

MONTHLY  
LUNCHTIME SEMINAR  
SERIES

52<sup>ND</sup> SESSION:

SELECTED ISSUES IN  
COMMERCIAL CASES

Judge John Griffin  
Judge Brigid M. McGrath  
Judge Thomas R. Mulroy

MAY 23, 2017

John Griffin grew up on the south side of Chicago and graduated from St. Rita High School. He attended the University of Notre Dame and received a Bachelor of Business Administration degree with honors in 1973. Judge Griffin graduated cum laude from DePaul University College of Law in 1976.

After graduating from law school, he served as a law clerk for Judge John F. Hechinger in the Chancery Division of the Circuit Court of Cook County. After leaving that position, John Griffin practiced law for 31 years with the law firm of Griffin & Gallagher where he had a general practice.

In 2008, he was appointed a Circuit Court Judge and was elected in 2010. Judge Griffin was retained in 2016.

Judge Griffin served in the First Municipal District Traffic Court for five months in 2008. His next assignment was the Mortgage Foreclosure Section of the Chancery Division. In 2011 he was transferred to his present position, presiding over a commercial calendar in the Law Division. In January 2015, Judge Griffin was named Supervising Judge of the Commercial Section.

The Illinois Supreme Court appointed Judge Griffin to its Committee on Education and the Executive Committee of the Judicial Conference of Illinois. He has spoken at the Judicial Education Conference, various continuing legal education seminars, local high schools and grammar schools.

Judge Griffin has held memberships in several professional organizations, including the Chicago Bar Association, the Illinois State Bar Association, the Southwest Bar Association, and the Illinois Judges Association.

Brigid M. McGrath  
Associate Judge  
Circuit Court of Cook County

Judge McGrath sits in the Law Division of the Circuit Court of Cook County, and since January 2004, she has been assigned to Commercial Calendar U. She has served as vice-chair for the Chicago Bar Association's Commercial Law Committee and has given a number of presentations on evidence and commercial law.

Prior to taking the bench in 1999, she was an equity partner at the Chicago law firm of Bell, Boyd & Lloyd, where she practiced commercial litigation and insurance defense litigation, in the areas of medical malpractice and product liability. While there, she was selected as a Leading Illinois Attorney in the area of Commercial Litigation. She joined Bell, Boyd in 1989, after working as an associate in insurance defense litigation for five years at Lord, Bissell & Brook. Before that, she was a clerk to the Honorable Robert Martin, U.S. Bankruptcy Judge for the Western District of Wisconsin.

She obtained her J.D. from the University of Minnesota Law School, and her undergraduate degree from Creighton University.

Judge Thomas R. Mulroy  
Circuit Court of Cook County  
Law Division, Commercial Calendar  
The Daley Center, Chicago

Prior to becoming a judge in 2007, Judge Mulroy was a trial lawyer with a national practice in state and federal criminal and civil courts. He was an Assistant United States Attorney in Chicago and a partner at Jenner & Block. He has written and taught extensively on trial practice and ethics. Currently he sits in the Commercial Section of the Law Division and is the Supervising Judge of its mandatory arbitration program.

- Member Chicago Bar Association Board of Managers
- Vice Chair, Loyola University School of Law Board of Governors
- Vice President, Chicago Bar Association
- Board Member, Chicago Bar Foundation
- Fellow, American College of Trial Lawyers
- Established the Excellence in Evidence Award, Loyola Law School
- Former Special Counsel, Attorney Registration & Disciplinary Commission
- Adjunct Professor of Law: Loyola and Northwestern Universities
- Former Director, Illinois Institute for Continuing Legal Education
- Former Director, Illinois Bar Foundation
- Former President, Legal Club of Chicago

# **SECTION A**

- Uniform Standing Order For All Commercial Calendars (eff. June 1, 2014)
- Mandatory Arbitration, Supervising Judge Standing Order

# UNIFORM STANDING ORDER FOR ALL COMMERCIAL CALENDARS

(Effective June 1, 2014)

## Purpose

The purpose of this uniform standing order is to establish consistent procedures in the Commercial Calendar Section.

## Civility and Attorney Conduct in the Commercial Calendar Section

Zealous advocacy is the lawyer's professional obligation, but incivility of any kind will not be tolerated in the Commercial Calendar Section. Any attorney appearing before a Judge in the Commercial Calendar is required to know the relevant details of the case.

## Motion Times and Trial Procedures Specific to a Judge

This standing order is effective in all Commercial Calendar Courtrooms. To obtain *actual dates* and *specific times* when a Judge will hear certain motions, other filing information particular to a Judge, or to learn a specific Judge's trial procedures, including jury selection, one should consult that Judge's specific information found on the circuit court website [www.cookcountycourt.org](http://www.cookcountycourt.org) and in the *Chicago Daily Law Bulletin*.

## Self- Represented Litigants

A party appearing without counsel (other than a corporation which must appear by counsel) receives no special status and is required to comply with the Court's rules and procedures, with the Illinois Code of Civil Procedure, the Supreme Court Rules, and with the relevant case law decisions.

## Scheduling

Delays in a litigated matter result in absent witnesses, failed memories and added cost. Therefore, in the interest of justice, Judges in the Commercial Calendar Section work to promptly dispose of the cases pending before them. Litigants must know that

the dates set for discovery, motions, hearings, trial and other such dates, absent exigent circumstances, will not be extended or continued.

