

## **ARTICLE 11: MANDATORY ARBITRATION**

### **11.00 MANDATORY ARBITRATION PROCEEDINGS GOVERNED BY ILLINOIS SUPREME COURT RULES**

(a) The Mandatory Arbitration Program in the Circuit Court for the Sixteenth Judicial Circuit, Kane County, Illinois is governed by Illinois Supreme Court Rules 86-95 for the conduct of Mandatory Arbitration Proceedings. Pursuant to Supreme Court Rule 86(c), the Circuit Judges of the Sixteenth Judicial Circuit have previously adopted the Supreme Court Rules as amended as a Local Rule effective January 3<sup>rd</sup>, 1995. Arbitration proceedings shall be governed by the Supreme Court Rules and by Local Rule Article 11.

*Amend. Gen. Order 95-5, eff. Jan. 3, 1995 ; Gen. Order 96-22, eff. July 9, 1996; Gen. Order 08-04, eff. May 5<sup>th</sup>, 2008*

### **11.01 CIVIL ACTIONS SUBJECT TO MANDATORY ARBITRATION (S. CT. RULE 86)**

(a) Mandatory Arbitration proceedings are undertaken and conducted in the Sixteenth Judicial Circuit Kane County, pursuant to approval of the Illinois Supreme Court.

(b) Mandatory Arbitration proceedings are a part of the underlying civil action. All rules of practice contained in the Illinois Code of Civil Procedure and Illinois Supreme Court Rules shall apply to these proceedings.

(c) All civil actions exclusively for money in an amount exceeding \$10,000 but not exceeding \$50,000 exclusive of interest and costs shall be subject to mandatory arbitration.

(d) Cases not originally assigned to the Arbitration Calendar may be ordered to arbitration on the motion of either party, by agreement of the parties or by order of Court, when it appears to the Court that no claim in the action has a value in excess of \$50,000, irrespective of defenses, or where a jury has been demanded in a small claims action.

(e) When a civil action not originally assigned to the Arbitration Calendar is subsequently assigned to the Arbitration Calendar, pursuant to Supreme Court Rule 86(d), the Arbitration Administrator shall promptly assign an arbitration hearing date. The arbitration hearing date shall be not less than 60 days nor more than 180 days from the date of the assignment to the Arbitration Calendar.

(f) Consistent with Supreme Court Rules, these rules may be amended from time to time by order of a majority of the Circuit Judges for the Sixteenth Judicial Circuit.

*Amend. by Gen. Order 95-5, eff. March 1, 1995 ; Gen. Order 96-22, eff. July 9, 1996 ; Gen. Order 01-11, eff. June 20, 2001 ; Gen. Order 03-08, eff. April 7, 2003 ; Gen. Order 06-06, eff. January 10, 2006; Gen. Order 08-04, eff. May 5<sup>th</sup>, 2008*

## **11.02 APPOINTMENT, QUALIFICATION AND COMPENSATION OF ARBITRATORS (S. CT. RULE 87)**

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

- (1) has attended an approved mandatory arbitration seminar, and
- (2) has read and is informed of the rules of the Supreme Court and the Act relating to mandatory arbitration, and
- (3) is presently licensed to practice law in Illinois, and
- (4) has engaged in the practice of law in Illinois for a minimum of three years; or is a retired Judge, and

(b) Applicants who further certify in their applications that they have engaged in trial practice in Illinois for a minimum of five years, or who are retired Judges, shall be eligible to serve as chairpersons.

(c) The Administrator shall maintain an alphabetical list of qualified arbitrators who shall be assigned to serve on a rotating basis. The Administrator shall also maintain a list of those persons who have indicated on their application a willingness to serve on an emergency basis. Emergency arbitrators shall also serve on a rotating basis. Each panel will consist of three arbitrators or such lesser number as may be agreed upon in writing by the parties.

(d) All arbitrators except emergency arbitrators shall receive not less than 60 days' notice of the date, time and place of service.

(e) Upon completion of each day of service, each arbitrator shall file a voucher with the Arbitration Administrator. The Administrator shall process the appropriate vouchers for prompt payment of the arbitrators.

*Amend. by Gen. Order 95-5, eff. March 1, 1995 ; Gen. Order 96-22, eff. July 9, 1996 ; Gen. Order 01-11, eff. June 20, 2001; Gen. Order 08-04, eff. May 5<sup>th</sup>, 2008*

## **11.03 SCHEDULING OF HEARINGS (S. CT. RULE 88)**

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

(b) Upon the filing of any civil action subject to this article, the Clerk of the Circuit Court shall set a return date for summons, not less than 21 days nor more than 40 days after filing, returnable before the Judge designated to hear arbitration cases by the Supervising Judge for Arbitration. The summons shall require that the plaintiff and all defendants appear at the time and place indicated. The complaint and summons shall

state in upper case letters on the upper right hand corner: “THIS IS AN ARBITRATION CASE.”

