

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

22ND JUDICIAL CIRCUIT McHENRY COUNTY

ARBITRATION QUESTION AND ANSWER BOOKLET



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WHAT IS ARBITRATION?

Mandatory court-annexed arbitration is an alternate dispute resolution procedure used in court systems across the country. Court-annexed arbitration was established in Illinois as a non-binding form of alternative dispute resolution. The program is a deliberate effort on the part of the judiciary, bar and public to reduce the length and cost of litigation in Illinois.

The program applies to all civil cases seeking money damages exclusively greater than \$10,000 and less than the jurisdictional limit approved for that particular circuit by the Illinois Supreme Court. In McHenry County the limit is currently \$50,000. McHenry County further requires that small claims actions are subject to arbitration when a jury demand is filed. Cases may also be transferred to the arbitration calendar from other court calls or divisions.

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

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

The Arbitration Program has provided a speedier resolution of small civil lawsuits than had previously been possible. The parties accept a substantial proportion of the arbitration awards. In addition, the members of the McHenry County bar, as arbitrators, have played a major role in helping to reduce the length and cost of litigation in this circuit.

I. ARBITRATION FACILITIES

1. Where is the Arbitration held?

The McHenry County *Arbitration Center* is located in the jury deliberation rooms of the *McHenry County Courthouse, Room 355, 2200 N. Seminary Road, Woodstock, Illinois.*

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

In the event you have a question about the arbitration process and/or the arbitration hearing, contact the Arbitration Center at *Tel. (815) 337-0582; Fax (815) 338-0248.*

In the event you have a question about the filing of papers, any fees, the Arbitration Court Call, or if you desire to place a case on the motion call, please contact the Office of the Circuit Clerk at *(815) 334-4310.*

II. ARBITRATION CASES

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

In McHenry County, a civil action shall be subject to mandatory arbitration if each claim therein is exclusively for money damages in an amount exceeding \$10,000, but not exceeding \$50,000, exclusive of costs and interest [Illinois Supreme Court Rule 86(b)]. Small claims cases in which a jury demand has been made are subject to mandatory arbitration, as well [Circuit Rule 17.01(h)]. Cases may also be transferred to the arbitration calendar

from other calls or divisions upon the motion of the court or any party.

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

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

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

Illinois Supreme Court Rule 86(d) provides that cases not assigned to the arbitration calendar may be ordered to arbitration at a status call, pre-trial, or case management conference when it appears to the court that no claim in the action has a value in excess of the monetary limit authorized by the Supreme Court for that circuit (currently \$50,000) irrespective of defenses.

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

Yes. An appropriate motion to amend damages and to transfer an assigned "LA" case to the arbitration calendar must be made before the law division judge in accordance with court rules.

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

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

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

A small claims case may be transferred to the arbitration calendar upon the appropriate motion before the small claims judge in accordance with court rules.

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

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

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

Generally, it will not be available for the following:

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

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

9. Can I observe an arbitration hearing prior to my own arbitration hearing date?

Yes. Arbitration hearings are open to the public. It is *strongly* suggested that you contact the arbitration center to schedule a time to view a hearing, as hearings are only scheduled on Fridays and are *not* conducted every Friday. The arbitration staff will give you alternate days and times to select from.

10. If I can't make it to the Arbitration Hearing, can my spouse represent me?

Unless your spouse is licensed to practice law, he or she may not represent you in your arbitration hearing. You must either represent yourself or have an attorney represent you.

11. Can the arbitration center recommend an attorney to handle my case?

No. One possible source for attorney referrals is the McHenry County Bar Association at (815) 338-9559.

12. If I am an officer of a corporation, can I represent the corporation?

No corporation may appear as claimant, assignee, subrogee, or counterclaimant in a small claims proceeding, *unless* represented by counsel. However, an officer, director, manager, department manager, or supervisor of the corporation may *defend as defendant* when the amount claimed *does not exceed the jurisdictional limit for small claims* (currently \$10,000.00) [Illinois Supreme Court Rule 282(b)].

III. ARBITRATORS

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

Arbitrators are lawyers who have met specific criteria and who have been trained and certified to act as arbitrators. They are assigned on a specific day to hear cases that have been previously scheduled for that day.

Circuit Rule 17.02(a)(b) provides that any licensed attorney shall be eligible for appointment as an arbitrator by filing an application with the arbitration administrator certifying that he/she is: in good standing with the Illinois Attorney Registration and Discipline Commission (ARDC); has completed a court-approved training seminar on arbitration practices and procedures; has been engaged in the active practice of law in Illinois for a minimum of two (2) years within the five years immediately preceding the filing of the application or is a retired judge; and resides in, practices in, or has an office located within McHenry County. In order to be considered for the position of chair, an attorney must fill out an additional application indicating a minimum of five (5) years recent trial experience. The application will be reviewed and approved by the supervising judge.