### "Piggy-Backed" Motions

"Piggy-backed" motions, the common and unusual term, may be brought at any regularly set date for the case and will be heard by the Judge if proper notice has been given to all parties who have filed an appearance.

## **I. MOTIONS**

### A. Regular Motion Call

1. Motions must be *spindled* in Room 801 of the Clerk's Office in the Daley Center or filed online. Motions are not to be filed in the courtroom.
2. Motions must be served on all parties who have filed an appearance and a courtesy copy delivered to the Judge's chambers.
3. On the date a motion is set to be presented, the Court may rule on the motion or set a briefing schedule.

### B. Emergency Motions

1. Notice of emergency motions must comply with local Rule 2.2 and a copy of the motion must be presented to the Court the day before the motion is scheduled to be heard.
2. True emergencies are rare and limited to a *situation which could lead to irreparable injury if relief is not granted before Movant can be heard on the Court's regular motion call.*
  - a) Motions to compel discovery are usually not considered emergencies.
3. If the Court finds the motion is not an emergency it will be stricken.

### C. Routine Motions

1. Routine Motions are to be given to the courtroom Court Clerk.
2. Cases set for trial and cases which are three years old or older are not eligible for Routine Motions.
3. A party opposing a Routine Motion must object to it when it is presented. Objections may be made in writing or orally in person or by telephone.
4. If a Routine Motion is in proper order and if no objection is made, the Court Clerk will enter an order granting the Routine Motion.



5. Routine Motions are:
  - a) Vacate technical default;
  - b) Leave to file appearance;
  - c) Leave to file answer, *instanter*;
  - d) Leave to file first amended complaint or counterclaim;
  - e) Leave to appear as additional counsel or to substitute attorneys by agreement (a motion to withdraw as counsel without a substitute attorney is not a Routine Motion);
  - f) Appoint a special process server (the server's license number must be included);
  - g) Voluntary dismissal of complaint or counterclaim; stipulations to dismiss all or any part of a case (except wrongful death and minors' settlements); and
  - h) Petition for the issuance of subpoena to be served outside Illinois (specific documentation required).
6. Appearance *pro hac vice* is governed by Supreme Court Rule 707.

#### D. Motions for Default –Required Documents

1. Default Motions must entirely comply with this Order and with *Motion Judges Rule 4.2* or they will not be heard.
2. Default Motions are to be set on the case's previously scheduled status date, or *spindled* at the Motion Desk in Room 801 of the Daley Center.
3. Five court days prior to the date set for the motion, copies of the documents listed and of all other required documents must be provided to the Court.
4. Required Documents
  - a) Notice. Movant must provide notice to all parties who have been served, even if they have not filed an appearance. (See: *Motion Judges Rule 2.1*).
  - b) Original notice of motion and motion;
  - c) Face of summons;
  - d) Return of summons;
  - e) Attorney certificate that counsel examined the court file and the clerk's computer within 10 business days prior to the hearing date and determined defendant's appearance or answer was not on file;
  - f) Affidavit of military service (if an individual is in default);
  - g) Copy of the verified complaint and/or Movant's affidavit verifying the judgment amount;
  - h) Affidavit detailing costs requested;

- i) Affidavit detailing attorneys' fees, if authorized by statute or contract  
(See *Motion Court Rules 4.2(e) (2)*);
- j) Proposed Judgment Order.

## II. INITIAL CASE MANAGEMENT CONFERENCE

- A. After a case is filed, the Clerk of the Court sends notice of the Case Management Conference to those who have filed an appearance.
- B. Notice of this Conference will be published in the *Chicago Daily Law Bulletin*.
- C. Counsel familiar with the case and *pro-se* litigants must appear at the Conference and if they do not, the case may be dismissed. The parties are to inform the Court as to the status of discovery, the pleadings and any pre-trial motions.

## III. PRETRIAL SETTLEMENT CONFERENCE

- A. Before a Settlement Conference will be scheduled, the parties are required to exchange good faith offers and demands in writing.
- B. A Settlement Memorandum must be submitted two business days prior to the Conference by each party and must contain:
  - a. Date and amount of last offer/demand by each party;
  - b. Primary reason or the main points why the case has failed to settle;
  - c. A summary of plaintiffs' and defendants' evidence and primary legal issues;
- C. Clients must attend the Settlement Conference in person.
- D. The Judges in the Commercial Calendar encourage good faith mediation of disputes and may order any contested matter to mediation by Order of Referral (Circuit Court of Cook County Rule 20).

## IV. BRIEFS AND CITATIONS

- A. Opening briefs and response briefs cannot exceed 15 pages. Reply briefs cannot exceed 7 pages. Briefs must contain customary 12 point font, one inch margins and be double-spaced. Briefs filed in excess of these limitations will not be accepted without leave of Court upon written motion containing good cause.
- B. At the Clerk's Status, movant is obligated to deliver copies of all the briefs, pleadings, relevant documents and the most recent complaint, with an

accompanying cover letter containing the case number, date and time of the hearing. *Some Judges require two copies of these materials.*

## V. MATERIALS REQUIRED PRIOR TO TRIAL

### A. Jury Trial

1. Concise statement of the case to be read to the jury in *voir dire*;
2. Estimate of the number of trial days;
3. Witness list to be read to the jury in *voir dire*;
4. Statement that the party will/will not stipulate to a unanimous verdict of 10 or more jurors;
5. Motions *in limine*;
6. Trial briefs;
7. Jury instructions with I.P.I. numbers (each instruction marked "Agreed" or "Objected To") and compliance with Supreme Court Rule 239c;
8. Parties' exhibit lists indicating each exhibit number and noting which exhibits are objected to. Failure to submit and note objections may cause the objections to be waived;
9. Requests to Produce at Trial (Supreme Court Rule 237) must be prepared and delivered to the Court seven days before the final pre-trial conference; and
10. Final pleadings, including: the complaint, answer, counterclaims, affirmative defenses, answers to requests to admit and other relevant pleadings.

