

**COURT OF COMMON PLEAS**

**ASHTABULA COUNTY, OHIO**

**RULES OF**

**CIVIL AND CRIMINAL PRACTICE**

**GENERAL DIVISION**

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## **RULE 1**

### **PRECEDENCE**

The rules set forth herein are adopted in accordance with Rule 83 of the Ohio Rules of Civil Procedure and, in case of conflict, shall be subordinate to the Ohio Rules of Civil Procedure. These rules shall also apply to all criminal cases except where clearly inapplicable.

## **RULE 2**

### **FILING OF PLEADINGS, MOTIONS, ETC.**

A. Every pleading, motion or other document filed in any case shall contain the names of all parties and the complete addresses, if known, of any party who is appearing in the case for the first time.

B. Every pleading, motion or other document filed on behalf of a party shall have printed or typed thereon the name, address, telephone number and Supreme Court registration number of counsel filing same; and if filed by a law firm, the name of the attorney having primary responsibility for the case shall be specifically designated.

C. It shall be the responsibility of the filing party to provide the Clerk of Courts with sufficient copies of any pleading, motion or other document to be served by the Clerk or Sheriff.

D. If a case is dismissed and subsequently refiled, the refiled complaint shall contain the following designation under the case number: "THIS IS A REFILED CASE." The trial Judge to whom the case was previously assigned shall be reassigned to the refiled case. Failure to comply with this rule may subject the attorney or party to appropriate sanctions.

### **RULE 3**

#### **TIME FOR FILING PLEADINGS**

Unless otherwise provided by law or other rule, all pleadings, amended pleadings or motions shall be filed within fourteen (14) days after the filing of any entry granting leave to file or overruling or sustaining a motion unless otherwise specified in the entry itself.

The opposing party shall move or otherwise respond to the pleading, amended pleadings, or motion within fourteen (14) days of filing such pleading, amended pleading or motion unless otherwise ordered by the Court.

## **RULE 4**

### **PLEADING OUT OF RULE**

A. All counsel may agree to grant a party one (1) extension of time to move or plead, not exceeding thirty (30) days, without leave of Court. Such consent shall be filed with the Clerk, in writing, signed by counsel for each party.

B. If the parties or counsel cannot agree to the first extension of time or if an extension of time beyond thirty (30) days is desired, a party who is not yet in default may move the Court for such additional time which shall be fixed by the Court. Each such motion shall state therein the number of prior extensions of time obtained by the moving party.

C. A party in default may file instanter a responsive pleading prior to two (2) days before the date set for trial without leave of Court only with written consent of opposing counsel attached to such pleading.

If such consent cannot be obtained or if the filing is requested within two (2) days of the date set for trial, then a responsive pleading may only be filed with leave of Court.

If the case has been set for trial, the filing of any responsive pleading instanter under this rule shall not be a reason for continuance of trial unless otherwise ordered by the Court.

## **RULE 5**

### **FAX FILINGS**

The Clerk will accept the filing of pleadings and other papers, other than the original filing of complaints in civil or criminal cases, by telephone facsimile transmission, in accordance with Rule 5(E), Ohio Rules of Civil Procedure, subject to the following provisions:

1) A transmitted document must not be longer than ten (10) pages, not including the cover page, and must pertain to only one case. Each filing must be made by a separate transmission. The attorney shall verify with the Clerk, within one (1) business day of the filing, the receipt and acceptance of the facsimile filing.

2) All documents submitted will be considered filed when the date/time has been stamped by the Clerk on the telephone facsimile transmitted document. For purpose of this section, the date/time stamped produced by the Clerk's facsimile machine shall constitute the date/time stamp of the Clerk.

3) A fee of \$1.00 per page shall be charged to the person who causes a document to be filed with the Court by means of a telephone facsimile machine. The risk of facsimile filing remains with the sender, and the Court assumes no responsibilities or liabilities.

4) a. Any user of the telephone facsimile filing shall prepare a cover page using the following format:

FAX FILING

TO: Ashtabula County Court of Common Pleas, Clerk of Court  
1-440-576-2819

FROM: \_\_\_\_\_  
(Name)  
\_\_\_\_\_  
(Telefax Number)  
\_\_\_\_\_  
(Office Number)  
\_\_\_\_\_  
(Address)  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
(Case Name)  
\_\_\_\_\_  
(Case Number)  
\_\_\_\_\_  
(Name of Opposing Counsel, if any)

The sender acknowledges that they are financially responsible for the cost of \$1.00 per page for each page filed with the Court by the use of a telephone facsimile machine.

b. Transmissions that do not substantially comply with the above format may be ordered stricken by the Court.

5) This rule does not alter any duty imposed upon a party or their attorney under the Ohio Rules of Criminal and Civil Procedure to serve a copy of all pleadings upon the opposing party or their attorney.

## **RULE 6**

### **CASE MANAGEMENT; CIVIL CASES**

#### **A. PREFACE**

The goal of this Rule is the prompt but fair disposition of litigation. This goal can only be accomplished by early and continuing judicial control and management of each case assigned to the Judge's docket. This Rule will establish a general framework for management of cases, leaving to the discretion of the individual Judge the use of additional procedures to accomplish the goal of this Rule.