2. Will I have a choice of arbitrators?

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

3. Do I have to pay the arbitrators?

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

4. How are the arbitrators chosen?

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

5. When will I know who will be the members of the panel who will hear my case?

The panel members will introduce themselves to the litigants at the beginning of the hearing.

6. May I ask to change arbitrators if I think there is prejudice, a conflict, or other problems?

No. Arbitrators may recuse themselves if they feel there may be a conflict, or withdraw if grounds appear to exist for disqualification pursuant to the Code of Judicial Conduct [Illinois Supreme Court Rule 87(c)]. There is no provision made in the rules for a substitution of arbitrators or change of venue from the panel or any of its members. The remedy of rejection of an award and the right to proceed to trial has been determined to be the appropriate response to a perceived bias or prejudice on the part of any member of the panel or error by the panel in the determination of its award.

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

If an arbitrator discovers a conflict after the hearing has started and no arbitrator is available to take his/her place, the arbitration hearing can continue before the two remaining panelists if all parties agree. Otherwise, an emergency arbitrator will be called and the hearing will be delayed until the emergency arbitrator arrives.

8. If I do not understand the meaning of the award, may I contact the arbitrators? Can I ask the arbitrators what I did wrong?

No. The arbitrators are bound by the Code of Judicial Conduct and cannot have *ex parte* communications with any of the parties or their attorneys. Arbitrators may not be contacted, or publicly comment, or respond to questions regarding a particular arbitration case heard by that arbitrator during the pendency of that case and until a final order is entered and the time for appeal has expired [Circuit Rule 17.02(e)].

IV. MOTIONS

1. What days and times are arbitration motions heard?

Arbitration motions are heard Monday through Friday at 9:00 a.m. at the McHenry County Courthouse, 2200 N. Seminary Road. Please contact the Circuit Clerk's Office to place a case on the motion call.

2. Where are the arbitration motions heard?

The Supervising Judge for Arbitration in Courtroom 202 hears the arbitration motions.

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

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

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

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

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

Yes. Circuit Rule 17.03(d) provides that counsel *shall* give notification to the arbitration administrator at least seven (7) days in advance of the hearing of changes of appearances or additions of parties or counsel, or of the need for additional time. Sanctions may be imposed for failure to do so.

6. Can arbitrators hear motions?

The arbitrators' authority to hear motions is limited. Their authority and power exist only in relation to the

conduct of the hearing at the time it is held. Thus, the arbitrators can hear and determine motions to exclude witnesses, motions *in limine*, rulings on the admissibility of evidence, and motions for directed finding.

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

V. DISCOVERY

1. Are there special rules governing discovery in arbitration?

Yes. Arbitration cases are subject to the disclosure provisions of Illinois Supreme Court Rule 222. All litigants are well advised to read and comply with this Rule. Failure to file or serve the disclosure statement as provided by rule, or as the court may order prior to the arbitration hearing, may result in the imposition of sanctions as prescribed in Illinois Supreme Court Rule 219(c).

NO DISCOVERY IS TO BE CONDUCTED AFTER THE HEARING EXCEPT BY LEAVE OF COURT AND FOR GOOD CAUSE SHOWN [Circuit Rule 17.05 (a)].

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

It is up to each litigant to present the evidence. Illinois Supreme Court Rule 90(c) provides that items such as hospital reports, doctor's reports, drug bills and other medical bills, as well as bills for property damage, estimates of repair, earnings reports, expert opinions, and depositions of witnesses are admissible without the maker being present. ***In order to take advantage of this rule, a written notice of the intent to offer those documents along with a copy of the documents MUST BE sent to all other parties AT LEAST 30 DAYS PRIOR to the scheduled arbitration hearing date. All documents shall be accompanied by a summary cover sheet indicating money damages incurred and specifying whether each bill is paid or unpaid.***

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

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

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

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

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

Yes. Subpoena practice in arbitration cases is conducted in the same fashion as that followed in a non-arbitration case. A subpoena to testify at an arbitration hearing is in essentially the same form provided for in the Code of Civil Procedure. It is the duty of the party requesting the subpoena to modify the form to show that the appearance is set before an arbitration panel and to give the *time and place* set for the hearing. Arbitration subpoena forms are available at the clerk's office.

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

Yes. Witness fees and costs shall be in the same amount and shall be paid by the same party or parties as established by the Code of Civil Procedure and the Circuit Rules.