### B. Bench Trial

The same materials shall be delivered for Bench Trials except for numbers 1, 4 and 7.

### C. Both Jury and Bench Trial

1. 45 days prior to the trial date, or other specific date set by the Court, the parties must confer and exchange the above materials as well as all their trial exhibits and demonstrative evidence.
2. If the Court's schedule prevents trial on the date set, the case will be transferred *instanter* to the Presiding Judge and will be assigned to another Judge for immediate trial.
3. *Motions in limine* will be ruled on prior to trial.
4. Jury instructions may be discussed and ruled upon at the pretrial conference prior to trial.

## CHECKLIST FOR DEFAULT MOTIONS

CASE NAME: \_\_\_\_\_

CASE NO.: \_\_\_\_\_ HEARING DATE: \_\_\_\_\_

\_\_\_\_\_ Copies delivered to chambers at least 5 court days before prove-up or default hearing

\_\_\_\_\_ Original notice of motion and original motion

\_\_\_\_\_ Face of Summons

\_\_\_\_\_ Return of summons

\_\_\_\_\_ Attorney certificate indicating that court file and computer have been checked for defendant's appearance or answer or form CCL 0517. (File and computer must be checked within 10 business days prior to date of hearing.)

\_\_\_\_\_ Affidavit of military service when defaulting an individual  
(Clerk Form CCG 004 and status report print out from the Department of Defense Service Member Database pursuant to the Service Members Civil Relief Act)

\_\_\_\_\_ (1) A copy of the complaint with exhibits and an affidavit by the moving party establishing the judgment amount, or (2) a verified complaint

\_\_\_\_\_ An affidavit detailing the costs of suit, if applicable

\_\_\_\_\_ An affidavit for attorneys' fees, if applicable  
(See Motion Court Rules 4.2(e)(2)) (Statutory or Contract)

\_\_\_\_\_ Proposed judgment order:

\_\_\_\_\_ **UNLIQUIDATED DAMAGES:** the order shall reflect the default being entered and the case being set for prove-up of damages in Courtroom 2303. The Court will select the date for prove-up.

\_\_\_\_\_ **LIQUIDATED DAMAGES:** the order shall reflect the following:  
\_\_\_\_\_ (1) the reason for default;  
\_\_\_\_\_ (2) the judgment amounts for specific items of recovery (e.g. attorneys' fees and costs, with supporting documents as required above); and  
\_\_\_\_\_ (3) a statement that a copy of the order will be sent to defendant(s) by the close of business on the date of entry.

READY TO BE ENTERED? (\_\_\_\_\_, 20\_\_)

YES

NO

**Commercial Calendar Section, Law Division  
Mandatory Arbitration  
Supervising Judge Standing Order**

Judge Thomas Mulroy (Courtroom 1906), Supervising Judge of the Mandatory Arbitration Program, hears all motions relating to the arbitration process after a case has been referred to mandatory arbitration on his Mandatory Arbitration Call.

**How to Schedule Motions on The Mandatory Arbitration Call\***

1. Telephone Courtroom 1906 (312-603-5935) and you will be given a date for presentment of the motion.  
(Motions will be heard Monday through Friday at 9:15 a.m. in Courtroom 1906.)
2. File the motion in Room 801 and list the date given by Courtroom 1906.
3. Serve Notice of the Motion on all parties in accordance with local Rule 2.1(c):
  - a. *If notice of hearing is given by personal service, the notice shall be delivered before 4 p.m. of the second court day preceding the hearing of the motion.*
  - b. *If notice is given by mail, the notice shall be deposited in a United States Post Office or Post Office Box on or before the fifth court day preceding the hearing of the motion.*
4. Deliver courtesy copies to Courtroom 1906 three (3) days before the hearing.
5. On the motion date, you must complete the "Sign in Sheet" before **9:15 AM** to be called.

**\*Please Note: These requirements are mandatory and failure to follow them may result in the motion being stricken from the Mandatory Arbitration Call.**

# **SECTION B**

- Commercial Calendar Mandatory Arbitration Rules (eff. December 1, 2014)
- Commercial Arbitrator Application

## IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

The undersigned circuit judges of the circuit court of Cook County hereby adopt the following Rules:

### PART 25

#### LAW DIVISION MANDATORY ARBITRATION, COMMERCIAL CALENDAR SECTION

1. Application: Mandatory Arbitration will be held in those commercial cases assigned to the Commercial Calendar Section of the Law Division, including cases with self-represented or *pro se* litigants, with damages of less than \$75,000. The arbitration hearings will take place at the Cook County Mandatory Arbitration Center, 222 N. LaSalle Street, Chicago, Illinois.
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 and/or conspiracy, interference with business relationships, and/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.
3. Referral To Mandatory Arbitration Order: After the answer is filed in a commercial case pending in the Commercial Calendar Section and after consultation with the parties, the Court will determine whether the case qualifies for mandatory arbitration.
  - a. If the Court finds that the case qualifies for mandatory arbitration, it will issue a Referral To Mandatory Arbitration order which will be given 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 and will specify whether the mandatory arbitration will be expedited pursuant to the parties' agreement.
  - c. The order will set a case management date 180 days (or 120 days if expedited) after the date of the order of Referral.

