

**IN THE COURT OF COMMON PLEAS
LAKE COUNTY, OHIO
GENERAL DIVISION**

STATE OF OHIO

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COUNTY OF LAKE)

JOURNAL ENTRY

BY ORDER OF THE COURT, effective January 1, 2005, the attached Rules for Arbitration for Lake County have been revised and adopted.

IT IS SO ORDERED.

Judge Joseph Gibson

Judge Eugene A. Lucci

Judge Richard L. Collins Jr.

Judge Vincent A. Culotta



RULES FOR ARBITRATION FOR LAKE COUNTY

(Effective January 1, 2005)

Judges of the General Division of the Court of Common Pleas, Lake County, Ohio

Judge Joseph Gibson
Judge Eugene A. Lucci
Judge Richard L. Collins Jr.
Judge Vincent A. Culotta



Joan Snyder
Arbitration Commissioner
(440) 350-2723

**RULES FOR ARBITRATION
FOR LAKE COUNTY**

In order to facilitate and expedite the administration of justice in Lake County, Ohio, the following procedures shall be in effect from and after *January 1, 2005*.

PART I

(A) CASES FOR SUBMISSION TO ARBITRATION

(1) A case shall be submitted to arbitration if so ordered by a judge after a case management conference, pretrial conference, or settlement conference has been conducted, and the court has determined that all parties to the case have made an appearance by filing a responsive pleading or otherwise. The judge should determine that the case is appropriate for arbitration. Cases submitted to arbitration shall be heard and decided by a board of arbitration, consisting of three members of the bar of Lake County, Ohio, to be selected as provided in Part II.

(2) All discovery must be completed before a case is submitted to arbitration. Timely motions must be ruled upon. The issues must be joined and the case be ready for trial. No further pleadings, motions, discovery, or delays will be permitted after the case has been submitted to arbitration, except in the discretion of the judge, upon good cause shown.

(3) Whenever agreed upon by all of the parties, in writing, the parties can agree to voluntary binding arbitration.

(4) The parties in any action which is at issue and has been on file at least six months may stipulate, in writing, before or after pretrial conference, that it may be submitted for arbitration in accordance with this rule. Upon the filing of such stipulation, the action shall be submitted to arbitration if so ordered by the judge assigned to the case.

(5) Any party to an action which is at issue and has been on file at least six months, may file a motion, executed by that party or the representative of that party, requesting that the case be submitted to arbitration in accordance with this rule. The judge assigned to the case may, after a hearing, grant such motion and order the case submitted to arbitration.

(6) If the arbitration hearing is anticipated to last more than two hours, the parties shall advise the arbitration commissioner at least 48 hours prior to said hearing so that proper arrangements can be made.

(7) A case is submitted to arbitration on the date when the judge assigned to the case places an order on the case docket submitting the case to arbitration.

(B) EXCEPTION TO ORDER

(1) Exceptions to an order submitting a case to arbitration shall be made by a motion filed within ten days of such order.

PART II

(A) SELECTION OF ARBITRATORS

(1) In all cases subject to arbitration, the members of the board of arbitration shall be appointed by the arbitration commissioner from the list of members of the bar of Lake County. The members of the bar qualified to act shall include only those who have filed with the arbitration commissioner their consent to so act, and all acting members of the practicing bar of Lake County shall participate.

(2) If any appointed arbitrator cannot participate in any given hearing, said arbitrator shall submit a declaration, in writing, as to why he or she cannot participate in that particular case and/or on the given date when the case has been set for arbitration, within fourteen days of notice of appointment as an arbitrator or notification of the date set for the arbitration hearing.

(3) In case of unavailability of an arbitrator, said arbitrator shall immediately call the arbitration commissioner, who, in turn, may appoint a new arbitrator to hear the case.

(B) MANNER OF APPOINTMENT

(1) The list of arbitrators shall be divided into three groups, designated as arbitration groups (a), (b), and (c). Group (a) shall consist of lawyers, listed alphabetically, who, as of January 1 of the current year, have been a civil trial practitioner for at least ten years. Group (b) shall consist of lawyers, listed alphabetically, who, as of January 1 of the current year, have been a civil trial practitioner for at least five years. The balance of the lawyers, that is, those who have not been a civil trial practitioner for at least five years, shall be placed, alphabetically, in group (c). The judges shall certify the lists at the first meeting of the General Division each year, and such certification shall be conclusive as to the composition of the lists. Appointments to each board shall be made in alphabetical order, where feasible, one from each group.

**(C) COMPOSITION OF THE BOARD;
DISQUALIFICATION FROM APPOINTMENT**

(1) The lawyer named from group (a) shall be the chair of the board. Not more than one member of a law partnership or an association of attorneys shall be appointed to the same board, nor shall an attorney be appointed to a board who is related by blood or marriage

to any party to the case or to any attorney of record in the case, or who is a law partner or an associate of any arbitrator of record in the case.

