

25.1 Application

Mandatory Arbitration will be held in those commercial and personal injury cases assigned to the Law Division, including cases with self-represented or pro se litigants, with damages of less than \$50,000 and no retained expert witness as defined in Supreme Court Rule 213(f)(3).

- a. Personal injury cases not subject to mandatory arbitration are: asbestos, construction, medical malpractice, nursing home and product liability cases, unless the parties agree to arbitration.
- b. The arbitration hearings will take place at the Cook County Mandatory Arbitration Center, 222 N. LaSalle Street, Chicago, Illinois.

25.2 Commercial Case Defined

A commercial case is one which is assigned to the Commercial Calendar Section of the Law Division and is

- a. one which pleads cause(s) of action for, among other things, breach of contract (including breach of loan agreements or guarantees, construction contracts, breach of warranty), employment disputes, employment discrimination, qui tam claims, civil and/or commercial fraud, conspiracy, interference with business relationships, or shareholder disputes.
- b. Commercial cases do not include causes of action for purely equitable relief, personal injury, divorce, criminal, real estate foreclosure, wills, housing code violations and/or evictions.

25.3 Personal Injury Case Defined

A personal injury case is one which is assigned to the Motion Section or the Individual Calendar Section of the Law Division and is

- a. One which pleads civil cause(s) of action seeking monetary damages for injuries pursuant to common law or statutory law, including intentional torts and negligence (i.e., motor vehicle, premises liability, Dram Shop, FELA).
- b. Excused from Mandatory Arbitration are asbestos, construction, medical malpractice, nursing home and product liability cases, unless the parties agree to arbitration.

25.4 Referral to Mandatory Arbitration, Procedure

After the defendant(s) answer(s) is/are filed in a case subject to Mandatory Arbitration and after consultation with the parties, the referring Court shall issue a Referral to Mandatory Arbitration Order: 2

- a. The Order shall be forwarded to the Administrator, Cook County Mandatory Arbitration Center, 222 N. LaSalle Street, Chicago, Illinois.
- b. The order will list the case name, case number, the names of the attorneys of record, potential witnesses and interested parties.
- c. The Order will specify whether the mandatory arbitration will be standard or expedited based on the parties' agreement.

- d. The arbitration hearing shall take place 150 days after the date of referral in “standard” arbitrations and 90 days after the date of referral in “expedited” arbitrations.
- e. The case will continue before the Court during the first 120 days if it is a “standard” arbitration, or the first 60 days if it is an expedited arbitration.
- f. The referring court has discretion to refer cases to Mandatory Arbitration when the damages exceed \$50,000, if the Court finds, after consultation with the parties, that the complexity of the case is such that it is amenable to arbitration and if it is not otherwise excluded from Mandatory Arbitration.

25.5 Mandatory Arbitration Hearing Procedure

Upon receipt of the order of Referral To Mandatory Arbitration, the Administrator shall:

- a. randomly assign a single arbitrator qualified pursuant to Paragraph 16 infra, and
- b. set a date and time for the arbitration hearing, and
- c. will notify the parties of the name of the arbitrator and of the hearing date.

25.6 Arbitrator Conflicts Check

The arbitrator assigned to the case must conduct a conflict of interest review pursuant to the Code of Judicial Conduct and the Illinois Rules of Professional Conduct, and sign a Conflicts Review Form indicating the review has been conducted and that the arbitrator has no conflict.

- a. If the arbitrator discovers a conflict, the arbitrator will immediately inform the Administrator and withdraw from the case and
- b. The Administrator will immediately and randomly assign a new arbitrator.
- c. The parties’ may not move to substitute an arbitrator without cause, but if any party files a motion to substitute an arbitrator for cause, any party shall be presented to the Supervising Judge, Mandatory Arbitration, on proper notice and motion.

25.7 Discovery Pending Arbitration

Cases referred to Mandatory Arbitration shall remain pending before the referring court and discovery shall be conducted according to the following schedule:

- a. “standard” arbitration: 120 days following the referral Order;
- b. “expedited” arbitration: 60 days following the Referral Order;
- c. Discovery will be stayed for 30 days prior to the arbitration hearing;
- d. unless completed, discovery may resume before the referring court after rejection of an award and prior to trial.

25.8 Required Documents for the Arbitration Hearing

- a. Thirty (30) days prior to the hearing, the parties shall meet, confer and exchange the documents listed herein, including documents a party seeks to have presumptively admitted as provided for in 9 infra, as well as any other documents a party intends to offer at the hearing.
- b. Fourteen (14) days prior to the hearing the parties must submit the following documents to the arbitrator:
 - i. The most current complaint, answer, counterclaim, third party complaint and affirmative defenses and other relevant pleadings;
 - ii. Each party's detailed statement of the case including the legal and factual issues involved, limited to fifteen (15) pages in length; double spaced;
 - iii. a list of the witnesses who are expected to testify;
 - iv. all documents expected or intended to be offered as evidence at the hearing, including those requested to be presumptively admissible pursuant to 9, infra;
 - v. stipulations as to facts or law;
 - vi. reports, affidavits or summaries having proper foundation; and
 - vii. itemization of the damages claimed in the complaint and counterclaim;
- c. Failure to submit these required documents or failure to timely submit these required documents may be grounds for a bad faith finding against the delinquent party.

