

29.0 ARBITRATION

PART I: CASES FOR SUBMISSION

- (A) A case shall be placed upon the Arbitration List if so ordered by a Judge after a Case Management Conference, pretrial or settlement conference and the Court has determined that all parties to the case have made an appearance by filing a responsive pleading or otherwise.
- (B) Judges should ensure that the case is appropriate for Arbitration.
- (C) The amount actually in controversy, exclusive of interest and costs, is fifty thousand dollars (\$50,000.00) or less per plaintiff and/or cross-claimant. Cases involving title to real estate or actions in equity are usually not suitable for Arbitration unless the determination of a sum of money is a matter at issue, and it will substantially dispose of an action. In such cases, the Court may in its usual referral order refer such an issue for determination by a panel, reserving other issues for the Court. Arbitration shall be ordered in cases where the monetary amount in controversy exceeds the sum specified in the Arbitration rule where all the parties to the action agree to Arbitration.
- (D) All discovery must be completed before a case is referred to Arbitration. Timely motions must be ruled upon. The issues must be joined and the case must be ready for trial. No further pleadings, motions, discovery or delays will be permitted.

PART II: SELECTION OF ARBITRATORS

(A) ELIGIBILITY AND CLASSIFICATION OF PROSPECTIVE ARBITRATORS

- (1) Chairpersons must have been admitted to the Ohio Bar and actively engaged in the practice of law for not less than three (3) years. Non-Chairpersons must have been so admitted for not less than one (1) year.
- (2) Attorneys shall indicate to the ADR Administrator the type of dispute the attorney prefers to arbitrate and the area of the attorney's expertise, including prior experience.
- (3) Where practical, the ADR Administrator will assign an Arbitrator to a case within that attorney's expertise.

(B) APPOINTMENT OF ARBITRATION PANEL

- (1) The list of Arbitrators shall be divided into two (2) groups, Chairpersons and Non-Chairpersons. The ADR Administrator may designate an attorney as a Chairperson who has been actively engaged in the practice of law for not less than three (3) years and has requested such designation. Appointments to each Panel shall be made by the ADR Administrator and consist of one member from the list of Chairpersons and two members from the list of Non-Chairpersons. Where feasible, appointments shall be made in alphabetical order with consideration given to the attorney's expertise or practice so as to achieve a balanced panel.
- (2) Not more than one member of a law partnership or an association of attorneys shall be appointed to the same Panel, nor shall an attorney be appointed to a Panel who is related to any party to the case or to any attorney of record in the case, or has any bias or prejudice that may effect the outcome of the case.

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PART III: ASSIGNMENT OF CASES

- (A) A case shall be assigned by the ADR Administrator to a Panel upon referral by a Judge.
- (B) No disclosure shall be made to the Arbitrators prior to the filing of the report and award referred to in Part VI of any offers to settle made by either party. Prior to the delivery of the Court file to the Chairperson of the Panel of Arbitrators, the ADR Administrator shall remove from the file and retain all papers referring to demands or offers for settlements and any notations containing the Court's subjective impressions of the case.
- (C) In all cases subject to Arbitration and where all parties to the action agree, the Court may, in its usual referral order, refer the matter for determination to a single, special Arbitrator in lieu of a Panel of Arbitrators. The Court may select as special Arbitrator a lawyer named on the Arbitration List or a lawyer experienced (and who would qualify as an expert) in the area of practice which is the subject of the action to be referred to Arbitration. The special Arbitrator shall receive the same compensation as the Chairperson of a Panel of Arbitration. Except that the special Arbitrator shall act and make a decision as a single Arbitrator, in all other respects, the procedures in Rule 29 shall be in full force and effect until further order of Court.

PART IV: ARBITRATION REFERRAL ORDER

The Entry referring a case to Arbitration shall read as follows:

All discovery is complete. All timely motions have been ruled upon. The issues are joined and the case is ready for trial. No further pleadings, motions, discovery or delays permitted. Case referred to Arbitration. Arbitration hearing shall be held and concluded within ninety (90) days from the date of referral.