#### **B. SCHEDULING CONFERENCE**

1) After service of the complaint, the Judge assigned to the case shall make a scheduling order. The Judge shall make the order after a scheduling conference with all counsel of record and *pro se* parties. The conference may be conducted in person or with leave of Court by telephone. The arrangements for a telephone scheduling conference shall be made by counsel requesting the same.

2) The scheduling order shall make provision for and limit the time to:

- a. join new parties and amend pleadings;
- b. file and hear pretrial motions;
- c. name experts;
- d. complete discovery;
- e. schedule pretrial conference and file pretrial statements;
- f. schedule trial date;

- g. other appropriate matters.

The schedule so ordered shall not be modified except by order of the Court.

3) At the case management conference, counsel shall inform the Court of any appropriate and available alternative dispute resolution programs or procedures that might result in the early resolution of the case without a trial.

### **C. MOTIONS**

#### **1) SUMMARY JUDGMENT**

- a. Motions for summary judgment shall be in accordance with Civil Rule 56, and shall be decided without oral hearing, unless oral argument is requested and determined necessary by the Court. Upon the filing of the motion, the Assignment Commissioner will fix a “hearing” date as required by Civil Rule 56(C) by notice, which shall be mailed to parties or their counsel or be otherwise served by the Clerk of Courts.
- b. To assure compliance with Civil Rule 56(C), depositions, answers to interrogatories, written admissions, affidavits, transcripts of evidence, and written stipulations of fact to support or oppose a motion for summary judgment shall be (1) separately filed with the Clerk and incorporated into the motion, or (2) attached to the motion or memorandum. The

caption of the summary judgment motion shall state, "...including affidavit or \_\_\_\_\_, ...deposition of \_\_\_\_\_." Documents which are not expressly mentioned in Civil Rule 56(C) shall be attached to an affidavit and filed. Failure to file any document as provided herein may result in its exclusion by the Court.

## 2) ALL OTHER MOTIONS

All other motions will be decided without oral hearing unless oral argument is requested and determined necessary by the Court. The moving party shall file with the motion a brief supporting memorandum containing the authorities relied upon and any affidavits or other supporting documents required or appropriate to file with the motion. Each party opposing the motion shall file a written response within fourteen (14) days after receipt of the motion. Reply or additional briefs or memoranda shall be submitted only with approval of the Court. Motions for leave to plead shall be in accordance with local rules of Court.

## D. CONTINUANCES

1) Requests for continuance shall be submitted to the Judge assigned to the case at least fourteen (14) days prior to the trial or hearing date, absent emergency or other cause deemed sufficient by the Court. Requests for continuance shall be by motion and proposed journal entry, which shall include:

- a. The reason for the request. If the reason is another case scheduled on the same date in another Court, attach a copy of the conflicting notice.
- b. The time and date of the current assignment.
- c. A new date obtained from the Assignment Commissioner and cleared with opposing counsel by movant in the event the court grants the motion for continuance.

**E. PRETRIAL CONFERENCE**

1) The pretrial conference shall be scheduled at the Scheduling Conference, and notice given to all counsel and all unrepresented parties.

2) Such pretrial conference shall be attended by counsel for the parties, who shall have their clients present or available by telephone for consultation and by all unrepresented parties. In those cases in which the real party in interest is an insurance company, the presence or availability by telephone of a representative of the insurance company shall constitute compliance with the provisions of this subsection.

3) Counsel who attend pretrial conferences shall have conferred with each other prior thereto, and they shall have authority to discuss all phases of the case, to conduct good faith negotiations toward settlement of the case, and to enter into stipulations and admissions in preparation for trial.

4) The parties shall, at the pretrial conference, submit to the Court, with a copy to all opposing counsel, a pretrial statement which shall include:

- a. identification of the claims or defenses,
- b. brief statement of the facts,
- c. issues of fact,
- d. injuries if applicable,
- e. damages, list specials,
- f. issues of law,
- g. witnesses (lay) (expert),
- h. estimate of time for trial,
- i. pending motions,
- j. stipulations,
- k. depositions to be used in case in chief.

5) At the conclusion of the conference, the Court may cause to be prepared a memorandum or stipulation of the action taken at such conference and order it filed in the case. The matters therein stipulated shall thereupon be binding upon the parties. In lieu thereof, the Court may make an order which recites the action taken at the conference and the agreements of the parties, which order, when entered, shall control the subsequent course of the proceedings.

6) The Court may require the parties, or any one of them, to furnish the Court with a trial brief as to any or all of the issues in the case at such time as the Court may designate.

## **F. EXPERT WITNESS**

1) Each counsel shall exchange with all other counsel written reports of medical and expert witnesses expected to testify in advance of the trial. The parties shall submit expert reports in accord with the time schedule established for discovery. The party with the burden of proof as to a particular issue shall be required to first submit expert reports as to that issue. Thereafter, the responding party shall submit opposing expert reports within the schedule established for discovery.

2) A party may not call an expert witness to testify unless a written report has been procured from the witness and provided to opposing counsel. It is counsel's responsibility to take reasonable measures, including the procurement of supplemental reports, to insure that each report adequately sets forth the expert's opinion. However, unless good cause is shown, all supplemental reports must be supplied no later than thirty (30) days prior to trial. The report of an expert must reflect his opinions as to each issue on which the expert will testify. An expert will not be permitted to testify or provide opinions on issues not raised in his report.