(c) Upon the return date of the summons and the Court finding that all parties have appeared, the Court shall assign the next available arbitration hearing date, not less than 180 days from the initial case filing date to the next available hearing date thereafter. If one or more defendants have not been served within 100 days from the initial case filing date, the Court may in its discretion dismiss the case as to unserved defendants for lack of diligence.

(d) Any party may request advancement or postponement of a scheduled arbitration hearing date by filing a written motion with the Clerk of the Circuit Court requesting the change. The notice of hearing and motion shall be served upon all other parties and upon the Arbitration Administrator, as provided by Supreme Court Rule and the Rules of the Circuit Court for the Sixteenth Judicial Circuit. The Motion shall be set for hearing on the calendar of the Supervising Judge for Arbitration. The motion shall contain a concise statement of the reason for the change of the hearing date and be subject to Supreme Court Rule 231 (Motions for Continuance). The Supervising Judge may grant an advancement or postponement of the arbitration hearing upon good cause shown.

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

(f) Upon settlement of any case scheduled for arbitration, counsel or plaintiff shall immediately notify the Arbitration Administrator in writing. Failure to do so may result in the imposition of sanctions.

(g) It is anticipated that the majority of cases to be heard by an arbitration panel will require a maximum of 2 hours for presentation and decision. It shall be the responsibility of plaintiff’s counsel or the plaintiff to confer with counsel and pro se parties, to obtain an approximation of the length of time required for presentation of the case and advise the Arbitration Administrator at least 14 days in advance of the hearing date as to any additional time required.

(h) Supreme Court Rule 218 case management conferences shall not be required for cases subject to mandatory arbitration unless and until a rejection of the arbitration award is filed, pursuant to Supreme Court Rule 93. In cases where a valid rejection of the arbitration award has occurred, the case management conference shall be conducted at the Post-Hearing Status date and time, issued to the parties at the time of the arbitration hearing. The Court shall set the Post-Hearing status date within 35-50 days after the entry of an arbitration award.

*Amend. by Gen. Order 95-9, eff. March 1, 1995 ; Gen. Order 96-10, eff. March 12, 1996; Gen. Order 96-22, eff. July 9, 1996 ; Gen. Order 08-04, eff. May 5<sup>th</sup>, 2008*

#### **11.04 DISCOVERY (S. CT. RULE 89)**

(a) Discovery may be conducted in accordance with the established rules and shall be completed (unless the parties otherwise agree) not less than 30 days prior to the arbitration hearing. No discovery shall be permitted after the hearing, except upon leave of Court and good cause shown.

(b) All parties shall comply with the provisions of Supreme Court Rule 222. Plaintiff shall file an initial Rule 222 Disclosure Statement with the Clerk of the Circuit Court not later than the case's initial return date. Thereafter, defendant shall file an initial Rule 222 Disclosure Statement with the Clerk of the Circuit Court not later than 28 days after their first court appearance, in conjunction with a written answer and appearance, or as otherwise ordered by the Court. Prior to the arbitration hearing, failure to serve the disclosure statement as provided by rule or as the Court allows may result in the imposition of sanctions as prescribed in Supreme Court Rule 219(c) and Rule 222(g).

*Amend. by Gen. Order 95-9, eff. March 1, 1995 ; Gen. Order 96-22, eff. July 9, 1996 ; Gen. Order 08-04, eff. May 5<sup>th</sup>, 2008*

#### **11.05 CONDUCT OF THE HEARING (S. CT. RULES 90 and 91)**

(a) Hearings shall be conducted in general conformity with the procedures followed in civil trials. The chairperson shall administer oaths and affirmations to witnesses. Rulings concerning admissibility of evidence and applicability of law shall be made by the chairperson.

(b) At the commencement of the hearing, the parties shall provide a brief written statement of the nature of the case, including a stipulation as to all relevant facts on which the parties agree. The stipulation shall include relevant contract terms, dates, times, places, location of traffic control devices, year, make and model of automobiles, of other vehicles, equipment or goods and products which are involved in the litigation and other relevant and material facts. The time devoted to the presentation of evidence should be limited to those facts upon which the parties disagree.

\* (c) Established rules of evidence shall be followed in all arbitration hearings except as follows:

(1) 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, records and reports of hospitals, doctors, dentists, registered nurses, licensed practical nurses and physical therapists, or other licensed health care providers;
- (b) Bills for drugs, medical appliances and prostheses;
- (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; if estimates are to be used, the opposing party shall

have immediate access to the damaged property to obtain his own estimates which must be obtained and provided with 10 days of his gaining access to the damaged 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 an opinion 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 certification as provided by Section 1-109 of the Code of Civil Procedure [735 ILCS 5/1-109].

