
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 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.
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.
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.
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:

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- 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.
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.
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.
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;

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- 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.

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.

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:

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- i Medical records and reports of hospitals, doctors, dentists, registered nurses, licensed practical nurses, and physical therapists, or other health-care 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.
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.
11. 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.

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- 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.
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.
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.
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.
15. Arbitrator Fee: Arbitrators will be paid \$300 per arbitration.
16. Arbitrator Qualifications:
- a. Commercial Arbitrator: To be selected as an arbitrator in Commercial Cases in the Mandatory Arbitration Program one must:

iii 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;

iv concentrates his or her practice in commercial law; and

v 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.

a. 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.

b. 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.

c. All applicants for arbitrator must attend a training seminar 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 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.

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- 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.

Personal Injury Arbitrator Ethics & Professionalism - Panel Discussion

Arbitrator Ethics & Attorney Professionalism – Rules of professionalism apply as does the Code of Judicial Conduct.

- Process is informal but is still a mandated court proceeding.
- Remind attorneys to explain this to their clients as well – even when using technology, the same standards apply.
- Email issues with ex parte communications

Notes:

Judicial Canons –

- Held to same standards as a judge when you are acting as a neutral for court annexed programs.
- Remember you are NOT an advocate when you serve as a neutral

Notes:

Conflicts Check Form Tips –

- Complete conflicts form within 3-day time and return to all attorneys and the administrator.
- DISCLOSE CONFLICTS! You are the only arbitrator, so this is important.
- No access to court files so it's okay to ask attorneys for further information if you need it to do proper review.

Notes:

Code of Judicial Conduct

Supreme Court Rule 61

CANON 1

A Judge Should Uphold the Integrity and Independence of the Judiciary

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

Supreme Court Rule 62

CANON 2

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

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

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

Supreme Court Rule 63

CANON 3

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

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

A. Adjudicative Responsibilities.

(1) A judge should be faithful to the law and maintain professional competence in it. A judge should be unswayed by partisan interests, public clamor, or fear of criticism.

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

Code of Judicial Conduct

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

(4) A judge shall accord to every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard according to law. A judge may make reasonable efforts, consistent with the law and court rules, to facilitate the ability of self-represented litigants to be fairly heard.

(5) A judge shall not initiate, permit, or consider ex parte communications, or consider other communications made to the judge outside the presence of the parties concerning a pending or impending proceeding except that:

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

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

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

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

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

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

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

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

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

(8) Proceedings in court should be conducted with fitting dignity, decorum, and without distraction.

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

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

B. Administrative Responsibilities.

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

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

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

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

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

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

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

C. Disqualification.

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

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

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

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

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

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

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

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

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

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

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

D. Remittal of Disqualification. A judge disqualified by the terms of Section 3C may disclose on the record the basis of the judge's disqualification and may ask the parties and their lawyers to consider, out of the presence of the judge, whether to waive disqualification. If following disclosure of any basis for disqualification other than personal bias or prejudice concerning a party, the parties and lawyers, without

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participation by the judge, all agree that the judge should not be disqualified, and the judge is then willing to participate, the judge may participate in the proceeding. This agreement shall be incorporated in the record of the proceeding.

APPENDIX- For Rule 63 CANON 3

M.R. No. 2634.

Order entered April 16, 2007; amended February 2, 2017.

Any security cameras installed in the courtrooms in the various circuits shall be in accordance with the following standards; (1) security cameras are to be placed in areas of the courtroom such that there is no video recording of the jury or witnesses; (2) audio recordings of the proceedings are prohibited in connection with security cameras; (3) use of such cameras is limited to security purposes and any video tape produced therefrom shall remain the property of the court and may not be used for evidentiary purposes by the parties or included in the record on appeal; (4) security cameras shall be monitored by designated court personnel only; and (5) signs shall be posted in and outside of the courtroom notifying those present of the existence of the court surveillance.

All recordings from security cameras monitoring court facilities are the property of the local circuit courts and are deemed to be in the possession of the local circuit courts notwithstanding actual possession by another party.