- d. The case will continue before the Court during the first 120 days (or 60 days if expedited).
    - e. The Court has discretion to refer cases to mandatory arbitration when the damages exceed \$75,000, if the Court finds, after consultation with the parties, that the complexity of the case is such that it is amenable to arbitration.
4. Expedited Mandatory Arbitration: If the parties agree to an expedited arbitration, the Court will order the arbitration to be expedited. Under an expedited schedule the arbitration hearing would be held 90 days after the answer is filed instead of 150 days.
5. Referral To Mandatory Arbitration Order-Effect: Upon receipt of the order of Referral To Mandatory Arbitration, the Administrator will randomly assign a single arbitrator qualified pursuant to Paragraph 16 herein, and
  - a. will set a date and time for the arbitration hearing, and
  - b. will notify the parties of the name of the arbitrator and of the hearing date.
  - c. The case will remain before the Court and will proceed there until 30 days prior to the date set for the arbitration hearing when discovery will be stayed.
  - d. The arbitration hearing must be held within 150 days (or 90 days if expedited) of the order of Referral To Mandatory Arbitration.
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/or 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.
  - b. The Administrator will immediately and randomly assign a new arbitrator.
  - c. The parties may not move to substitute an arbitrator without cause.
7. Discovery: The case will continue in the trial court following the order of Referral To Arbitration for 120 days (or 60 days if the arbitration is expedited) after the order of Referral To Arbitration.



- a. After 120 days (or 60 days if expedited) discovery will be automatically stayed in the trial court and will remain stayed until the arbitration hearing is completed, the award entered and the parties have rejected or accepted the award.
  - b. There is no discovery in arbitration.
8. Required Documents: Fourteen days prior to the hearing the parties must submit the following documents to the arbitrator:
  - a. The most current complaint, answer, counterclaim, third party complaint and affirmative defenses and other relevant pleadings;
  - b. Each party's detailed statement of the case including the legal and factual issues involved, limited to 15 pages in length, double spaced;
  - c. The witnesses who are expected to testify;
  - d. Documents expected to be placed in evidence at the hearing;
  - e. Stipulations as to facts or law;
  - f. Reports, affidavits or summaries having proper foundation; and
  - g. Itemization of the damages claimed in the complaint and counterclaim.
  - h. Thirty days prior to the hearing, the parties shall meet, confer and exchange the documents listed herein as well any other documents or legal arguments a party intends to present at the hearing.
  - i. 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.
9. The Arbitration Hearing: The hearing must be completed within 150 days (or 90 days if expedited) of the order of Referral To Mandatory Arbitration.
  - a. The hearings will be held during a four hour period.
  - b. 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.

- c. 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; and
  - iii. the format of the hearing, including time limits for each side's presentation.
  - iv. At the pre-hearing conference, the arbitrator will set such 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.
  - v. If the arbitrator determines that it is not feasible to arbitrate all the issues in the case (counterclaim, cross claim, affirmative defense or third party complaint) the arbitrator, upon consultation with the parties at the pre-arbitration hearing, shall decide which issues are central to the resolution of the case, and shall conduct the hearing as to those.
- d. The arbitrator will structure the hearing and pre-arbitration conference so as to afford due process to the parties.
- e. The witnesses who testify at the hearing shall be sworn under oath.
- f. The arbitrator may not be called as a witness for any reason relating in any way to the arbitration.
- g. An interpreter will be provided if written notice is given to the Administrator 14 days prior to the scheduled hearing.
- h. At the conclusion of the hearing, both parties must submit a summary of the legal fees each incurred in connection with the arbitration to be used, if necessary, pursuant to Paragraph 11d below.
  - i. Failure to submit a summary of legal fees will constitute a waiver of those fees for purposes of Paragraph 11d.
  - ii. "Legal fees incurred" means reasonable fees incurred during the period commencing with the stay of discovery in the trial court

through the conclusion of the arbitration hearing and the rendering of the award.

10. The Award: The arbitrator will issue an award (the decision), using the Award Form, based on the evidence presented at the hearing.
  - a. The Award Form will consist of the name and case number, date of the hearing, attorneys who appeared at the hearing and a simple finding by the arbitrator, 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.
11. Rejection of the Award: Either party may reject the award if the rejecting party does so within seven business 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 fill out 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 will 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 by 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 must 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 9h above.
  - e. The Court will rule on whether the fees are reasonable under Section d above after trial on the case.

12. Party Acting In Bad Faith: If the arbitrator certifies that any party acted in bad faith by:
  - a. willfully refusing to attend the arbitration hearing,
  - b. willfully refusing 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 Arbitrator for a hearing.
  - d. If the Court finds the party acted in bad faith, the Court may sanction the party up to \$1,000.
  - e. The arbitrator may not be called as a witness in this hearing.
  