If a continuance of a hearing within the ninety (90) days is agreed to by the Chairperson of the Arbitration Panel upon request of an attorney for a party, the party so requesting the continuance shall have the responsibility for contacting all parties and Arbitration Panel members to obtain a date and time for the new hearing which is agreeable to all involved and notifying all parties, panel members, and the ADR Administrator in writing of the new time and place of the hearing. Continuances should be granted by the Chairperson only in situations of extreme hardship.

Requests for continuance beyond the ninety (90) days from the date of referral must be made to the Judge assigned the case by written motion in compliance with this rule.

PART V: HEARINGS: WHEN AND WHERE HELD; NOTICE

- (A) Hearings shall be held at a place provided by the Chairperson of the Panel of Arbitration. This may be in a private office, the hearing room at the office of the ADR Administrator, or a Bar Association office. Unless counsel for all parties and the entire Panel agree, the place shall be one of central city location. Should the Chairperson be unable to provide a place for the hearing, request shall be made to another member of the Panel to make such provision. Within fourteen (14) days of the appointment, the Chairperson shall fix a time for the hearing within ninety (90) days of the referral date by the Court, and the Chairperson shall notify the Arbitrators and the parties or their counsel in writing at least ten

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(10) days before the hearing of the time and place of the hearing. No hearings shall be fixed for Saturdays, Sundays, legal holidays or evenings, except upon agreement by counsel for all parties and the Arbitrators.

Whenever there is a settlement, or dismissal, written notice, or if there is insufficient time for written notice to reach all parties, Arbitrators and the ADR Department, oral notice shall be given to the ADR Department and all the members of the Arbitration Panel that the case has been settled or been dismissed. In the event that a case shall be settled or dismissed prior to the date scheduled for the hearing, the Panel members shall not be entitled to a fee. In the event that a case has been settled or dismissed and the parties have failed to notify the Panel members, and the members do appear on the date of the hearing, the Panel members shall be entitled to receive a fee. A failure to so notify the Panel members shall be reported to the assigned Judge who may impose sanctions in the amount of the Arbitrators' fees hereinafter provided in Part VII (D). *(this paragraph added 12/01/97)*

- (1) There shall be no communications by counsel or the parties with the Arbitrators concerning the merits of the controversy prior to the commencement of the hearing.
- (2) Any motion that inadvertently has not been ruled on prior to the reference of the action to Arbitration or has been filed subsequent to the reference shall be disregarded by the panel and, for the purposes of Arbitration, treated as a nullity.
- (3) Whenever there is a request to continue an Arbitration hearing to a date beyond ninety (90) days from the date of referral, a written motion must be made to the Judge assigned the case. 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 Panel of Arbitration and be heard and an award made, whether or not a party appears.

(B) 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. An award shall not be made solely on the default of a party. The Panel of Arbitration shall require the other party to submit such evidence as they may require for the making of an award.
- (2) 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 the right to file an appeal de novo (Part VII hereof) and a consent to the entry by the Court of judgment on the report and award of the panel.
- (3) The Court to whom a case is assigned may, upon motion filed with the ADR Administrator acting for the Clerk of Courts within thirty (30) days of filing of the report and award and for good cause shown, grant leave to file an appeal de novo as hereinafter provided in Part VII to a party who has failed to appear and participate in a hearing.

(C) CONDUCT OF HEARING

(1) General Powers

- (a) The Chairperson should rule on evidentiary matters with the advice of the other Panel members. Strict conformity to the legal Rules of Evidence shall not be necessary. All evidence shall be taken in the presence of the Arbitrators and all of the parties except

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where any of the parties is absent, in default, or any of the parties has waived the right to be present. The Panel may receive the evidence of witnesses by sworn testimony or by affidavit or written report, including police reports, Sheriff's reports and highway patrol reports, and shall give it such weight as they deem it is entitled to after consideration of any objection made to its admission. Expert reports (medical or otherwise) shall be received into evidence when they are on the expert's letterhead and signed.