3) All experts must submit reports. If a party is unable to obtain a written report from an expert, counsel for the party must demonstrate that a good faith effort was made to obtain the report and must advise the Court and opposing counsel of the name and address of the expert, the subject of the expert's expertise together with his qualifications and a detailed summary of his testimony. In the event the expert witness is a treating physician, the Court shall have the discretion to determine whether the hospital and/or office records of that physician's treatment which have been produced

satisfy the requirements of a written report. The Court shall have the power to exclude testimony of the expert if good cause is not demonstrated.

4) If the Court finds that good cause exists for the non-production of an expert's report, the Court shall assess costs of the discovery deposition of the non-complying expert against the party offering the testimony of the expert unless, by motion, the court determines such payment would result in manifest injustice. These costs may include the expert's fee, the Court Reporter's charges and travel costs.

5) If the Court finds that good cause exists for the non-production of a report from a treating physician, the court shall assess costs of the discovery deposition of the physician equally between the Plaintiff and the party or parties seeking discovery of the expert. These costs may include the physician's fees, the Court Reporter's charges and travel costs.

6) A party may take a discovery deposition of the opponent's medical or expert witness only after the mutual exchange of reports has occurred. If a party chooses not to hire an expert in opposition to an issue, that party will be permitted to take the discovery deposition of the proponent's expert. Except upon good cause shown, the taking of a discovery deposition of the proponent's expert prior to the opponent's submission of an expert report constitutes a waiver of the right on the party of the opponent to call an expert at trial on the issues raised in the proponent's expert's report.

## RULE 7

### CASE MANAGEMENT GUIDELINES

#### 1) CIVIL CASES

<u>EVENT</u>	Torts & Product Liability  (24 Months)	General Civil, Foreclosure & Workers' Comp.  (12 Months)
Case Filed	0 Mo.	0 Mo.
Status Check	3rd Mo.	3rd Mo.
Scheduling Conference	4th Mo.	3rd Mo.
Plaintiff ID Expert Witnesses	7th Mo.	5th Mo.
Defendant ID Expert Witnesses	9th Mo.	7th Mo.
Discovery Cutoff	12th Mo.	8th Mo.
Dispositive Motion Cutoff	12th Mo.	8th Mo.
Formal Pretrial	12th Mo.	9th Mo.
Trial	15th Mo.	10th Mo. +

#### 2) ADMINISTRATIVE APPEALS

##### EVENT:

Notice of Appeal Filed	0 Mo.
Petition, Assign. Error, Record Filed	40 Days
Answer Brief in Opposition	30 Days

Reply Brief	14 Days
Oral Argument Set	4th Mo.

**3) DOMESTIC RELATIONS**

a. Dissolutions

Filed	0 Mo.
Parent Education Seminar	60 Days
Hearing	2nd Mo.

b. Divorce

Filed	0 Mo.
Temp. Support Order	17 Days from Service
Parent Education Seminar	60 Days from Service
Mediation Assessment	75 Days from Service
Request Family Custody Evaluation	14 Days after Assessment (if Mediation Unsuccessful)
Pretrials	At request of a party
Discovery Cutoff	120 Days
Final	120 Days +

c. Reciprocals, Domestic Violence

Filed	0 Days
Hearing, Reciprocal Action	28 Days after Service
Hearing, Domestic Violence Case	10 Days after Service

4) **CRIMINAL**

- |    |   |               |
|----|---|---------------|
| a. | Indictment Filed  | 0 Mo.         |
| b. | Arraign   | Within 7 Days |
| c. | Defendant Request<br>Discovery                              | 14 Days       |
| d. | Plaintiff Answer Discovery<br>& file Recip. Request         | 28 Days       |
| e. | Defendant Answer Discovery                                  | 42 Days       |
| f. | Pretrial Motion Cutoff                                      | 35 Days       |
| g. | Pretrial Conference only on<br>Motion & with leave of Court | 46 Days       |
| h. | Pretrial Motion Hearing                                     | 46 - 60 Days  |
| i. | Set Trial Date, subject to<br>Speedy Trial Time Limitation  | 60 Days +     |

**RULE 8**

**ASSIGNMENT OF CASES**

A. The Clerk shall assign newly filed cases to Judges by lot under the adopted individual assignment system.

B. Assignments of cases for trial shall be made by the Assignment Commissioner consistent with any Scheduling Order issued by the Court pursuant to Local Rule 6(B).

C. All cases having priority under any statute shall, upon filing be brought to the attention of the Assignment Commissioner by counsel. The Assignment Commissioner shall then schedule such case according to its priority after consultation with the Judge assigned to the case.

## **RULE 9**

### **WITHDRAWAL OF COUNSEL**

Withdrawal of attorney of record shall be only upon application with Judgment Entry of approval by the Court, and where possible, the name of the successor attorney shall be included in the Judgment Entry. The application to withdraw shall include a certification by counsel that the client has been informed of all scheduled hearing dates and/or filing deadlines, and that a copy of the application to withdraw was served on the client. Upon allowance of withdrawal by the Court, such withdrawing counsel shall serve a copy of the Judgment Entry on the client and the opposing party or counsel, if any, by regular U.S. mail.