7. Can discovery take place after the hearing?

In most instances, no. Illinois Supreme Court Rule 89 provides that discovery may be conducted in accordance with established rules and shall be completed prior to the arbitration hearing. *No discovery shall be permitted after the hearing, except by leave of court for good cause shown.*

VI PRIOR TO THE ARBITRATION HEARING

1. Who issues the arbitration summons?

Before an arbitration hearing can proceed, all parties must be served with a summons. The Office of the Circuit Clerk of McHenry County issues the arbitration summons as well as any necessary aliases.

2. When will an arbitration hearing date be assigned?

Upon the filing of a case, the Clerk of the Circuit Court shall assign a date and time for the arbitration hearing. The date and time will be noted on the complaint and all summons. *This is the only notice of the hearing that the parties will receive.*

3. There is another date on the summons. Do I need to attend that date as well?

Yes. The summons contains a return of service date in the first paragraph, which is set before the Supervising Judge of Arbitration. *All parties must appear in court on the return date unless otherwise excused by order of court.*

If plaintiff fails to appear on the original or continued return day, the case may be dismissed for want of prosecution.

If the defendant fails to file an appearance on or before the return day, an order of default may be entered, at which time the arbitration hearing date will be removed [Circuit Rule 17.03(a)].

4. What if I am the Plaintiff and I do not have service on a defendant by the return of service date?

A plaintiff who has failed to obtain timely service by the return date shall appear before the Supervising Judge of

Arbitration on the return date. Plaintiff may request the issuance of an alias summons and rescheduling of the arbitration date, if necessary.

In the event the plaintiff has failed to obtain service of process on all defendants by means of an original or alias summons more than 60 days before the original arbitration hearing date or any rescheduled arbitration hearing date, and the Court finds that the plaintiff has failed to exercise reasonable diligence to obtain service on any defendant, the Court may dismiss the action as to such unserved defendant pursuant to Illinois Supreme Court Rule 103(b) [Circuit Rule 17.03(a)].

5. What if I am the defendant and I wish to contest the allegations in the complaint?

If any defendant wants to contest the claims made by the plaintiff, the defendant must file an appearance *and* an answer. *No case will proceed to arbitration unless an answer is on file to any complaint, counter claim, third party claim, and/or affirmative defense.*

For the appearance, there is a form available in the Office of the Circuit Clerk and a clerk will advise you of the appropriate fee. For the answer, there is no form available. The defendant must answer each allegation of the complaint, in writing. For example, if there are six paragraphs in the complaint, the answer must contain either an admission or denial of each paragraph contained in the complaint.

6. What if I need to add another defendant, file a counter complaint, or file a third party complaint?

Upon the timely filing of any amended complaint, any counter complaint or any third party complaint with an ad damnum not in excess of \$50,000, the filing party or their counsel shall be required to appear before the Supervising Judge of Arbitration *within 10 days* of said filing for the setting of appropriate dates to allow the clerk to issue summons and for any other orders the Court deems appropriate. The clerk shall not issue summons on the above pleading until return dates and arbitration hearing dates have been set by the Court [Circuit Rule 17.03(a)].

7. Where can I get the forms required for my case?

Most required forms are available at the Office of the Circuit Clerk. Forms are also available on McHenry County's web site: <http://www.co.mchenry.il.us> (click on departments, circuit clerk, forms).

8. What if the parties settle the matter prior to the hearing?

If the parties settle the matter prior to the hearing, the parties will be required to appear before the Supervising Judge of Arbitration at the scheduled motion call *before* the arbitration hearing date to submit the appropriate stipulations and/or orders disposing of the case. The parties are required to notify the arbitration center immediately of any settlement or disposition of a case scheduled for hearing. Copies of any dispositive orders may be mailed, delivered, or faxed to the arbitration center.

VII. THE ARBITRATION HEARING

1. How long should a hearing last?

It is anticipated that the majority of cases heard by an arbitration panel will require two (2) hours or less for the presentation of the evidence. Plaintiff's attorney is responsible for conferring with all other parties to determine an approximation of time required for presentation of the case. The arbitration administrator **must** be advised at least seven (7) days in advance of the hearing of the estimated duration of the hearing [Circuit Rule 17.03(d)].

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

No. However, the arbitration center contacts all counsel of record, or the party himself or herself if not represented by counsel and who have an appearance on file, a week before the hearing to make sure the case is still proceeding in order to have a panel available to hear the case.

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

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

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

Circuit Rule 17.03(d) provides that the plaintiff or plaintiff's attorney contact all parties to determine the approximate time required for the hearing and advise the

arbitration administrator **at least seven (7) days** in advance of the hearing date. If the hearing will require a half-day (three hours) the arbitration administrator will schedule the allotted time. ***If the parties determine that more than three (3) hours are needed for the hearing, they should also notify the Supervising Judge of Arbitration*** at the time the Supervising Judge sets the date of the hearing and ***state in the order*** setting the hearing that the hearing will necessitate a specified amount of additional time. Sending a copy of this order to the arbitration administrator will suffice as the Rule 17.03(d) notice. Arbitration hearings are **not** to exceed one (1) day.

