pruzan v. Brauer **315 Ill. App 3d 1223 (1st Dist. 2000)**

Plaintiff files personal injury case, fails to appear at arbitration, despite 237. Plaintiff resided in Florida and made no attempt to appear. Award for defendant. Court barred plaintiff's rejection. Affirmed.

Quinn v. Reardon **316 Ill. App. 3d. 1294 (1st Dist. 2000)**

Plaintiffs file personal injury case. Plaintiff Johnson is awarded damages. Plaintiff Quinn loses due to non-appearance despite 237 on plaintiff Quinn to appear. Appellate Court found plaintiff Quinn's non-appearance reasonable due to medical excuses provided.

Macon v. Hurst **1-01-3109 Rule 23**

Plaintiff files personal injury case, arrives 45 minutes late during closing arguments. Plaintiff alleges attorney mistake that plaintiff was sent to wrong address. 237 served on

plaintiff. Plaintiff did not testify, yet arbitrators entered an award for plaintiff. Court barred plaintiff's testimony at trial. Defendant filed motion for summary judgment which court granted. Appellate Court reversed, found plaintiff excuse to be reasonable.

State Farm v. Sumskis **1-00-3987 Rule 23**

Subrogation action. 237 served for claims adjustor who failed to appear. Insufficient adversarial testing without claims adjustor.

State Farm v. Mohammed **1-03-0536 Rule 23**

Plaintiff had no insureds or employees at arbitration. No bad faith finding by panel. 237 notice found to be deficient.

United Services v. Lee **1-02-1602 Rule 23**

237 served on named plaintiff's adjuster. Plaintiff's adjuster did not appear. Award entered in favor of plaintiff. Defendant rejected and filed motion to bar plaintiff from presenting evidence at trial for violation of 91(b). Court barred plaintiff based on 91(b). Appellate Court found plaintiff's violation of 237 unreasonable and pronounced disregard for rules. Summary judgment affirmed.

Bachmann v. Kent **293 Ill. App. 3d 1078 (1st Dist. 1997)**

A rejection of an arbitration award that was signed by the attorney's secretary improper. Unexcused absence of party precludes filing of rejection. Party barred per discovery violation. Must appear at arbitration. The court is under no obligation to allow an attorney to sign a document when that document is already signed in violation of a court rule.

State Farm Insurance a/s/o Blaze v. Gebbie **288 Ill. App. 3d 640 (1st Dist. 1997)**

Failure to appear at arbitration is not excused because court had barred presentation of any evidence.

Morales v. Mongolis **293 Ill. App. 3d 660 (1st Dist. 1997)**

Defendant was given adequate notice pursuant to Rule 237(b) to appear at arbitration hearing, although notice specified appearance at trial rather than at hearing, where court entered order transferring case to mandatory arbitration and defendant filed motion to be excused from appearing at arbitration hearing or to continue arbitration, which court denied, and thus, defendant could not have reasonably construed notice as notice to compel her appearance at trial; however, better practice would have been to issue new notice to appear at arbitration hearing.

Miller v. Beach **1-01-2391 Rule 23**

Court held 237 for trial is sufficient 237 for arbitration as well, after defendant who was served with 237 failed to appear at arbitration contending 237 was for trial only.

Smith v. Johnson et al. **278 Ill. App. 3d 387 (1st Dist. 1996)**

The defendant can be barred from rejecting an arbitration award if she fails to appear at the arbitration hearing but appears through counsel. Defendant argued never got mail notice

from attorney. Court held notice to attorney adequate. Prior motion to excuse co-defendant stated this defendant would appear.

Williams v. Dorsey **273 Ill. App. 3d 893 (1st Dist. 1995)**

Notice to appear qualifies as 237(b) notice to appear at arbitration. Notice to an attorney of an arbitration hearing is considered notice to the client.

Hinkle et al v. Womack **303 Ill. App. 3d 105 (1st Dist. 1998)**

Defendant's non-appearance need not result in prejudice to plaintiff. Merely cross examining witnesses and making arguments to rebut a plaintiff's case is not adversarial testing. A court cannot modify the substantive provisions of the arbitration award or grant any monetary relief in addition to the sum awarded by the arbitrators.

Kellett v. Roberts **281 Ill. App. 3d 461 (2nd Dist. 1996)**

The trial court must set forth a reason when it denies a party's motion for sanctions under 237. Supreme Court Rule 91(b) is not an impermissible and unconstitutional restriction to a party's right to a trial by jury. The fact that the defendant was not informed of the date of the arbitration hearing constitutes an excuse for the defendant's failure to appear. Attorney was notified.

Allstate v. Avelares **295 Ill. App. 3d 950 (1st Dist. 1998)**

A defendant who fails to participate in the arbitration hearing in good faith warrants denial of the request for reimbursement of the statutory jury demand fee and the arbitration award rejection fee.

Foy v. Ford **205 Ill. 2d 580 (2003)**

237 for trial includes arbitration. Not necessary to show deliberate and contumacious disregard for court's authority for 237 violation. Arbitrators' substantive ruling of law not reviewable by trial court. (Expansion of **Morales** ruling.)

State Farm v. Bozzi **1-02-3595 Rule 23**

Both served 237 notices. Court excused State Farm adjustor if insured appeared. Insured did not appear and court found adjustor's failure to appear was due to reasonable excuse. Court discusses ability to use 237 as basis for sanctions.

Starling v. Furey **1-01-4241 Rule 23**

Plaintiff did appear at arbitration. 237 on plaintiff. Arbitration lasted until 9:23 a.m. Plaintiffs arrived but were told hearing was over. Plaintiffs were delayed by major storm, not just traffic. No evidence of deliberate and pronounced disregard.

Devries v. Cruz **1-01-3668 Rule 23**

Despite 237, plaintiff did not appear at arbitration due to family emergency of mother-in-law's stroke on morning of arbitration. Court found affidavits sufficient.

Merendino v. French **315 Ill.App3d 1217 (1st Dist.2000)**

Plaintiff failed to appear. Attorney present. 237 on plaintiff. Plaintiff confused depositions and arbitration. Court held excuse not reasonable.

State Farm Insurance v. Jacquez **322 Ill. App. 3d 652 (1st Dist. 2001)**

A defendant who failed to appear at the arbitration hearing pursuant to a Supreme Court Rule 237 notice should not be barred from rejecting the award when the arbitration panel indicated in the award that there was no prejudice to the plaintiff.

Vazquez v. Young **1-01-0016 Rule 23**

237 notice on plaintiff. Barring order on defendant (no signed interrogatory). Plaintiff stated was at hospital with son on date of arbitration. Plaintiff arrived 30 minutes late. Plaintiff rejects. Court bars rejection on 237. Should have used Rule 91(b), which could possibly have yielded a different result to the claim.

Williams v. Martinez **323 Ill. App. 3d 1153 (1st Dist. 2001)**

237 Notice on plaintiff. Defendant excused from arbitration. Plaintiffs barred from presenting evidence due to discovery violation. Court really only barred one plaintiff. Court affirmed barring rejection on proper plaintiff, but remanded case on other plaintiff. (Good review of barring order and 91(b)).

Allstate v. Marshall **1-00-2901 Rule 23**

237 notice. Defendant does not show. Defendant at funeral five days prior to arbitration. Drove back from Mississippi. Arrived too late. Rejection barred based on insufficient affidavit.

State Farm v. Harmon **335 Ill. App. 3d 687 (1st Dist. 2002)**

Plaintiff filed a subrogation action against defendant for allegedly damaging the vehicle of plaintiff's insured. Defendant filed a notice to produce pursuant to Supreme Court Rule 237 notifying plaintiff to produce at the mandatory arbitration hearing "Plaintiff(s) and Co–Defendant(s) at the commencement of the case in chief of Defendant(s) Robert L. Harmon." Plaintiff's counsel was present at the arbitration hearing, but plaintiff's insured was not present. The arbitrators entered an award for plaintiff. Defendant filed a timely notice of rejection of the arbitration award and requested a trial. Defendant then filed a motion for sanctions pursuant to Illinois Supreme Court Rules 237 and 91(b) seeking to bar plaintiff from testifying or producing any evidence at trial because the plaintiff failed to appear despite a valid Rule 237 notice and produced no other witness who could testify to the merits of "his claim for bodily injury." Trial court granted motion. Appellate Court held that because defendant's notice only requested "plaintiff(s)" and did not designate an employee to appear, plaintiff did not act in bad faith by appearing through its counsel. Furthermore, defendant did not request the appearance of plaintiff's insured. It should be noted, however, that Rule 237(b) would not reach plaintiff's insured because in this case the insured was not a party to the lawsuit. Defendant bears the responsibility for any alleged insufficiency in adversarial testing because he failed to secure evidence in the appropriate fashion

McGee v. Lopez **1-01-3914 Rule 23**

Neither plaintiff nor attorney appeared at arbitration hearing, despite 237 notice. Plaintiff argued delayed in traffic. Appellate Court found deliberate and pronounced disregard for rules.

FAILURE OF PARTY TO BE PRESENT WITHOUT 237 NOTICE, 91(b) FAILURE TO PARTICIPATE

Schmidt v. Joseph **315 Ill. App. 3d 77 (1st Dist. 2000)**

Plaintiff did not appear. Plaintiff's attorney opened, crossed defendant, closed and presented 90(c). Barring automobile accident victim from rejecting an arbitration award, on the ground that she failed to prove she participated in good faith and in a meaningful manner in the arbitration hearing, at which she failed to appear, was not an abuse of discretion, even though her counsel did appear, where there was insufficient information to determine whether plaintiff's counsel subjected the case to the type of adversarial testing expected at trial, absent a transcript of the arbitration hearing, a transcript of the trial court's finding, an affidavit from counsel, or the materials presented at the hearing.

Meine v. Rathunde **1-02-0130 Rule 23**

Plaintiff files personal injury case. Neither plaintiff nor attorney appear at arbitration. Award for defendant. Plaintiff rejects. Plaintiff claimed lack of notice. No 237 was served on plaintiff. Court barred plaintiff's rejection. Appellate Court affirms. Plaintiff has duty to follow progress of case. Failure of plaintiff to follow progress of case may constitute inept preparation.

Employer's Consortium, Inc. v. Aaron **298 Ill. App. 3d 187 (2nd Dist. 1998)**

Plaintiff's corporation representative did not appear. Plaintiff attorney called no witnesses, introduced verified complaint and promissory note. Court held insufficient 91(b) participation.

Martinez v. Gaimari **271 Ill. App. 3d 879 (2nd Dist. 1995)**

Arbitrators and trial court reasonably could have concluded that by not requesting the arbitration hearing be continued so that defendant could be present, defendant never intended to participate in good faith and in meaningful manner, and, thus, trial court properly barred defendant from rejecting arbitration award.

Hill v. Behr **239 Ill. App. 3d 814 (2nd Dist. 1997)**

Plaintiffs did not appear at the arbitration hearing, 90(c) material was not presented, and no liability and/or damages testimony was presented. Therefore, the plaintiffs should be barred from rejecting the arbitration award despite the fact that the arbitrators failed to find that the plaintiffs did not participate in the arbitration hearing in good faith.

Knight v. Guzman **291 Ill. App. 3d 378 (1st Dist. 1997)**

An attorney who did not appear at the arbitration hearing, but is an associate of the law firm that is representing a defendant can sign notice of rejection. Law firm's prior rejections cannot be basis for sanction.

Fiala v. Schulenberg et al. **256 Ill. App. 3d 922 (1st Dist. 1993)**

Defendant Century 21 was entitled to relief from default judgment affirming arbitration award where judgment was entered under circumstances that were deemed unfair, unjust and unconscionable. Specifically, Century 21 did not have possession of funds in dispute and reasonably relied on the parties' representations that no action would be taken against it at the arbitration hearing. It did not have possession of funds in dispute and reasonably relied on parties' representations that no action would be taken against it

State Farm v. Rodrigues **324 Ill. App. 3d 736 (1st Dist. 2001)**

Plaintiff appeared at the arbitration hearing by counsel and presented both the defendant's adverse testimony and an arbitration package of documentary evidence relating to damages and repairs. The arbitrators did not make a finding that plaintiff had failed to participate in good faith. Also, the circuit court made the finding without the benefit of a transcript of the arbitration hearing. Further, there was no indication in t he record that defendant ever filed the necessary Rule 237 notice for the plaintiff and/or the plaintiff's representative to appear. As a result, under the particular circumstance of this case, the record clearly does not reflect that the plaintiff displayed a deliberate and pronounced disregard for the arbitration rules and therefore the trial court abused its discretion in barring plaintiff from presenting evidence at trial.

Saldana v. Newmann **318 Ill. App. 3d 1096 (1st Dist. 2001)**

Court did not abuse its discretion in barring plaintiff from rejecting an award when plaintiff's attorney did not present the trial court with an affidavit attesting to his participation in the arbitration hearing and when the plaintiff failed to arrive due to traffic issues and simply agreed that the panel of arbitrators would enter an award in favor of defendant. Further the time stamp of "8:52" evidencing the entry of the written award also supported a reasonable inference that here was no meaningful participation in that the hearing lasted only 22 minutes from its scheduled start time.

State Farm v. Cozzola **1-02-2960 Rule 23**

Plaintiffs insured did not appear. No excuse offered. Finding for defendant. Defendant must subpoena insured. Barring of rejection improper.

Ross v. Tinch **1-02-2480 Rule 23**

No 237. Defendant's attorney appears but not defendant. Pleadings establish contract dispute with credibility of parties essential. Award for plaintiff. Defendant rejects. Appellate Court affirms trial court barring rejection and rules 237 notice is not prerequisite to 91(b) finding.

Spano v. City of Chicago **1-00-4134 Rule 23**

Plaintiff and attorney 15 minutes late. Arbitration completed. Tardiness not deliberate and pronounced disregard for rules.