(D) ASSIGNMENT OF CASES

(1) The arbitration commissioner shall assign up to three cases to each board appointed by the commissioner at the time of their appointment. The cases shall be taken in order from those cases submitted to arbitration by the judges. No cases shall be assigned by the arbitration commissioner to a board within thirty days from the time such case is submitted to arbitration unless a judge directs that the case be assigned specially within the thirty-day period or in the event that a companion case may be subject to assignment within the thirty-day period. Notwithstanding any provision of these rules to the contrary, a judge may submit a case for arbitration to be held between two specific dates.

(2) No disclosure shall be made to the arbitrators prior to the filing of a report and award referred to in Part IV, of any offers of settlement made by either party or of any "high-low" agreement. Prior to the delivery of the court file to the chair of the board of arbitrators, the arbitration commissioner shall remove from the file and retain all papers or any notations referring to demands or offers of settlement or high-low agreements.

PART III

(A) HEARINGS; WHEN AND WHERE HELD; NOTICE

(1) Hearings shall be held at a place provided by the chair of the board of arbitration. Unless counsel for all parties and the entire board agree, the place shall be Painesville, Ohio. Should the chair be unable to provide a place for the hearing, the chair shall request another member of the board to make such a provision. The chair shall fix a time for hearing not less than fifteen days and not more than thirty days after the appointment of the board of arbitration and shall notify the arbitrators and the parties, or their counsel, in writing, at least ten days before the hearing, of the time and place of the hearing. The thirty-day period may be extended by the arbitration commissioner. No hearing shall be fixed for Saturdays, legal holidays or evenings, except upon agreement by counsel for all parties and the arbitrators.

(2) Since sufficient time is available to the parties prior to the hearing date to settle or compromise their disputes, once a hearing date is set, the hearing shall proceed forthwith at the scheduled time. There shall be no communications by counsel or the parties with the arbitrators concerning the merits of the controversy prior to the commencement of this hearing.

(3) The arbitration shall be held and concluded within ninety days from the date of submission.

(4) Counsel, or the parties if unrepresented, shall promptly notify the Arbitration Commissioner in the event of a case settlement, dismissal, or continuance.

(B) INABILITY OF PARTY TO PROCEED

(1) In the event that counsel for any party is unable to proceed within thirty days from the appointment of the board of arbitration, the chair shall notify the arbitration commissioner who may mark the case "continued" and shall assign another case to the board.

(2) If, for any reason, the plaintiff(s) and/or defendant(s) wish to seek a continuation of the arbitration of the case, the party seeking same shall make all necessary arrangements for the continuance, including written permission from the opposing counsel, the arbitrators, and also establishment of a new date convenient to the arbitrator and all counsel in the pending case.

(C) CASE CONTINUED TWICE CERTIFIED TO COURT

(1) Whenever any case has been continued two times after assignment to arbitration, the case shall be certified by the arbitration commissioner to the judge to whose docket the case has been assigned, who shall summon the parties or their counsel. The judge shall have the power to make any appropriate order, including an order of dismissal for want of prosecution, or an order that the case be again assigned to a board of arbitration and be heard and that an award be made regardless of whether the defending party appears and defends.

(2) Requests for continuance beyond the ninety days from the date of submission by the judge must be made by written motion to the judge assigned to the case.

(D) OATH OF ARBITRATORS

(1) When all the arbitrators are assembled, they shall be sworn or affirmed justly and equitably to try all matters properly at issue submitted to them, which oath or affirmation may be administered to them by any person having authority to administer oaths, or in the absence of such person, by one of their number.

(E) DEFAULT OF A PARTY

(1) The arbitration may proceed in the absence of any party who, after due notice, fails to be present or fails to obtain an adjournment or continuance. An award shall not be made solely on the default of a party; the board of arbitration shall require the other party to submit such evidence as they may require for the making of an award. The failure of a party to appear either in person or by counsel and participate in an arbitration proceeding shall be considered as a waiver of his right to file an appeal de novo (Part VI hereof) and

a consent to the entry by the court of judgment on the report and award of the panel. The court to whom a case is assigned may, upon motion filed with the arbitration commissioner acting for the clerk of court within thirty days of filing of the report and award and for good cause shown, grant leave to party who has failed to appear and participate in a hearing, to file an appeal de novo as hereinafter provided in Part VI.

(F) CONDUCT OF HEARING; GENERAL POWERS

(1) Three members of the board, unless the parties agree upon a lesser number, shall be the judges of the relevancy and materiality of the evidence offered, and conformity to legal rules of evidence shall not be necessary. All evidence shall be taken in the presence of the arbitrators and of all the parties except where any of the parties is absent, in default, or any of the parties has waived the right to be present. The board may receive the evidence of witnesses by affidavit or written report and shall give it such weight as they deem it is entitled to after consideration of any objections made to its admission.