## **RULE 10**

### **PREPARATION OF ENTRIES**

A. Unless the Court specifically agrees to prepare a Judgment Entry, it shall be the responsibility of counsel to do so. Upon the settlement of any pending matter, counsel for the Plaintiff, or moving party, shall prepare the entry unless the Court is advised otherwise. In all other cases, counsel for the party in whose favor an order, decree or judgment is rendered shall prepare the entry.

A proper Judgment Entry shall be prepared within fourteen (14) days and submitted to counsel for the opposing party, who shall approve or reject the proposed entry within seven (7) days after receipt. If counsel who is required by this rule to prepare an entry, fails to do so within the fourteen (14) day period, counsel for the opposing party shall prepare the entry and submit it to the counsel failing to comply with this rule, who shall approve or reject the proposed entry within seven (7) days after receipt.

If approval or rejection of an entry is not communicated to the counsel preparing the entry, such counsel may note that fact on the entry and then present the entry to the Court for signature and filing without such approval.

When the entry is approved by counsel, it shall be so endorsed and presented to the Court for approval, and if signed by the Judge, shall be filed with the Clerk.

If counsel are unable to agree upon an entry or fail to submit an entry within thirty (30) days following the order, decree, judgment, or notification to the Court of

settlement, the trial judge, after reasonable notice to the parties, may prepare and enter an entry or dismiss the case.

B. Every Judgment Entry concluding a pending case shall specify the allocation of court costs. In the absence of an agreement as to the allocation of costs, the Clerk shall assess costs as follows:

- 1) Default Judgment ----- against Defendant,
- 2) Dismissed by Plaintiff ----- against Plaintiff,
- 3) Settlement ----- against Plaintiff and Defendant equally,
- 4) Following trial or contested hearing ----- as directed by the Court.

## **RULE 11**

### **JUDICIAL SALES/EVIDENCE OF TITLE**

A. In every action demanding the judicial sale of real property, including actions to quiet title, partition, marshaling of liens, and foreclosure, the party or parties seeking such judicial sale shall file, together with the filing of the pleadings requesting such relief, a preliminary judicial report prepared by a licensed "title insurance company," as that term is defined in Section 3953.01(c) of the Ohio Revised Code, showing: (i) the name of the owners of the property to be sold; (ii) a reference to the volume and page of the recording by which the owners acquired title to such real estate; (iii) a description of all exceptions to said owner's fee simple title and liens thereon; (iv) the name and address, as shown on the record lien, of the lien holder(s); and (v) a reference to the volume and page of the recording by which the named plaintiff claims its lien or other interest in the property. The preliminary judicial report shall be current to within fourteen days prior to the filing of the Complaint or other pleading requesting judicial sale.

B. At the time of the filing of the final decree in foreclosure, the party or parties submitting the same shall file a final judicial report, updating the preliminary report to a date subsequent to the date of judgment, to insure that all necessary parties are properly before the Court in the pending action. Where the evidence of title indicates that a necessary party or parties have not been made defendants, the attorney for the party submitting the precipe for Order For Sale shall proceed without delay to cause

such new parties to be added and serve a copy of the Complaint in accordance with the Ohio Rules of Civil Procedures.

C. After the Sheriff's return of the Order For Sale and prior to confirmation of the sale, the party or parties requesting the Order For Sale shall file an invoice for the cost of the preliminary and final judicial reports with the Clerk of this Court. The amount of the invoice shall be taxed as costs in the case.

D. The party or parties requesting the Order For Sale shall prepare a distribution entry showing court costs assessed, which includes the invoice for the cost of the title examination, and all other costs and distribution of sale proceeds.

E. In actions for the marshaling and foreclosure of liens, any other judicial sale of real estate, or any action involving title to real estate, the attorney for the plaintiff shall file simultaneously with the precipe for Order For Sale, a separate Exhibit "A," that must include all of the following:

- 1) the caption of the case and the case number;
- 2) the legal description of the subject real estate;
- 3) a notation by the Ashtabula County Engineer that the legal description is acceptable for transfer purposes.

No Order For Sale shall issue unless the description of the real estate is acceptable for transfer by the Ashtabula County Engineer. Refusal to comply with the foregoing provisions of this rule shall be grounds for dismissal of the case.

**RULE 12**

**APPRAISERS**

Pursuant to Revised Code Section 2335.01, the Court fixes the compensation of appraisers of real estate as follows:

For the appraisal of any property under the same case, a fee of \$35.00 per appraiser.

## **RULE 13**

### **PROPERTY BONDS**

Where real property bonds are accepted by the Court in criminal or civil actions, executed by an Ashtabula County property owner, the Court will consider the fair current market value to be three times the appraised value for tax purposes, as shown in the county records, for the purpose of determining the owner's equity. Prior to the Court's acceptance of the real property bond, the Court may require evidence of title in the form of a title guarantee or abstract of title to be filed.

**RULE 14**

**ATTORNEY NOT TO BE RECEIVED AS SURETY**

No practicing attorney shall be received as surety on any bond or recognizance in any action or proceeding, civil or criminal.