Lekienta v. Soltys **1-99-3016 Rule 23**

The plaintiffs should not be barred from rejecting the arbitration award because the plaintiffs' attorney was mistaken as to the time of the hearing and failed to appear.

Schmidt v. Sanders **1-02-1209 Rule 23**

Defendant arrived late for arbitration but during hearing. No request to re-open proofs. Barring rejection affirmed.

Moy v. Galustyan **195 Ill. 2d 580 (2001)**

Neither parties nor attorneys attended arbitration. Award for defendant. Case dismissed for want of prosecution on judgment on award call. No rejection filed. Two years later motion to vacate and enter judgment for defendant. Plaintiff argued clerical error in not appearing. Appellate Court affirmed barring of rejection and also would not vacate judgment for defendant per 2-1301 waiver argument denied.

Mamolella v. Nandorf **318 Ill. App. 3d 1221 (1st Dist. 2001)**

No 237 on plaintiff. Plaintiff did not attend arbitration. Plaintiff attorney present. No 90(c) material. Plaintiff rejects. Court, as sanction (91(b)), bars testimony of plaintiff at trial. Plaintiff argued traffic delay prevented appearance. Summary judgment entered since plaintiff could present no evidence.

Dimaano v. Freeman **302 Ill. App.3d 1086 (1st Dist. 1999)**

A court should not set aside the arbitration award and schedule another arbitration when the plaintiffs nor their counsel appeared at the hearing. Transcript or bystander's report needed to review sanction.

Williams v. Abelkader **312 Ill. App. 3d 1212 (1st Dist. 2000)**

Neither plaintiff nor defendant appeared at arbitration. Both attorneys present. Award for defendant. Plaintiff said attorney gave wrong time to plaintiff. Court barred based on 91(b).

REJECTIONS

Hornburg v. Esparza **312 Ill. App. 3d 801 (1st Dist. 2001)**

Partial rejection in multi-party case allowed.

Kolar v. Arlington **286 Il. App.3d 43 (2nd Cir. 1996)**

Once the arbitration panel makes a decision concerning the issues raised, the award is deemed an all or nothing proposition that must either be accepted or rejected in its entirety.

Cruz v. Northwestern Chrysler Plymouth Sales **179 Ill. 2d 271 (1997)**

Once the arbitration panel has made its award, the parties must accept or reject the award in its entirety. If none of the parties file a notice of rejection of the award and request to proceed to trial within the time specified under the rules, the circuit court has no real function beyond entering judgment on the award

Busch v. Mison 385 Ill. App.3d 620 (1st Dist. 2008)

Rule 92(c) should be read as concluding that any rejection of any part of the award applies to the entire award.

JUDGMENT ON AWARD

Lollis v. Chicago Transit Authority 238 Ill. App. 3d 583 (1st Dist. 1992)

Court may not enter judgment on award *sua sponte*. Parties need to file motion to enter judgment on arbitration award.

POST ARBITRATION BUT PRIOR TO JUDGMENT ON AWARD SETTLEMENT

Poole v. Mosley 307 Ill. App. 3d 625 (1st Dist. 1999)

Judgment entered on arbitration award in action arising from vehicular collision was not subject to *vacatur*, even though parties had allegedly entered settlement agreement after award was entered but before entry of judgment, where parties disagreed as to a material factor of settlement, so that no enforceable settlement agreement was entered and a proper timely motion for judgment on award was filed.

GOOD FAITH PARTICIPATION: QUALITY v. QUANTITY
HOW MUCH PARTICIPATION IS REQUIRED?

Easter Seal v. Current Development Corp. 307 Ill. App. 3d 48 (3rd Dist. 1999)

Defendant submitted plaintiff's case to sufficient adversarial testing before arbitration panel to preclude debarring its notice of rejection of award on ground of bad faith failure to participate in arbitration, even though defendant appeared only through counsel, where arbitration panel made no finding of bad faith and arbitration panel did not award plaintiff full amount sought in both counts of its complaint

Employer's Consortium, Inc. v. Aaron 298 Ill. App 3d 187 (2nd Dist. 1998)

Finding that plaintiffs seeking to recover on promissory notes failed to participate in mandatory arbitration proceeding in good faith and in meaningful manner, so as to warrant sanction, was supported by evidence that plaintiffs' participation in arbitration was limited to making brief opening statement and submitting copy of unverified complaint along with attached exhibits. Furthermore, arbitration panel's finding is prima facie evidence of a failure to participate in arbitration proceeding in good faith and in meaningful manner, so as to warrant sanctions.

Hill v. Behr & Sons Inc. 293 Ill. App. 3d 814 (2nd Dist. 1997)

The plaintiffs should be barred from rejecting the arbitration award despite the fact that the arbitrators failed to find that the plaintiffs did not participate in the arbitration hearing in good faith by not appearing, not complying with Rule 909(c), nor provided any testimony on liability and/or damages.

Ruback v. Doss **347 Ill. App. 3d 808 (1st Dist. 2004)**

Conduct of motorist in arbitration proceeding relating to negligence claim against deceased driver's estate, in failing to offer evidence from witnesses whose testimony would not raise issues under Dead-Man's Act, was not "bad faith," and thus, trial court was not warranted in imposing sanctions for bad-faith participation in arbitration; motorist subpoenaed two occurrence witnesses for the arbitration hearing but through no fault of her own, the witnesses failed to appear.

Danzot v. Zabilka **342 Ill. App. 3d 493 (1st Dist. 2003)**

Conduct of plaintiff in arbitration proceeding relating to personal injury claim against deceased motorist's estate, in failing to offer evidence from eyewitnesses whose testimony would not raise issues under Dead–Man's Act, was not "bad faith," and thus, trial court was not warranted in imposing sanctions for bad-faith participation in arbitration; plaintiff did not breach a court rule or order, because trial court had not made evidentiary ruling regarding Dead–Man's Act or otherwise restricted plaintiff's presentation of evidence.

Martinez v. Galmari **271 Ill. App. 3d 879 (2nd Dist. 1995)**

Arbitrators and trial court reasonably could have concluded that, by not requesting that arbitration hearing be continued so that defendant could be present, defendant never intended to participate in good faith and in meaningful manner, and, thus, defendant could be barred from rejecting arbitration award; defendant was eyewitness to events allegedly giving rise to her liability, and defendant did not offer medical excuse for failing to participate until she was faced with prospect of being barred from rejecting award.

Goldman v. Dhillon **307 Ill. App. 3d 169 (1st Dist. 1999)**

Defendant appeared without attorney, offered no evidence, exhibits, cross or arguments. Court held that based on the Defendant's lack of participation at the arbitration hearing, transcripts were not needed to bar the Defendant from rejecting the award based on not participating in good faith.

Johnson v. Williams **323 Ill. App. 3d 1144 (1st Dist. 2001)**

Defendant and attorney at arbitration without appearance or answer. No default entered. Court held defendant may participate and reject.

Webber v. Bednarczyk **287 Ill. App. 3d 458 (1st Dist. 1997)**

Rule requiring good faith participation at mandatory arbitration hearing does not provide for sanctions for what parties do or do not do prior to hearing based on the history of a law firm's rejection of prior arbitration awards and is not relevant to whether the defendant or the defendant's attorney participated in this arbitration hearing in good faith.

Knight v. Guzman **291 Ill. App. 3d 378 (1st Dist. 1997)**

Rule requiring all parties to arbitration hearing to participate in hearing in good faith and in meaningful manner does not provide for sanctions for party's rejection of arbitration award or as punishment for his representative law firm's track record in rejecting numerous awards.

Mamolella v. Nandorf **318 Ill. App. 3d 1221 (1st Dist. 2001)**

No 237 on plaintiff. Plaintiff did not attend arbitration. Plaintiff attorney present. No 90(c) material. Plaintiff rejects. Court, as sanction (91(b)), bars testimony of plaintiff at trial. Plaintiff argued traffic delay prevented appearance. Summary judgment entered since plaintiff could present no evidence.

EXCESSIVE ARBITRATION AWARD

Cruz v. Northwestern Chrysler Plymouth Sales 170 Ill.2d 271 (1997)

The trial court can correct an obvious and unambiguous error in mathematics or language per Rule 92(d), it cannot modify the substantive provisions of the arbitration award or grant any monetary relief in addition to the sums awarded by the arbitrators.

Hinkle v. Womack **303 Ill. App. 3d 105 (1st Dist. 1999)**

Defendant's argued that the trial court abused its discretion in not "reversing" the arbitration award as excessive. It is well settled that rejection of the arbitration award is the sole intended remedy from an award and once the arbitration panel has made its award, the parties must accept or reject the award in its entirety. If none of the parties file a notice of rejection of the award the circuit court has no real function beyond entering judgment on the award but can only correct an obvious and unambiguous error in mathematics or language it cannot modify the substantive provisions of the award or grant any monetary relief in addition to the sums awarded by the arbitrators."

Issacs v. Hemmerich **313 Ill. App. 3d 1085 (1st Dist. 2000)**

Excessive award not subject to review by trial court.

ABSENCE OF PREJUDICE AS FACTOR IN PARTY NOT APPEARING

State Farm Insurance v. Jacquez **322 Ill. App. 3d 652 (1st Dist. 2001)**

A defendant who failed to appear at the arbitration hearing pursuant to a Supreme Rule 237 notice should not be barred from rejecting the award when the arbitration panel indicated in the award that there was no prejudice to the plaintiff. Plaintiff subrogor not a witness.

State Farm Insurance v. Gebbie **288 Ill. App. 3d 640 (1st Dist. 1997)**

Failure to appear at arbitration is not excused because court had barred presentation of any evidence.

Bachmann v. Kent **293 Ill. App. 3d 1078 (1st Dist. 1997)**

Unexcused absence of party precludes filing of rejection. Party barred per discovery violation must appear at arbitration. .

Hinkle v. Womack **303 Ill. App. 3d 105 (1st Dist. 1999)**

Defendant's non-appearance need not result in prejudice to plaintiff. Merely cross examining witnesses and making arguments to rebut a plaintiff's case is not adversarial testing.

PRO HAC VICE (Requirement for Out-of-State Attorneys)

Colmar v. Freemantle Media **344 Ill. App. 3d 977 (1st Dist. 2003)**

Attorney appearing at arbitration need not be Illinois licensed.

RULE 90 (c) EVIDENCE PACKAGE

Arthur v. Catour **216 Ill. 2d 72 (2005)**

Though not an arbitration case, but deals with allowing unpaid portions of medical bills to be admitted into evidence at trial. Discusses modern health insurance contracts.

REJECTING THE ARBITRATION AWARD

Gershak v. Feign **317 Ill. App.3d 14 (1st Dist. 2000)**

Absent evidence in each case of some behavior or circumstance from which it could be inferred that the rejections were unsigned for an improper purpose, it is error for the trial court to refuse to allow the attorneys to cure the defective pleadings by signing the notices of rejection when the error was brought to their attention since Rule 137 clearly provides for such a cure.

Killoren v. Racich **260 Ill. App. 3d 197 (2nd Dist. 1994)**

An award is validly rejected if rejection is filed within the 30-day rejection period and fee is paid within that same 30-day period.

Pakrovsky v. Village of Lakemoor **274 Ill. App. 3d 515 (2nd Dist. 1995)**

A Supreme Court Rule 93(a) notice of rejection is timely filed where the notice is mailed within the 30-day period but received thereafter.

Thomas v. Leyva **276 Ill. App. 3d 652 (1st Dist. 1995)**

Trial court did not abuse its discretion in declining motion to set aside judgment which had been entered after defendant had failed to object within 30 days to arbitration award in action arising out of automobile accident where defendant never properly rejected award in allocated time, it would have been unreasonable to compel plaintiffs to proceed to trial on merits merely because defendant realized months later that judgment was not to her liking, and arbitration award was not ambiguous.

Howard v. Jimenez **316 Ill. App. 3d 1287 (1st Dist. 2000)**

Rejection mailed within 30 days proper.

Ianotti v. Chicago Park District **250 Ill. App. 3d 628 (1st Dist. 1993)**

A trial court may extend the time for filing a notice of rejection of an arbitrator's award upon a showing of good cause. In the instant case, it was an abuse of discretion for the trial judge to conclude that plaintiff's assertion of inadvertent error, without any further explanation, did not constitute good cause.

Zero v. Carde **1-01-2107 Rule 23**

Party who fails to reject may not rely on the rejection of a subsequently de-barred co-party. 237 for all witnesses and all materials pursuant to 214 request is appropriate.

Knight v. Guzman **291 Ill. App. 3d 378 (1st Dist. 1997)**

An attorney who did not appear at the arbitration hearing, but is an associate of the law firm that is representing a defendant can sign notice of rejection. Law firm's prior record of rejections cannot be basis of sanction.

Walikonis v. Haslor **306 Ill. App. 3d 811 (2nd Dist. 1999)**

Improper to bar defendant from rejecting the arbitration award based on conduct prior to arbitration.

Stewart v. Brown **324 Ill. App. 3d 1141 (1st Dist. 2001)**

Complaint for $2,500 was supposed to be $25,000. Award for $2,500 properly rejected to allow amendment.

Rodriguez v. Hushka **325 Ill. App. 3d 329 (1st Dist. 2001)**

$200 fee not required to reject for legal services provider. (735 ILCS 5/5-105.5 provides for fee waiver)

Liebovich Steel v. Advance Iron **353 Ill. App. 3d 311 (2nd Dist. 2004)**

Court struck arbitration rejection because defendant paid $200 fee when he should have paid $500 fee on a case with an award in excess of $30,000. Strict adherence to rule governing rejection of arbitration awards is required, and proper fee amounts were clearly stated in rule and in notice sent to rejecting party's counsel.