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

The Supervising Judge of Arbitration may advance or postpone a hearing date for good cause shown. Motions to continue should be set on the motion call before the arbitration judge **not less than seven (7) days** prior to the arbitration hearing [Circuit Rule 17.03 (b)].

Two things must be filed with the Clerk of the Circuit Court: (1) a Notice of Motion which **must** be sent in a timely manner to all parties involved in the lawsuit **and** to the arbitration administrator indicating that you want to appear in court to ask the court for a change in the hearing date, and (2) a Motion to Continue, which must be attached to the Notice of Motion, outlining the reasons for the continuance. If the motion is granted, the arbitration administrator must be notified of the new date and time for a case [Circuit Rule 17.03(d)].

The arbitrators **CANNOT**, for any reason, continue a case. Even if both parties agree to the continuance, the Supervising Judge of Arbitration must sign the order granting the continuance and assigning the new date.

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

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

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

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

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

If a party fails to appear at the hearing, the hearing will proceed **ex-parte** and the appropriate award entered. If there is another case scheduled that is ready, the administrator will generally start that case first. If there are no other scheduled cases, the arbitration administrator will generally wait ten to fifteen (10-15) minutes for a party to appear before calling the case. However, pursuant to Illinois Supreme Court Rule 91(a), the non-appearing party waives the right to reject the award and consents to entry of a judgment on the award.

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

Yes. The court house has a variety of conference rooms for use by attorneys and their clients. Also, when available, any of the hearing rooms may be used for conference rooms.

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

See answer to Section VII.8 above. The judgment entered on the **ex-parte** award may be vacated [See Illinois Supreme Court Rule 91(a)]. Pursuant to the Rule, costs and fees may be assessed against the party that did not appear. The costs may include, but are not limited to, payments of filing fees and service of summons fees, attorney's fees, witnesses' fees, stenographic fees, and any other out-of-pocket expenses incurred by any party or witness.

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

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

12. What happens if the defendant has failed to file an appearance or answer?

In the event a defendant, after service of process, fails to file an appearance or answer on or before the return date set in the summons, it may be determined that all allegations in the complaint are admitted. The plaintiff shall appear before the Supervising Judge of Arbitration on the return date for the purpose of obtaining a judgment, or an order of default and a date for prove-up, removing the case from the previously scheduled arbitration hearing date.

Arbitrators *CAN NOT* enter a default judgment. *If* the Supervising Judge of Arbitration has entered a default with a *court ordered prove-up scheduled at the arbitration hearing*, the arbitrators may determine that all allegations in the complaint are admitted and proceed on the issue of damages only in regards to that defendant.

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

The Supervising Judge of Arbitration will dismiss the case for want of prosecution.

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

Illinois Supreme Court Rule 91(b) provides that all parties to an arbitration hearing must participate in good faith and in a meaningful manner. If the panel unanimously finds that a party has failed to participate in the hearing in good faith and in a meaningful manner, they may so state on the appropriate Rule 91(b) form or on the award along with the factual basis therefore. Any

other party may bring a motion for sanctions before the Supervising Judge of Arbitration. Sanctions against the non-good faith participant may include those as provided in Illinois Supreme Court Rule 219(c), an order debarring that party from rejecting the award, and costs and attorney's fees incurred for the arbitration hearing and in the prosecution of the petition for sanctions.

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

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

16. What happens to my exhibits after the hearing?

The arbitration administrator stores them on the premises. According to Circuit Rule 17.06 (i), it is the duty of the attorneys or parties to retrieve the exhibits from the arbitration center within *seven (7) days* after the *entry of judgment, notice of rejection, or order of dismissal*. All exhibits not retrieved shall be destroyed. It should be noted that the arbitration center is not responsible for the documents. Litigants are **STRONGLY URGED** to make copies of original documents and leave the copies, **NOT THE ORIGINALS**, with the panel while they make their deliberations.

17. If, during the arbitration hearing, I disagree with a ruling of the arbitrators, may I, at that time, go

before the Supervising Judge of Arbitration for a ruling?

No. 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 and to decide the law and facts of the case. The chair of the panel shall make rulings on objections to evidence or on other issues that arise during the hearing. The remedy of rejection of the award and the right to proceed to trial is determined to be the appropriate remedy for a perceived bias or prejudice on the part of any member of the panel or error by the panel in the determination of its award.