25.9 The Arbitration Hearing

The hearing for a "standard" arbitration must be completed within 150 days of the order of Referral to Mandatory Arbitration and the hearing for an "expedited" arbitration must be completed within 90 days of the order of Referral To Mandatory Arbitration.

- a. Thirty (30) days prior to the hearing, any party, seeking to have documents presumptively admitted at the hearing, shall serve on all other parties a copy of such documents, and a written statement that such documents will be offered into evidence as presumptively admitted. If this procedure is complied with, the following documents will be admitted into evidence without further foundation or other proof:
 - i. Medical records and reports of hospitals, doctors, dentists, registered nurses, licensed practical nurses, and physical therapists, or other healthcare providers.
 - ii. bills, for example: medical treatments, physical therapy, drugs, medical appliances and prostheses, etc. (specified as "paid" or "unpaid");
 - iii. property repair bills or estimates, itemized and setting forth the charges for labor and material used or proposed for use in the repair of the property;
 - iv. employer's report or other records of time lost from work or lost compensation and rate of pay,
 - v. written statements and/or depositions of witness(es), which the witness(es) would be allowed to express if testifying in person. Witness(es) statement(s) must be supported or made by affidavit or by certification as provided in section 1-109 of the code of civil procedure;
 - vi. other documents not specifically covered by any of the forgoing provisions, and which are otherwise admissible under the rules of evidence.

- vii. All documents referred to in this provision must be accompanied by a summary cover sheet which lists:
 - (1) Each included item,
 - (2) The money damages incurred in each category and
 - (3) A notation as to whether each bill is paid or unpaid.
- b. All documents in Section 8 and 9 herein shall be submitted to the arbitrator no later than fourteen (14) days prior to the hearing.
- c. The hearings will be held during a four-hour period.
- d. The Illinois Rules of Evidence shall apply to the hearing, except that the arbitrator may, in the exercise of sound discretion, relax application of the rules in the interests of fairness and efficiency, provided that due process is accorded to all parties.
- e. Immediately prior to the commencement of the hearing a pre-hearing conference will be held where the arbitrator, after consultation with the parties, will decide:
 - i. Which exhibits will be admitted into evidence;
 - ii. how and whether to narrow the issues to be arbitrated;
 - iii. the format of the hearing, including time limits for each side's presentation;
 - iv. rules and procedures, as the arbitrator deems appropriate, such as: time limits for the production of each party's evidence; whether summaries of direct examination will be admitted; whether affidavits or summary exhibits may be used at the hearing and other such rules and procedures.
- f. The arbitrator will structure the hearing and pre-arbitration conference so as to afford due process to the parties.
- g. The witnesses who testify at the hearing shall be sworn under oath.
- h. No telephonic appearance of parties or attorneys will be allowed, without good cause shown, upon notice and motion brought before the Supervising Judge, Mandatory Arbitration.
- i. The arbitrator may not be called as a witness for any reason relating in any way to the arbitration.
- j. An interpreter will be provided if written notice is given to the Administrator 14 days prior to the scheduled hearing.
- k. At the conclusion of the hearing, both parties shall submit a summary of the legal fees each incurred in connection with the arbitration to be used, if necessary, pursuant to Paragraph 11(d), *infra*.
 - i. Failure to submit a summary of legal fees will constitute a waiver of those fees for purposes of Paragraph 11(d), *infra*.
 - ii. "Legal fees incurred" means reasonable fees incurred during the period commencing with the stay of discovery in the referring court through the conclusion of the arbitration hearing and the rendering of the award.

25.10 The Award

The arbitrator will issue an award (the decision) based on the evidence presented at the hearing and prepare an Award Form.

- a. The Award Form will consist of the name and case number, date of the hearing, attorneys who appeared at the hearing and the arbitrators, without written opinion.

- b. The arbitrator must file the Award Form with the Administrator by 5:00 p.m. on the second business day following the conclusion of the hearing.
- c. The Administrator will send a copy of the Award Form to the parties of record within one business day of the Administrator's receipt thereof.

25.11 The Rejection of the Award

Either party may reject the award if the rejecting party does so within fourteen (14) calendar days after receiving the notice of the award from the Administrator. Thereafter, and on the date specified in the trial court's order of Referral To Mandatory Arbitration, the case will be returned to the trial judge for further proceedings or for the entry of judgment on the award.

