

**Court of Common Pleas
County of Summit**

General Division

209 SOUTH HIGH STREET

AKRON, OHIO 44308

July 7, 2017

Robert G. Heffern
Akron Legal News
60 S. Summit Street
Akron, OH 44308

Dear Mr. Heffern:

The Judges of the Common Pleas Court, General Division, request that the following notice and proposed amendment to Misc. Order 325, Rule 10. Arbitration, be published for one week in the Akron Legal News beginning July 13, 2017. Further, the court is seeking public comment for the following two weeks, through the end of business on August 3, 2017. (Proposed amendment of Rule 10. is enclosed).

At a meeting of the Summit County Common Pleas Court General Division Judges it was agreed to seek a two week comment period for the proposed amendment to Local Rule 10. The proposed amendment can be viewed on the court's website at <http://www.summitcpcourt.net>. Comments should be submitted to the Court Executive Office at rgainer@cpcourt.summitoh.net by the end of business on August 2, 2017.

Thank you.

Sincerely,



Susan K. Sweeney
Assistant Court Executive Officer

SKS:cd
Enclosure

cc: Akron Bar Association for publication in the Bar Examiner

10. ARBITRATION

10.01 Arbitration Procedures

Arbitrations in the Common Pleas Court of Summit County, Ohio shall be conducted in accordance with the procedures set forth in this local rule.

10.02 Cases for Submission

(A) Mandatory Arbitration / Amount

Every civil case, except those involving title to real estate, equitable relief, or appeal, in which the amount actually in controversy (exclusive of interest and costs) has been determined at pretrial by the assigned judge to be Fifty Thousand Dollars (\$50,000.00) per claimant or less, may be submitted to mandatory arbitration pursuant to this rule.

(B) Stipulation

Without limitation as to amount, counsel in any civil action may stipulate, in writing, before or after pretrial, that the case may be submitted to mandatory arbitration in accordance with this rule. Upon the filing of such stipulation, the action shall be submitted to mandatory arbitration.

(C) Motion

Counsel in any civil action which is at least six (6) months old may file a motion, before or after pretrial, accompanied by a pretrial statement, requesting that the case be submitted to mandatory arbitration in accordance with this rule. The assigned judge may, after a hearing, grant such motion and order the case submitted to mandatory arbitration.

10.03 Arbitrators

(A) Selection

In all cases subject to arbitration, the members of the Board of Arbitration shall be appointed by the assigned judge from the list of members of the Bar of Summit County who have been admitted to the practice of law for more than one year, and who have consented to act as arbitrators, and who have filed with the Administrative Judge their consent to so act. Attorneys subsequently desiring to be eliminated from the list may so notify the Administrative Judge by letter. The list of arbitrators shall be kept on file with the Administrative Judge, who shall record all appointments.

(B) Manner of Appointment

The assigned judge in each case submitted to arbitration shall appoint three lawyers from the list to act as an Arbitration Board. One of the lawyers so appointed shall be designated as chair of the Board by the assigning judge. The parties may, by agreement, stipulate that the case shall be submitted to a single arbitrator rather than a panel of arbitrators. The Administrative Judge shall be notified of all appointments in order that he may properly record same.

(C) Single Arbitrator

In all cases submitted to arbitration, parties may stipulate to have the case heard by a single arbitrator chosen by agreement of the parties from the list provided for in Rule 10.03 (A). In all such cases submitted to one arbitrator, the sole arbitrator shall receive a fee of One Hundred Thirty Dollars (\$130.00).

Additionally, the parties may stipulate to compensate a sole arbitrator more than One Hundred Thirty Dollars (\$130.00); however, in such cases, any amount paid to the sole

arbitrator over One Hundred Thirty Dollars (\$130.00) shall not be paid out of County funds, but shall be paid by the parties as they may agree.

(D) Composition of Board; Disqualification

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 in the case or to any attorney of record in the case, or who is a law partner or associate of any arbitrator-of- record in the case, or who has an interest in the determination of the case which would interfere with an impartial consideration of the case.

10.04 Non-disclosure of Offers of Settlement

No disclosure shall be made to the arbitrators prior to the filing of the report and award of any offers to settle made by either party. Prior to the delivery of the case file to the chair of the Board of Arbitrators, the judge to whom such case has been assigned shall remove from the file and retain all papers or any notations referring to demands or offers for settlement, including demands or offers for settlement contained in the pretrial statement.

10.05 Hearings

All arbitration hearings must be held within ninety (90) days from the date of referral.

(A) Time and Place

Hearings shall be held at a place designated by the Court, preferably in the courthouse or other County building. The Arbitration Clerk in the Civil Assignment office shall fix a time and date of hearing and shall notify the arbitrators and all parties and/or attorneys to the suit. No hearing shall be fixed for Saturdays, Sundays, legal holidays, or evenings, except upon agreement by counsel for all parties and the arbitrators.

(B) Settlement

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 unilateral communications by counsel or the parties with the arbitrators concerning the merits of the case at any time prior to the filing of the report and award of the Board.