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

A court reporter is not provided. Circuit Court Rule 17.06 (f) provides that any party, at that party's expense, may make a stenographic record of the hearing. If a party has a stenographic record transcribed, notice thereof shall be given to all other parties and a copy shall be furnished to any party upon payment of a proportionate share of the total cost of making the stenographic record. Testimony from the arbitration hearing has limited use in any later trial of the matter.

No sound recording equipment shall be allowed in the arbitration hearing except as utilized by a court reporter.

19. Will a language interpreter be provided?

The arbitration center does not schedule or recommend language interpreters. Each party is responsible for

providing their own language interpreter if one is required.

An interpreter or other assistance for the deaf or hearing impaired will be arranged, provided the arbitration administrator is notified of the need *not less than seven (7) days* prior to the scheduled arbitration hearing [Circuit Rule 17.06(g)].

20. I have videotape as part of my 90(c) evidence. Is there a way I can let the arbitration panel see the video?

The arbitration center does have a video player, along with DVD capability. The requesting party **must** make arrangements with the arbitration center staff to reserve the video equipment **prior** to the arbitration hearing.

VIII. THE ARBITRATION AWARD AND JUDGMENT ON THE AWARD

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

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

Usually, the award and notice of award are filed the day of the hearing with the Clerk of the Court. The Clerk of the Court is responsible for the entry of the same on the record.

Copies will be mailed to all parties who have filed an appearance in the matter.

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

The panel does not announce the award to the parties. Litigants may wait for the award or call the arbitration center later to have the award read. A copy of the award will be mailed to all litigants who have filed an appearance.

3. Is the award of the arbitrators binding?

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

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

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

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

Illinois Supreme Court Rule 92(d) provides that when it appears from the record and the award that there is an *obvious and unambiguous* error in language or mathematics, the court, upon application by one of the parties within the 30-day rejection period, may correct the same. If such a motion is made, it will stay the proceedings, including the running of the 30-day rejection period, until the court decides the matter.

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

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

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

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

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

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

At the time of the arbitration hearing the court sets a status date, called the Judgment on Award date, approximately 35 days after the arbitration hearing. The parties receive a copy of the court order setting the Judgment on Award status date along with their copy of the award via the mail. Typically, one of the parties will move for judgment on the award at the status date. ***The Judgment on Award status date is mandatory for all parties.*** If neither party attends the status date, the Supervising Judge of Arbitration may dismiss the case for want of prosecution.

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

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

IX. REJECTION OF THE AWARD AND TRIAL DE NOVO

1. Is there a cost to reject the award?

Yes. Pursuant to Illinois Supreme court Rule 93(a), ***WITHIN 30 DAYS AFTER*** the filing of the award with the Clerk of the Court, and upon payment of the sum of \$200 to the Clerk of the Court, if the award was \$30,000 or less, or \$500 if the award was greater than \$30,000, any party ***who was present*** at the arbitration hearing,

either in person or by counsel, and who has not been debarred from rejecting the award, may file with the Clerk of the Court a written notice of rejection and request to proceed to trial. The party filing the rejection of the award must also file a certificate of service of such notice on all other parties.

2. If another party has rejected the award, must I also pay a rejection fee?

No. Per Illinois Supreme Court Rule 93, 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.

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

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

4. Can I use the award from the arbitration hearing at my trial?

No. Illinois Supreme Court Rule 93 prohibits any reference in subsequent trial to the fact that an arbitration proceeding was held or that an award was made.

5. Who may reject the arbitration award?

Illinois Supreme Court Rule 93(a) provides that any party who was present at the arbitration hearing, either in

person or by counsel, may, upon payment of the appropriate rejection fee, file with the clerk a written notice of rejection of the award and request to proceed to trial, together with a certificate of service of such notice on all other parties. The filing of a single rejection shall be sufficient to enable all parties, except a party who has been debarred from rejecting the award, to proceed to trial on all issues of the case without the necessity of each party filing a separate rejection. The filing of a notice of rejection shall not be effective as to any party who is debarred from the rejection of an award.

X. FAQ: THINGS TO KNOW WHEN APPEARING IN COURT

1. What is “service,” and why is it important?

Service is the formal process by which a party to a case is informed that the case has been filed against him or her, and that he or she must come to court on a specific date. Proper service is important because without it, a court does not have the power to order a party to do anything or resolve the dispute. A party is served when he or she receives a summons (see below). Usually, the Sheriff delivers a summons to a defendant and there is a fee for the service.

2. What is a “summons” and an “alias summons?”

A summons is a pre-printed legal form that tells a defendant that he or she is being sued, and contains the date the defendant must come to court (the “Return Date”). An “alias summons” is a second summons that is issued by the court when the first attempt to serve a summons was unsuccessful.

