

The Impact of Cook County's Increase in Referrals to the Law Division Mandatory Arbitration Program

Article

Amundsen Davis Transportation Alert

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The significant increase in Cook County law division cases referred to the mandatory arbitration program in 2024 may have a surprisingly positive impact on the transportation industry. With verdicts on the rise, the arbitration program can be a useful tool to limit exposure and trial expenses in cases with minimal discovery requirements.

The law division mandatory arbitration program, started in 2021, applies to certain personal injury and commercial cases in the law division and is governed by Cook County Circuit Rule 25. Under Rule 25, commercial and personal injury cases with damages valued at less than \$50,000 and that do not involve claims of medical malpractice, asbestos, construction, nursing home, and product liability are automatically referred to mandatory arbitration. However, Rule 25 also grants motion judges the discretion to refer applicable higher value cases to arbitration if, after consulting with the attorneys and considering the difficulty of the case, the judge determines the case is suitable for arbitration. Based upon the recent guidance provided by courts in the law division, motion judges are exercising their discretion under Rule 25 more actively in 2024 to refer higher value cases to the mandatory arbitration program.

After a judge determines that a law division case is ripe for mandatory arbitration, the court enters a "Referral to Mandatory Arbitration Order" on a "standard" or "expedited" schedule. Cases referred to arbitration in the law division program are heard by a single arbitrator whose practice must include a concentration in personal injury or commercial law and a minimum years of experience. Parties receive 60 days for discovery in expedited cases and 90 days for discovery in standard cases. Arbitration hearings are expected to take place 90 days after a referral in expedited cases and 150 days after a referral in standard cases. Importantly, Rule 25.14 specifically states that hearing dates will not be extended or continued in standard or expedited cases, absent exigent circumstances.

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Procedurally, parties will find that law division arbitrations involve similar evidentiary practices as municipal division arbitrations, but there are several key distinctions that make Rule 25 arbitrations more appealing to parties in the transportation industry accustomed to trial practice. Like Rule 90(c), Rules 25.8 and 25.9 provide that all rules of evidence apply (except in the arbitrator's discretion) and that, within 30 days of the arbitration, parties are required to exchange all documents that they intend to have "presumptively admitted" at the hearing, including medical bills and records, property repair bills or estimates, lost wages, deposition transcripts and affidavits of witnesses, and other documents admissible under the rules of evidence. However, in the law division program, parties must provide the arbitrator the documents they seek to have "presumptively admitted" 14 days before the hearing, along with a statement of the case, current pleadings, a list of witnesses expected to testify, stipulations, an itemization of the damages, and any other documents the parties intend to admit at the hearing.

Another feature of the law division arbitration program is the requirement under Rule 25.9 for arbitrators to hold a "pre-hearing" conference with the parties immediately before the arbitration to discuss and decide the format, rules and time limits of the hearing, which exhibits will be admitted into evidence, and how and whether to narrow the issues to be arbitrated. The rule specifically provides that telephonic appearances of parties and attorneys is prohibited absent good cause shown.

Unlike the 14 days provided in municipal arbitrations, parties have 30 days to reject a law division arbitration award after its issuance. The \$750.00 cost of rejecting an award, however, is greater under Rule 25.11, and parties may seek to recover their legal fees incurred in connection with the arbitration if a rejecting party fails to obtain a better result at trial. Parties waive the right to recover legal fees if they fail to submit a summary of their legal fees at the conclusion of the arbitration.

The program's Arbitration Administrator, Kimberly O'Brien, also shared that O'Brien and Supervising Judges Kathy M. Flanagan and Patrick J. Sherlock plan to offer a training on the law division mandatory arbitration program in the Spring of 2024.

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