## **RULE 15**

### **ARBITRATION**

#### **PART I**

A. **CASES FOR SUBMISSION.** Every case in which a pretrial has been conducted and the amount actually in controversy (exclusive of interest and costs) is Twenty-five Thousand Dollars (\$25,000.00) per claimant or less, except those involving title to real estate, actions in equity, domestic relations or appeal, may be submitted to, heard and decided by a Board of Arbitration consisting of three (3) members of the Bar of Ashtabula County, Ohio, to be selected as provided in Part II. A case shall be placed upon the Arbitration List when so ordered at pretrial or upon written request by counsel for any party after a pretrial, by a Judge upon the determination that the amount actually in controversy, exclusive of interest and costs, is Twenty-five Thousand Dollars (\$25,000.00) per claimant or less.

The Court may order a case to be scheduled for trial to the Court or jury, without referral to arbitration.

B. **CASES SUBMITTED BY STIPULATION.** The parties in any action which is at issue may stipulate in writing, before or after pretrial, that it may be submitted for Arbitration in accordance with this Rule, without monetary limit. Upon the filing of such stipulation, the action may be ordered upon the Arbitration List.

C. **CASES SUBMITTED BY MOTION.** Any party to an action which is at issue and has been pending at least six (6) months may file a motion requesting that the case

be submitted for Arbitration in accordance with this Rule. The assigned Judge may, without the necessity of a hearing, grant such motion and order the case placed upon the Arbitration List.

## **PART II**

A. **SELECTION OF ARBITRATORS.** In all cases subject to arbitration, the members of the Board of Arbitration shall be appointed by the Court from the list of members of the Bar of Ashtabula County.

B. **MANNER OF APPOINTMENT.** The Court shall appoint a panel of three arbitrators, the chair of which shall be designated by the assigning Judge.

Upon written agreement of the parties, one arbitrator may be assigned to hear their case. The parties may agree upon the arbitrator, and/or the arbitrator shall be appointed by the Court. The arbitrator shall be entitled to receive compensation equal to the total compensation paid to the Board of Arbitrators of Three Hundred Fifty Dollars (\$350.00) pursuant to the schedule in Part V.

C. **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 the Board who is related by blood or marriage to any party or attorney of record in the case or who is a law partner or an associate of, or shares expenses with, any attorney of record in the case.

D. **ASSIGNMENT OF CASES.** The Court shall, if possible, assign two or more cases to each Board at the time of appointment. Said cases shall be taken in order from the Arbitration List.

E. **DISCLOSURE.** No disclosure of any offers of settlement shall be made to the arbitrators prior to the filing of the report and award referred to in Part IV.

### **PART III**

A. **HEARINGS; WHEN AND WHERE HELD; NOTICE; REFERRAL ENTRY; DEPOSIT.** Hearings shall be held in Ashtabula County at a place provided by the Chair of the Board of Arbitration. Should the Chair be unable to provide a place for the hearing, the Chair shall request another member of the Board to make such provision. Hearings may be held in the courthouse provided they are scheduled through the Assignment Office. The Chair shall schedule a hearing not less than fifteen (15) days nor more than sixty (60) 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 (10) days before the hearing, of the time and place of the hearing. The sixty (60) day period may be extended by the Court. No hearings shall be scheduled for Saturdays, Sundays, legal holidays or evenings, except upon agreement by counsel for all parties and the arbitrators.

Since sufficient time is available to the parties prior to the hearing date to settle or compromise their disputes, the hearing shall proceed forthwith at the scheduled time. Neither counsel nor the parties shall communicate with the arbitrators concerning the merits of the controversy prior to the commencement of the hearing.

The Entry referring a case to arbitration shall include the following:

- 1) Case referred to arbitration. Arbitration hearing shall be held and concluded within sixty (60) days from the date of referral.

- 2) Arbitration hearings scheduled prior to Court trials should be given priority.
- 3) If continuance of a hearing is agreed to by the Chair of the Arbitration Panel upon request of an attorney or a party, the party so requesting the continuance shall have the responsibility of contacting all parties and Arbitration Panel members to obtain a date and time, agreeable to all involved, for the rescheduled hearing and notifying all parties and panel members in writing of the rescheduled date, time and place of the hearing. Continuances should be granted by the Chair only in situations of extreme hardship. Nothing herein shall be construed to permit an Arbitration Chair to continue an arbitration beyond sixty (60) days from the date of referral.
- 4) Plaintiff(s) shall deposit the sum of One Hundred Seventy-five Dollars (\$175.00), one-half (1/2) of the Arbitrators' fees, with the Chair at least fourteen (14) days prior to the scheduled hearing. Defendant(s) shall deposit the sum of One Hundred Seventy-five Dollars (\$175.00), one-half (1/2) of the Arbitrators' fees, with the Chair at least fourteen (14) days prior to the scheduled hearing. In the event that a party fails to deposit the Arbitrators' fees with the Chair as ordered, the Chair shall notify all other parties ten (10) days prior to the scheduled hearing, who may post the other party's portion of the Arbitrators' fees. The case will be transferred to the Court's regular trial docket if Arbitrators' fees in the total amount of Three Hundred Fifty Dollars (\$350.00) have not been deposited three (3) days prior to the scheduled hearing.

**B. INABILITY OF PARTY TO PROCEED.** In the event that counsel for any party is unable to proceed within sixty (60) days from the appointment of the Board of Arbitration, the Chair shall notify the Court which may mark the case "continued," place it at the bottom of the arbitration list and assign another case to that Board; or transfer such case to the regular docket.