3. What is an “appearance?”

An appearance is a written form the defendant must file with the Clerk of the Court. The appearance tells the court that the defendant intends to have the court hear the matter for which the plaintiff has filed the complaint. The appearance form also tells the court if you are representing yourself, or whether you have hired an attorney to represent you.

4. What is an “answer?”

An answer is the written statement a defendant must file with the court. It addresses each of the paragraphs in the plaintiff’s complaint by admitting or denying the allegations the plaintiff is making.

5. What is a “motion,” and how do I file one?

Filing a motion with the court is the manner in which a party officially requests the court to do something, such as rule on an issue or schedule a hearing. A party filing a motion must send it to all of the parties in a case, and also file it in the Office of the Circuit Clerk.

6. What is a “notice of motion,” and how do I file one?

A “notice of motion” is simply the form a party files with the court telling the court that all of the parties to a case have been informed that a motion has been filed. The notice of motion contains the time, date and place in which a motion will be heard, and is sent to the opposing parties and the court along with copy of the motion itself. If the other party files a motion, you should receive a

copy of the motion and a copy of the notice of motion either in the mail or by hand delivery.

7. What is a “continuance?”

A “continuance” simply means that the case will be continued on another date set by the court.

8. What is a “status date?”

A status date means a future date on which the parties will again appear in court to tell the judge what is happening with the case. The court uses these dates to ensure that the case is moving along towards a final resolution and not just languishing on the court’s docket.

9. What is an “order?”

An order (or “court order”) contains instructions to the parties regarding what they must do. Orders can contain instructions as simple as “the parties will next appear on Feb. 27, 2007,” or command the parties to do – or to forbid them from doing – specific tasks. Generally, each time you appear in court, the court will order the parties to do something. All orders are placed in the court file.

10. How can I see what is in the court file?

Court files are public documents and can be viewed by anyone. To view the file for your case, go to the Office of the Circuit Clerk, located on the third floor of the courthouse. For a small fee, you can have the clerk copy items in the court file for you.

11. What do I need to bring to court?

If you are coming to court for a trial, you need to bring with you all of the evidence you have to prove your case, including any receipts, contracts, pictures, any other documents and, of course, any witnesses.

12. What is arbitration, and must my case go to arbitration?

All cases in which a party is seeking only money damages between \$10,000 and \$50,000 must go to arbitration before being heard by a judge. Small claims cases in which a jury demand has been made are subject to mandatory arbitration as well. At arbitration, the parties present their case to a panel of three arbitrators, and the arbitrators make a monetary award based on the evidence. If you are not satisfied with the arbitrators’ decision, you can reject it by filing a notice of rejection and paying a small fee within 30 days from the date the award is filed with the clerk. The case will be returned to court and a trial conducted before a judge.

13. What should I bring to an arbitration hearing?

Similar to a trial, you need to bring to an arbitration all of the evidence you have to prove your case, including any receipts, contracts, pictures, any other documents and any witnesses. Please refer to Illinois Supreme Court Rule 90(c) for procedures to be followed prior to the arbitration hearing.

SAMPLE PLEADINGS

**IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS
SUMMONS (Action for \$10,001-\$50,000)**

Plaintiff) THIS IS AN ARBITRATION CASE
) No. _____
 vs.)
) Amount claimed \$ _____
 Defendant)

**THIS IS AN ARBITRATION CASE
SUMMONS**

TO EACH DEFENDANT:

YOU ARE HEREBY SUMMONED and required to appear before this Court at 2200 N. Seminary Road, Room No. ____ , Woodstock, Illinois, at _____ m, on _____ 20__ to answer the complaint in this case, a copy of which is hereto attached. **IF YOU FAIL TO DO SO, A JUDGMENT BY DEFAULT MAY BE TAKEN AGAINST YOU FOR THE RELIEF ASKED IN THE COMPLAINT.**

NOTICE: Both plaintiff and defendant shall appear in court on the return date unless an appearance and answer, as well as any required fees and any other required responsive pleading thereto has been filed on or before the return date. In such case neither party need appear and the case will be heard at the Arbitration Center, 2200 N. Seminary Road, room 355, Woodstock, IL at _____ on the _____ day of _____, 20__, by arbitration without further notice.

NOTICE TO PLAINTIFF: Notwithstanding the aforesated, if plaintiff fails to appear on the original return date or any continued date thereof, the case may be dismissed for want of prosecution without further notice.

To the Officer:

This summons must be returned by the officer or other person to whom it was given for service, with endorsement of service and fees, if any, immediately after service and not less than 3 days before the day for appearance. If service cannot be made, this summons shall be returned so endorsed.

This summons may not be served later than 3 days before the day for appearance.