Gellert v. Jackson **373 Ill. App.3d 149 (2nd Dist. 2007)**

Entry of judgment on arbitration decision reversed because plaintiff's attempt to file timely rejection was prevented due to clerk's office early closing demonstrated good cause to extend the time to reject the arbitration award.

BAD FAITH FINDING BY ARBITRATION PANEL

Schmidt v. Joseph **315 Ill. App. 3d 77 (1st Dist. 2000)**

Plaintiff did not appear. Plaintiff attorney opened, crossed defendant, closed and presented 90(c). Court held insufficient good faith participation under 91(b).

Goldman v. Dhillon **307 Ill. App. 3d 169 (1st Dist. 1999)**

Defendant appeared without attorney, offered no evidence, exhibits, cross or arguments. Court found transcripts not needed. No good faith participation.

Mamolella v. Nandorf **318 Ill. App. 3d 1221 (1st Dist. 2001)**

No 237 on plaintiff. Plaintiff did not attend arbitration, plaintiff attorney present. No 90(c) material, plaintiff rejects. Court, as sanction (91(b)), bars testimony of plaintiff at trial. Plaintiff argued traffic delay prevented appearance. Summary judgment entered since plaintiff could present no evidence.

SECOND ARBITRATION

Akpan v. Sharma **293 Ill. App. 3d 100 (1st Dist. 1997)**

A case cannot be set for a second arbitration hearing after a party has rejected the award from the first arbitration hearing.

Dimaano v. Freeman **302 Ill. App.3d 1086 (1st Dist. 1999)**

A court should not set aside the arbitration award and schedule another arbitration when the plaintiffs nor their counsel appeared at the hearing. Transcript or bystander's report needed to review sanction.

Moon v. Jones **282 Ill. App. 3d 335 (1st Dist. 1996)**

A plaintiff cannot be barred from rejecting future arbitration awards regardless of whether the plaintiff attends those hearings or participates in good faith.

Guider v. McIntosh **293 Ill. App. 3d 935 (1st Dist. 1997)**

The trial court does not have authority to order a second arbitration hearing when both parties were present at the first hearing. Court only has discretion to order second arbitration hearing in one circumstance: when one party did not attend arbitration hearing and has filed motion to vacate judgment entered on arbitration award.

2-1301 VACATING JUDGMENT

Ibeagwa v. Habitat Co. **1-01-1598**
(leave to appeal denied)

Plaintiff failed to appear at arbitration. No 237; judgment for defendant vacated. New arbitration scheduled. Plaintiff failed to appear at second arbitration. Plaintiff rejection barred. Judgment for defendant. Plaintiff filed motion to vacate judgment and offered excuse that train was 17 minutes late. Court held insufficient excuse.

Moy v. Galustyan **195 Ill. 2d 580 (2001)**

Neither parties nor attorneys attended arbitration. Award for defendant. Case dismissed for want of prosecution on judgment on award call. No rejection filed. Two years later motion to vacate and enter judgment for defendant. Plaintiff argued clerical error in not appearing. Appellate Court affirmed barring of rejection and also would not vacate judgment for defendant per 2-1301 waiver argument denied.

Horn v. Newcomer **1-00-1777 Rule 23**

Plaintiff files personal injury case. Notice of arbitration sent to only one of two plaintiffs' attorneys was inadequate. Both attorneys of record entitled to notice (Hoffman dissents from rule).

MODIFYING ARBITRATION AWARD

Cruz v. Northwestern Chrysler Plymouth Sales **179 Ill. 2d 271 (1997)**

Once the arbitration panel has made its award, the parties must accept or reject the award in its entirety. If none of the parties file a notice of rejection of the award and request to proceed to trial within the time specified under the rules, the circuit court has no real function beyond entering judgment on the award. Although the court can correct an "obvious and unambiguous error in mathematics or language", it cannot modify the substantive provisions of the award or grant any monetary relief in addition to the sums awarded by the arbitrators.

Issacs v. Hemmerich **313 Ill. App. 3d 1085 (1st Dist. 2000)**

Excessive award not subject to review by trial court.

Winbush v. CHA **321 Ill. App. 3d 1056 (1st Dist. 2001)**

Attorney fees issue must be presented to arbitration panel.

Hinkle v. Womack **303 Ill. App. 3d 105 (1st Dist. 1998)**

A court cannot modify the substantive provisions of the arbitration award or grant any monetary relief in addition to the sum awarded by the arbitrators.

Mrugala v. Fairfield **325 Ill. App. 3d 484 (1st Dist. 2001)**

The trial court committed error when it modified the substantive provisions of the arbitration award to include equitable relief which is not available in arbitration. Supreme Court Rule 86(b) explicitly states: "[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."

INTERPRETERS AT ARBITRATION

See Illinois Supreme Court Language Access Policy and Local Circuit Court Rules for information about the use of interpreters during hearings.

VOLUNTARY NON-SUIT, DWPs AND REFILED ACTIONS

Arnett v. Young et. al. **269 Ill. App. 3d 858 (1st Dist. 1995)**

The language of Supreme Court Rule 91 bars an absent party from voluntary dismissal under section 2-1009 of the Illinois Code of Civil Procedure.

George v. Ospalik **299 Ill. App. 3d 888 (3rd Dist. 1998)**

A plaintiff who does not reject the arbitration award is not entitled to a voluntary dismissal pursuant to section 2-1009(a) of the Illinois Code of Civil Procedure.

Perez v. Leibowitz **215 Ill. App. 3d 900 (1st Dist. 1991)**

A plaintiff is entitled to a voluntary dismissal pursuant to section 2-1009 of the Illinois Code of Civil Procedure after the parties have participated in mandatory arbitration proceedings, and rejection allowed case to move to trial stage. ***NOTE:*** **THIS CASE HAS BEEN CRITISIZED BY THE *YOUNG* AND *OSPALIK* CASES CITED ABOVE.**

Lewis et. al. v. Collinsville Unit #10 School District 311 Ill. App. 3d 1021 (5th Dist. 2000)

An arbitration hearing precludes a voluntary dismissal, pursuant to section 2-1009 of the Illinois Code of Civil Procedure, if proper notice of an attempt to take a voluntary non- suit not given. However, trial court's entry of judgment upon an arbitrator's award constitutes a final disposition of the case forever barring a plaintiff from subsequent attempts to voluntarily dismiss his or her case.

Padron v. Sotiropoulos **313 Ill. App. 3d 1087 (1st Dist. 2000)**

A plaintiff party who is not present at the mandatory arbitration hearing may not voluntarily non-suit their case to avoid the consequences of Rule 91(b).

Little v. Beatty **1-01-4230 Rule 23**

Barring order entered. Award for defendant. Case is dismissed for want of prosecution. Re-filed case (under 219(e)) is subject to same bar.

ORDERS BARRING REJECTIONS PRIOR TO ARBITRATION HEARING

Hampton v. Ray **1-01-2379 Rule 23**

Personal injury action filed. Compelling order entered against plaintiff. Plaintiff barred at arbitration for non-compliance. Award for defendant. Plaintiff rejects. Court barred rejection. Appellate Court reversed. Held plaintiff made sufficient effort to comply in scheduling depositions. Plaintiff's conduct was not deliberate or contumacious.

Nettles-Jackson v. Merker **1-01-3288 Rule 23**

Plaintiff files personal injury action. Disputed compelling order entered. Plaintiff barred from presenting evidence at arbitration due to non-compliance. Award for defendant. Plaintiff rejects. Rejection is barred. Appellate Court reversed. Lack of contumacious disregard.

Moon v. Jones **282 Ill. App. 3d 335 (1st Dist. 1996)**

After trial court granted negligence plaintiff's motion to vacate judgment entered on arbitration award that was made in favor of defendant after neither plaintiff nor her counsel appeared at initial arbitration hearing, trial court abused Its discretion in entering order *nunc pro tunc* after second arbitration hearing that plaintiff was debarred from rejecting any future arbitration awards, including award in defendant's favor after second hearing, regardless of whether she was present at future hearing and participated in good faith or whether any error or injustice occurred.

Walikonis v. Haslor **306 Ill. App. 3d 811 (2nd Dist. 1999)**

Rule permitting court to impose sanctions for failure to participate in arbitration in good faith and in a meaningful manner did not authorize trial court to prospectively debar motorist from rejecting an arbitration award on the basis of his conduct before the arbitration hearing; there was no indication that the motorist's conduct at the hearing itself was objectionable, and the sanction deprived him of his right to have a jury (or the court) determine damages.

INTERVENTION

Ratkovich v. Hamilton **267 Ill. App. 3d 908 (1st Dist. 1994)**

A party who intervenes less than 60 days prior to an arbitration hearing is entitled to receive 60 days notice of that hearing required by Supreme Court Rule 88.

Juszczyk v. Flores **334 Ill. App.3d 122 (1st Dist. 2002)**

Failure to give defendant in negligence action at least 60 days' notice of arbitration hearing rendered arbitration judgment voidable, not void, where trial court had personal and subject matter jurisdiction over defendant based on service of summons and complaint

Jordan v. Bangloria **2011 IL App (1st) 103506**

Trial court could enter judgment on arbitration award in plaintiff's favor in automobile accident case, even if county arbitration administrator did not provide defendant with 60 days' written notice of arbitration hearing, where defense counsel was aware that the case had been transferred to the mandatory arbitration calendar and plaintiff's counsel served defense counsel with notice to appear at arbitration as well.

WAIVER OF RIGHT TO CONTEST REJECTION

Pineda v. Flores **306 Ill App. 3d 1178 (1st Dist. 1999)**

The defendant waived his right to contest the rejection of the arbitration award by failing to bring a motion for nearly two years and by participating in subsequent litigation.

Moy v. Galustyan **195 Ill. 2d 580 (2001)**

Neither parties nor attorneys attended arbitration. Award for defendant. Case dismissed for want of prosecution on judgment on award call. No rejection filed. Two years later motion to vacate and enter judgment for defendant. Plaintiff argued clerical error in not

appearing. Appellate Court affirmed barring of rejection and also would not vacate judgment for defendant per 2-1301 waiver argument denied.

Schmidt v. Sanders **1-02-1209 Rule 23**

Defendant arrived late for arbitration but during hearing. No request to reopen proofs. Barring rejection affirmed.

COUNTERCLAIMS AND SET OFFS AFTER ARBITRATION

Maher v. Chicago Park District **269 Ill. App. 3d 136 (1st Dist. 1994)**

A defendant does not waive its right of set off when the defendant did not present the set off claim to the arbitrators and did not reject the award because the set off presented an ancillary issue that could be resolved by court.

Marsh v. Nellessen **235 Ill. App. 3d 998 (2nd Dist. 1992)**

Denial of motion to assert counterclaim following arbitration was abuse of discretion; rule requiring discovery to be completed prior to arbitration did not prohibit filing of new claim.

O'Leary v. State Farm **1-03-2980 Rule 23**

Set offs may be applied to arbitration award.

NEITHER PLAINTIFF NOR DEFENDANT APPEAR AT ARBITRATION

Williams v. Abelkader **312 Ill. App. 3d 1212 (1st Dist. 2000)**

Neither plaintiff nor defendant appeared at arbitration. Both attorneys present. Award for defendant. Plaintiff said attorney gave wrong time to plaintiff. Court barred based on 91(b).

Moy v. Galustyan **195 Ill. 2d 580 (2001)**

Neither parties nor attorneys attended arbitration. Award for defendant. Case dismissed for want of prosecution on judgment on award call. No rejection filed. Two years later motion to vacate and enter judgment for defendant. Plaintiff argued clerical error in not appearing. Appellate Court affirmed barring of rejection and also would not vacate judgment for defendant per 2-1301 waiver argument denied.

MONETARY RELIEF ONLY; NO EQUITABLE RELIEF

Mrugala v. Fairfield Ford Inc. **325 Ill. App. 3d 484 (1st Dist. 2001)**

Equitable relief, such as revocation of acceptance in connection with the purchase of a vehicle, is not available in a mandatory arbitration proceeding under the Illinois mandatory arbitration scheme.

EVIDENTIARY ISSUES

Dead-Man's Act **735 ILCS 5/8-201**

Rerack v. Lally **241 Ill. App. 3d 692 (1st Dist. 1992)**

Testimony regarding "event" that is details of the collision may be barred, but improper to bar testimony of matters which did not occur in the presence of decedent.

Ruback v. Doss **347 Ill. App. 3d 808 (1st Dist. 2004)**

Conduct of motorist in arbitration proceeding relating to negligence claim against deceased driver's estate, in failing to offer evidence from witnesses whose testimony would not raise issues under Dead-Man's Act, was not "bad faith," and thus, trial court was not warranted in imposing sanctions for bad-faith participation in arbitration; motorist subpoenaed two occurrence witnesses for the arbitration hearing but through no fault of her own, the witnesses failed to appear.

Danzot v. Zabilka **342 Ill. App. 3d 493 (1st Dist. 2003)**

Conduct of plaintiff in arbitration proceeding relating to personal injury claim against deceased motorist's estate, in failing to offer evidence from eyewitnesses whose testimony would not raise issues under Dead–Man's Act, was not "bad faith," and thus, trial court was not warranted in imposing sanctions for bad-faith participation in arbitration; plaintiff did not breach a court rule or order, because trial court had not made evidentiary ruling regarding Dead–Man's Act or otherwise restricted plaintiff's presentation of evidence. Even assuming plaintiff acted in bad faith in arbitration proceeding relating to personal injury claim against deceased motorist's estate, by failing to offer evidence from eyewitnesses whose testimony would not raise issues under Dead-Man's Act, trial court abused its discretion by imposing, as sanction, a bar on plaintiff's presentation of evidence or testimony at trial; plaintiff's counsel was entitled to make decisions regarding which witnesses to call as matter of trial strategy, plaintiff was under no obligation to subpoena each potential witness named in her own discovery responses, and onus was on estate to issue subpoenas for eyewitnesses if their testimony was essential to adversarial testing at arbitration hearing.