**C. CASE CONTINUED TWICE CERTIFIED TO COURT.** Whenever any case has been continued two times after assignment to two Boards of Arbitration, the Court shall summon the parties or their counsel. The Court shall have the power to make any

appropriate order, including transfer to the Court's regular trial docket, an order of dismissal for want of prosecution, or an order that the case be again assigned to a Board of Arbitration, heard and an award made whether or not the parties appear and prosecute or defend.

**D. OATH OF ARBITRATORS.** When the whole number of the arbitrators shall be assembled, they shall be sworn or affirmed to well and truly 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, including any one of their number.

**E. DEFAULT OF A PARTY.** The arbitration may proceed in the absence of any party, who, after due notice, fails to appear or obtain a 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 it may require to make an award.

**F. CONDUCT OF HEARING; GENERAL POWERS.** The three members of the Board, unless the parties agree upon a lesser number, shall decide the relevancy and materiality of the evidence offered. Strict adherence to legal rules of evidence shall not be necessary. All evidence shall be taken in the presence of the arbitrators and parties except when a party is absent, in default, or 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 after consideration of any objections made to its admission.

Each party is strongly urged to limit presentation of evidence to thirty (30) minutes. If special and unusual circumstances require additional time, the Chair and the other parties must be notified in advance.

G. **SPECIFIC POWERS.** The Board of Arbitration shall have the general powers of a court including, but not limited to, the following powers:

1) **Subpoenas.** To cause the issuance of subpoenas to witnesses to appear before the Board and to request the issuance of an attachment according to civil and local court rules for failure to comply therewith.

Counsel shall, whenever possible, produce a party or witness at the hearing without the necessity of a subpoena.

2) **Production of Documents.** To compel the production of all books, papers and documents which they shall deem material to the case.

3) **Administration Oaths; Admissibility of Evidence.** To administer oaths or affirmations to witnesses, to determine the admissibility of evidence, to permit testimony to be offered by deposition, affidavits reports or otherwise and to decide the law and the facts of the case submitted to them.

H. **PROOF OF DAMAGES.** In actions involving personal injury, damage to property or both, the following bills or estimates may be offered and received in evidence to prove the value and reasonableness of the charges for services, labor and material, or items contained therein and, where applicable, the necessity for furnishing the same, on condition that copies of the bills to be offered in evidence are provided to the adverse party at least seven (7) days prior to the arbitration hearing. Adverse

parties are not bound by such evidence and may present evidence to the contrary regarding such bills or estimates.

1) **Healthcare Bills.** Hospital bills on the official letterhead or billhead of the hospital when dated and itemized; bills of doctors and dentists, when dated and containing a statement showing the date of each visit and the charge therefor; bills of registered nurses, licensed practical nurses, or physical therapists and other healthcare professionals, when dated and containing an itemized statement of the days and hours of service and the charges therefor; bills for medicines, eye glasses, prosthetic devices, medical belts, or similar items.

2) **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.

I. **EXCHANGE OF DOCUMENTARY EVIDENCE.** Copies of all documents and or evidence which a party intends to introduce at the arbitration, including, but not limited to, medical and other expert reports, shall be provided to the other party seven (7) or more days prior to the scheduled arbitration date. For good cause shown, the Board may permit admission of documents provided to the other party less than seven (7) days before the hearing.

J. **SUPERVISORY POWERS OF COURT.** The assigned Judge shall have full supervisory powers with regard to any questions that arise during arbitration proceedings and in the application of these rules.

K. **WITNESS FEES.** Witness fees in any case referred to arbitration shall be the same amount as fees for witnesses in trials in the Common Pleas Court of Ashtabula County, Ohio. Witness fees may be ordered taxed as costs in the case. The costs in any case shall be paid by the same party or parties to whom taxed if the case had been tried in the Common Pleas Court of Ashtabula County, Ohio.

L. **TRANSCRIPT OF TESTIMONY.** The Arbitrators shall not be required to make a transcript of the proceedings before them. Any party desiring a transcript shall provide a court reporter, cause a record to be made and pay the cost thereof, which shall not be considered costs in the case. Any party desiring a copy of any transcript shall be provided with it by the court reporter upon payment therefor.

#### **PART IV**

A. **REPORT AND AWARD.** Within seven (7) days after the hearing, the Chair of the Board of Arbitration shall file a report and award with the Court and on the same day shall mail or otherwise provide copies thereof to all parties or their counsel. An award for each party may not exceed Twenty-five Thousand Dollars (\$25,000.00) per claimant, exclusive of interest and costs, except an award greater than Twenty-five Thousand Dollars (\$25,000.00) per claimant may be made when the parties have consented to arbitration. The report and award shall be signed by all of the members of the Board. In the event the 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 Court 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 EFFECT OF REPORT AND AWARD; ENTRY OF JUDGMENT.** 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 prevailing party shall provide the Court a judgment in accordance therewith. After entry of such judgment, execution process may be issued as in the case of other judgments.

#### **PART V**

**A. MEMBER'S COMPENSATION.** Each member of a Board of Arbitration shall receive a fee of One Hundred Dollars (\$100.00), and the Chair shall receive One Hundred Fifty Dollars (\$150.00), as compensation for services in each case. 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. The members of a Board shall not be entitled to receive their fees until after filing the report and award with the Court. Fees paid to arbitrators shall not be taxed as costs nor follow the award as other costs.