WITNESS _____, 20__
 (Seal of Court) _____
 (Clerk of the Circuit Court)

 (Deputy)

 (Plaintiff's attorney or plaintiff if he is not represented by an attorney)
 Name _____
 Attorney for _____
 Address _____
 City _____
 Telephone _____

KATHERINE M. KEEFE, CLERK OF THE 22nd JUDICIAL CIRCUIT COURT
 McHENRY COUNTY, WOODSTOCK, ILLINOIS 60098

REVERSE SIDE MUST BE COMPLETED

SHERIFF'S FEES (Service and Return \$ _____
 (_____
 (Miles \$ _____
 (_____
 (Total \$ _____

 Sheriff of _____ County

I certify that I served this summons on defendants as follows:

(a) – Individual defendants – personal:
 The officer or other person making service shall (a) identify as to sex, race and approximate age of the defendant with whom he left the summons, and (b) state the place where (whenever possible in terms of an exact street address) and the date and time of the day when the summons was left with the defendant.

(b) – Individual defendants – abode:
 By leaving a copy and a copy of the complaint at the usual place of abode of each individual defendant with a person of his family, of the age of 13 years or upwards, informing that person of the contents of the summons. The officer or other person making service shall (a) identify as to sex, race and approximate age of the person, other than the defendant, with whom he left the summons and (b) state the place where (whenever possible in terms of an exact street address) and the date and time of day when the summons was left with such person.

And also by sending a copy of the summons and of the complaint in a sealed envelope with postage fully prepaid, addressed to each individual defendant at his usual place of abode, as follows:

Name of defendant	Mailing Address	Date of Mailing
_____	_____	_____
_____	_____	_____

(c) – Corporation defendants:
 By leaving a copy and a copy of the complaint with the registered agent, officer or agent of each defendant corporation, as follows:

Defendant corporation	Registered agent, officer or agent	Date of Service
_____	_____	_____
_____	_____	_____

(d) – Other Service:

_____, Sheriff of _____ County
 By: _____

Dated this _____ day of _____, 20__

**KATHERINE M. KEEFE, CLERK OF THE 22nd JUDICIAL CIRCUIT COURT
 McHENRY COUNTY, WOODSTOCK, ILLINOIS 60098**

Rule 90(c) Cover Sheet

Plaintiff)
)
v.) No.
)
Defendant)

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

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

I. Healthcare 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/Defendant

KATHERINE M. KEEFE, CLERK OF THE 22nd JUDICIAL CIRCUIT COURT
McHENRY COUNTY, WOODSTOCK, ILLINOIS 60098

_____)
Plaintiff(s),)
vs.) Gen. No. _____
_____)
Defendant(s).)

MOTION

Signature (Plaintiff/Defendant)

PLEASE PRINT
Name: _____
Address: _____
City: _____
Telephone: _____

KATHERINE M. KEEFE, CLERK OF THE 22nd JUDICIAL CIRCUIT COURT
McHENRY COUNTY, WOODSTOCK, ILLINOIS 60098

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

IN THE CIRCUIT COURT OF THE 22ND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

Plaintiff(s),
vs. _____
Defendant(s).
Gen. No. _____

Plaintiff(s),
vs. _____
Defendant(s).
Gen. No. _____

NOTICE OF MOTION

NOTICE OF REJECTION OF AWARD

To:

TO:

On _____, 20__ at _____m. or as soon thereafter as
counsel may be heard, I shall appear before the Honorable _____ or any judge sitting in his
stead, in the courtroom usually occupied by him in Court Room _____, McHenry County
Government Center, 2200 N. Seminary, Woodstock, Illinois.

**NOTICE MUST BE SENT TO THE CLERK OF THE COURT AND TO ALL PARTIES OF
RECORD. PAYMENT OF THE (\$200.00 for awards of \$30,000 or less; \$500.00 for awards
greater than \$30,000) REJECTION FEE MUST ACCOMPANY THE FILING OF THIS
NOTICE.**

Name: _____
Attorney for: _____
Address: _____
City: _____
Telephone: _____

NOTICE IS GIVEN THAT _____ rejects the Award of the
(Plaintiff/Defendant)
Arbitrators entered in this cause on _____ and requests a trial before the
Court. Parties shall appear on the date previously scheduled on the Notice of Award to set a date for trial.

(Signature)

Signature
(Rejecting Party or Attorney)

AFFIDAVIT OF SERVICE

_____ on oath states: On _____,
20____, I served this notice by mailing a copy to each person to whom it is directed.

Signed and sworn before me

_____ 20__

Notary Public

Name: _____
Attorney for: _____
Address: _____
City: _____
Telephone: _____

Received _____, 20____, at _____M.