Supreme Court Rule 64

CANON 4

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

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

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

B. A judge may appear at a public hearing before an executive or legislative body or official on matters concerning the law, the legal system, and the administration of

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justice, and he or she may otherwise consult with an executive or legislative body or official, but only on matters concerning the administration of justice.

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

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

Supreme Court Rule 65

CANON 5

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

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

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

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

(2) A judge should not solicit or permit his or her name to be used in any manner to solicit funds or other assistance for any such organization. A judge should not allow his or her name to appear on the letterhead of any such

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organization where the stationery is used to solicit funds and should not permit the judge's staff, court officials or others subject to the judge's direction or control to solicit on the judge's behalf for any purpose, charitable or otherwise. However, a judge may be a speaker or the guest of honor at an organization's fund-raising events and may allow event-related promotional materials, invitations, and other communications to mention such participation by the judge.

C. Financial Activities.

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

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

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

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

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

(b) a judge or a member of the judge's family residing in the judge's household may accept ordinary social hospitality; a gift, bequest, favor, or loan from a relative; a wedding or engagement gift; a loan from a lending institution in its regular course of business on the same terms generally available to persons who are not judges; or a scholarship or fellowship awarded on the same terms applied to other applicants;

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

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likely to come before the judge, including lawyers who practice or have practiced before the judge.

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

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

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

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

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

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

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

Supreme Court Rule 66

CANON 6

Nonjudicial Compensation and Annual Statement of Economic Interests

A judge may receive compensation for the law-related and extrajudicial activities permitted by this Code if the source of such payments does not give the appearance of influencing the judge in his or her judicial duties or otherwise give the appearance of impropriety subject to the following restrictions:

A. Compensation. Compensation should not exceed a reasonable amount nor should it exceed what a person who is not a judge would receive for the same activity.

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B. Expense Reimbursement. Expense reimbursement shall be limited to the actual cost of travel, food, and lodging reasonably incurred by the judge and, where appropriate to the occasion, by the judge's spouse. Any payment in excess of such an amount is compensation.

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

Supreme Court Rule 67

CANON 7

A Judge or Judicial Candidate Shall Refrain From Inappropriate Political Activity

A. All Judges and Candidates.

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

- (a) act as a leader or hold an office in a political organization;
- (b) publicly endorse or publicly oppose another candidate for public office;
- (c) make speeches on behalf of a political organization;
- (d) solicit funds for, or pay an assessment to a political organization or candidate.

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

(3) A candidate for a judicial office:

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

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

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

(d) shall not:

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(i) make statements that commit or appear to commit the candidate with respect to cases, controversies or issues within cases that are likely to come before the court; or

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

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

B. Authorized Activities for Judges and Candidates.

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

(a) at any time,

(i) purchase tickets for and attend political gatherings;

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

(iii) contribute to a political organization;

(b) when a candidate for public election

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

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

(iii) distribute pamphlets and other promotional campaign literature supporting his or her candidacy; and (iv) publicly endorse or publicly oppose other candidates in a public election in which the judge or judicial candidate is running.

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

(3) Except as prohibited by law, a candidate for judicial office in a public election may permit the candidate's name: (a) to be listed on election materials along with

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the names of other candidates for elective public office, and (b) to appear in promotions of the ticket.

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

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

JUSTICE HEIPLE, concurring:

First and foremost, Rule 67 and these canons of judicial ethics are intended as a working guide of conduct for judges and judicial candidates. They indicate areas of activity that are deemed to be within and without proper limits of judicial conduct. In between, of course, are uncertain areas which lack definition. What the canons seek is judicial conduct that is in keeping with the high calling of judicial office. They are not intended to facilitate the filing of casual or vindictive charges against judges or judicial candidates.

The application of these canons require a high measure of common sense and good judgment. Matters that are either minor in nature or susceptible to differing interpretations ought not result in charges being filed. Charges of misconduct should be limited to matters that are both clearly defined and commonly accepted as serious.

The canons have attempted to recognize that Illinois has an elective judiciary. As a practical matter, the Illinois judge must involve himself in matters political. That is to say, the judge or candidate must be a participant in the system. A corollary of this activity is the public's right to know whom they are voting for. Realistically speaking, it is not enough for the judge or candidate to merely give name, rank and serial number as though he were a prisoner of war. Rather, the public has a right to know the candidate's core beliefs on matters of deep conviction and principle. While the candidate is not required to disclose these beliefs, he should neither be deterred nor penalized for doing so. In so doing, however, the judge or judicial candidate ought to refrain from stultifying himself as to his evenhanded participation in future cases. Rule 67 attempts to make that clear.