10.06 Inability of Party to Proceed

(A) Continuance

In the event that counsel for any party is unable to proceed on the date assigned, unless otherwise ordered by the assigned judge, the chairman may mark the case ~~§continued~~ and reset it for hearing within ninety (90) days from the date of referral.

(B) Pending Motions

Any motion that has not been ruled on prior to the referral of the action to arbitration or that has been filed subsequently to the referral shall be disregarded by the panel and for the purposes of arbitration treated as a nullity.

10.07 Case Continued Twice-Certified to Court

Whenever any arbitration hearing has been continued two (2) times after assignment to a panel, said case shall be certified by the chairman to the judge, who shall summon the parties or their counsel. The judge shall have the power to make an appropriate order, including an order of dismissal for want of prosecution, or an order that the case be again

assigned to the Board of Arbitration and be heard and an award made whether or not a party appears.

10.08 Oath of Arbitrators

When the arbitration panel has been assembled, they shall be sworn or affirmed in the presence of the litigants as follows:

"I solemnly swear or affirm that I will faithfully and fairly hear and examine the matters in controversy, and that I will make a just award to the best of my understanding."

The oath or affirmation may be administered by counsel for a party who is a notary public, or in the absence of such person, by one of the panel.

10.09 Default of a Party

The arbitration may proceed in the absence of any party, who, after due notice, fails to be present or who fails to obtain an adjournment. 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 a waiver of that party's right to file an appeal de novo 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 within thirty (30) days of filing of the report and award, and for good cause shown, grant leave to a party who has failed to appear and participate in a hearing, to file an appeal de novo as hereinafter provided.

10.10 Conduct of Hearing/ General Powers

A majority of the members of the Board, unless the parties agree upon a single arbitrator, shall be the judge 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 all of the parties except where any of the parties is absent, in default, or has waived the right to be present. The Board may receive the evidence of witnesses by sworn testimony or by affidavit or written report and shall give it such weight to which they deem it is entitled after consideration of any objections made to its admission. Counsel shall upon request, whenever possible, produce a party or witness at the hearing without the necessity of a subpoena.

10.11 Specific Powers

The Board of Arbitrators, by a majority thereof, shall have the general powers of a court, including but not limited to, the following:

(A) Subpoenas

Subpoenas may be issued as provided in Civ.R. 45, through the office of the Clerk as in any other case filed in the Common Pleas Court. The subpoena forms should be altered to show the correct place of hearing.

(B) Production of Documents

The Board of Arbitrators shall have the power to compel the production of all books, papers, and documents which they deem material to the case. Should a party or witness fail to produce documents or to testify regarding a matter after being ordered to do so by a panel, the panel shall consider that particular matter uncontested and may proceed to make a final award without the necessity of issuing a citation for contempt.

(C) Administering Oath/ Admissibility

The Board of Arbitrators shall have the power 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.

(D) Medical Expenses; Property Damage

In actions involving personal injury and/or damage to property, bills or estimates as described herein may be offered and received in evidence without further proof, for the purpose of proving the value and reasonableness of charges for services, labor and materials, or items contained therein, and where applicable, the necessity for such expenses, on condition that one (1) week's written notice has been given to the adverse party, accompanied by copies of the bills to be offered in evidence.

(1) Hospital Bills

Bills for hospital services must be on the official letterhead or billhead of the hospital and must be dated and itemized.

(2) Doctor/Dentist Bills

Bills for services rendered by doctors and dentists must be on the official letterhead or billhead of the doctor or dentist, and must state the dates of each visit and an itemization of the charges for each visit.

(3) Bills for Nurses, etc.

Bills for services rendered by registered nurses, licensed practical nurses, or physical therapists must be dated and must contain an itemization of the days and hours of services and the corresponding charges for such services.

(4) Bills for Medications, etc.

Bills and receipts for medications, eye glasses, prosthetic devices, medical belts, or similar items must clearly show the date and place of purchase and the amount of each purchase.

(5) Property Repair Bills or Estimates

Bills or estimates for property repair must clearly identify and set forth the charges for labor and materials necessary for repair of the property. In the case of an estimate, the party intending to offer the estimate into evidence shall, at least one (1) week prior to the arbitration, forward to the adverse party notice of such intention, together with a copy of the estimate and a statement indicating whether or not the property was repaired in full or in part. If repairs were made, such notice shall include a copy of the receipt or bill showing the items of repair made and the amount paid for labor and materials.

(E) Supervisory Powers of Judge

The assigned judge or a judge designated to serve in the assigned judge's absence shall have full supervisory power with regard to any questions that arise in all arbitration proceedings and in the application of these rules.

10.12 Witness Fees

Witness fees in any case referred to arbitration shall be in the same amount as now or hereafter provided for trial witnesses in the Common Pleas Court of Summit 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 gone to trial.

10.13 Transcript of Testimony

There shall be no recording or transcription taken during an arbitration hearing.