MANDATORY ARBITRATION CASE LIST

Adetona v. Difor	**1-02-1372 Rule 23**
Akpan v. Sharma	**293 Ill. App. 3d 100 (1st Dist. 1997)**
Allstate Ins. Co. v. Simons	**1-02-2193 *(pet. for lv. to appeal denied)***
Allstate v. Avelares	**295 Ill. App. 3d 950 (1st Dist. 1998)**
Allstate v. Marshall	**1-00-2901 Rule 23**
Amro v. Bellamy	**785 N.E. 2d 939 (1st Dist. 2003)**
Anderson v. Pineda	**354 Ill. App. 3d 85 (1st Dist. 2004)**
Arguelles v. Higgs	**1-03-2053 Rule 23**
Arguilar v. Singleton	**1-01-0568 Rule 23**
Arnett v. Jiffy Cab Company	**269 Ill. App. 3d 858 (1st Dist. 1995)**
Arthur v. Catour	**216 Ill. 2d 72 (2005)**
Bachmann v. Kent	**293 Ill. App. 3d 1078 (1st Dist. 1997)**
Bianco v. Lee	**1-01-3672 Rule 23**
Colmar v. Freemantle Media	**344 Ill. App. 3d 977 (1st Dist. 2003)**
Costelo v. Illinois	**263 Ill App.3d 1052 (1st Dist. 1993)**
Cruz v. Northwestern Chrysler Plymouth Sales	**179 Ill. 2d 271 (1997)**
Czernak v. Taylor	**1-03-1744 Rule 23**
Danzot v.Zabilka	**342 Ill. App. 3d 493 (1st Dist. 2003)**
Davenport v. Tyms	**324 Ill. App. 3d 1122 (1st Dist. 2001)**
Devries v. Cruz	**1-01-3668 Rule 23**
Dimaano v. Freeman	**302 Ill. App.3d 1086 (1st Dist. 1999)**
Easter Seal v. Current Development Corp.	**307 Ill. App. 3d 48 (3rd Dist. 1999)**
Eichler v. Record Copy Service	**318 Ill App.3d 790 (1st Dist. 2000)**
Employer's Consortium, Inc. v. Aaron	**298 Ill. App. 3d 187 (2nd Dist. 1998)**
Faircloth v. Livehelper	**1-03-1362 Rule 23**
Father and Son v. Taylor	**301 Ill App.3d 448 (1st Dist. 1998)**
Fiala v. Schulenberg	**256 Ill. App. 3d 922 (1st Dist. 1993)**
Finova v. Northwest	**312 Ill. App. 3d 1196 (1st Dist. 2000)**
Foy v. Ford	**205 Ill. 2d 580 (2003)**
Geico v. Buford	**338 Ill. App. 3d 448 (1st Dist. 2003)**

Geico v. Campbell	**335 Ill. App. 3d 930 (1st Dist. 2002)**
Gellert v. Jackson	**2007 Ill. App. LEXIS 473 (May 4, 2007)**
George v. Ospalik	**299 Ill. App. 3d 888 (3rd Dist. 1998)**
Gershak v. Feign	**317 Ill. App.3d 14 (1st Dist. 2000)**
Gilmore v. City	**1-01-1431 Rule 23**
Givens v. Renteria	**347 Ill. App. 3d 934 (1st Dist. 2004)**
Glover v. Barbosa	**344 Ill. App. 3d 58 (1st Dist. 2003)**
Goldman v. Dhillon	**307 Ill. App. 3d 169 (1st Dist. 1999)**
Gore v. Martino	**312 Ill. App. 3d 701 (1st Dist. 2000)**
Gripman v. Northwestern	**1-03-0791**
Guider v. McIntosh	**293 Ill. App. 3d 935 (1st Dist. 1997)**
Hall v. Allied	**1-01-2257 Rule 23**
Hampton v. Ray	**1-01-2379 Rule 23**
Hejduk v. Gandhi	**1-01-1210 Rule 23**
Hill v. Behr	**239 Ill. App. 3d 814 (2nd Dist. 1997)**
Hinkle v. Womack	**303 Ill. App. 3d 105 (1st Dist. 1999)**
Horn v. Newcomer	**1-00-1777 Rule 23**
Hornburg v. Esparza	**316 Ill. App. 3d 801 (3rd Dist. 2000)**
Howard v. Jimenez	**316 Ill. App. 3d 1287 (1st Dist. 2000)**
Ianotti v. Chicago Park District	**250 Ill. App. 3d 628 (1st Dist. 1993)**
Ibeagwa v. Habitat Co.	**204 Ill. 2d 660 (2003)**
Issacs v. Hemmerich	**313 Ill. App. 3d 1085 (1st Dist. 2000)**
Johnson v. Saenz	**311 Ill. App. 3d 693 (2nd Dist. 2000)**
Johnson v. Williams	**323 Ill. App. 3d 1144 (1st Dist. 2001)**
Juszczyk v. Flores	**334 Ill. App. 3d 122 (1st Dist. 2002)**
Kellett v. Roberts	**281 Ill. App. 3d 461 (2nd Dist. 1996)**
Killoren v. Racich	**260 Ill. App. 3d 197 (2nd Dist. 1994)**
King v. Duprey	**335 Ill. App 3d 923 (1st Dist. 2002)**
Knight v. Guzman	**291 Ill. App. 3d 378 (1st Dist. 1997)**
Kolar v. Arlington Toyota	**286 Ill. App.3d 43 (1st Dist. 1996)**
Kukis v. Wang	**1-00-4249 Rule 23**

Lekienta v. Soltys	**1-99-3016 Rule 23**
Lewis v. Collinsville Unit #10 School District	**311 Ill. App. 3d 1021 (5th Dist. 2000)**
Liberty Mutual v. Garcia	**1-03-2785 Rule 23**
Liebovich Steel v. Advance Iron	**353 Ill. App. 3d 311 (2nd Dist. 2004)**
Little v. Beatty	**1-01-4230 Rule 23**
Lollis v. Chicago Transit Authority	**238 Ill. App. 3d 583 (1st Dist. 1992)**
Lopez v. Miller	**363 Ill. App. 3d 773 (1st Dist. 2006)**
Lozano v. Ly	**1-01-1331 Rule 23**
Macon v. Hurst	**1-01-3109 Rule 23**
Maher v. Chicago Park District	**269 Ill. App. 3d 136 (1st Dist. 1994)**
Maltese v. Accardo	**1-01-3273 Rule 23**
Mamolella v. Nandorf	**318 Ill. App. 3d 1221 (1st Dist. 2001)**
Marsh v. Nellessen	**235 Ill. App. 3d 998 (2nd Dist. 1992)**
Martinez v. Galmari	**271 Ill. App. 3d 879 (2nd Dist. 1995)**
MBNA American Bank v. Cardoso	**302 Ill. App. 3d 710 (1st Dist. 1998)**
McGee v. Lopez	**1-01-3914 Rule 23**
Meine v. Rathunde	**1-02-0130 Rule 23**
Merendino v. French	**315 Ill. App. 3d 1217 (1st Dist.2000)**
Miller v. Beach	**1-01-2391 Rule 23**
Mitchell v. Hatch	**1-02-0431 Rule 23**
Moon v. Jones	**282 Ill. App. 3d 335 (1st Dist. 1996)**
Morales v. Mongolis	**293 Ill. App. 3d 660 (1st Dist. 1997)**
Moy v. Galustyan	**195 Ill. 2d 580 (2001)**
Mrugala v. Fairfield	**325 Ill. App. 3d 484 (1st Dist. 2001)**
Nationwide v. Kogut	**354 Ill. App. 3d 1 (1st Dist. 2005)**
Nettles-Jackson v. Merker	**1-01-3288 Rule 23**
Nichols v. Bettis	**1-02-0388 Rule 23**
Nix v. Whitehead	**368 Ill. App. 3d 1 (1st Dist. 2006)**
O'Leary v. State Farm	**1-03-2980 Rule 23**
Padron v. Sotiropoulos	**315 Ill. App. 3d 1087 (1st Dist. 2000)**
Pakrovsky v. Village of Lakemoor	**274 Ill. App. 3d 515 (2nd Dist. 1995)**

Perez v. Leibowitz	**215 Ill. App. 3d 900 (1st Dist. 1991)**
Pezza v. Cerniglia	**1-03-1362 Rule 23**
Pineda v. Flores	**306 Ill. App. 3d 1178 (1st Dist. 1999)**
Poole v. Mosley	**307 Ill. App. 3d 625 (1st Dist. 1999)**
Progressive Insurance Co. v. Ogilvie	**1-03-2490 Rule 23**
Progressive Insurance Company v. Damoto	**1-01-0460 Rule 23**
Pruzan v. Brauer	**315 Ill. App 3d 1223 (1st Dist. 2000)**
Quinn v. Reardon	**316 Ill. App. 3d. 1294 (1st Dist. 2000)**
Ratkovich v. Hamilton	**267 Ill. App. 3d 908 (1st Dist. 1994)**
Rerack v. Lally	**241 Ill. App. 3d 692 (1st Dist. 1992)**
Richmond v. Bailin	**1-03-1812 Rule 23**
Rodriguez v. Hushka	**325 Ill. App. 3d 329 (1st Dist. 2001)**
Ross v. Tinch	**1-02-2480 Rule 23**
Ruback v. Doss	**347 Ill. App. 3d 808 (1st Dist. 2004)**
Saldana v. Newmann	**318 Ill. App. 3d 1096 (1st Dist. 2001)**
Schmidt v. Joseph	**315 Ill. App. 3d 77 (1st Dist. 2000)**
Schmidt v. Sanders	**1-02-1209 Rule 23**
Smith v. Johnson	**278 Ill. App. 3d 387 (1st Dist. 1996)**
Spano v. City of Chicago	**1-00-4134 Rule 23**
Starling v. Furey	**1-01-4241 Rule 23**
State Farm Insurance v. Gebbie	**288 Ill. App. 3d 640 (1st Dist. 1997)**
State Farm Insurance v. Jacquez	**322 Ill. App. 3d 652 (1st Dist. 2001)**
State Farm Insurance v. Kazakova	**299 Ill. App. 3d 1028 (1st Dist. 1998)**
State Farm Insurance v. Nasser	**337 Ill. App. 3d 362 (1st Dist. 2003)**
State Farm v. Bozzi	**1-02-3595 Rule 23**
State Farm v. Cozzola	**1-02-2960 Rule 23**
State Farm v. Culbertson	**355 Ill. App. 3d 205 (1st Dist. 2005)**
State Farm v. Harmon	**335 Ill. App. 3d 687 (1st Dist. 2002)**
State Farm v. Jones	**1-05-3218**
State Farm v. Koscelnik	**342 Ill. App. 3d 808 (1st Dist. 2003)**
State Farm v. Mohammed	**1-03-0536 Rule 23**

State Farm v. Rodrigues	**324 Ill. App. 3d 736 (1st Dist. 2001)**
State Farm v. Santiago	**344 Ill. App. 3d 1010 (1st Dist. 2003)**
State Farm v. Sumskis	**1-00-3987 Rule 23**
State Farm v. Watkins	**1-03-2818 Rule 23**
Stewart v. Brown	**324 Ill. App. 3d 1141 (1st Dist. 2001)**
Thomas v. Leyva	**276 Ill. App. 3d 652 (1st Dist. 1995)**
Tiller v. Semonis	**263 Ill. App. 3d 653 (1st Dist. 1994)**
United Services v. Lee	**1-02-1602 Rule 23**
Vazquez v. Young	**1-01-0016 Rule 23**
Walikonis v. Haslor	**306 Ill. App. 3d 811 (2nd Dist. 1999)**
Ware v. Zaragoza	**1-01-1209 Rule 23**
Webber v. Bednarczyk	**287 Ill. App. 3d 458 (1st Dist. 1997)**
Weisenburn v. Smith	**214 Ill. App. 3d 160 (2nd Dist. 1991)**
West Bend Mutual Insurance v. Herrera	**292 Ill. App. 3d 669 (1st Dist. 1997)**
West v. Malik	**1-00-3580 Rule 23**
Williams v. Abelkader	**312 Ill. App. 3d 1212 (1st Dist. 2000)**
Williams v. Dorsey	**273 Ill. App. 3d 893 (1st Dist. 1995)**
Williams v. Martinez	**323 Ill. App. 3d 1153 (1st Dist. 2001)**
Winbush v. CHA	**321 Ill. App. 3d 1056 (1st Dist. 2001)**
Yodka v. Gallagher	**324 Ill. App. 3d 1142 (1st Dist. 2001)**
Zero v. Carde	**1-01-2107 Rule 23**
Zietara v. Daimler Chrysler	**361 Ill. App. 3d 819 (1st Dist. 2005)**
Ziolkowski v. Collins	**323 Ill. App. 3d 1154 (1st Dist. 2001)**

Section 10

Checklists

MANDATORY ARBITRATION PROCEEDINGS CHECKLIST

- ✓ Arrival in Hearing Room
  - Arbitrator Introduction among each other
  - Three (3) Arbitrators – check with Arbitration Staff

- ✓ Review Case Folder
  - Award Form, Sign-in Sheet, Court File/Info Page (to make sure case & parties match)
  - Recusal due to conflict with case or attorneys (SCR 87 (c))

- ✓ Parties and Attorneys Arrival/Introduction
  - Need for two (2) arbitrators
  - All parties and attorneys present
    - grace period
    - call to clients – note discussion
  - The arbitration will proceed in the absence of a party who fails to be present after due notice. Panel shall require present party to submit such evidence as required for making award (SCR 91(a))

