

RULE 24. Compulsory arbitration

(A) Cases for arbitration

(1) Any judge of the general division of the Court of Common Pleas may at the case management conference or thereafter order and schedule, by entry, any case to be heard and decided by a Board of Arbitration, consisting of not more than three members of the Bar of Hamilton County, Ohio, to be selected as hereinafter provided, except those cases involving title to real estate, equitable relief and appeals, provided the amount actually in controversy (exclusive of interest and cost) as determined by the assigned judge does not exceed \$100,000.00 per case. Arbitration shall be permitted in cases where the amount in controversy exceeds the sum specified in the plan for mandatory arbitration where all parties to the action agree to arbitration.

(2) Selection of Board.

(a) The parties may select the chair and other board members by agreement.

(b) By agreement of the parties, the board may consist of one or three members with one member serving as chair.

(c) If the parties agree to the composition of the board, the Arbitration Commissioner must be notified in writing of the selection not less than 60 days before the date of the hearing.

(d) If the Arbitration Commissioner is not notified sixty days before the date of the hearing, the Arbitration Commissioner shall select the board as otherwise provided herein.

(3) All times provided in section (A) shall be computed from the date the entry referenced in (A)(1) above is journalized in the office of the Clerk of Courts.

(B) Exceptions to entry concerning arbitration

(1) Exceptions to an entry placing a case on the arbitration list shall be raised by a motion filed within ten (10) days of the journalization of said entry, and shall be heard by the Assigned Judge.

(2) Exceptions to an arbitrator shall be raised by motion filed within ten (10) days of the mailing of confirmation of arbitration hearing and shall be heard by the Assigned Judge.

(C) Appointment of arbitrators

Members of Arbitration Boards, whether selected by the parties or by the Arbitration Commissioner, shall be appointed by the Arbitration Commissioner, by entry, from the list as described in Paragraph (D).

(D) List of Arbitrators

(1) The Arbitration Commissioner shall prepare and maintain a list of arbitrators, consisting of four groups: Chairpersons, Non-Chairpersons Arbitrators, Emergency Chairpersons, and Emergency Non-Chairpersons Arbitrators. All Chairpersons and Emergency Chairpersons shall consist of lawyers who are selected from the list of arbitrators by the Presiding Judge or by a judge or judges assigned to do so by the Presiding Judge.

(2) No person may be added to the list of arbitrators unless that person is an attorney authorized to practice law in the State of Ohio, has filed with the Arbitration Commissioner a written consent to serve as an arbitrator and has completed the training requirements set forth in Paragraph (Z).

(3) Arbitrators subsequently desiring to be deleted from the list of arbitrators may do so by notifying the Arbitration Commissioner in writing.

(E) Composition of Board: Disqualification from appointment

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 has an interest in the determination of the case or a relationship with the parties or their counsel which would interfere with an impartial consideration of the case.

(F) Assignment of Cases: Communication with Arbitrators

(1) The Arbitration Commissioner may assign up to two cases to each Arbitrator at the time of their selection.

(2) Once a case is assigned to a board of arbitrators, there shall be no communication by counsel or the parties with the arbitrators concerning the merits of the controversy prior to the commencement of the hearing. Further, no disclosure shall be made to the arbitrators prior to the filing of the report and award referred to in Para. P, of any offers of settlement made by either party. Prior to the delivery of the court file to the Chairperson 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 for settlement including the Certificate of Readiness.

(G) Hearings: when and where held: notice

Hearings shall be held at a place scheduled by the Arbitration Commissioner, unless counsel for all parties and the entire board agree otherwise. At least ten (10) days before the hearing, the Arbitration Commissioner shall send to the parties or their counsel written confirmation of the time and place of the hearing and the identity of the Board members. No hearings shall be fixed for Saturdays, legal holidays or evenings, except upon agreement by counsel for all parties and the arbitrators.

(H) Continuances

(1) Any continuance of an arbitration hearing shall require the approval of the Assigning Judge. In the event of a continuance, the Arbitration Commissioner may assign the case to another board. If a continuance is requested and obtained more than seven (7) days prior to the scheduled hearing date, the Arbitration Commissioner shall not assess costs unless the Assigning Judge otherwise orders. If a continuance is requested and obtained less than eight (8) days prior to the scheduled hearing date, the Arbitration Commissioner shall, unless the Assigning Judge otherwise orders, assess costs against the requesting party as follows:

(a) If the continuance is obtained four (4) to seven (7) days prior to the scheduled hearing date, the assessed costs shall be fifty dollars (\$50.00).

(b) If the continuance is obtained less than four (4) days prior to the scheduled hearing date, the assessed costs shall be one-hundred-fifty dollars (\$150.00).

The assessed costs shall be paid when the entry granting a continuance is filed and the entry shall allocate those costs to the Arbitration Commissioner and direct the Clerk of Courts to make immediate payment of such costs to the Arbitration Commissioner.

(2) Whenever a continuance is requested after two prior continuances, the case shall be certified by the Arbitration Commissioner to the Assigning Judge who shall summon the parties or their counsel. The Assigning Judge may 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 an award made whether or not the defendant appears and defends.

(I) Oath of arbitrators

When the whole number of the arbitrators shall be 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.

(J) Default of a party

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 Board of Arbitration shall require the other party to submit such evidence as they may require for the making of an award.

(K) Conduct of hearing: general powers

(1) Although strict conformity to legal rules of evidence is not necessary, the Board shall receive only relevant and material evidence. All evidence shall be taken in the presence of the arbitrators and the parties except where any of the parties is absent, is in default or has waived the right to be present. The Board shall receive evidence in the following forms:

(a) Sworn testimony by competent witnesses.

(b) Affidavits, documentary evidence, the product of all completed discovery and/or written reports, provided that such evidence has been served upon the adverse parties or their counsel at least fourteen (14) days before the hearing, unless counsel otherwise agree.

(2) Notwithstanding the above, the Board may receive additional evidence as it deems proper.

(3) All evidence received shall be given such weight as the Board deems it is entitled to after consideration of any objections which may be made.

(4) No disclosure of any kind shall be made to the arbitrators prior to the hearing.

(L) 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.

(2) Procedure in Case of Estimate. In the case of an estimate, the party intending to offer the estimate shall forward with that party's 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 repair made and the amount paid.

(M) Supervisory powers of Court

Any judge of the general division of the Court of Common Pleas shall have full supervisory powers with regard to any questions that arise in all arbitration proceedings and in the application of these rules.

(N) Witness fees

Witness fees in any case referred to said Board of Arbitration shall be in the same amount as now or hereafter provided for witnesses in trials in the Common Pleas Court of Hamilton

County, Ohio. These costs may be ordered taxed in the case and 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 Hamilton County, Ohio.

(O) Transcript of testimony

The arbitrators shall not be required to make a transcript of the proceedings before them. If any party shall desire a transcript of any portion of the proceedings, that party shall, upon fourteen (14) day notification to all other parties to the action, provide a reporter for the entirety of the proceedings and cause a record to be made. The appearance fee shall be paid by the party providing notice. The appearance fee 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 therefore, based upon the usual charges made for a copy of a deposition transcript.

(P) Report and award

Within thirty (30) days after the hearing, the Chairperson of 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. An award may not exceed \$100,000.00 per case exclusive of interest. 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 arbitration docket and file the original report with the Clerk of Courts forthwith. (Amended July 1, 1998)

(Q) Legal effect of report and award: entry of judgment

The report and award, unless appealed from as herein provided, shall be final. If no appeal is taken within the time and in the manner specified therefore, the Court shall enter judgment of such award. Subsequent to the time for appeal, the prevailing party shall prepare a judgment entry, which shall be submitted to the assigning judge. If no entry has been submitted to and accepted by the Court within forty-five (45) days from the date of journalization of the report and award, the Court may enter its own entry.

(R) Compensation of arbitrators

(1) Each member of the 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 sixty dollars (\$60.00). In cases requiring less than three hours to hear the fee shall be forty dollars (\$40.00). 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 hearing of unusual duration or involving questions of unusual complexity, the assigning judge, on petition 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 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) The Chairperson shall receive as compensation the sum of thirty dollars (\$30.00) for each case heard by the Board, in addition to the compensation fixed for members of the Board of Arbitration.

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

(4) In the event that a case shall be settled or dismissed sooner than twenty-four (24) hours prior to the date scheduled for the hearing, the Board members shall not be entitled to the aforesaid fee. In the event that a case has been settled or dismissed within said twenty-four (24) hour period, the Chairperson shall be entitled to receive a fifty dollar \$50.00 fee. Upon receiving notice that the case has been settled or dismissed more than twenty-four (24) hours before the date set for hearing, the Arbitration Commissioner shall assign another case to the same Board.

(S) Right of appeal

Any party may appeal from the action of the Board of Arbitration to the Common Pleas Court of Hamilton County. 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 Board is filed and journalized in the office of the Clerk of Courts.

(T) Notice of appeal and cost

(1) The appellant shall pay an Appeal Fee of thirty-five dollars (\$35.00) to the Clerk of Courts and shall file with the Clerk and the Arbitration Commissioner a notice of appeal accompanied by an affidavit that the appeal is not being taken for delay. A copy of such instruments shall be served upon opposing parties or their counsel.

(2) In addition to (1), the appellant shall first repay to Hamilton County, Ohio, by depositing with the Clerk of Courts all fees received by the members of the Board of Arbitration in the case in which the appeal is taken. The sum paid shall not be taxed as costs in the case and shall be recoverable by the appellant only if:

(a) Upon a trial de novo by the Assigned Judge, the appellant secures a judgment (i) which reverses the decision of the arbitrators, or (ii) which is more favorable to the appellant than the award of the arbitrators; or

(b) Prior to a trial de novo by the Assigned Judge, the appellant secures a settlement which is more favorable to the appellant than the award of the arbitrators and such settlement is evidenced by an entry of dismissal, signed by the Assigned Judge, which recites that the Court has been advised of the amount of settlement and orders the Clerk of Courts to refund the appellant's deposit of the arbitrators fees.

(U) Poverty affidavit

A party desiring to appeal an award may apply by a written motion and affidavit to the Court averring that by reason of poverty that party is unable to make payments required for an appeal. If after due notice to the opposite parties, the Judge is satisfied of the truth of the statements in such affidavit, the Judge may order that the appeal of such party be allowed although the said amounts are not paid by the appellant.

(V) Return to active list

If an appeal is filed from an arbitration order, the case will be set for trial and forthwith returned to the Judge who previously placed the case on the arbitration list.

(W) Appeal de novo

All cases which have been duly appealed shall be tried de novo by the Assigned Judge.

(X) Testimony of arbitrators on appeal

In the event of an appeal 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.

(Y) Exceptions and reasons therefore

(1) Any party may file exceptions with the Clerk of Courts from the 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:

(a) That the arbitrators misbehaved themselves in the conduct of the case.

(b) That the action of the Board was procured by corruption or other undue means.

(2) Copies of such exceptions shall be served upon each arbitrator and the Arbitration Commissioner within forty-eight (48) hours after filing and shall be forthwith assigned before the Assigning Judge to conduct a hearing thereon.

(3) If such exceptions shall be sustained, the report of the Board shall be vacated by the Court, and the case forthwith returned to the active list of the Judge who previously placed it on the arbitration list and in this event the Vacating Judge may withhold arbitration compensation from any one or more of the arbitrators.

(Z) Arbitrator training:

(1) No person shall be added to the list of arbitrators maintained by the Arbitration Commissioner pursuant to Paragraph (D) until such person has completed a viewing of the videotape training program entitled "Arbitration: The Arbitrator's Role."

(2) The Arbitration Commissioner shall announce, in the Cincinnati Court Index, the times when the videotape training program will be shown by the Arbitration Commissioner. Viewing at other times and places may also be accepted as meeting this requirement as determined by the Arbitration Commissioner.

(3) The Arbitration Commissioner shall maintain a record of all persons who have met this training requirement.

(4) Persons who are presently on the list of arbitrators maintained by the Arbitration Commissioner shall be permitted to remain thereon.

Amended December 1, 2004

Local Rule 24.1 "Forms of Binding Arbitration"

A) The parties to an arbitration may agree in advance, in writing, that the action of the Board of Arbitration will be unconditionally binding, in which case there will be no right of appeal. In so agreeing the parties may elect to proceed within the standard monetary limits, within specified different limits, or without any limits.

B) The parties to an arbitration may agree in advance, in writing, that the action of the Board of Arbitration will be conditionally binding, in which case there will be no right of appeal if all of the following conditions are met:

(1) At least 14 days prior to the arbitration hearing each prosecuting party shall submit in writing to the Arbitration Commissioner the lowest acceptable amount receivable through arbitration, and each defending party shall submit in writing to the Arbitration Commissioner the highest acceptable amount payable through arbitration. Said acceptable amounts shall be received by the Arbitration Commissioner no later than 14 days prior to the arbitration hearing, shall be sealed in an envelope(s) clearly identifying the case by caption and case number and retained in confidentiality pursuant to (3) below;

(2) The acceptable amounts, or, in the case of multiple prosecuting or defending parties, the aggregate acceptable amounts so submitted to the Arbitration Commissioner overlap to create a range of mutual acceptability;

(3) The acceptable amounts submitted to the Arbitration Commissioner by each party, and any resulting range of mutual acceptability, shall not in any way have been disclosed to, or become known by, any member of the Board of Arbitration prior to the rendering of their written report and award;

(4) After the hearing has been concluded and the arbitration report and award has been reduced to writing and signed by all panel members, the Arbitration Commissioner shall open the sealed envelope(s) containing the acceptable amounts submitted by each party and determine that the arbitration report and award falls within a range of mutual acceptability.

If the above conditions are met the Arbitration Commissioner shall submit an appropriate entry to the assigned judge for signature, attaching the acceptable amounts of the parties as exhibits.

Any issue raised by any party as to compliance with the above conditions shall be determined by the assigned judge in the case.