**B. DEPOSIT FOR ARBITRATORS' FEES.** One-half (1/2) of the Board of Arbitrators' fees in the amount of One Hundred Seventy-five Dollars (\$175.00) shall be paid by Plaintiff(s), and one-half (1/2) of the Board of Arbitrators' fees in the amount of One Hundred Seventy-five Dollars (\$175.00) shall be paid by Defendant(s). The arbitrators' fees shall be deposited with the Chair or sole arbitrator at least fourteen (14)

days prior to the scheduled arbitration. In the event that a party fails to deposit the arbitrators' fees as ordered, the other parties to the action may deposit the amount with the Chair three (3) days prior to the scheduled hearing. The Board of Arbitration shall have the authority to increase the award to Plaintiff in the additional sum of One Hundred Seventy-five Dollars (\$175.00) if Defendant fails to deposit arbitration fees prior to the hearing and Plaintiff does so; and to deduct the sum of One Hundred Seventy-five Dollars (\$175.00) from any award to Plaintiff if Plaintiff fails to deposit arbitrators' fees prior to the scheduled hearing and Defendant does so.

C. **DISMISSAL OF CASE.** In the event that a case is dismissed more than two days prior to the scheduled hearing, the Board members shall not be entitled to the aforesaid fee. In the event that a case is settled or dismissed within two (2) days of the hearing, the Board members shall be entitled to receive said fee. Upon receiving notice that a case has been settled or dismissed more than two (2) days before the date set for hearing, the Court may assign another case to the same Board.

## **PART VI**

A. **RIGHT OF APPEAL.** Any party may appeal the award of the Board of Arbitration to the Common Pleas Court of Ashtabula County. Appeal by any party shall require a trial *de novo* of the entire case on all issues and as to all parties. Separate appeals by each are not necessary. The right of appeal shall be completed subject to the following conditions, compliance with which shall be within thirty (30) days after the entry of the award of the Board on the docket of the Clerk of Courts.

1) **Notice of Appeal.** The appellant shall file with the Clerk of Courts a notice of appeal. A copy shall be served upon all parties or their counsel.

2) **Repayment of Arbitration Fees.** The appellant shall pay to the Clerk of Court the appellee's portion of the arbitrators' fees in the amount of One Hundred Seventy-five Dollars (\$175.00) contemporaneously with filing the notice of appeal. The sum shall be paid to appellee or appellee's counsel, shall not be taxed as costs in the case and shall not be recoverable by the appellant in any proceeding. Failure to pay arbitrators' fees may result in dismissal of the appeal.

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

4) **Return to Active List.** The case shall thereupon be returned to the assigned Judge for trial *de novo*.

5) **Withdrawal of Appeal.** An appeal of an award of the Board of Arbitration filed hereunder may be withdrawn only upon agreement of all parties to the action.

B. **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 to

testify at any hearing *de novo* as to the proceedings which occurred before them in their official capacity as arbitrators.

**C. EXCEPTIONS AND REASONS THEREFOR.** 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 the following reasons and for no other:

- 1) that the arbitrators misbehaved in the conduct of the case, or
- 2) that the action of the Board was procured by corruption or other improper means.

Copies of the exceptions shall be served upon each arbitrator within forty-eight (48) hours after filing, which shall be forthwith set for hearing before the assigned Judge, and which shall toll the thirty (30) day appeal period until decided by the Court.

If the exceptions are sustained, the report of the Board shall be vacated by the Court, and the case assigned for trial or reassigned for arbitration.

## RULE 16

### TEMPORARY ORDERS IN DOMESTIC RELATIONS CASES

A. Motions for *ex parte* orders must be supported by appropriate affidavit and the Court may require the moving party to appear before granting the order.

B. **RESTRAINING ORDERS.** For cause shown, the Court may grant an order excluding one party from the marital home *ex parte*.

A temporary order may also contain language restraining all parties to the action from annoying or harassing the other, either directly or indirectly, and prohibiting disposition of marital assets, and Plaintiff's counsel shall serve a copy of the order on Plaintiff.

C. **RESIDENTIAL PLACEMENT OF MINOR CHILDREN.** Where both parties are residing in the same household, a temporary placement order need not be filed. If a temporary placement order is granted to one party during the pendency of the divorce, then the non-residential party shall have reasonable visitation with the minor child(ren), unless restricted by the Court for cause shown.

D. **CHILD SUPPORT.** The non-residential parent shall be ordered to pay temporary support for the minor child(ren) which shall commence the first Friday following the date of filing of the Complaint. This temporary support shall be fixed as follows:

- 1) A child support guideline work sheet shall be completed and filed with the temporary order and support shall be in that amount.

- 2) If, subsequent to the *ex parte* order, either party requests a child support modification and the same is granted by Judgment Entry or Magistrate's Order, after completion of a work sheet, such weekly modification may be retroactive to the effective date of the *ex parte* order.
- 3) All child support work sheets that are submitted for the Court's consideration shall contain the words "submitted by Attorney \_\_\_\_\_" and shall indicate which party the attorney represents.
- 4) Each temporary order must include a determination of health insurance if found to be available, as well as a determination of the liability of each party for uninsured medical, dental, prescription, psychological and optical expenses of the minor children.