- ✓ Settled Case *(local rules will determine procedure)*

- ✓ Review of Info Page and Case with Attorneys
  - Copies of pleadings for review
  - Type of case
  - Small Claims
  - Length of hearing- remind attorneys that two-hour time limit will be strictly enforced
  - Identify and chart all claims
    - Reminder: all matters must be submitted (Costello –presumption)
  - Stipulations
  - Bankruptcy, unserved defendants, dismissed defendants or counts
  - Consolidated cases
  - Ask for 90(c) packages

- ✓ Chairperson Control

- ✓ Determine Missing Parties, Witnesses, Attorneys
  - Grace period
  - Insistence that parties proceed
  - Plaintiff must prove case
  - Complete Sign-in Sheet

- ✓ SCR 90 (c) Packet
  - Any objection to content
  - Summary Sheet (paid & unpaid bills)
  - Depositions
  - Car damage photos (admissibility with relation to extent of injury)

- ✓ Motions at Hearing
  - Amending complaint
  - Continuance
  - Voluntary non-suit
  - Default

- ✓ Attorneys Appearing without Filed Appearance
  - *Pro hac vice* - **Colmar v. Freemantle Media North American, Inc.** 344 Ill App 3d 977, 983 (1st Dist. 2003)
  - okay at arbitration

- ✓ Case Set for Default and Prove-Up

- ✓ Court Related Issues to be Discussed Prior to Hearing
  - Unanswered pleadings – what effect?
  - SCR 216 – Requests to Admit

- ✓ Opinion Witnesses
  - Less than thirty (30) days notice

- ✓ SCR 237
  - Rule and its application (documents & people)
  - Excusing a party based on admission of liability - Rule 90(g) – (seven days)
  - Agreements between counsel to substitute driver of car for adjustor & others
  - Note non-appearance on Award Form - specifically who was not there
  - Do not indicate or rule on arguments - recite facts

- ✓ Barring Orders and Other Court Orders
  - **Eichler v. Record Copy Services**, 318 Ill. App.3d 790 (1st Dist. 2000)
    The Court found that "Plaintiff's ability to testify at the arbitration or trial was in her hand by either complying with or modifying the court order. She did neither. Plaintiff's failure to even attempt to comply with the court's discovery order of August 25, 1999, or to vacate or modify the sanction portion of that order prior to the November 1999 arbitration hearing, indicates that the plaintiff never intended to participate in the arbitration in good faith."
  - *See also* **Lopez v. Miller**, 363 Ill. App.3d 773 (1st Dist. 2006)

- ✓ The Hearing
  - Swear in interpreters
    - requirement for interpreters (not for defendant or 237)
  - **State Farm Mutual Ins. Co. v. Kazakova**, 299 Ill. App.3d 1028 (1st Dist. 1998)
  - Oath for 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?*
  - Time management – two (2) hours
  - Swear in parties & witnesses
  - Oath for parties & witnesses
    - *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?*

- ✓ Late Arrivals
  - During hearing
  - While opposing party and attorney are still present
  - Discretion (**Zietara v. Daimler Chrysler Corp.**, 361 Ill. App. 3d 819 (1st Dist. 2005)

- ✓ Memorandum of Law

- ✓ Concluding the Hearing

- ✓ Determination of Compliance with SCR 91(a) and SCR 91(b)
  - If you find unanimously as a panel that a party is not participating in good faith and in a meaningful manner, pursuant to SCR 91(b), check the 91(b) box on the Award Form and be as specific as possible in the findings.
  - Alternative findings
    - bad faith (*prima facie*)
    - prejudice or lack thereof is no indication
  - Adversarial testing expected at trial (**State Farm Mutual Ins. Co. Kolscelnik**, 342 Ill. App. 3d 808 (1st Dist. 2002)
  - Evaluation standard: pronounced disregard for rules – **Schmidt v. Joseph**, 315 Ill. App. 3d 77 (1st Dist. 2000) and **Saldana v. Newmann**, 318 Ill. App. 3d 1096 (1st Dist. 2001) cases: not necessarily intentional
  - Litmus test: "Would you proceed at trial in same way?"
  - Quality & Quantity
  - List factors
    - 237 compliance
    - SCR 90(c)
    - barring order
    - other court orders
    - witnesses: affidavits, missing
    - pleadings
    - attorney only/party only

- adversarial testing

- ✓ Deliberations
  - Decide the issues of liability and damages. Make sure you determine all matters as to all issues and all costs.
  - If the parties ask for and are entitled to attorney's fees, they must prove those fees either by testimony or affidavit.
  - If there is a cross-claim, counter-claim, or third-party complaint, make sure to address it in the award.
  - Everything the parties want in a judgment must be in the award.
  - Arbitrators must award costs in a specific amount.

- ✓ 735 ILCS 5/2-1116 *(Contributory Fault)*

- ✓ Court Costs

- ✓ Drafting the Award
  - Address all claims
  - Address any cross-claims, counter-claims, third-party complaints
  - Indicate any SCR 237 violations on Award Form
  - Award should identify the parties by name and designate plaintiff or defendant -- i.e. *"Award in favor of defendant, XYZ Company."*
  - Ensure <u>all</u> claims, including attorney's fees (if prayed for) are addressed in award - i.e. *"Award in favor of plaintiff, John Doe, and against defendant, XYZ Company, in the amount of four thousand dollars ($4000.00)."*
  - Indicate award entered on <u>each</u> of the cases if <u>consolidated</u>
  - If award is *ex-parte*, indicate on Award Form that plaintiff or defendant did not appear in person or by counsel
  - If panel finds unanimously that party has failed to participate in good faith and a meaningful manner, panel's finding and <u>factual</u> <u>basis</u> shall be stated in award.

(See also Section 5 – Drafting the Arbitration Award)

ARBITRATOR RECUSAL CHECKLIST

The following checklist addresses questions that an arbitrator should ask himself/herself when determining whether a conflict might exist to the extent that the arbitrator should not hear the case that is assigned and recuse themselves. Arbitrators are governed by the Illinois Code of Judicial Conduct and, therefore, are obligated to adhere to all ethical requirements.

- ✓ 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?
- ✓ Within the last three (3) years have you been associated with an attorney or firm who has filed an appearance in this case?
- ✓ Within the last seven (7) years have you represented any party in the case?
- ✓ 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 or association assigned to the same panel?

If the answer to any of these questions is YES, the arbitrator should recuse himself/herself from hearing the case. If an arbitrator does not answer YES to any of these questions, but feels that there is some reason that he/she is not comfortable hearing the case, the arbitrator should disclose this to the parties and, based on the discussion and the discretion of the arbitrator, decide if recusal is appropriate.

Good Faith/Bad Faith Participation

The following section addresses one of the most fundamental issues relative to mandatory arbitration, good faith participation.

Supreme Court Rule 91(b) requires that all parties to an arbitration participate in good faith and in a meaningful manner. Anything less than this may result in the arbitration panel entering an award which includes a finding of bad faith and a factual basis for that finding. Such an award is *prima facie* evidence that the party failed to participate in good faith and in a meaningful manner.

This section includes information on compliance with SCR 91 as well as the full text of the Rule and the Committee Comments. Following is a ***Bad Faith Checklist*** that sets out the requirements through various case law as well as factors to be applied by the arbitrators when determining bad faith and/or good faith participation.

Compliance with Supreme Court Rule 91

(a) Failure to be Present at Hearing
(b) Good Faith Participation

Supreme Court Rule 91(a) requires that a party appear in person or by counsel at the arbitration hearing.

Supreme Court Rule 91(b) requires that all parties participate in the arbitration hearing in good faith and in a meaningful manner.

The arbitrators are required to determine compliance with SCR 91(a) and 91(b). The following checklist of factors may assist in determining whether parties have participated in good faith, pursuant to SCR 91(b).

If there is a unanimous finding by the arbitrators that a party did not participate in good faith, the factors contributing to this finding should be listed on the Award Form. If a party fails to appear, the arbitrators should indicate whether that party's absence was prejudicial.

Supreme Court Rule 91(a)

Rule 91. Absence of Party at Hearing

(a) Failure to be Present at Hearing. The arbitration hearing shall proceed in the absence of any party who, after due notice, fails to be present. The panel shall require the other party or parties to submit such evidence as the panel may require for the making of an award. The failure of a party to be present, either in person or by counsel, at an arbitration hearing shall constitute a waiver of the right to reject the award and a consent to the entry by the court of a judgment on the award. In the event the party who fails to be present thereafter moves, or files a petition to the court, to vacate the judgment as provided therefor under the provisions of the Code of Civil Procedure for the vacation of judgments by default, sections 2--1301 and 2--1401, the court, in its discretion, in addition to vacating the judgment, may order the matter for rehearing in arbitration, and may also impose the sanction of costs and fees as a condition for granting such relief.

Adopted May 20, 1987, effective June 1, 1987; amended April 7, 1993, effective June 1, 1993.

Committee Comments

Paragraph (a)

There is precedent for such a rule and its consequence in the rules of other jurisdictions. Cuyahoga County (Cleveland), Ohio, has long had a rule which provides that the failure of a party to appear at the hearing either in person or by counsel constitutes a waiver of his right to reject the award and demand trial and further operates as consent to the entry of judgment on the award.

The Washington rules provide that a party who fails to participate at the hearing without good cause waives the right to a trial.

The court administrator of the Philadelphia Court of Common Pleas, Judge Harry A. Takiff, upon reviewing our initial draft, applauded the inclusion of this rule. Judge Takiff proposed to recommend the adoption of a like rule for the Pennsylvania arbitration programs.

The enactment, by the legislature, establishing the procedure of mandatory court-annexed arbitration as an integral part of the juridical process of dispute resolution and the promulgation of these rules to implement such legislation compels the conclusion that its process must be utilized in arbitrable matters either to finally resolve the dispute or as the obligatory step prior to resolution by trial. To permit any party or counsel to ignore the arbitration hearing or to exhibit an indifference to its conduct would permit a mockery of this deliberate effort on behalf of the public, the bar and judiciary to attempt to achieve an expeditious and less costly resolution of private controversies.

A party who knowingly fails to attend the scheduled hearing, either in person or by counsel, must be deemed to have done so with full knowledge of the consequences that inhere with this rule. Where the failure to attend was inadvertent, relief may be available to the party under the

provisions of the Code of Civil Procedure, sections 2--1301 or 2--1401, upon such terms and conditions as shall be reasonable. See Ill. Ann. Stat., ch. 110, pars. 2--1301, 2--1401, Historical & Practice Notes (Smith-Hurd 1983); also **Braglia v. Cephus** (1986), 146 Ill. App. 3d 241, 496 N.E.2d 1171.

Supreme Court Rule 91(b)

Rule 91. Absence of Party at Hearing

(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.

Adopted May 20, 1987, effective June 1, 1987; amended April 7, 1993, effective June 1, 1993.

Committee Comments

Paragraph (b)

Prior to the adoption of these sanctions, there were complaints by arbitrators that some parties and lawyers would merely attend but refuse to participate in arbitration. This paragraph was adopted to discourage such misconduct.

The arbitration process, and this rule in particular, was not intended to force parties to settle cases. Settlement, by definition, must be voluntary and not compelled. However, mandatory arbitration is a dispute resolution process under the auspices of the court. Parties and lawyers must not be allowed to abuse the arbitration process so as to make it meaningless.

Arbitration must not be perceived as just another hurdle to be crossed in getting the case to trial. Good faith participation, as required by this rule, was therefore intended to assure the integrity of the arbitration process.

In drafting Rule 91(b), the Committee surveyed the experience of other states, drawing particularly on similar requirements for good faith participation in the mandatory arbitration rules of Arizona, California and South Carolina.

Good Faith Participation

- **How much participation is required?**

  Easter Seal v. Current Development, 307 Ill. App. 3d 48

  Employers v. Aaron, 298 Ill. App. 3d 187

  Hill v. Behr, 293 Ill. App. 3d 814
  Where the plaintiff failed to submit any SCR 90(c) documents or establish any damages, as no medical bills or records had been submitted, and the defendant was not cross-examined, the court held that the trial court had authority to find that the plaintiff failed to participate in the arbitration in good faith even though the arbitrators refused to make that finding.

  Martinez v. Galmari, 271 Ill. App. 3d 879
  Type of adversarial testing that would be expected at trial

- **Bad faith outside arbitration – discovery abuses resulting in barring order or other significant court order**

Factors to Apply in Determining Bad Faith / Good Faith Participation

- ✓ Was a 237 request served?
- ✓ Was the 237 request served on the proper party?
- ✓ Was a barring order or any other significant court order previously entered?
- ✓ Was a SCR 90(c) package prepared and presented? Was it complete?
- ✓ Was there a necessary opinion witness' statement/affidavit in compliance with 90(c)(5)?
- ✓ Was case subject to same adversarial testing expected at trial?
  - (Easter Seal case – less than full award of damages despite no appearance by defendant and no transcript)
- ✓ Were pleadings sufficient and complete?
  - e.g. answer/affirmative defense, admission of liability
- ✓ Was an interpreter necessary but not present so as to affect a party's understanding of the hearing?
- ✓ Did either side appear by counsel only or party only without counsel?
- ✓ Was either side prejudiced by non-appearance of another party?

Section 11

Jury Instructions

Jury Instructions

The following section contains samples of actual jury instructions relative to issues such as *burden of proof* and *measure of damages.*

The purpose of including these sample instructions in this Manual is to provide a reference for arbitrators as to the elements of negligence and the propositions that must be proven by the plaintiff, as well as the elements of damages, proved by the evidence, to have resulted from the conduct of the defendant.

These instructions should serve as a helpful reminder for arbitrators when determining and drafting the award.