What fair-minded people seek in a judge is a person who will be fair and impartial and who will follow the law. Those considerations overshadow matters of nonjudicial ideology such as socialism, antivivisection, membership in the Flat Earth Society, an obsession with gender neutral language, or whatever. The matter of nonjudicial ideology

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is of direct and primary concern, of course, when judges begin to act as legislators rather than jurists. Judges who adhere to the rule that their conscience is their guide and that the law must accommodate their conscience are especially deserving of close scrutiny and concern. Under our Illinois constitutional scheme, however, it is the voters who are to make that call, not a governmental prosecutorial body or an association of lawyers.

JUSTICE McMORROW, dissenting:

I dissent from the adoption of certain portions of new Rule 67 of the Code.

At the time of this writing, Illinois elects its judges. Irrespective of the merits or demerits of the elective process, it is essential to the justice system that judges be “independent, fair, and competent” so as to honor the public trust placed in them by virtue of their position. The purposes of the Code of Judicial Conduct are set forth in the Preamble to the Code. That Preamble, as amended, *inter alia*, provides:

“Our legal system is based on the principle that an independent, fair and competent judiciary will interpret and apply the laws that govern us. The role of the judiciary is central to American concepts of justice and the rule of law. Intrinsic to all provisions of this code are precepts that judges, individually and collectively, must respect and honor the judicial office as a public trust and strive to enhance and maintain confidence in our legal system.”

In this Code of Judicial Conduct, the Supreme Court of Illinois has set the standard by which judges are to be guided in their professional conduct. In my opinion, these standards should be high, and should be in keeping with the principles espoused in the Preamble. They are the guidelines which tell judges in this State in what activities they may or may not participate. The primary goal of the Code should be the attainment of a fair and impartial judiciary.

Today, in adopting certain amendments to Rule 67, the majority apparently wishes to accommodate the elective process to which judges are presently subjected. In so doing, the majority has substantially broadened the political activity in which judges may participate. For example, by deleting certain prohibitions which appeared in Rule 67 prior to the amendments, a judge may now *at any time* attend political gatherings, may make unlimited contributions to a political organization, may identify himself or herself as a member of a political party, or may purchase tickets for political dinners or other functions. Rules 67(B)(1)(a)(i), (B)(1)(a)(ii), (B)(1)(a)(iii).

However, our prior Rule 67 was not unduly restrictive. Indeed, no hardship to judges under the former rule has been demonstrated, nor has there been any hue or cry for the changes which have been adopted. I am unaware of any need for judges to make unlimited contributions to a political party, to attend political gatherings, or to identify their political party allegiance. On the contrary, upon election to judicial office, judges are to be impartial; they are to be unbiased with respect to race, gender, and

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political party affiliation. Upon election, judges should no longer be Democrats or Republicans. Rather, judges are elected to apply the rule of law without respect to political organization affiliation. Although I recognize the need to solicit political organizational support at the time a candidate is seeking election to the judiciary, or at such time as a judge is seeking retention, I am particularly disturbed by the amendments' allowance of a judge to engage in the political activities permitted by these amendments *at any time*.

I submit that the new rule "abandon[s] several important ethical standards that uphold the independence and dignity of judicial office" and will surely cause severe problems in the public perception of judicial candidates. (Report of the Committee on Judicial Performance and Conduct of the Lawyers' Conference of the Judicial Administration Division of the American Bar Association on the Final Draft of the Model Code of Judicial Conduct 28 (1990) (hereinafter Report of the Committee on Judicial Performance).) In my view, the new standards of the rule are too permissive with respect to the political activities of judicial candidates. The increased permissiveness in judicial candidates' political activities fosters a misguided over-politicization of the judicial election process in this State. In my judgment the time and efforts of the Illinois Supreme Court might be better expended by addressing the myriad of problems confronting the justice system, rather than considering and adopting amendments which allow judges to participate in additional political activity. I dissent from the adoption of these amendments because they are imprudent, unnecessary, and lend themselves to abuse.