(2) Counsel shall, upon request, whenever possible, produce a party or witness at the hearing without the necessity of a subpoena.

(G) CONDUCT OF HEARING; SPECIFIC POWERS

(1) The board of arbitration shall have the general powers of a court, including, but not limited to, the following powers:

- a. SUBPOENAS. To cause the issuance of subpoenas to witnesses to appear before the board and to request the issuance of an attachment according to the practice of the courts for failure to comply therewith:
- b. PRODUCTION OF DOCUMENTS. To compel the production of all books, papers, and documents which they shall deem material to the case;
- c. ADMINISTERING OATHS; ADMISSIBILITY OF EVIDENCE. To administer oaths or affirmations to witnesses, to determine the admissibility of evidence, to permit testimony to be offered by depositions and to decide the law and the facts of the case submitted to them.

(H) MEDICAL BILLS, OTHER MEDICAL SPECIALS, PROPERTY DAMAGE BILLS OR ESTIMATES, LOST WAGES

(1) In actions involving personal injury and/or damage to property, the following bills or estimates may be offered in evidence for the purpose of proving the value and reasonableness of the charges for services, labor, and materials, or items contained therein and, where applicable, the necessity for furnishing same, namely:

- a. hospital bills, bills of doctors, dentists, chiropractors, registered nurses, licensed practical nurses, physical therapists, or other medical providers;
- b. bills for medicine, eye glasses, prosthetic devices, medical belts or similar items;
- c. property repair bills or estimates; and
- d. lost wages supported by properly verified amounts of lost time, hourly rate, wage statements or similar items.

(2) The respective dollar amounts for each such category may be expressed as one sum; all dates for treatment, services rendered, medical attentions, prescriptions, and property repair bills and all lost wages supported by properly verified amounts of lost time, hourly rate, wage statements or similar items, must be listed and served upon the opposing party within fourteen days prior to the hearing and any notice to an insurance adjuster prior to filing the action or during the pendency of the action shall be sufficient notice to opposing party in cases where insurance may be involved.

(3) **PROCEDURE IN CASE OF ESTIMATE.** In the case of an estimate, the party intending to offer the estimate shall forward with the notice to the adverse party, together with the copy of the estimate, a statement indicating whether or not the property was repaired, and if it was, whether the estimated repairs were made in full or in part, attaching a copy of the receipted bill showing the items of repair made and the amount paid.

(4) **SUPERVISORY POWERS OF COURT.** The judge to whose docket the case has been assigned shall have full supervisory powers with regard to any questions that arise in all arbitration proceedings and in the application of these rules.

(J) WITNESS FEES

(1) Witness fees in any case referred to the board of arbitration shall be in the same amount as now or hereafter provided for witnesses in trials in the Common Pleas Court of Lake County, Ohio, and may be ordered taxed as costs in the case. Costs in the case shall be paid by the same party or parties by whom they would have been paid had the case been tried in the Common Pleas Court of Lake County, Ohio.

(K) TRANSCRIPT OF TESTIMONY

(1) The arbitrators shall not be required to make a transcript of the proceedings before them. If any party desires a transcript, he shall provide a reporter and cause a record to be made. The requesting party shall pay the cost, which shall not be considered costs in the case. Any party desiring a copy of any transcript shall be provided with it by the reporter upon payment, based upon the usual charges made for a copy of a transcript.

(L) MISCELLANEOUS

(1) Any motion that inadvertently has not been ruled on prior to the submission of the action to arbitration or that has been filed subsequent to the submission shall be disregarded by the board of arbitration and, for the purposes of arbitration, treated as a nullity.

(2) The board of arbitration shall not consider collateral source benefits a claimant has received or may be entitled to receive. Although a stipulation between the parties as to the amount of set-off is encouraged, a party seeking an adjustment for collateral benefits pursuant to R.C. Section 2744.05(B) and R.C. Section 2305.27 must file a motion with the assigned judge within ten days of the filing of the report and award of arbitration and file a copy with the arbitration commissioner. A brief in opposition shall be filed within seven days of the filing of the motion and a copy filed with the arbitration commissioner. The arbitration commissioner shall forward the motion and brief in opposition to the judge for ruling, and the filing of the motion shall stay the entering of judgment on the report and award. However, in no event shall filing the motion extend the time for filing an appeal de novo. After the judge renders a ruling on the motion and informs the arbitration commissioner, the report and award will be reduced to judgment in accordance with that ruling.