13. Supervising Judge Mandatory Arbitration: The Presiding Judge of the Law Division will appoint a Supervising Judge, Mandatory Arbitration who will hear motions relating to the arbitration process, such as motions to continue the arbitration, but not including those relating to the conduct of the hearing or the admission of evidence at the hearing.
  
14. No Extensions of Time: No extensions or continuances of the 150 day (or 90 day) time period within which arbitration must be conducted will be permitted, absent exigent circumstances.
  
15. Arbitrator Fee: Arbitrators will be paid \$300 per arbitration.
  
16. Arbitrator Qualifications: To be selected as an arbitrator one must be a licensed attorney proficient in commercial law and/or commercial law arbitration, and must have
  - a. commercial litigation experience;
  - b. been in practice for seven years;
  - c. concentrates his/her practice in commercial law; and

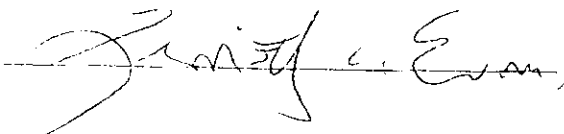
- d. completed successfully the commercial law arbitration training seminar approved by the Arbitrator Selection Committee.
- e. Exceptions may be made by the Arbitrator Selection Committee for attorneys without all of the above experience if they demonstrate particular qualifications to be commercial law arbitrators and if they have successfully completed the commercial law arbitration training seminar approved by the Arbitrator Selection Committee.
- f. Retired judges qualify as commercial arbitrators if they heard commercial cases while active as a judge and if they successfully completed the commercial law arbitration training seminar approved by the Arbitrator Selection Committee.
- g. Each lawyer or retired judge seeking to be a commercial law arbitrator must complete a form listing his/her qualifications and submit it to the Arbitration Administrator who, after review, will send it to the Arbitrator Selection Committee for approval.
- h. All applicants for arbitrator must attend a training seminar sponsored by the Chicago Bar Association. The training seminar must be first approved by the Arbitrator Selection Committee.

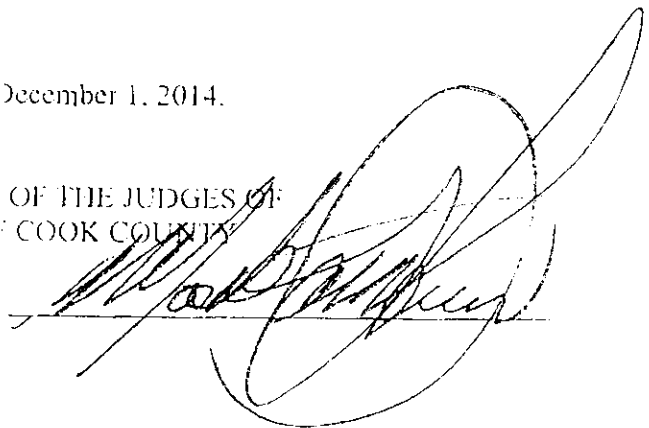
17. Arbitrator Selection Committee: The Arbitrator Selection Committee will consist of the judges in the Commercial Calendar Section of the Law Division and others appointed by the Presiding Judge of the Law Division. The Committee will select the arbitrators after recommendation and review by the Arbitration 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 commercial arbitrator.

Dated this 26<sup>th</sup> day of November, 2014, effective December 1, 2014.

ADOPTED BY A MAJORITY OF THE JUDGES OF  
THE CIRCUIT COURT OF COOK COUNTY





Commercial Calendar Section, Law Division  
Mandatory Arbitration-Commercial Cases

**Commercial Arbitrator Application**

Commercial Case Defined: A case 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 and/or conspiracy, interference with business relationships, and/or shareholder disputes. Commercial cases do not include cases seeking purely equitable relief, personal injury, divorce, criminal, real estate foreclosure, wills, housing code violations and/or evictions.

To: Administrator  
Cook County Mandatory Arbitration Center  
222 N. LaSalle Street  
Chicago, Illinois 60601

Name: \_\_\_\_\_  
Office address: \_\_\_\_\_  
Telephone number: \_\_\_\_\_  
Email address: \_\_\_\_\_

(Attach your resume containing your legal experience and nature of your practice)

1. Law firm or affiliation: \_\_\_\_\_
2. Primary type of legal work (40% of your practice): \_\_\_\_\_
3. Law school and graduation date: \_\_\_\_\_
4. Illinois Attorney Disciplinary Commission Registration Number: \_\_\_\_\_
5. Date admitted to practice before the Illinois Supreme Court: \_\_\_\_\_
6. Admitted to Federal Trial Bar \_\_\_\_\_
7. Date on which approved Arbitration Seminar completed: \_\_\_\_\_
8. Last five commercial cases you litigated:
  1. Case name and number: \_\_\_\_\_
    - a. Opposing counsel and telephone number: \_\_\_\_\_
    - b. Judge's name: \_\_\_\_\_

- 2. Case name and number: \_\_\_\_\_
  - a. Opposing counsel & telephone number: \_\_\_\_\_
  - b. Judge's name: \_\_\_\_\_
  
- 3. Case name and number: \_\_\_\_\_
  - a. Opposing counsel & telephone number: \_\_\_\_\_
  - b. Judge's name: \_\_\_\_\_
  
- 4. Case name and number: \_\_\_\_\_
  - a. Opposing counsel & telephone number: \_\_\_\_\_
  - b. Judge's name: \_\_\_\_\_
  