In addition, I cannot agree with the majority's new view of the appropriate scope of a judicial candidate's public comment on matters that may or are likely to come before the court, provided the candidate does not "make statements that commit or appear to commit the candidate with respect to cases, controversies or issues within cases that are likely to come before the court." (Rule 67(A)(3)(d)(i).) Ultimately, the new Rule is short-sighted because it places candidates for judicial office in an unseemly position where they may feel compelled to "pander" for votes by publicly adopting views which appear popular to the electorate. See Report of the Committee on Judicial Performance at 31.

The Commentary indicates that this amendment was adopted in response to the decision of the Federal court in *Buckley v. Illinois Judicial Inquiry Board* (7th Cir. 1993), 997 F.2d 224. In that case, the Seventh Circuit Court of Appeals held unconstitutional the portion of our rule that forbids a judicial candidate from "announc[ing] his views on disputed legal or political issues." (134 Ill. 2d R. 67(B)(1)(c).) The Federal court concluded that this "announcement" prohibition invaded a candidate's constitutional rights, because it "reache[d] far beyond speech that could reasonably be interpreted as committing the candidate in a way that would compromise his impartiality should he be successful in the election." *Buckley*, 997 F.2d at 228.

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It is indisputable that the constitutional guarantee of freedom of speech must be balanced against the right of the public to a judiciary which will decide the issues presented to it in the courtroom setting, on the basis of the facts and applicable law. A judicial candidate's right to free speech may be restricted where a compelling State interest is present which counterbalances the candidate's ability to speak freely. The integrity and impartiality and independence of the judiciary is, in my opinion, such a compelling State interest to which deference should be paid.

The key words in the amendment which now appear in Rule 67(A)(3)(d)(i) are "commit or appear to commit." These words are subject to varying interpretations and, I submit, are unnecessarily too broad to cure the fault found by the Federal court in the *Buckley* case. I question whether the amendment permitting a judge to speak on issues which may come before the court, provided the judge uses the magic words that the judge "is not committing" will be more problematic than the rule was prior to this amendment.

I also find disturbing the Commentary to the amendments to the effect that a judge or judicial candidate may respond to "false information concerning a judicial candidate [that] is made public." (Rule 67, Committee Commentary.) The Report of the Committee on Judicial Performance stated the following with regard to this provision:

"This new expansion of free speech for judges who might be tempted to come to the aid of another judge or judicial candidate who has been the subject of criticism in a political campaign is totally without merit. There is no reason for a judge to become involved as a spokesperson or in any other capacity for another judge who has been publicly maligned. Publicly 'correcting' what the judge regards as a misstatement of fact in a judicial campaign is one of the acts presently prohibited by the existing Code, and it should continue to be prohibited.

Most issues of 'fact' in the context of judicial elections are, at best, mixed issues of fact and opinion and at worst are pure issues of opinion. Thus, the 'narrow' exception anticipated by the draftspersons would, in reality, become a large loophole.

The new provision would put enormous pressure on judges to become actively involved in campaigns of other judges or candidates." Report of the Committee on Judicial Performance at 5-6.

I agree with these comments from the Report of the Committee on Judicial Performance regarding this new amendment to Rule 67.

In my opinion, public perception of a fair and impartial judiciary is diminished by adoption of the amendments to which I have made reference. Because the majority permits potential further politicization of the Illinois judiciary by adoption of the above-referenced amendments, I respectfully dissent.

How to be an Effective Personal Injury Arbitrator in the Law Division

- I. **Arbitrator Preparation** – Know and follow the proper rules.
 - Circuit Court Rule 25 NOT Supreme Court Rules 86-95 – case types that will be allowed, timing of process, discovery and hearing. (CCR 25.2 & 25.3)
 - Complete and return conflicts check ASAP (within the three days) – send to administrator plus all parties for transparency. (CCR 25.6)
 - Any questions on impartiality, please recuse yourself. We will just get you another case.