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

(2) Specific Powers

- (a) The Panel of Arbitration, by a majority, shall have the general powers of a Court, including, but not limited to, the following powers:
- (b) Subpoenas. Subpoenas are to be issued as provided in Civil Rule 45 through the Clerk's Office as in any other case filed in Common Pleas Court. The subpoena forms should be altered to show the correct place of hearing.
- (c) Production of Documents. The Panel has the power to compel the production of all books, papers and documents which are material to the case.
- (d) Should a party or witness fail to produce documents or to testify as to a matter after being ordered to do so by a panel, the panel may treat that particular matter as uncontroverted and proceed to make a final award without the necessity of issuing a citation for contempt.
- (e) Administering Oaths; Admissibility of Evidence. The Panel has the power to administer oaths of 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 it.
- (f) Medical Bills, Property Damage Bills or Estimates. In actions involving personal injury and/or damage to property, the following bills or estimates may be offered and received in evidence without further proof, for the purpose of proving the value and reasonableness of the charge for services, labor and material, or items contained therein and, where applicable, the necessity for furnishing the same, accompanied by a copy of the bills to be offered in evidence:
 - (i) Hospital Bill. Hospital bills on the official letterhead of the hospital, when dated and itemized.
 - (ii) Bills of Doctors and Dentists. Bills of doctors and dentists, when dated and containing a statement showing the date of each visit and the charges.
 - (iii) Bills of Nurses, etc. Bills of registered nurses, licensed practical nurses, or physical therapists, when dated and containing an itemized statement of the days and hours of service and the charges.

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- (iv) Bills for Medicines, etc. Bills for medicines, eyeglasses, prosthetic devices, medical belts, or similar items.
- (v) Property Repair Bills or Estimates. Property repair bills or estimates, when identified and itemized, setting forth the charges for labor and material used in the repair of the property.
- (vi) Procedure in Case of Estimate. In the case of an estimate, the party intending to offer the estimate shall forward with his 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 part, attaching a copy of the receipted bill showing the items of the repair made and the amount paid.

(3) Collateral Sources

- (a) The Panel of Arbitration shall not consider collateral source benefits a claimant has received or may be entitled to receive.
- (b) Although a stipulation between the parties as to the amount of a set-off is encouraged, a party seeking an adjustment for collateral benefits pursuant to O.R.C.2744.05 (B) and O.R.C.2305.27 must file a motion with the assigned Judge within ten (10) days of the posting of the report and award and hand deliver a copy of the motion to the office of the ADR Administrator. A brief in opposition shall be filed within seven (7) days of the filing of the motion and a copy shall be hand delivered to the office of the ADR Administrator. The ADR Administrator 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 such time that the Judge renders a ruling on the motion and informs the office of the ADR Administrator, the report and award will be reduced to judgment in accordance with that ruling.

(D) SUPERVISORY POWERS OF THE COURT

The assigned Judge shall have full supervisory powers with regard to any questions that arise in all Arbitration proceedings and in the application of these rules.

(E) WITNESS FEES

Witness fees in any case referred to a Panel of Arbitration shall be in the same amount as provided for witnesses in trials in the Common Pleas Court of Cuyahoga County, Ohio, and may be ordered taxed as costs in the case. The costs in any 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 Cuyahoga County, Ohio.

(F) TRANSCRIPT OF TESTIMONY

The Arbitrators shall not be required to make a transcript of the proceedings. If any party shall desire a transcript, that party shall provide a reporter and cause a record to be made. The party requesting the same shall pay the costs which shall not be considered costs in the case. Any party desiring a copy of

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any transcript shall be provided a copy by the reporter upon payment, based upon the usual charges made for a copy of a deposition plus one-half (½) of the cost of the reporter at the hearing.

PART VI: REPORT AND AWARD

(A) Within seven (7) days following the hearing, the Panel of Arbitration shall file a report and award in the office of the ADR Administrator acting for the Clerk of Courts, and on the same day shall mail or otherwise forward copies to all parties or their counsel. An award may not exceed fifty thousand dollars (\$50,000.00) per plaintiff and/or cross-claimant, exclusive of interest, unless the parties have waived the monetary limits. The report and award shall be signed by all of the members of the Panel. In the event all three (3) members do not agree on the finding and award, the dissenting member shall write the word "dissents" before the signature. A minority report shall not be required unless the dissenting Arbitrator elects to submit a report due to unusual circumstances. The ADR Administrator shall make a notice of the report and award on the docket and file the original report with the Clerk of Courts.