- 5. Case name and number: \_\_\_\_\_
  - a. Opposing counsel & telephone number: \_\_\_\_\_
  - b. Judge's name: \_\_\_\_\_

9. Commercial arbitration experience:

- a. Case names, dates and issues arbitrated of the last three commercial arbitrations where you acted as arbitrator:
  - 1. Date/Name \_\_\_\_\_
    - a. Issues: \_\_\_\_\_
  - 2. Date/Name \_\_\_\_\_
    - a. Issues: \_\_\_\_\_
  - 3. Date/Name \_\_\_\_\_
    - a. Issues: \_\_\_\_\_
  
- b. Case names, dates and issues arbitrated of the last three commercial arbitrations where you acted as an attorney:
  - 1. Date/Name \_\_\_\_\_
    - a. Issues: \_\_\_\_\_
  - 2. Date/Name \_\_\_\_\_
    - a. Issues: \_\_\_\_\_
  - 3. Date/Name \_\_\_\_\_
    - a. Issues: \_\_\_\_\_

Signature: \_\_\_\_\_

Date \_\_\_\_\_

# SECTION C

- *“A Summary: Mandatory Arbitration in Commercial Calendar Cases with Damages of \$75,000 or Less.”*



**A Summary:**  
**Mandatory Arbitration in Commercial Calendar Cases**  
**With Damages of \$75,000 or Less**

Introduction

The judges of Commercial Calendar of the Law Division have many smaller cases on their calls which lend themselves to mandatory arbitration. This summarizes a program which would require cases, including those with self-represented litigants, claiming damages of less than \$75,000 to go to mandatory arbitration within four months of the answer being filed. This program will make the resolution of these cases more efficient while giving the litigants a full hearing by a qualified commercial law arbitrator. The mandatory arbitration program is to be targeted to efficiently resolve smaller cases; we do not want it to be a vehicle for delay. We consider this proposal to be a pilot program for the Law Division and for other Divisions in the Circuit Court of Cook County.

Summary of the Mandatory Arbitration Program Rules

- 1. Once it has been determined that a commercial case that is assigned to the Commercial Calendar Section of the Law Division has damages of less than \$75,000, referral to mandatory arbitration will be appropriate. [Rule 1]. In such commercial case, after the answer is filed and the Court consults with the parties, the Court will determine whether the case qualifies for mandatory arbitration. [Rule 3]. If the Court finds that the case qualifies for mandatory arbitration, it will issue a Referral to Mandatory Arbitration order. The order will set a case management date of at most 180 days after the order. [Rule 3(a), (c)].**

Arbitration is a cost-effective way alternative to litigation. For cases less than \$75,000 in damages and relatively simple legal issues, arbitration has the potential to save both time and money for the parties. Arbitration will provide parties in these cases with efficiency and expediency in the decision of their cases. It will also decrease the amount of cases flowing through the Commercial Calendar of the Law Division substantially, allowing the courts to focus on more complex cases with larger damages.

Breach of contract cases are a good example of cases that would benefit from mandatory arbitration. In breach of contract cases, the issues are relatively simple and are thus able to be decided by an arbitrator. Additionally, parties in breach of contract cases do not want to spend more money on litigation than the contract would have been worth.

An example of a breach of contract case that could have benefitted from mandatory commercial arbitration is *Santorini Cab Corp. v. Banco Popular North America*, 2013 IL App (1st) 122070 (1st Dist. 2013). In that case, Plaintiff sued Defendant for breach of contract concerning the sale of two taxicab medallions to Plaintiff for \$48,000 each. *Id.* at ¶ 4. Paragraph 6 of each contract for sale stated that if the parties were unable to attain final approval for the transfer of the medallions from the department of consumer services of the City of Chicago (DCS) within 90 days of the contract, then Defendant's would refund Plaintiff's deposit. *Id.* Upon this refund, neither party would have any further obligations or rights against the other, and the contracts would be deemed void. *Id.* Plaintiff paid the required money under each contract, and continued to work with the Defendant on the deal after the 90 day period had expired. *Id.* at ¶ 5-6.

After the 90 day period had expired, Defendant informed Plaintiff that, although DCS had received the documents concerning the transfer, it had not given its final approval, and that Defendant did not want to take any further steps towards finalizing the transaction. *Id.* at ¶ 6. The case was heard in the Commercial Calendar, where the trial court found that Defendant had breached the two contracts because it failed to transfer the medallions or cancel the contracts in writing. *Id.* at ¶ 13. The court also found that Defendant had waived the paragraph 6 provision by continuing to work with Plaintiff after the 90 day period had expired. *Id.*

**2. The Court reserves the discretion to refer cases to mandatory arbitration when the damages exceed \$75,000 if the Court determines that it is a case amenable to arbitration. [Rule 3(e)].**

It is possible that a case has legal issues that are straightforward and fairly simple to decide, but the damages are greater than \$75,000. In such a case, it would create efficiency for the parties, as well as the Commercial

Calendar of the Law Division, to attempt arbitration before taking the case to trial.

- 3. The arbitration hearing must be held within 150 days of the order of Referral to Mandatory Arbitration. [Rule 5(d)]. If the parties agree to expedited arbitration, the Court will order the arbitration to be expedited. Expedited arbitration hearings will be held 90 days after the answer is filed, rather than 150 days. [Rule 4]. Hearings will be held during a 4 hour period within 150 days (or 90 days if expedited) of the order of Referral to Mandatory Arbitration. [Rule 9(a)]. No extensions or continuances of the 150 day (or 90 day) time period will be permitted absent exigent circumstances. [Rule 14].**

The goal of this program is to provide parties with a timely and efficient alternative to litigation by providing a short window of opportunity before trial for the parties to have their arguments heard and for an arbitrator to provide a fair decision. The hope is that the case can be decided in this short window rather than through a lengthy litigation process in court. This goal can only be achieved if arbitration is attempted early in the case. Waiting too long to refer a case to arbitration defeats the goal of the mandatory arbitration program.

- 4. A single arbitrator will be randomly assigned to the hearing. [Rule 5]. To be selected as an arbitrator, one must be a license attorney proficient in commercial law and/or commercial law arbitration. [Rule 16]. The arbitrator must also have: been in practice for seven years, successfully complete the commercial law arbitration training seminar. [Rule (16(d)-(e)]. Exceptions may be made by the Arbitrator Selection Committee for attorneys without this experience if they demonstrate other qualifications to be commercial law arbitrators and successfully completed the commercial law arbitration training seminar. [Rule 16(e)]. Retired judges may qualify as commercial arbitrators if they heard commercial law cases while active as a judge and if they successfully complete the commercial law arbitration training seminar. [Rule 16(f)]. Any interested lawyers or retired judges must complete a form listing his/her qualification and submit it for review to the Arbitrator Administrator, who will then send it to the Arbitrator Selection Committee for approval. [Rule 16(g),(h)]. The Arbitrator Selection Committee will consist of judges in the Commercial**

**Calendar Section of the Law Division. [Rule 17]. The Arbitration Selection Committee will review the performance of each arbitrator every 12 months and will decide whether each arbitrator should be retained as a commercial arbitrator.**

Decisions in arbitration cases are generally final and binding, provided a party does not reject the award. As such, it is vital to the process to have arbitrators with the proper qualifications to both understand and decide the cases fairly and in a manner that provides proper due process to both parties. Accordingly, a vigorous selection, training, and review process for those interested in becoming commercial arbitrators is necessary to ensure all cases have the best chance of being decided fairly.

- 5. Arbitrators will be paid \$300 per arbitration. [Rule 15].**
  
- 6. Pursuant to the Code of Judicial Conduct and/or the Illinois Rules of Professional Conduct, the assigned arbitrator must conduct a conflict of interest review and sign a Conflict Review Form to indicate there is no conflict. [Rule 6]. If the arbitrator determines there is a conflict, the arbitrator will withdraw from the case and a new arbitrator will be randomly assigned. [Rule 6(a), (b)]. The parties may not move to substitute an arbitrator without cause. [Rule 6(c)].**

Arbitrators will be chosen randomly to best ensure that there is no conflict of interest between the arbitrator and the parties to the case. However, should a conflict of interest arise, steps must be taken to protect the fairness of the arbitration process. Because of the important role the arbitrator will play in this program, it is important that the arbitrators display strong ethics and professionalism and disclose any potential conflict of interest with a case. It is important that all arbitrators go through a conflict of interest review to provide the best opportunity for fair due process to both parties.

An example of a conflict of interest in an arbitration case can be found in *Stoller v. Stoller*, 222 Ill.App.3d 22 (1st Dist. 1991). In *Stoller*, Plaintiff appealed an interlocutory order of the Circuit Court of Cook County denying his request for vacatur and a stay of a previously entered arbitration award. *Id.* at 24. Plaintiff claimed that the appointed arbitrators should have been

disqualified because they had a conflict of interest which arose as a result of their legal representation of the Plaintiff and Defendants. *Id.* Both of the arbitrators in the case had rendered legal services for Plaintiff and Defendants, but the parties signed an agreement submitting their dispute for arbitration to these arbitrators. *Id.* at 25. At the beginning of the arbitration, each of the parties stated that they waived the right to assert privilege or conflict of interest which may arise as a result of using these arbitrators. *Id.* The arbitrators ultimately found in favor of Defendants, and Plaintiff appealed. *Id.* at 26.

Because the purpose of this program is to provide the parties with a due process without lengthy and costly litigation, it is important that the arbitrators have no conflict of interest. This program seeks to avoid a situation like that in *Stoller* to allow the parties a chance to settle the case without a lengthy trial. If there is a conflict of interest, the parties will most likely end up in another lengthy dispute about the conflict of interest, and thus defeat the purpose of the program. The case will end up in court and the whole purpose of the program will be for naught.

- 7. The case will continue in the trial court following the order of Referral to Arbitration for 120 days (60 days if expedited arbitration). [Rule 7]. After 120 days (or 60 days if expedited), discovery will be automatically stayed in the trial court and remain stayed until the completion of the arbitration hearing, the award entered, and the parties have either accepted or rejected the award. [Rule 7(a)]. There is no discovery in arbitration. [Rule 7(b)].**

The goal with this program is to shorten the litigation process, not provide attorneys with a way to stall the case and conduct more discovery in the meantime. Attorneys should be putting their good faith efforts into the arbitration hearing to achieve a speedy and agreeable resolution, rather than putting that effort into discovery for a costly and lengthy trial.