Table of Contents

21.02 Burden of Proof on the Issues 108
30.01 Measure of Damages - Personal Property 108
30.03 Measure of Damages - Aggravation of Pre-Existing Ailment or Condition 108
30.04 Measure of Damages - Disfigurement 108
30.04.01 Measure of Damages - Disability/Loss of a Normal Life 108
30.04.02 Loss of a Normal Life - Definition 109
30.05 Measure of Damages - Pain & Suffering - Past & Future 109
30.05.01 Measure of Damages - Emotional Distress - Past & Future 109
30.06 Measure of Damages - Medical Expense - Past & Future - Adult Plaintiff, Emancipated Minor, or Minor Whose Parent has Assigned Claim to Minor 109
30.07 Measure of Damages - Loss of Earnings or Profits - Past & Future - Adult Plaintiff, Emancipated Minor, or Minor Whose Parent has Assigned Claim to Minor 109
30.08 Measure of Damages - Loss of Future Earnings - Future Medical Expenses - Minor Plaintiff 109
30.09 Measure of Damages - Caretaking Expense - Past & Future - Adult Plaintiff, Emancipated Minor, or Minor Whose Parent has Assigned Claim to Minor 109
30.10 Measure of Damages - Damage to Personal Property - Repairs & Depreciation or Difference in Value Before and After Damage 110
30.11 Measure of Damages - Damage to Personal Property - Repairs or Difference in Value Before and After Damage 110
30.12 Measure of Damages - Damage to Personal Property - Cost of Repairs & Depreciation of Repaired Property 110
30.13 Measure of Damages - Damage to Personal Property - Repairs 110
30.14 Measure of Damages - Damage to Personal Property - Difference in Value Before and After Damage 110
30.15 Measure of Damages - Damage to Personal Property - Value Before Damages - No Salvage 110
30.16 Measure of Damages - Damage to Personal Property - Loss of Value 111
30.17 Measure of Damages - Damage to Real Property - Repairable Damage 111
30.18 Measure of Damages - Damage to Real Property - Permanent or Continuing Damage 111
30.21 Measure of Damages - Personal Injury - Aggravation of Pre-Existing Condition - No Limitations 111
30.22 Collateral Source - Damages 111

21.02 Burden of Proof on the Issues – Negligence - One Plaintiff and One Defendant – Causes of Action Accruing Prior to 11/25/86

The plaintiff has the burden of proving each of the following propositions:

First, that the defendant acted or failed to act in one of the ways claimed by the plaintiff as stated to you in these instructions and that in so acting, or failing to act, the defendant was negligent;

Second, that [plaintiff was injured] [and] [the plaintiff's property was damaged];

Third, that the negligence of the defendant was a proximate cause of [the injury to the plaintiff] [and] [the damage to the plaintiff's property].

If you find from your consideration of all the evidence that each of these propositions has been proved, then your verdict should be for the plaintiff. On the other hand, if you find from your consideration of all the evidence that any of these propositions has not been proved, then your verdict should be for the defendant.

30.01 Measure of Damages – Personal and Property

If you decide for the plaintiff on the question of liability, you must then fix the amount of money which will reasonably and fairly compensate him for any of the following elements of damages proved by the evidence to have resulted from the [negligence] [wrongful conduct] [of the defendant], [taking into consideration the nature, extent and duration of the injury].

[Here insert the elements of damages which have a basis in the evidence.]

Whether any of these elements of damages has been proved by the evidence is for you to determine.

30.03 Measure of Damages – Aggravation of Pre-Existing Ailment or Condition

The aggravation of any pre-existing ailment or condition.

30.04 Measure of Damages – Disfigurement

The disfigurement resulting from the injury.

30.04.01 Measure of Damages – Disability/Loss of a Normal Life

[The disability experience (and reasonably certain to be experienced in the future).]

[Loss of a normal life experienced (and reasonably certain to be experienced in the future).]

30.04.02 Loss of a Normal Life – Definition

The temporary or permanent diminished ability to enjoy life. This includes a person's inability to pursue the pleasurable aspects of life.

30.05 Measure of Damages – Pain and Suffering – Past and Future

The pain and suffering experienced [and reasonably certain to be experienced in the future] as a result of the injuries.

30.05.01 Measure of Damages – Emotional Distress – Past and Future

The emotional distress experienced [and reasonably certain to be experienced in the future].

30.06 Measure of Damages – Medical Expense – Past and Future – Adult Plaintiff, Emancipated Minor, or Minor Whose Parent Has Assigned Claim to Minor

The reasonable expense of necessary medical care, treatment, and services received [and the present cash value of the reasonable expenses of medical care, treatment and services reasonably certain to be received in the future].

30.07 Measure of Damages – Loss of Earnings or Profits – Past and Future – Adult Plaintiff, Emancipated Minor, or Minor Whose Parent Has Assigned Claim to Minor

[The value of (time) (earnings) (profits) (salaries) (benefits) lost] [.] [(T)he present cash value of the (time) (earnings) (profits) (salaries) (benefits) reasonably certain to be lost in the future].

30.08 Measure of Damages – Loss of Future Earnings – Future Medical Expenses – Minor Plaintiff

The present cash value of (time) (earnings) (profits) (salaries) (benefits) [(medical) care, treatment, and services] (caretaking expense) reasonably certain to be lost (or incurred) in the future after the plaintiff has reached the age of eighteen.

30.09 Measure of Damages – Caretaking Expense – Past and Future – Adult Plaintiff, Emancipated Minor, or Minor Whose Parent Has Assigned Claim to Minor

The reasonable expense of necessary help which has been required as a result of his injury [and the present cash value of such expense reasonably certain to be required in the future].

30.10 Measure of Damages – Damage to Personal Property – Repairs and Depreciation or Difference in Value Before and After Damage

The damage to property, determined by the lesser of two figures which are calculated as follows:

One figure is the reasonable expense of necessary repair of the property plus the difference between the fair market value of the property immediately before the occurrence and its fair market value after the property is repaired.

The other figure is the difference between the fair market value of the property immediately before the occurrence and the fair market value of the unrepaired property immediately after the occurrence.

You may award as damages the lesser of these two figures only.

30.11 Measure of Damages – Damage to Personal Property – Repairs or Difference in Value Before and After Damage

The damage to property, determined by the lesser of (1) the reasonable expense of necessary repairs to the property and (2) the difference between the fair market value of the property immediately before the occurrence and its fair market value immediately after the occurrence.

30.12 Measure of Damages – Damage to Personal Property – Cost of Repairs and Depreciation of Repaired Property

The reasonable expense of necessary repairs to the property which was damaged plus the difference between the fair market value of the property immediately before the occurrence and its fair market value after it is repaired.

30.13 Measure of Damages – Damage to Personal Property – Repairs

The damage to property, determined by the reasonable expense of necessary repairs to the property which was damaged.

30.14 Measure of Damages – Damage to Personal Property – Difference in Value Before and After Damage

The damage to property, determined by the difference between its fair market value, immediately before the occurrence and its fair market value immediately after the occurrence.

30.15 Measure of Damages – Damage to Personal Property – Value Before Damages – No Salvage

The damage to property, determined by the fair market value of the property immediately before the occurrence.

30.16 Measure of Damages – Damage to Personal Property – Loss of Value

The reasonable rental value of similar property for the time reasonably required for the [repair] [replacement] of the property damaged.

30.17 Measure of Damages – Damage to Real Property – Repairable Damage

The damage to real property, determined by the reasonable expense of necessary repairs to the property which was damaged [and the value of loss of the use of the (building) (improvements) for the time reasonably required for the repair] [and the difference between the fair market value of the real property immediately before the occurrence and its fair market value immediately after the repairs].

30.18 Measure of Damages – Damage to Real Property – Permanent or Continuing Damage

The damage to real property, determined by the difference between the fair market value of the real property immediately before the occurrence and its fair market value immediately after the occurrence.

30.21 Measure of Damages – Personal Injury – Aggravation of Pre-Existing Condition – No Limitations

If you decide for the plaintiff on the question of liability, you may not deny or limit the plaintiff's right to damages resulting from this occurrence because any injury resulted from [an aggravation of a pre-existing condition] [or] [a pre-existing condition which rendered the plaintiff more susceptible to injury].

30.22 Collateral Source – Damages

If you find for the plaintiff you shall not speculate about or consider any possible sources of benefits the plaintiff may have received or might receive. After you have returned your verdict the court will make whatever adjustments are necessary in this regard.

Section 12

Evidence Scenarios

Evidence Scenarios

The following section contains various hypothetical examples of situations wherein the arbitrators will need to make evidentiary rulings pursuant to the established Rules of Evidence for Illinois because the offering party has not complied with SCR 90(c) and, therefore, presumptively admissible documents have not been previously offered in evidence pursuant to that rule.

AN ARBITRATOR'S GUIDE TO THE ESTABLISHED RULES OF EVIDENCE

A. INTRODUCTION

The pleadings in a case assigned to Mandatory Arbitration will define the issues to be decided at the hearing. The Mandatory Disclosure Statement required of both plaintiff and defendant by Supreme Court Rule 222 in tort and contract cases under $50,000 will also be helpful in defining the issues. If the parties can furnish these to the arbitrators before the hearing commences, it will be helpful. If not, you may want to ask the parties to brief you on the issues.

1. Relevant Evidence

The issues to be decided will define what is relevant evidence. Relevant evidence is evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.[1]

As a GENERAL RULE only RELEVANT EVIDENCE IS ADMISSIBLE. By limiting the evidence presented by the parties to relevant evidence, the arbitrators will avoid wasting time unnecessarily.

Otherwise irrelevant, and even inadmissible, evidence may be received in evidence by the arbitrators if:

a) The parties STIPULATE to the admissibility and receipt in evidence of testimony, documents, or objects, etc.

b) The evidence becomes RELEVANT by a party's laying a foundation establishing the testimony, documents, or objects as RELEVANT.

2. Presumptive Admissibility under Rule 90(c)

Illinois Supreme Court Rule 90(c) provides that certain documents are PRESUMPTIVELY ADMISSIBLE; they include hospital bills, hospital reports, doctor's reports, drug bills, and other medical bills, bills for property damage, estimates of repair, written estimates of value, earnings reports, written statements of witnesses, and the depositions of a witness, upon 30 days' written notice of intention to offer the documents into evidence, accompanied by a copy of the document. Where there has been compliance with Supreme Court Rule 90(c) the documents should be received in evidence. Neither AUTHENTICATION nor FOUNDATION are required.

SUPREME COURT RULE 90(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:

a) 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;

b) bills for drugs, medical appliances and prostheses (specified as paid or unpaid);

c) 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;

d) a report of the rate of earnings and time lost from work or lost compensation prepared by an employer;

e) 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;

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

Any evidence which falls within Supreme Court Rule 90(c) is PRESUMPTIVELY ADMISSIBLE. Any other evidence offered must meet the requirements of the ESTABLISHED RULES OF EVIDENCE (Supreme Court Rule 90(b)).

3. Direct Examination

DIRECT EXAMINATION GENERAL RULE: Leading questions are forbidden. DEFINITION OF A LEADING QUESTION: A question that contains the answer desired of the witness, e.g. "Was the color of the defendant's car red?" instead of "What color was the defendant's car?"

EXCEPTION: If the witness' memory is exhausted, or the witness is HOSTILE, or where the

witness is identified with an opposing party as an ADVERSE WITNESS, then the witness may be examined as if under cross-examination, i.e., leading questions may be used.

Whether the witness is HOSTILE or ADVERSE is determined by the presence of one or more of the following conditions: the attitude of the witness; the witness' interest in the outcome (i.e., an agent or employee of the opponent); the content of the witness' testimony indicates surprise or affirmative damage to the party calling the witness.[2]

4. Cross-Examination

CROSS-EXAMINATION GENERAL RULE: Leading questions are permissible. SCOPE: Cross-examination is limited to those subject matters covered on DIRECT EXAMINATION and to those matters affecting credibility.

5. Redirect Examination

The real purpose of REDIRECT is REHABILITATION and should be limited to matters brought out for the first time on cross-examination. The offering party should have the opportunity on REDIRECT to meet such matters and try to explain away. It should not be an opportunity to say the same thing that was said on DIRECT examination (i.e., to reinforce direct), nor to add material that could have been, but was not, offered on direct.

This will be extremely important because of the time constraints on the arbitration hearing.

6. Offer of Proof

In the event the arbitrator rules certain evidence inadmissible, either testimony of a witness, or objects such as photos or other items, a party may make an OFFER OF PROOF in one of the following ways:

a) ask the witness what his or her testimony would have been if the objection had been overruled;

b) counsel may make a statement as to what the substance of the witness' testimony would have been but for the ruling.

GENERAL RULE: Allow the offer of proof to be made. Even though there is no transcript for a review proceeding, the primary purpose of the offer of proof is to provide the arbitrator with the most informed opportunity to make the proper ruling. After hearing the offer of proof, the arbitrator may have a different opinion as to the relevance or admissibility of the proposed evidence.

B. EVIDENCE SCENARIOS

Each of these hypothetical evidence problems assumes that the offering party has NOT complied with Supreme Court Rule 90(c). Hence the Arbitrator will have to make a ruling pursuant to the established Rules of Evidence for Illinois. These examples are illustrative, but not exhaustive, of the typical types of evidentiary rulings which arbitrators may face. (Please note: the hypothetical fact patterns provided below are for purposes of illustration and should not be relied upon as authority when making rulings)

1. Subsequent Remedial Measures

a) The plaintiff seeks to admit proof that the defendant, two days after the incident, repaired defects in the steps upon which plaintiff allegedly fell and was injured.

OBJECTION: Not relevant.

RULING: SUSTAINED. Proof of subsequent remedial measures is not admissible on the issue of negligence.[3]

b) The plaintiff seeks to admit evidence of a subsequent remedial repair by the Defendant of a manhole as proof that Defendant owned the property.

OBJECTION: Not relevant because it is proof of a subsequent remedial repair.

RULING: OVERRULED. Proof of subsequent remedial repairs is admissible on an issue other than negligence of the defendant, i.e., proof of ownership, control, feasibility of precautionary measures, or impeachment.[4]

2. Similar Happenings

a) Plaintiff seeks to admit defendant's records which show that two other accidents occurred under substantially similar conditions on the steps of defendant's building.