10.14 Report and Award - Not a Judgment

Within twenty (20) days after the hearing, the chairman of the Board of Arbitration shall prepare and file a report and award with the Clerk, and on the same day shall mail or otherwise forward copies thereof to all parties or their counsel. An award may not exceed Fifty Thousand Dollars (\$50,000.00) per claimant, exclusive of interest and costs. 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 dissenting arbitrator elects to submit the same due to unusual circumstances. The chairman shall also submit a copy of the report and award to the assigned judge.

10.15 Legal Effect of Report and Award

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 a judgment in accordance therewith. After order of such judgment, execution process may be issued as in the case of other judgments.

10.16 Compensation of Arbitrators

(A) Members of the Board

Each member of the Board of Arbitration who has signed an award or files a minority report, shall receive, as compensation for his/her services in each case, a fee of \$70.00 per half day. When more than one case arising out of the same transaction is heard at the same hearing(s), it shall be considered one case in determining compensation of arbitrators. In cases requiring hearings of unusual complexity, the assigned Judge, upon motion of the members of the Board and for cause shown, may allow additional compensation. The members of the Board shall not be entitled to receive their fee until after filing the Report and Award with the assigned Judge. Fees paid to arbitrators shall not be taxed as costs nor follow the award as other costs.

(B) Chairman

The Chairman shall also receive compensation of \$20.00 per half day for each case heard by the Board, in addition to the compensation in Rule 10.16(a).

(C) Source of Funds

All compensation for arbitrators shall be paid from funds of Summit County, upon proper warrant, which have been allocated for the operation of the Summit County Common Pleas Court.

(D) Settlement/Dismissal of Claim

In the event a case is settled or dismissed more than two (2) days prior to the date scheduled for the hearing, the Board members shall not be entitled to the aforesaid fees. In the event a case has been settled or dismissed within said 2-day period, Board members shall be entitled to receive said fees. The 2-day period shall include Saturdays, Sundays and holidays.

Counsel for the parties are required to notify the Arbitration Clerk immediately of any settlement or dismissal. If the arbitration notice is not more than two working days, the assigned Judge, for good cause shown, can require one or more of the parties to pay the arbitrator fees if the arbitrator does not proceed as scheduled.

10.17 Appeals

(A) Right of Appeal De Novo and Filing Requirements

Any party may appeal an award of the Board of Arbitration to the Common Pleas Court of Summit County, if within thirty days (30) after filing of the award with the Clerk, the party does both of the following:

(1) Files a notice of appeal with the Clerk and serves a copy on the adverse party or parties and assigned judge accompanied by an affidavit that the appeal is not being taken for delay. The affidavit accompanying the notice of appeal shall be signed by the appealing party or counsel for the appealing party. The appellant's notice of appeal shall be accompanied by an appeal fee of Fifty Dollars (\$50.00), payable to the Clerk.

(2) Reimburses the Clerk for all fees paid to the arbitrators in the case. The sum so paid shall not be taxed as costs in the case and shall not be recoverable by the appellant in any proceeding.

(B) If the party appealing is indigent, then upon proper motion or affidavit of indigency, the assigned judge may allow the appeal to proceed without the payments as required herein.

(C) An appeal de novo duly made, shall be an appeal of all claims and issues raised by the pleadings in the appealed case.

(D) All appeals shall be de novo proceedings at which members of the deciding Board of Arbitration, or single arbitrator are barred as witnesses.

10.18 Exceptions

(A) Reasons for Exceptions

Any party may file exceptions with the Clerk from a decision of the Board 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: (1) that the arbitrators behaved improperly in the conduct of the case; and/or (2) that the action of one or more of the arbitrators was procured by misconduct or corruption.

(B) Procedure

Copies of said exceptions shall be served upon each arbitrator within forty-eight (48) hours after filing and the matter shall forthwith be set for hearing before the assigned judge. If such exceptions are sustained, the report of the Board shall be vacated by the Court and the case shall be set for trial. The filing of exceptions shall toll the running of the thirty (30) day period for appeal as provided in Rule 10.17 (A) herein until a ruling on the exceptions has been made by the Court.

10.19 Time Parameters

(A) All arbitrations conducted under these rules will be governed by the following time parameters:

(1) All plaintiffs to the action shall have a total of one and a half hours to present their case(s) in chief, case(s) in rebuttal or in defense of any and all claims. This one and a half hours, includes time for opening statements and closing arguments. The one and a half hours may be allocated between all plaintiffs as all plaintiffs may agree.

(2) All defendants to the action shall have a total of one and a half hours to present their case(s) in chief, counterclaim(s) and case(s) in rebuttal or in defense of any and all claims. This one and half hours includes time for opening statements and closing arguments. The one and a half hours may be allocated between all defendants as all defendants may agree.

(B) For good cause shown, including, but not limited to cases involving third-party practice, the time parameters set forth in Section 10.19 (A) may be altered, but only by the judge

assigned to the case. In such cases, the chairman and arbitrators shall be compensated in half day increments as provided under Rule 10.16 for additional time spent.