Notes:

II. **Arbitrator Authority**

- Administer oath as needed to parties, witnesses and foreign language interpreters
- Handle logistics of hearing day, structure of pre-hearing conference, allow for stipulations between the parties.
- Rule on admissibility of evidence, testimony – stating reasoning for rulings when needed.
- Require attorneys to comply with the rules and proper trial advocacy – process is less formal but it is still an evidentiary court hearing.
- Make an “award” or “finding” but not a judgment.
- CANNOT grant motions, most importantly you cannot continue a case.
- Good versus Bad Faith participation – An example of bad faith?

Notes:

III. **Pre-Hearing Submissions** – (CCR 25.8 and 25.9)

- Require conference between parties 30 days before hearing in order for items to be presumptively admissible – you can remind them of this by email, include all parties so it’s not ex parte.
- Encourage parties to stipulate to facts and evidence when possible in effort to streamline the hearing and presentation of evidence.
- Parties must supply submissions to the arbitrator 14 days before the hearing – you can allow late submissions if asked and agreeable between the parties so long as everyone has enough time to still review and prepare for the hearing.
- “Typical” documents for each case type (commercial and personal injury) are listed in the rule.

-
- Common mistakes:
 - Not paginated or organized, too long
 - Not submitted in a timely manner
 - Doesn't include relevant material
 - Photos missing, not labeled or not color (or recognizable)
 - Specials not itemized or totaled
 - Not submitting or asking for court costs
 - Not containing specific law/code sections in cases where there is something specific necessary

Notes:

IV. **Foreign Language Interpreters** –

- Use of qualified, impartial interpreters versus family members – remember you aren't the advocate so it can be hard
- Difference between municipal division arbitration program and law division program

Notes:

V. **Using Technology/Electronics for Testimony** –

- Zoom by agreement of the parties? When is this done and by whom? Does it require a judge's order before it can be arranged?

Notes:

VI. **Arbitrator Conduct** –

General arbitrator practice tips

- Encourage attorneys to present their “best” case, to have all parties present as required by the rules and to have their evidence well organized – focus them on taking the process seriously so they will get more out of the process.
- Request attorneys be succinct so they present an efficient and effective case – this is NOT a jury trial – the max time is 4 hours including the pre-hearing conference, hold them to this time.
- Please remind attorneys to conduct their 30 day conference – this helps attorneys stipulate to matters they should for efficiency
- Collect fee statement memos at the end of the hearing.
- **Remember you are not there to organize their case, you are not an advocate but the neutral fact finder (like a judge or jury would be)**

Notes:

Program Administration

Arbitration Hearing Basics –

- Exclusively on THURSDAYS and FRIDAYS starting at 8:30 a.m. and 1:00 p.m.
- Cases will be in-person and held at the Mandatory Arbitration Center, 222 North LaSalle Street, 13th Floor, Chicago, Illinois 60601
- Zoom by agreement? Very limited slots available, must be coordinated in advance with the arbitration administrator
- Notice sent to all parties of record containing their date from Clerks, follow up email from arbitration staff with arbitrator's name and contact email for you to do conflicts.
- Arbitrators are assigned randomly and rotationally
- Arbitrators and arbitration staff DO NOT have the authority to continue a hearing date. Anyone needing a new date must present a formal motion to continue before the Supervising Judge of Law Division Mandatory Arbitration
- Arbitrators cannot request a new date – remember you agreed to hear the case so please do not back out last minute absent exigent circumstances

Notes:

Hearing Day Information –

- Rules grant 4 hours for the hearing – broken down generally into a 30-minute pre-trial conference and then 3.5 hours for presenting the case
- Payment governed by Rule - \$300 per case and an award must be entered to receive payment. Paid through the Comptroller's Office in Springfield and sent to you by them, the process takes around 6-8 weeks after case is complete
- Rules give two business days to complete the award – if you complete this at the Arbitration Center, staff here will help you complete the form properly, if you take it home with you, you will need to type the award and return it within the proper timeframe

Notes:

Do you want to apply? –

- Rule 25.16 covers the requirements to be considered for each program
- Application is in materials, please don't forget to attach a resume or CV
- Send completed application forms to me at kobrien@illinoiscourts.gov and I will be in touch when the Selection Committee has rendered its decision on your application

Notes: