

RULE 12
ARBITRATION

12.1 Except in appeals and in those cases involving title to real estate or equitable relief, any Judge may, at any time, by a general entry, order any case to be heard and decided by a Board of Arbitrators or a single arbitrator, provided the following conditions are satisfied:

- A. A pretrial has been held or waived by the parties with the consent of the court;
- B. The court determines that all dispositive motions have been ruled upon and the case is ready for trial setting; and
- C. The amount actually in controversy per each party (exclusive of interest and costs) as determined by the court does not exceed \$100,000 per case. A case where the amount in controversy exceeds \$100,000 may be referred to arbitration by consent of all parties and the court.

12.2 Arbitrators shall be attorneys at law who are members of the Clermont County Bar Association and other attorneys at law who regularly practice before the Bar in Clermont County, Ohio, as designated by the Administrative Judge of the Court of Common Pleas' General Division. The Assignment Office shall notify all attorneys so designated. Attorneys desiring to be eliminated from the list may notify the Administrative Judge in writing prior to October 1st of each year. Unless excused, they shall be subject to assignment for arbitration services during the following 12 months.

12.3.1 Objections to an order placing a case on the arbitration list shall be raised by motion filed within 10 days of the mailing of notice of the order and shall be heard by the assigned judge.

12.3.2 Objections to an assigned arbitrator shall be raised by motion filed within 10 days of mailing of notice of assignment and shall be heard by the assigned judge.

12.4.1 Manner of Appointment: The assignment office shall keep the list of arbitrators. This list shall be divided into three equal groups designated as Arbitration Group (A), (B) and (C). Group (A) shall consist of lawyers, listed alphabetically, who are selected from the list of arbitrators by the judges of the Court of Common Pleas. The balance of lawyers on the list shall be divided at random into Groups (B) and (C), listed alphabetically. Appointments to each Board of Arbitrators shall be made in alphabetical order, one from each group, by the Assignment Office.

No substitution of arbitrators shall be made without written entry of the Court and notification to counsel. No substitution shall be made within 10 days of the hearing date unless all counsel agrees and the substitution is ordered by the assigned judge.

12.4.2 Composition of Board: All arbitration cases will be heard by a panel of three arbitrators, unless the parties agree to the appointment of a single arbitrator. The lawyer from Group (A) shall be Chairperson of the Board.

12.4.3 Assignment of Cases: The Assignment Office shall assign a case to the Board Chairperson at the time of the Chairperson's appointment. These cases shall be taken in order from the arbitration list.

12.4.4 No settlement offers shall be disclosed to the Arbitrators before the report and award (See Section 12.16 of these Rules) are filed.

12.5 Once an arbitrator is chosen, he or she shall be stricken from the pool until all other persons in the pool have served as an arbitrator. The pool will be reassembled on the 1st of October each year, or earlier if the Administrative Judge so directs.

12.6 Neither counsel nor the parties shall communicate with the arbitrators concerning the merits of the controversy before the hearing commences.

12.7 The time and place of hearings shall be designated by the assigning judge at pretrial or by the Assignment Office after consultation with the Board Chairperson, the arbitrators, and the parties. A hearing shall not be scheduled more than 90 days after the appointment of the Board of Arbitration without leave of court. After the hearing is set, the arbitrators and the parties, or their counsel, shall be notified in writing of the time and place of the hearing.

12.8 Once a hearing date is set, the hearing shall proceed at the scheduled time unless the case is continued by the assigned judge. It shall be continued to a date on which the previously assigned panel can meet. Each panel member assigned to a specific case, unless removed for cause, will remain with that case until its completion. Arbitrators assigned to a case are expected to personally appear. No substitution may be made without a showing of good cause and an order of the assigned judge. Failure to appear as an arbitrator at the designated hearing date and time may result in contempt proceedings against the arbitrator and an award of the parties' expenses and costs.

12.9 When the arbitrators are assembled, they shall be sworn or affirmed to justly and equitably try all matters properly submitted to them. This oath or affirmation may be administered by any person having authority to administer oaths.

12.10 The arbitration shall proceed in the absence of any party who, after due notice, is not present or fails to obtain an adjournment. An award shall not be made solely on the default of a party; the Arbitrator or the Board of Arbitration shall require the other party to submit such evidence as the Board may require for making an award.

12.11 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 a party is absent after notice, is in default, or has waived the right to be present. The arbitrators shall receive evidence in the following forms:

- A. Sworn testimony by competent witnesses;
- B. The product of all discovery completed prior to the hearing; and
- C. Affidavits, depositions, documentary evidence and/or written reports, if such evidence has been served upon the adverse parties or their counsel at least 14 days before the arbitration hearing. Counsel may agree otherwise or the Court may provide otherwise by pretrial order.

Arbitrators may receive additional evidence as they deem proper and shall accord the evidence whatever weight they deem appropriate.

12.12 The arbitrators shall have the general powers of a court including, but not limited to, the following powers:

- A. Subpoenas. To issue subpoenas for witnesses to appear before arbitration and to request the issuance of an attachment for failure to comply.
- B. Production of Documents. To compel the production of all books, papers and documents which they deem material to the case; and
- C. 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.

12.13 A party intending to offer an estimate shall forward with the notice to the adverse party, a copy of the estimate, a statement indicating whether or not the property was repaired and, if it was repaired, whether the estimated repairs were made in full or part, attaching a copy of the receipted bill showing the repairs made and the amount.

12.14 Any judge of the General Division of the Court of Common Pleas shall have full supervisory powers for questions that arise in an arbitration proceeding and in the application of these Rules.

12.15 Arbitrators are not required to make a transcript of the proceedings. If a party wishes a transcript, that party shall provide a reporter and shall pay the costs thereof, which shall not be considered costs in the case. The reporter shall provide a copy of the transcript to any party desiring one upon payment, based upon the usual charges for a copy of a deposition.

12.16 Within 7 days after the hearing, unless otherwise agreed by the parties or extended by the assigned judge, the arbitrator or the Board Chairperson shall file a report and award with the Assignment Office. The Assignment Office then shall mail or otherwise forward copies to all parties or their counsel. An award for each party may not exceed one hundred thousand dollars (\$100,000) per case, exclusive of interest, unless such limitation is waived in writing by all parties. The report and award shall be signed by all of the Board's members.

12.16.1 If the 3 Board 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; however, an arbitrator may submit one. The Assignment Office shall file the original and any minority reports with the Clerk of Courts.

12.17 Compensation: Board of Arbitrators. Each Board member who has signed an award or filed a minority report shall receive compensation as set by a standing court order. When more than 1 case arising out of the same transaction is heard at the same hearing or hearings, it shall be considered as one 1 case for compensation purposes. In cases requiring hearing of unusual duration or involving questions of unusual complexity, the assigned judge, on motion of the Board members and for cause shown, may allow additional compensation. The Board members are not entitled to receive their fees until after filing the report and award with the Assignment Office. Fees paid to arbitrators shall not be taxed as costs or follow the award as other costs.

12.17.1 Compensation: Single Arbitrator. After filing the report and award, the arbitrator is entitled to compensation as set by a standing court order. In cases requiring a hearing of unusual duration or involving questions of unusual complexity, the assigning judge, on motion of the arbitrator and for cause shown, may allow additional compensation. Compensation paid the arbitrator shall not be taxed as costs or follow the award as other costs.

12.18 Any party may appeal from the action of the Board of Arbitration to the Common Pleas Court of Clermont County. The appeal must be filed within 30 days after the report of the award has been filed with the Clerk of Courts. No appeal can be withdrawn without consent of all parties. The filing of a single appeal shall be sufficient to require a trial de novo. Notice of filing the appeal shall be given by counsel to all other counsel of record on or before the date of filing the appeal, by ordinary mail.

12.18.1 The appellant shall pay an appeal fee of \$400 to the Clerk of Courts and shall file with the Clerk and the Assignment Office a notice of appeal accompanied by an affidavit by the appellant's counsel, or by appellant, that the appeal is not being taken for the purpose of delay. Copies shall be served upon opposing parties or their counsel.

12.18.2 The sum paid shall include the arbitrator's fees and shall be recoverable by the appellant only if:

- A. Upon a trial de novo, the appellant secures a judgment which reverses the decision of the arbitrators or which is more favorable than the arbitrators' award; or
- B. Before a trial de novo, the appellant secures a settlement which is more favorable than the Arbitrators' award and the settlement is evidenced by an entry of dismissal, signed by the assigning judge, which recites that the Court has been advised of the amount of the settlement and orders the Clerk of Courts to refund to the appellant the deposit of the arbitrators' fees.

12.19 The report and award, unless appealed, shall be final. If no appeal is taken, the court shall enter judgment of the award. Upon expiration of 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 30 days from the expiration of the time for appeal, the court may enter its own judgment entry.