PART IV

(A) REPORT AND AWARD

(1) Within seven (7) days after the hearing, the board of arbitration shall file a report and award with the arbitration commissioner and on the same day shall mail or otherwise forward copies thereof to all parties or their counsel. There is no monetary limit on an award. The report and award shall be signed by all of the members of the board. In the event all three members do not agree on the finding and award, the dissenting member shall write the word "Dissents" before his or her signature. A minority report shall not be required unless the arbitrator elects to submit the same due to unusual circumstances. The arbitration commissioner shall make a note of the report and award on the docket and file the original report with the clerk of courts forthwith.

(B) LEGAL EFFECTS OF REPORT AND AWARD; ENTRY OF JUDGMENT

(1) The report and award, unless appealed from as herein provided, shall be final and shall have the attributes and legal effect of a verdict. If no appeal is taken within the time and in the manner specified therefor, the court shall enter judgment in accordance therewith. After entry of such judgment, execution process may be issued as in the case of other judgments.

PART V

(A) COMPENSATION OF ARBITRATORS

(1) Each member of a board of arbitration, who has signed an award or files a minority report, shall receive as compensation, for services in each case, a fee of \$150.00 for lawyers in group (a), a fee of \$125.00 for lawyers in group (b), a fee of \$100 for lawyers in group (c). When more than one case arising out of the same transaction is heard at the same hearing or hearings, it shall be considered as one case insofar as compensation of the arbitrators is concerned. In cases requiring a hearing of unusual duration, or involving questions of unusual complexity, the judge to whose docket said case has been assigned, on petition of the members of the board and for cause shown, may allow additional compensation. The members of a board shall not be entitled to receive their fees until after filing the report and award with the arbitration commissioner. Fees paid to arbitrators shall not be taxed as costs, nor follow the award as other costs.

(2) All compensation for arbitrators shall be paid, upon proper warrant, from funds of Lake County, Ohio, which have been allocated for the operation of the Common Pleas Courts of Lake County, Ohio.

(3) If a case shall be settled or dismissed sooner than two days prior to the date scheduled for hearing, the board members shall not be entitled to the fee. If a case has been settled or dismissed within the two-day period, the board members shall be entitled to receive the fee. Upon receiving notice that the case has been settled or dismissed more than two days before the date set for hearing, the arbitration commissioner shall assign another case to the same board.

(4) If a hearing takes more than four hours but less than eight hours, the arbitrators may be entitled to additional compensation upon application submitted by the panel chair and agreement by the assigned judge. If a hearing lasts more than eight hours, the arbitrators shall receive additional compensation after application is submitted by the panel chair to the assigned judge to determine the amount of additional fees.

PART VI

(A) RIGHT OF APPEAL

(1) Any party may appeal from the action of the board of arbitration to the Common Pleas Court of Lake County. The rights of appeal shall be subject to the following conditions, all of which shall be complied with within thirty days after the entry of the award of the board on the docket in the office of the clerk of courts.

(2) NOTICE OF APPEAL AND COST. The appellant shall pay a nonrefundable appeal fee as set forth on the clerk's schedule of fees to the clerk of courts and shall file with the clerk and the arbitration commissioner a notice of appeal together with an affidavit that the

appeal is not taken for delay, but because the appellant believes an injustice has been done. The appellant shall serve a copy of the notice and affidavit upon opposing parties or their counsel. The appeal fee shall not be taxed as costs in the case and shall not be recoverable by the appellant in any proceeding.

(3) **POVERTY AFFIDAVIT AND NOTICE.** A party desiring to appeal an award may apply by a written motion and affidavit to the court, averring that by reason of poverty the appellant is unable to make payments required for an appeal. If, after due notice to the opposing parties, the judge is satisfied of the truth of the statements in the affidavit, the judge may order that the appeal of such party be allowed without repayment of the fees.

(4) **RETURN TO ACTIVE LIST.** The cases shall thereupon be returned to the assigned judge.

(B) APPEAL DE NOVO

(1) All cases which have been duly appealed shall be tried *de novo*.

(C) TESTIMONY OF ARBITRATORS ON APPEAL

(1) If a party appeals from the award or decision of the board of arbitration, the arbitrators shall not be called as witnesses as to what took place before them in their official capacity as arbitrators upon any hearing *de novo*.

(D) EXCEPTIONS AND REASONS THEREFOR

(1) Any party may file exceptions with the clerk of courts from the decision of the board of arbitration within twenty days from the filing of the report and award for either or both of the following reasons, and no other:

- a. that the arbitrators misbehaved themselves in conduct of the case; and/or
- b. that the action of the board was procured by corruption or other undue means.

(2) Copies of the exceptions shall be served upon each arbitrator and the arbitration commissioner within 48 hours after filing and shall be forthwith assigned for hearing before the judge to whose docket the case has been assigned or before a judge assigned by that judge to conduct a hearing thereon. If such exceptions are sustained, the report of the board shall be vacated by the court, and the case shall be placed upon the civil active list.

(Adopted August 1, 1977; amended eff. February 1, 1995;
January 1, 2000; October 1, 2002, January 1, 2005)