- a. To reject an award, the rejecting party must fully complete a Rejection Form and file it with the Clerk of the Circuit Court in Room 801, Richard J. Daley Center accompanied by a \$750 rejection fee.
- b. The Rejection Form shall contain the case name and number, the arbitrator's name, date of the arbitration hearing, date and amount of the award and must be signed the rejecting party and by the rejecting party's attorney of record.
- c. Failure to timely and properly reject the Award as provided herein will constitute a waiver of the party's right of rejection.
- d. If the party rejecting the award fails to obtain a better result at trial. The party rejecting the Award shall pay the other party's reasonable legal fees incurred in connection with the arbitration, which must be submitted by both parties at the arbitration hearing pursuant to Paragraph 9k supra.
- e. After trial of the case, the Supervising Judge, Mandatory Arbitration will rule on whether the fees are submitted under Paragraph 9(k) supra are reasonable, pursuant to a motion properly noticed.

25.12 Party Acting in Bad Faith

If the arbitrator certifies that any party acted in bad faith because a party:

- a. willfully refused to attend the arbitration hearing,
- b. willfully refused to participate in the hearing, or
- c. has otherwise acted in bad faith in connection with the mandatory arbitration, the case will immediately be sent to the Supervising Judge, Mandatory Arbitration for a hearing.
- d. If the Supervising Judge finds the party acted in bad faith, the Supervising Judge may sanction the party up to \$1,000.
- e. The arbitrator may not be called as a witness in this hearing.

25.13 Supervising Judge Mandatory Arbitration

The Presiding Judge of the Law Division will appoint one or more Supervising Judges, Mandatory Arbitration, who will hear motions relating to the arbitration process, such as motions to continue the arbitration, arbitrator disqualification, bad faith sanctions, but not including those relating to the conduct of the hearing or the admission of evidence at the hearing.

25.14 No Extensions of Time

No extensions or continuances of the 150 day ("standard arbitration") or 90 day ("expedited arbitration") time period within which arbitration must be conducted will be permitted, absent exigent circumstances.

25.15 Arbitrator Fee

Arbitrators will be paid \$300 per arbitration.

25.16 Arbitrator Qualifications

- a. Commercial Arbitrator: To be selected as an arbitrator in Commercial Cases in the Mandatory Arbitration Program one must:
 - i. be a licensed attorney proficient in commercial law and/or commercial law arbitration;
 - ii. Have commercial litigation experience; have been in practice for seven years;
 - iii. concentrates his or her practice in commercial law; and
 - iv. successfully completed the Law Division Mandatory Arbitration training seminar approved by the Arbitrator Selection Committee.
- b. Personal Injury Arbitrator: To be selected as an arbitrator in personal injury cases in the Mandatory Arbitration program one must:
 - i. Be a licensed attorney proficient in personal injury law or personal injury law arbitration;
 - ii. Have personal injury litigation experience;
 - iii. Have been in practice for seven years;
 - iv. Concentrate his or her practice in personal injury law; and
 - v. Successfully complete the Law Division Mandatory Arbitration training seminar approved by the Arbitrator Selection Committee.
- c. Exceptions may be made by the Arbitrator Selection Committee for attorneys without all of the above experience if they demonstrate particular qualifications to be commercial law or personal injury law arbitrators and if they have successfully completed the Law Division Mandatory Arbitration training seminar approved by the Arbitrator Selection Committee.
- d. Retired judges qualify as Law Division commercial arbitrators or personal injury arbitrators if they heard commercial cases or personal injury cases while active as a judge and if they successfully completed the Law Division Mandatory Arbitration training seminar approved by the Arbitrator Selection Committee.

- e. Each lawyer or retired judge seeking to be a Law Division arbitrator must complete a form listing his or her qualifications and submit it to the Arbitration Administrator who, after review, will send it to the Arbitrator Selection Committee for approval.
- f. All applicants for arbitrator must attend a training seminar approved by the Arbitrator Selection Committee.

25.17 Arbitrator Selection Committee

The Arbitrator Selection Committee will consist of the judges in the Commercial Calendar Section of the Law Division and the judges in the Motion Section of the Law Division as well as others appointed by the Presiding Judge of the Law Division. The Committee will select the arbitrators after recommendation and review by the Arbitration Administrator.

- a. The Committee will review the qualifications of individuals applying to be arbitrators.
- b. The Committee will review the performance of each arbitrator every twelve months and will decide whether each should be retained as a Law Division arbitrator.

Adopted Nov. 26, 2014, eff. Dec. 1, 2014; amended April 1, 2021; eff. immediately

ADOPTED BY A MAJORITY OF THE JUDGES OF

THE CIRCUIT COURT OF COOK COUNTY