- 8. The parties must submit to the arbitrator 14 days before the hearing: the most current complaint, answer, counterclaim, third party complaint, affirmative defenses, and other relevant pleadings; each party's detailed statement of the case which must include the legal and factual issues involved, limited to 15 pages in length, double-spaced; a list of witnesses**

**expected to testify; documents expected to be placed into evidence at the hearing; stipulations as to fact or law; reports, affidavits, or summaries having proper foundation; and itemization of the damages claimed in the complaint and counterclaim. [Rule 8(a)-(g)]. 30 days prior to the hearing, the parties must meet and exchange all of the documents listed above in addition to any other documents or legal arguments a party intends to present at the hearing. [Rule 8(h)]. Failure to comply with Rule 8 in submitting these documents in a timely manner may be grounds for a bad faith finding against the delinquent party. [Rule 8(i)].**

The arbitration period is short, so it is important that these documents be submitted in a timely fashion so as not to unnecessarily lengthen the process. Again, this program is to create efficiency, not to create a vehicle for delay. In the interest of expediency, it is also important that the arbitrator have access to these documents before the arbitration hearing. This allows the arbitrator to best prepare to hear the case and understand the facts and legal arguments in the case. Failing to provide these documents to either the arbitrator or the other party in a timely fashion may be viewed as a bad faith action by the offending party. Accordingly, penalties or sanctions may be appropriate to ensure that the arbitration process is taken seriously and in good faith by both parties.

- 9. The Illinois Rules of Evidence shall apply to the hearing unless the arbitrator relaxes application of the rules in the interests of fairness and efficiency and both parties receive due process. [Rule 9(b)]. The witnesses who testify at the hearing will be sworn under oath. [Rule 9(e)].**

The purpose of this program is to give both parties the same due process and opportunity to present evidence supporting their cases that they would receive in court in a shorter timeframe.

- 10. At the conclusion of the hearing, both parties must submit a summary of the legal fees incurred in connection with the arbitration. [Rule 9(h)]. Failure to do so will constitute a waiver of those fees for purposes of Rule 11(d). [Rule 9(h)(i)].**

- 11. The arbitrator will hear the evidence and issue an award at the conclusion of the hearing. [Rule 10]. The Award Form will contain the**

name and case number, hearing date, the names of the attorneys who appeared, and a simple finding by the arbitrator. [Rule 10(a)]. There will be no written opinion. [Rule 10(a)]. The arbitrator must file the Award Form with the Administrator by 5:00pm on the second business day following the conclusion of the hearing. [Rule 10(b)]. A copy of the Award Form will be sent to the parties within one business day of the Administrator's receipt thereof. [Rule 10(c)].

This system will ensure that the parties receive the decision to accept or reject quickly, so as to avoid lengthening the process.

12. **Either party may reject the arbitrator's award if done within 7 business days of receiving the Award Notice. [Rule 11]. To reject an award, the rejecting party must fill out a Rejection Form and file it with the Clerk of the Circuit Court accompanied by a \$750 rejection fee. [Rule 11(a)]. Failure to timely and properly reject the award will constitute a waiver of the party's right of rejection. [Rule 11(c)]. In the case of rejection by either party, the case will be returned to the trial judge for further proceeding on the date specified in the trial court's order of Referral to Mandatory Arbitration. [Rule 11]. If the rejecting party fails to obtain a better result at trial, the rejecting party must pay the other party's reasonable legal fees incurred in connection with the arbitration. [Rule 11(d)]. The court will rule on whether the fees are reasonable. [Rule 11(e)].**

The goal of this arbitration program is to shorten the process and provide the parties the opportunity to reach a fair decision without lengthy and costly litigation. The time restraints, fees, and penalties after trial that accompany a rejection are to ensure that the award is fairly considered and not just simply rejected because it is not the original result a party was seeking.

13. **The arbitrator may certify that a party acted in bad faith by: willfully refusing to attend or participate in the hearing, or otherwise acting in bad faith. [Rule 12(a)-(c)]. In such situation, the case will immediately be sent to the Supervising Judge, Mandatory Arbitrator for a hearing. [Rule 12(c)]. The arbitrator may not be called as a witness in this hearing. [Rule 12(e)]. If the Court finds the party acted in bad faith, the Court reserves the right to sanction the offending party up to \$1,000. [Rule 12(d)].**

This program attempts to provide both parties with a fair hearing in a timely and cost-efficient manner. In the interest of avoiding a lengthy and costly trial, this program assumes that parties will act in good faith during the arbitration hearing process and try to reach a fair outcome. Not participating in the process in good faith defeats the purpose of the program, wastes the arbitrator and parties' time, prolongs the litigation, and increases the client's legal fees.

- 14. The Presiding Judge of the Law Division will appoint a Supervising Judge, Mandatory Arbitration. [Rule 13]. The Supervising Judge will hear motions relating to the arbitration process. [Rule 13]. The Supervising Judge will not hear motions relating to the conduct of the hearing or the admission of evidence at the hearing. [Rule 13].**

The Supervising Judge will hear motions important to the arbitration process. However, the Supervising Judge will not hear motions relating to admission of evidence or the conduct of the hearing to avoid a lengthy, sort-of "appeals" process. Again, the goal of this program is expediency and efficiency, not lengthening the litigation for attorneys and clients. It is the hope that this program will not only relieve the Commercial Calendar of the Law Division of several hundred cases each year, but also to allow parties to come to mutually agreeable conclusions without having a lengthy and costly litigation process.