OBJECTION: Not relevant.

RULING: OVERRULED. The records are admissible to show the probability that defendant had notice of the existence of a dangerous condition.[5]

b) Defendant apartment building owner seeks to introduce his own maintenance records to show the lack of any other similar accidents.

OBJECTION: Not relevant.

RULING: SUSTAINED. The records are inadmissible on the issue of absence of notice to the defendant of a defective condition.[6]

c) Plaintiff, in a suit to recover for lost profits for defendant's alleged breach of a real estate contract, offers proof of the sale prices of other similar real estate in the same area.

OBJECTION: Not relevant.

RULING: OVERRULED. Admissible as a proper method of proving fair market value.[7]

3. Character; Habit; Routine Business Practices

a) Defendant offers the testimony of a long-time friend who will testify concerning defendant's reputation in the community as a careful person as proof that he was not negligent on the occasion at issue.

OBJECTION: Not relevant.

RULING: SUSTAINED. Proof of another's character, or character trait, i.e. a careful person, is not admissible in a civil case unless the character or trait of character is an essential element of the cause of action, claim or defense.[8]

b) In an action for negligence against a car wash owner for damages sustained to plaintiff's auto which jumped the conveyor track while being washed, plaintiff seeks to testify that he has, for the past three years, washed his car at the same car wash every week, and that each time he reads the posted instructions, next drives his car onto the conveyor, then puts it in park and before he leaves the vehicle again checks to see that it is in park.

OBJECTION: Not relevant.

RULING: ADMISSIBLE. Proof of the plaintiff's habit or routine practice established by evidence of sufficient pattern of repeated responses in the same situation is admissible and is evidence of his character as a careful person and as proof that he acted in conformity with that character trait on this occasion. The ruling could conceivably be sustained depending on whether you agree or do not agree that Illinois still follows the eyewitness requirement, or necessity rule, before habit testimony is permitted.[9]

c) The defendant insurance company seeks to have an office manager testify that the company has a routine practice of mailing notices of non-coverage, which indicate

that the proposed insured its not covered by insurance until after receipt of the insured's premium check; that this procedure is followed immediately upon a telephone request from a proposed insured for coverage; and, that the records indicate that the practice was followed in the instant case.

OBJECTION: Hearsay.

RULING: OVERRULED, ADMISSIBLE. The routine practice of an organization, coupled with proof that the practice was in fact followed on the occasion in issue, is admissible.[10]

4. Offers of Compromise or Settlement; Payment of Medical Expenses

a) The plaintiff in a personal injury action testifies that at the scene of the accident the defendant offered to pay for her medical expenses and property damage as proof of defendant's admission of liability, and that defendant did pay part of her medical expenses.

OBJECTION: Payment of medical expenses and offers to settle are inadmissible on the issue of liability.

RULING: SUSTAINED. Compromises and offers to compromise or settle claims are inadmissible. Payment of medical and similar expenses are not admissible to prove liability.[11]

5. Evidence of Intoxication

a) Plaintiff in an action alleging negligence and willful and wanton conduct of the defendant seeks to have a bystander testify that when defendant emerged from his vehicle after the collision with plaintiff's car he smelled from alcohol.

OBJECTION: Evidence of the use of alcohol is not admissible.

RULING: SUSTAINED. Evidence of the use of alcohol is not admissible unless the offering party is prepared to prove intoxication.[12]

6. Convictions; Pleas of Guilty

a) Plaintiff seeks to introduce that defendant, after a plea of not guilty and bench trial, was convicted for speeding at the time of the alleged accident.

OBJECTION: Traffic offense convictions are not admissible because of the great volumes of cases handled by these courts, and traffic courts do not operate so as to assure the reliability of their judgments.

RULING: SUSTAINED. Traffic offense convictions are not admissible unless entered on

a plea of guilty. The nature of traffic court proceedings is that they are often perfunctory in nature and such convictions are frequently uncontested. Courts are reluctant to admit them.[13]

7. Original Writing; Best Evidence Rule

a) Plaintiff Realtor, in a suit to recover a real estate commission, seeks to introduce a copy of the Real Estate Listing Agreement as evidence of the terms of the contract with the seller-defendant. Realtor testifies that each person was given a copy of the contract as his original at the time of execution and that this is the realtor's copy.

OBJECTION: This is not the original document, and the Best Evidence or Original Writing Rule requires that the original be produced.

RULING: OVERRULED. Copies which the parties by their conduct treat as originals are admissible, i.e. contracts executed in multiple copies.[14]

b) An attorney in a suit for fees testifies from memory about the time and services rendered to his client.

OBJECTION: The attorney's written time records are the Best Evidence of the services and time rendered.

RULING: OVERRULED. The facts of the attorney's time and services exist independently of the written time records and the attorney may testify.[15]

c) Plaintiff seeks to introduce a copy of a contract after testifying that the original is in the possession of the defendant.

OBJECTION: The Best Evidence Rule requires plaintiff to produce the original.

RULING: SUSTAINED. Unless plaintiff can show that he gave notice pursuant to Supreme Court Rule 237 requesting defendant to produce the original at the hearing. The Best Evidence Rule requires that the original writing be introduced into evidence unless the original is shown to be lost, destroyed or unavailable. Detention of the original by the opposing party is a basis for an unavailability finding provided that the proponent shows the opponent's possession or control of the original, transmittal of notice to the opponent that the particular document will be needed at trial and the opponent's refusal or failure to produce the original at trial.[16]

8. Police Reports

a) The plaintiff seeks to introduce the investigative report of a policeman, who arrived immediately after the accident, as to what the parties and witnesses said regarding how the accident occurred. Plaintiff argues the report is admissible.

OBJECTION: Hearsay

RULING: SUSTAINED. Police investigative and accident reports are inadmissible as Business Records.[17]

9. Refreshed Recollection

a) The officer who investigated the accident, upon testifying, cannot recall the exact positions and locations of the vehicles involved, but he did write this information in his accident report. The defendant seeks to mark the accident report as an exhibit and show it to the officer, so that he may testify regarding what he observed.

OBJECTION: This is a police report and inadmissible.

RULING: OVERRULED. The witness, after a showing that his independent memory of what he observed is exhausted, may review his written police report, put it down, and testify from his refreshed recollection.[18]

10. Past Recollection Recorded

a) The same police officer, after refreshing his memory from his written report, still cannot testify from his refreshed recollection as to the details of the locations of the cars, or his analysis as to how the accident occurred. (Assume he has been qualified to give such an opinion). Defendant seeks to have the officer read from his report.

OBJECTION: Police reports are inadmissible by statute and Supreme Court Rule. Also, this is hearsay since it is an out-of-court statement being used to prove the truth of the matter asserted in the report.

RULING: OVERRULED. After an attempt to refresh the witness' memory has failed, and the arbitrator finds that the officer has no independent recollection about a matter covered in the writing, the officer may read from the report as an exception to the Hearsay Rule. This is Past Recollection Recorded. The document itself is also admissible.[19]

11. Medical Records; Business Records

a) The plaintiff seeks to introduce his medical records from the hospital, where he was treated for the injuries sustained in the incident, by having a doctor testify that he

treated plaintiff, supervised plaintiff's treatment by the persons who entered their treatment notes in the records, and that these entries are made in the normal course of his and the hospital's treatment of patients.

OBJECTION: Hearsay, and medical records are inadmissible.

RULING: OVERRULED. Medical records are now admissible under Supreme Court Rule 236 as a Business Record. A proper foundation for the records' admissibility has been laid by testimony that the records were kept in the regular course of business at the time of the acts or events or within a reasonable time thereafter, and that the person testifying either supervised or has personal knowledge of their recordation or method of recordation.

12. Hearsay; Non-Hearsay; Exceptions to Hearsay

THE SELF-QUOTING WITNESS.

a) The plaintiff offers the testimony of a witness, a passenger in defendant's vehicle, who testifies that just before the collision with plaintiff, he told the defendant he was exceeding the speed limit because he had just passed a 45 mph sign, and his speedometer was reading 60.

OBJECTION: Hearsay. This is an out-of-court statement being offered to prove the truth of the matter asserted.

RULING: SUSTAINED. The statement is hearsay and inadmissible even though the declarant is available to be cross-examined. The declarant's testimony is an out-of-court statement being introduced to prove the truth of the matter asserted.

13. State of Mind

a) In an action by a broker to recover damages for alleged failure of defendant to pay his brokerage fee, defendant testifies that he had discussions with his wife about his pending offers to buy the land before listing with plaintiff, and also that he had no conversations with his wife concerning using the plaintiff as his broker. The issue was whether defendant had listed with plaintiff or was awaiting the results of independent offers to buy before listing with plaintiff.

OBJECTION: These are self-serving statements and hearsay.

RULING: OVERRULED. Where the state of mind of a person at a particular time is

relevant to a material issue in the case, his declaration made at a time when no motive to misrepresent existed are admissible as proof of that issue, even when not made in the presence of the adverse party.[20]

14. Admission by a Party Opponent

a) The plaintiff, in an action against the owner of a trucking company for injuries sustained as a result of a truck's defective brakes, testifies that the driver of the truck, defendant's employee, shortly after the incident and at the scene of the accident, said, "The truck's brakes were bad man, really bad. When I made out my maintenance report two months ago I warned the company that they were dangerous."

OBJECTION: This is hearsay. It is an out-of-court statement being admitted to prove the truth of the matter asserted, i.e. that the defendant owner had knowledge that the brakes were in need of repair and did nothing.

RULING: OVERRULED. The statement by an agent, here the employee-driver, if within the scope of his employment or express or implied authority, is binding on the owner as an ADMISSION and is not hearsay.[21]

15. Excited Utterance

a) Plaintiff testified that immediately after the accident with the defendant company's truck and while lying on the road feeling all numb, defendant's employee truck driver, not available at trial, rushed up to plaintiff and said, "Man, am I sorry. I just didn't see the red light."

OBJECTION: Hearsay.

RULING: OVERRULED. Admissible as an EXCITED UTTERANCE exception to the Hearsay Rule. An excited utterance is one made where there is an occurrence sufficiently startling to cause a spontaneous and unreflecting statement, an absence of time to fabricate, and the statement relates to a startling event such as an auto accident.[22]

16. Statements of Medical Diagnosis

a) The plaintiff’s treating physician testified that on the first occasion he saw and treated plaintiff, plaintiff told him, "The speeding red car hit me head on."

OBJECTION: Hearsay.

RULING: OVERRULED. Statements made to a physician for the purpose of diagnosis and statement are admissible as an Exception to the Hearsay Rule. Here the doctor needed to know the

extent of the impact to make a proper diagnosis.[23]

17. Photos[24]

ADMISSIBILITY OF DAMAGED VEHICLE PHOTOS TO PROVE EXTENT of INJURY

a) **Dicosola v. Bowman**, 342 Ill. App. 3d 530 (1st Dist. 2003)
b) **Baraniak v. Kurby**, 371 III App. 3d 310 (1st Dist. 2007)

18. Telephone Calls

a) Plaintiff, who has known defendant and his family for five years and spoken to them many times in person, testifies as to the length of the relationship and extent of conversations, and that three days after plaintiff slipped and fell on snow and ice accumulated on defendant's property, defendant called him on the phone and stated: "I'm sorry my husband didn't shovel that snow and ice ten days ago. I told him it was slippery and that I was afraid someone was going to get hurt."

OBJECTION: Hearsay. Also plaintiff can't testify that it was defendant who called. Defendant will offer evidence that such a call was never made.

RULING: OVERRULED. A person may be identified by voice. A voice may be authenticated by someone who heard the call and was familiar with the caller's voice so as to identify the caller.[25]

19. Certified Copies

a) Defendant, on cross-examination, denies he was convicted of the felony charge of forgery in 1994. Plaintiff seeks to admit a certified copy of defendant's 1994 conviction for felony forgery, in the Circuit Court of Cook County Criminal Division, as impeachment evidence against defendant.

OBJECTION: Convictions are not admissible in civil cases and this is not the proper way to prove such a conviction.

RULING: OVERRULED. Any felony conviction within the last ten years, or a misdemeanor conviction for a crime involving deceit or dishonesty within the last ten years, is admissible to impeach the credibility of a witness or party.[26]

b) A certified copy of a court record is a proper form of evidence. Ill. Rev. Stat. 1991, ch 110, par. 8-1202 / 735 ILCS 5/8-1202 (1993) provides:

"The papers, entries and records of courts may be proved by a copy thereof certified under the signature of the clerk having the custody thereof, and the seal of the court, or by a judge of the

court if there is no clerk."

c) See also: 735 ILCS 5/8-101 and Federal Rules of Evidence 609. As are: Certified Municipal Records, 735 ILCS 5/8-1203; Certified Corporate Records, 735 ILCS 5/8-1204; Official Certificate of Land Offices, 735 ILCS 5/8-1208; Certified State Land Patents, 735 ILCS 5/8-1210; Certified Deposition Transcripts, Ill. Sup. Ct. R. 207(6); Certified Public Aid Records, 305 ILCS 5110-13.4; Certified Copies of Vital Statistic Records, 410 ILCS 53 1 to 410 ILCS 535/25.

d) Additionally, the following documents are SELF-AUTHENTICATING because they are accepted as authentic in normal everyday affairs: Interstate Commerce Commission Printed Schedules, Classifications and Tariffs, 735 ILCS 5/8-1201; Illinois Statutes, Foreign Statutes, and Acts of Congress, 735 ILCS 5/8-] 104; Uniform Commercial Code, 810 ILCS 511-202, Mortality and Annuity Tables, Ancient Documents (Those more than 30 years old), Reports of Courts, 735 ILCS 5/8-1106.