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

The report and award, unless appealed, 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, the Court shall enter judgment. After entry of judgment, execution process may be issued as in the case of other judgments.

PART VII: APPEALS

(A) RIGHT OF APPEAL DE NOVO

(1) Any party may appeal from the action of the Panel of Arbitration to the Common Pleas Court of Cuyahoga County. No appeal can be withdrawn without consent of all parties. The filing of a single appeal shall be sufficient to require a de novo trial of the entire case on all issues and as to all parties without the necessity of each party filing a separate appeal de novo. The right of appeal shall be subject to the following conditions, all of which shall be complied with within thirty (30) days after the entry of the award of the Panel.

(a) Notice of Appeal and Costs.

A notice of appeal de novo, together with an affidavit that the appeal is not taken for delay but upon the belief an injustice has been done, shall be filed by the appellant in the office of the ADR Administrator acting for the Clerk of Courts. The sum mentioned in (1)(b) below shall be filed with the notice and affidavit.

(b) Repayment of Arbitration Fees

The appellant shall repay to Cuyahoga County, Ohio by depositing with the Clerk of Courts all fees received by the members of the Panel of Arbitration in the case in which the appeal is taken. The sum so paid shall not be taxed as costs in the case and shall not be recoverable by the appellant in any proceeding.

(c) Poverty Affidavit and Notice.

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A party desiring to appeal an award may, concurrently with the filing of a notice of appeal de novo, file a written motion with affidavit averring that by reason of poverty the party is unable to make the payments required for an appeal, and request the Court allow an appeal de novo without payment of the amount specified in (1)(b). If after notice to the opposing parties the Judge is satisfied of the truth of the statements in the affidavit, an order shall be entered that the appeal of such party be allowed without payment of the required fee.

(B) RETURNED TO ASSIGNED JUDGE

The case shall be returned to the docket of the originally assigned Judge for trial.

(C) APPEAL DE NOVO

All cases which have been duly appealed shall be tried de novo.

(D) TESTIMONY OF ARBITRATORS ON APPEAL

In the event of an appeal from the award of the decision of the Panel 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.

(E) EXCEPTIONS AND REASONS THEREFORE FOR ARBITRATOR MISCONDUCT

- (1) Any party may file exceptions with the Clerk of Courts at the office of the ADR Administrator from the decision of the Panel of Arbitration within thirty (30) days from the filing of the report and award for either or both of the following reasons, and for no other:
 - (a) That the Arbitrators misbehaved themselves in the conduct of the case;
 - (b) That the action of one or more of the Arbitrators was procured by misconduct or corruption.
- (2) Copies of said exceptions shall be served upon each Arbitrator and the ADR Administrator within forty-eight (48) hours after filing and shall be heard by the assigned Judge forthwith.
- (3) If such exceptions are sustained, the report of the Panel shall be vacated by the Court and the case set for trial. The filing of exceptions shall toll the running of the thirty (30) day appeal period provided in (A) above until a determination of the exceptions by the Court.

PART VIII: COMPENSATION OF ARBITRATORS

- (A) Each member of a Panel of Arbitration who has signed an award or files a minority report shall receive as compensation for services in each case a fee of seventy-five dollars (\$75.00). When more than one case arising out of the same transaction is heard at the same hearing or hearings, it shall be considered one case insofar as compensation of the Arbitrators is concerned. In cases requiring hearings of unusual duration or involving questions of unusual complexity, the Administrative Judge, on motion of the members of the Panel and for cause shown, may allow additional compensation. The members of the Panel shall not be entitled to receive their fees until after filing the report and award with the ADR Administrator. Fees paid to Arbitrators shall not be taxed as costs nor follow the award as other costs.

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- (B) The Chairperson shall receive as compensation the sum of twenty-five dollars (\$25.00) for each case heard by the Panel, in addition to the compensation fixed for members of the Panel of Arbitration.
- (C) All compensation for Arbitrators shall be paid upon proper warrant from funds of Cuyahoga County, Ohio which have been allocated for the operation of the General Division of Common Pleas Court of Cuyahoga County.
- (D) In the event that a case shall be settled or dismissed more than two (2) days prior to the date scheduled for the hearing, the Panel members shall not be entitled to a fee.

Effective 05/01/99