**KATHERINE M. KEEFE, CLERK OF THE 22ND JUDICIAL CIRCUIT COURT
McHENRY COUNTY, WOODSTOCK, ILLINOIS 60098**

**KATHERINE M. KEEFE, CLERK OF THE 22ND JUDICIAL CIRCUIT COURT
McHENRY COUNTY, WOODSTOCK, ILLINOIS 60098**

REVERSE SIDE MUST BE COMPLETED

Certificate of Attorney

I certify that on _____, 20____, I served this notice by mailing a copy to each person to whom it is directed.

(Attorney)

VI. AFFIDAVIT OF SERVICE

_____ on oath states; On _____, 20____, I served this notice by mailing a copy to each person to whom it is directed.

(Signature)

Signed and sworn to before me
_____, 20____

Notary Public

Glossary of Terms

This glossary is not meant to be all-inclusive. For further definitions, please refer to Black's Law Dictionary

Ad damnum: The technical name for damages in a civil lawsuit.

Affirmative Defense: A defense that does not deny the truth of the allegations against the defendant but gives some other reason why the defendant cannot be held liable. All affirmative defenses must be raised in the responsive pleading (answer).

Alias Summons: A summons issued when the original has not produced its effect because defective in form or manner of service. When issued, it supersedes the first writ.

Complaint: In a civil action, the document that initiates a lawsuit. The complaint outlines the alleged facts of the case and the basis for which a legal remedy is sought.

Counterclaim: Claim presented by a defendant against the plaintiff following the claim of the plaintiff. If established, the claim will defeat or diminish the plaintiff's claim.

Debar: To bar, exclude or preclude from having or doing something.

Default Judgment: When a party against whom a judgment for affirmative relief is sought has failed to appear, plead (ie; answer) or otherwise defend against that claim, the party is in default and the court may enter

a judgment by default. A ruling entered against a defendant who fails to answer a summons in a lawsuit.

Defendant: In civil matters, the person or organization that is being sued. The person who is defending or denying. The person against whom relief or recovery is sought in an action or suit.

Directed Finding: In a case in which the party with the burden of proof has failed to present a sufficient evidence of a genuine issue of material fact the arbitrators may enter an award based on the assertion that there is no material fact at issue. A motion for a directed finding is only made after the opponent has presented the evidence.

Discovery: Part of the pre-trial litigation process during which each party requests relevant information and documents from the other side in an attempt to "discover" pertinent facts.

Ex-parte: On one side only; by and for one party.

Ex-parte Hearing: Hearings in which the court or tribunal hears only one side of the controversy.

Exhibit: A paper, document, or object produced in court during a trial or hearing and identified as evidence.

Motion: A request made to a court or judge for purpose of obtaining a rule or order directing some act to be done in favor of the applicant.

Motion in Limine: A pretrial motion that requests the court to issue a provisional or intervening order that prevents an opposing party from introducing or referring

to potentially irrelevant, prejudicial, or otherwise inadmissible evidence until the court has finally ruled on its admissibility.

Notice of Motion: A notice in writing, entitled in a cause, stating that on a certain day designated, a motion will be made to the court for the purpose or object stated. Such notice is required to be served upon all parties.

Plaintiff: A person who brings an action. The party who complains or sues in a civil action and is so named on the record.

Pro Se: (pronounced pro say) Latin phrase that means "for himself." A person who represents himself in court alone without the help of a lawyer is said to appear pro se.

Prove-up: To establish or make certain; to establish a fact or hypothesis as true by satisfactory and sufficient evidence.

Return: The act of a sheriff or other ministerial officer in delivering back to the court a writ, notice, process or other paper, which he was required to serve or execute, with a brief account of his doings under the mandate, the time and mode of service or execution, or his failure to accomplish it, as the case may be.

Service of Process: The service of writs, summonses, etc. Signifies the delivering to or leaving them with the party to whom or with whom they ought to be delivered or left; and, when they are so delivered, they are then said to have been served.

Subpoena: A command to appear at a certain time and place to give testimony upon a certain matter. A subpoena duces tecum requires production of books, papers and other things. An order compelling a person to appear to testify or produce documents.

Summary Judgment: Any party to a civil action may move for a summary judgment on a claim, counterclaim, or cross-claim when he believes that there is no genuine issue of material fact and that he is entitled to prevail as a matter of law.

Summons: A legal document that notifies a party that a lawsuit has been initiated and states when and where the party must appear to answer the charges.

Third Party Claim: A complaint filed against a third party by a defendant or plaintiff alleging that the third party is liable for all or part of a claim or counterclaim in dispute between the original parties.

Trial de Novo: The court holds a new trial or retrial of a case as if no prior trial had been had held.

Vacate: To annul; to set aside; to cancel or rescind. To render an act void; as to vacate an entry of record or a judgment.