20. Impeachment

a) Plaintiff is asked on cross-examination whether his brake lights were functioning when he stopped at the stop light just before defendant collided with the rear of plaintiff's car. He states: "I do not recall." Defendant offers questions and answers from plaintiff's deposition when plaintiff responded to an identical question with the answer, "No, they were not functioning."

OBJECTION: This is not a prior inconsistent statement and is not proper impeachment.

RULING: SUSTAINED. Plaintiff's failure to recall facts at the hearing cannot be impeached by prior testimony that on another occasion he remembered. The purpose of impeachment is to show that the witness lied or is not credible, not to prove the truth of the prior statement. This ruling could be otherwise if there is evidence that the failure to recall is feigned.

b) Plaintiff answers on cross-examination that his brake lights were on when defendant hit him from the rear. Defendant seeks to introduce questions and answers plaintiff gave at his deposition when plaintiff said, in answer to the question, 'Were your brake lights on at the time of the collision with defendant's vehicle?" Answer: "I don't recall."

OBJECTION: Not impeaching. Plaintiff didn't recall and now he does.

RULING: OVERRULED. Plaintiff's answer at trial is inconsistent with his failure to recall at a time closer to the event in question. It should be received. The arbitrator may give it whatever

weight appropriate on the issue of the credibility of the witness.

21. Expert Witness

a) The defendant offers a doctor who testifies that he examined the plaintiff, but did not treat him, reviewed the plaintiff's treating chiropractor's records, and from his examination and the notes regarding plaintiff's complaints of whiplash, he has an opinion to a reasonable degree of medical certainty that the plaintiff is malingering and his complaints are feigned.

OBJECTION: This non-treating physician is not qualified to give such an opinion.

RULING: OVERRULED. A non-treating physician can base his opinion on subjective complaints and the history the patient gives him. Who is qualified as an expert is within the sound discretion of the court.[27]

22. Lay Witness Opinion Testimony

a) Plaintiff offers to testify that after he looked in both directions before entering the intersection, he saw the defendant's truck barreling toward him at 60 miles per hour.

OBJECTION: This is lay opinion testimony about a matter that requires expert knowledge.

RULING: OVERRULED.[28]

Evidence Reference Texts

McCormick, EVIDENCE, (4th Edition 1992); Cleary and Graham's HANDBOOK OF ILLINOIS EVIDENCE (5th Edition 1990); Goodman, ILLINOIS TRIAL EVIDENCE (1987).

---

[1] Illinois adopted Federal Rule 401 in People v. Monroe, 66 Ill. 2d 317, 362 N.E. 2d 295,5 Ill. Dec. 824 (1977) and In re Elias, 114 Ill 2d 321,499 N.E. 2d 1327, 102 Ill. Dec. 314 (1986).

[2] Supreme Court Rule 238. Ill. Rev. Stat. 1991, ch. 110, par. 2-1102 (1991) / 735 ILCS 5/2¬11 02 (1993).

[3] Hodges v. Percival, 132 Ill. 53,23 N.E. 423 (1890); Lundy v. Whiting Corp., 93 Ill. App. 3d 244,417 N.E. 2d 154,48 Ill. Dec. 752 (1" Dist. 1981); Howe v. Medaris, 183 Ill. 288, 55 N.E. 724 (1899); Day v. Barber-Colman Co., 10 Ill. App. 2d 494, 135 N.E. 2d 231 (1956).

[4] Evidence of repairs made or precautions taken after an accident may be admissible, as an exception to the General Rule, to show that control of the premises is in Defendant, where there is a dispute on the issue of control. Larson v. Commonwealth Edison Co., 33 Ill. 2d 316, 211 2d 247 (1965); Practicability of enclosing equipment. Supolski v. Ferguson & Lange Foundry Co., 272 TIL 82,1 J 1 N.E. 544 (1916); Post-occurrence changes are admissible in products liability cases to establish feasibility of alternative design. Davis v. International Harvester Co., 167 Ill. App. 3d 814, 521 N.E. 2d 1282, 118 TIL Dec. 589 (2nd Dist. 1988); See also: Sutkowski v. Universal Marion Corp., 5 Ill. App. 3d 313, 281 N.E. 2d 749 (3rd Dist. 1972); Evidence of post-occurrence changes admissible to show Defendant acted with conscious disregard for safety of others or as proof of willful and wanton conduct. Collins v. Interroyal Corp., 126 Ill. App. 3d 244, 466 N.E. 2d 1191,81 Ill. Dec 389 (1st Dist. 1984); Contra: Schaffner Chicago & North Western Transp. Co., 129 Ill. 2d 1,541 N.B. 2d 643 (1989). Cleary and Graham's HANDBOOK OF ILLINOIS EVIDENCE (5th Ed. 1190) Sec. 407.1.

[5] Ballweg v. City of Springfield, 114 Ill. 2d 107,499 N.B. 2d 1373, 102 TIL Dec. 360 (1986) substantially similar happenings admissible to show notice of dangerousness.
[6] Evidence of no accidents inadmissible to show absence of notice. Mobile & Ohio Railroad Co. V. Vallowe, 214 Ill. 124, 73 N.E. 416 (1905).
[7] Department of Public Works & Bldgs. v. Klehm, 56 Ill. 2d 121,306 N.B. 2d 1 (1973).
[8] Holtzman v. Hoy, 118 Ill. 534,8 N.E. 832 (1886). But see McClure v. Suter, 63 Ill. App. 3d 378,379 N.E. 2d 1376,20 Ill. Dec. 308 (2nd Dist. 1978). Evidence of swimming regulations at similar campground admitted as custom and usage. Custom held to be relevant in determining the standard of care.
[9] Illinois is leaning toward adoption of Fed. Rule 406. Bradfield v. Illinois Central Gulf R.R., 137 Ill. App. 3d 19,484 N.E. 2d 365 (5th Dist. 1985) affd on other grounds 115 TIl. 2d 471,106 Ill Dec. 25, 505 N.E. 2d 331 (1987) wherein the Court seemed to be leaning toward permitting admissibility of evidence of both habit of a person and routine practice of an organization whether corroborated or not, and regardless of the presence of eyewitnesses. Cf. Cairns v. Hansen, 170 Ill. App. 3d 505, 120 Ill. Dec. 757, 524 N.E. 2d 939 (2nd Dist. 1988) requiring competent eyewitness testimony, if available. In Cairns the court refused to sanction the admissibility of habit testimony if competent eyewitness testimony was available on the basis that the Supreme Court had not yet formally adopted Fed. Rule 406. See Also: Wasleff, Jr. v. Dever, 194 Ill. App. 3d 147,550 N.E. 2d 1132,141 Ill. Dec. 86 (1st Dist. 1990), which follows Fed. Rule 406 in holding habit evidence is always admissible for the purpose of proving the conduct of a person or business organization.
[10] Webb v. Pacific Mut. Life Ins. Co., 348 Ill. App. 411,109 N.E. 2d 258 (1st Dist. 1952). Evidence of business practice admissible to show practice followed on occasion in issue.
[11] Ill. Rev. Stat. 1991, ch. 110, par. 8-1901 (1991); 735 ILCS 5/8-1901 (1993); Boeyv. Quaas, 139 111. App. 3d 1066,487 N.E. 2d 1222, 94 Ill. Dec. 345 (5th Dist. 1986). Settling Defendant allowed to testify so as to disclose terms of settlement with Plaintiff. Held admissible on issue of credibility of testimony of settling defendant; Sawicki v. Kim, 112 111. App. 3d 641, 445 N.E. 2d 63,67 Ill. Dec. 771 (2nd Dist. 1983). Reference in opening statement to Defendant's offer to pay $100 to settle the matter and an offer to reduce her bill for medical services reversible error.
[12] Evidence of use of alcohol not permitted except where the offering party is prepared to prove actual intoxication. Benuska v. Dahl, 87 Ill. App. 3d 911, 410 N.E. 2d 249, 43 Ill. Dec. 249 (2nd Dist. 1980); Ballard v. Jones, 21 Ill. App. 3d 496, 316 N.E. 2d 281 (1st Dist. 1974).
[13] Hengels v. Gilski, 127 Ill. App. 3d 894, 469 N.E. 2d 708, 83 DI. Dec. 101, (1st Dist. 1984); O'Dell v. Dowd, 102111. App. 3d 189,429 N.E. 2d 548,57 TIL Dec. 650 (4th Dist. 1981). Traffic conviction for driving too fast for conditions is admissible as an admission in later civil case when entered on plea of guilty. See also Cleary and Graham's, HANDBOOK OF ILLINOIS EVIDENCE, Sec. 802.4 (5th Ed. 1990).
[14] Ill. Rev. Stat. 1991, ch. 110, par. 8-401 /735 ILCS 5/8-401 (1993); Supreme Court Rule 236 (1991) amended 4-1-92, effective 8-1-92; Hayes v. Wagner, 220 Ill. 256, 77 N.E. 211 (1906); People v. Chicago, R. L & P. Ry. Co., 329111. 467, 160 N.E. 841 (1928). Duplicate originals of Election Notices and Ballots made from same reliable printing process through mechanical means, i.e. printing, are admissible as originals, without accounting for the absence of any other duplicate originals.
[15] In re Marriage of Collins, 154111. App. 3d 655,506 N.B. 2d 1000, 107 Ill. Dec. 109 (2d Dist. 1987).
[16] Illinois Supreme Court Rule 237(b) (1991) Electric Supply Corp. V. Osher, 105 Ill. App. 3d 46,433 N.B. 2d 732, 60 Ill. Dec. 690, (1st Dist. 1982); But notice may not be necessary if from the nature of the case an opponent must know party will rely on a writing in his possession. Maxcy-Barton Organ Co. V. Glen Bldg. Corp., 355 Dl. 228, 189 N.E. 326 (1934).
[17] Illinois Supreme Court Rule 236 amended 4-1-92, effective 8-1-92; Jacobs v. Holley, 3 Ill. App. 3d 762, 279 N.E. 2d 186 (2nd Dist. 1972)
[18] Hall v. Checker Taxi Co., 109 Ill. App. 2d 445, 248 N.E. 2d 721 (1st Dist. 1969); Rowlett v. Hamann, 112 Ill. App. 2d 121,251 N.E. 2d 358 (1st Dist. 1969).
[19] Taylor v. City of Chicago, 114 Ill. App. 3d 715, 449N.E. 2d 272, 70 TIl. Dec. 398 (1st Dist. 1983); Rowlett, supra. Wilsey Mv. Schlawin, 35 m. App. 3d 892,342 N.E. 2d 417 (1 ,I Dist. 1975)
[20] Hackett v. Ashley, 71 Ill. App. 3d 179,389 N.B. 2d 246, 27 Ill. Dec. 434 (3d Dist. 1979); People v. Coleman, 116 Ill. App. 3d 28, 451 N.E. 2d 973, 71 Ill. Dec. 819 (3d Dist. 1983).
[21] Taylor v. Checker Cab Co., 34 Ill. App. 3d 413, 339 N.E. 2d 769 (1st Dist. 1975); Cornell v. Langland, 109111. App. 3d 472, 440 N.E. 2d 985, 65 Ill. Dec. 130 (1st Dist. 1982) where statement by managing golf pro at defendant's club to plaintiffs husband that hole was shorter than 315 yards marked was admissible as an admission against club in action to recover for injuries suffered when plaintiff was hit by other golfer's drive. Golf pro was "overseer" of the course and had authority to deal with patrons concerning safety of others.

[22] People v. Staten, 143 Ill. App. 3d 1039,493 N.E. 2d 1157,1160,98 Ill. Dec. 136 (2nd Dist. 1986). To be admissible as an excited utterance exception to the hearsay rule there must be an occurrence or event sufficiently startling to cause a spontaneous and unreflecting statement, an absence of time to fabricate, and a relationship between the statement and the occurrence or event.

[23] Greinke v. Chicago City Ry., 234 Ill. 564, 85 N.E. 327 (1908); Welter V. Bowman Dairy Co., 318 Ill. App. 305,47 N.E. 2d 739 (1943); Ryan v. Monson, 33 Ill. App. 2d 406, 179 N.E. 2d 449 (410 Dist. 1961).

[24] Chgo. City Rwy. Co. v. Smith, 226 Ill. 178,80 N.E. 716 (1907); People v. Donaldson, 24 TIL 2d 315,181 N.B. 2d 131 (1962); Stevens v. Illinois Central R. Co., 306 Ill. 370,137 N.E. 859 (1923).

[25] Bell v. McDonald, 308 Ill. 329, 139 N.E. 613 (1923).

[26] People v. Montgomery, 47 Ill. 2d 510,268 N.E. 2d 695 (1971), which adopted Federal Rule of Evidence 609; Smith v. Andrews, 54 Ill. App. 2d 51,203 N.E. 2d 160, Cert. Den'd 382 U.S. 1029 (1964). Proof of conviction for felony rape admissible as prima facie evidence in later civil case of fact that Defendant committed rape. This is the judicial admission exception to the Hearsay Rule. People v. Spates, 77 Ill. 2d 193,395 N.E. 2d 563, 32 Ill. Dec. 333 (1979). A misdemeanor that has as its basis deception, dishonesty or false statement, or bears a reasonable relation to testimonial deceit, can be used for impeachment.

[27] Nowakowski v. Hoppe Tire Co., 39 Ill. App. 3d 155, 163,349 N.B. 2d 578,586 (1st Dist. 1976).

[28] Peterson v. Lou Boehrodt Chevrolet Co., 76 Ill. 2d 353, 392 N.E. 2d 1 (1979). Non-expert can give an opinion in miles per hour on speed of a vehicle. See Robinson v. Greeley & Hansen, 114111. App. 3d 720, 449 N.E. 2d 250 (2nd Dist. 1983). Non-expert not allowed to express an opinion on the ultimate legal issue, i.e. whether the entrance to a sewer life station was dangerous.