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

\*(d) A party who proposes to use a written opinion of an opinion witness or the testimony of an opinion witness at hearing may do so provided a written notice of such intent is given to every other party not less than 30 days prior to the hearing, accompanied by a statement containing the identity of the opinion witness, their qualifications, the subject matter and the basis of their conclusions and opinion.

\*(e) 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. Section 2-1101 of the Code of Civil Procedure [735 ILCS 5/2-1101] shall be applicable to arbitration hearings.

\*(f) The provisions of Sections 2-1102 of the Illinois Code of Civil Procedure [735 ILCS 5/2-1102] and the provisions of Supreme Court Rule 237 shall be applicable to arbitration hearings.

\*(g) The absence of a party at an arbitration hearing shall be dealt with according to the provisions of Supreme Court Rule 91.

(h) A stenographic record or recording of the hearings shall not be made unless a party does so at his/her own expense. If a party has a stenographic record made, a copy shall be furnished to any other party requesting the same upon payment of a proportionate share of the total cost of the making of the record or recording and the duplication of the same. The party providing the reporter shall inform the chairperson of the reporter's name, address and reporting firm before commencing.

(i) Witness fees and costs shall be in the same amount and shall be paid by the same party or parties as provided for trials in the Circuit Court of the County of Kane.

(j) The arbitrators shall determine the admissibility of evidence and decide the law and 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.

(k) All exhibits admitted into evidence shall be held by the panel until entry of the arbitration award. Attorneys or parties must retrieve all exhibits from the Arbitration Center within 7 days after entry of judgment, notice of rejection, or order of dismissal. All exhibits not retrieved shall be destroyed.

(\* These rules are similar but not identical to the Illinois Supreme Court Rules.)

*Amend. by Gen. Order 95-5, eff. March 1, 1995 ; Gen. Order 96-22, eff. July 9, 1996 ; Gen. Order 08-04, eff. May 5<sup>th</sup>, 2008*

#### **11.06 AWARD AND JUDGMENT ON AWARD (S. CT. RULE 92)**

(a) The panel shall render its decision and enter an award on the same day as the hearing. The Chairperson shall present the award to the Arbitration Administrator, who shall then file the same with the Clerk of the Circuit Court. The Clerk of the Circuit Court shall serve a Notice of Award upon the parties.

*Amend. by Gen. Order 95-5, eff. March 1, 1995 ; Gen. Order 96-22, eff. July 9, 1996 ; Gen. Order 08-04, eff. May 5<sup>th</sup>, 2008*

#### **11.07 REJECTION OF AWARD (S. CT. RULE 93)**

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

*Amend. by Gen. Order 95-5, eff. March 1, 1995 ; Gen. Order 96-22, eff. July 9, 1996 ; Gen. Order 08-04, eff. May 5<sup>th</sup>, 2008*

#### **11.08 LOCATION OF HEARINGS**

(a) The location of hearing shall be determined by the Chief Judge of the 16<sup>th</sup> Judicial Circuit.

*Amend. by Gen. Order 95-5, eff. March 1, 1995 ; Gen. Order 96-22, eff. July 9, 1996 ; Gen. Order 02-05, eff. March 5, 2002; Gen. Order 02-10, eff. April 30, 2002 ; Gen. Order 08-04, eff. May 5<sup>th</sup>, 2008*

#### **11.09 FORMS (S. CT. RULES 94 and 95)**

(a) All forms shall be as prescribed by Supreme Court Rule and by Administrative/General Order by the Chief Judge not inconsistent with any Supreme Court Rule.

*Amend. by Gen. Order 95-5, eff. March 1, 1995 ; Gen. Order 96-22, eff. July 9, 1996 ; Gen. Order 02-05, eff. March 5, 2002; Gen. Order 02-10, eff. April 30, 2002 ; Gen. Order 08-04, eff. May 5<sup>th</sup>, 2008*

## **11.10 ADMINISTRATION OF MANDATORY ARBITRATION**

(a) The Chief Judge of the 16<sup>th</sup> Judicial Circuit shall appoint a Judge of the 16<sup>th</sup> Judicial Circuit to act as Supervising Judge for Arbitration.

(b) The Chief Judge of the 16<sup>th</sup> Judicial Circuit shall designate an Arbitration Administrator or any assistants deemed necessary for the Mandatory Arbitration system.

*Amend. by Gen. Order 95-5, eff. March 1, 1995 ; Gen. Order 96-22, eff. July 9, 1996; Gen. Order 02-05, eff. March 5, 2002; Gen. Order 02-10, eff. April 30, 2002 ; Gen. Order 08-04, eff. May 5<sup>th</sup>, 2008*