**E. SPOUSAL SUPPORT.** Any request for temporary spousal support shall be made by motion and affidavit on forms prescribed by the Court. The opposing party may file an answer affidavit on forms prescribed by the Court within fourteen (14) days from the date of service of the motion requesting the temporary order.

F. All temporary support, whether child support or spousal support, shall be payable through the Ohio Child Support Payment Central.

Also see Local Rule 17 concerning filing of a Title IV-D Application for child support and/or spousal support.

G. Either party may file objections to the temporary support order by complying with the Ohio Civil Rules of Procedure. Objections may be heard by a Magistrate.

H. A party filing a motion for an *ex parte* order shall submit an entry, to be approved by the Court, that complies with the provisions of this rule.

**RULE 17**

**IV-D APPLICATIONS**

All pending and post decree motions requesting that child support and/or spousal support be established or modified must be accompanied by a completed IV-D Application signed by the obligee.

## **RULE 18**

### **CUSTODY AND PSYCHOLOGICAL EVALUATIONS**

A. Upon the filing of a Complaint for divorce, legal separation or dissolution, in which the parenting and support of minor child(ren) are involved, and if mediation has been deemed inappropriate, the Court may direct or the parties may request that the Family Court Services Office make an evaluation of the character, family relations, past conduct, earning ability and financial worth of the parties and of the home and its surroundings where it is proposed that the child(ren) are to live.

B. The home investigation and report shall be made by a Family Court Services Investigator of the Court of Common Pleas or other competent person designated by the Court. Unless an objection is filed with the Court and served on opposing counsel, not less than seven (7) days before the scheduled hearing, the report of the Family Court Services investigation shall be considered as evidence in any trial for a divorce, dissolution, change of parenting or other similar proceeding.

C. The party requesting the investigation, or the Court, shall direct whether the investigation should be complete or partial.

**COMPLETE INVESTIGATION** - includes office interviews and home visits with both parents; interviews with the children; employment verifications, personal references, school information, collateral information from counselors, police and other agencies. Written assessment of family situation and a recommendation regarding custody and/or visitation is provided to the Court.

**PARTIAL INVESTIGATION** - includes home visits to evaluate the physical living conditions and brief interviews with the parties. In addition, certain specific information or issues may be requested by the Court. A written summary and limited recommendation is provided to the Court.

D. The investigation fee and expenses shall be taxed as costs in the case. Upon any party filing a motion for a custody evaluation, they shall pay the sum of Three Hundred Dollars (\$300.00) for a complete investigation, or One Hundred Fifty Dollars (\$150.00) for a partial investigation, as a deposit toward investigation fees.

E. In all cases in which investigations are ordered, a notice may, at the request of the investigator, be mailed to each party to appear at the designated time and place for an interview with the investigator. A copy of such notice will be mailed to counsel for each party and it will be the duty of each party to comply with the request for appearance, just as it would be necessary to appear for a court ordered hearing.

F. Upon written motion and upon cause shown by accompanying memorandum specifically setting forth the basis, the Court may, at its discretion, order the parties and minor children to submit to psychological evaluation.

G. Psychological evaluations shall be made at the cost of the requesting party or the filing party and shall be assessed by the Court upon completion of the case. Arrangements for payment of the costs of the evaluation and any report shall be made directly by the parties. Unless an objection is filed with the Court and served on opposing counsel, not less than seven (7) days before the scheduled hearing, the report

of the psychological evaluator shall be admitted into evidence upon motion of either party.

Where parenting is a real issue in the case, the parties are requested, early on in the case, to agree to a disinterested psychologist. If neither party can agree, the Family Investigator shall name a psychologist for the evaluation. Neither counsel nor the parties shall attempt to influence or otherwise interfere with a neutral determination by the psychologist involved and shall not contact the psychologist, except in reference to the type of evaluation requested, to provide basic case information or scheduling information, or to arrange for payment. Neither counsel shall provide the psychologist with a history of the case or any other factual matters concerning the case, except as specifically requested by the psychologist.

H. Upon motion or order of the Court ordering a psychological evaluation, the following procedure shall be adhered to:

- 1) A Judgment Entry shall issue at the direction of the Court ordering such evaluation. Such Judgment Entry shall be submitted to the Court within five (5) days of any oral order;
- 2) Within ten (10) days of the filing of the Judgment Entry, all counsel shall insure that their clients and their minor child(ren) will contact the designated psychologist or such other agreed upon counselor for the purposes of making an appointment for evaluation; all appointments for psychological evaluation to be made under this

Rule shall be at the convenience of the counselor but shall be completed as soon as possible;

- 3) Counsel shall be responsible to insure full compliance with this Rule and insure that their clients appear for such evaluation purposes; failure to comply with this Rule and failure to show just cause for noncompliance may entail appropriate sanctions;
- 4) All inquiries by counsel shall be directed to the Court's Domestic Relations Investigator.

I. The report of any investigator shall be made in writing and shall be kept in the possession of the Domestic Relations Investigator or submitted to the Court except that, if the case is certified to Juvenile Court, such report shall be turned over to that Court. Home investigation and psychological reports shall not be made public, but a copy of the report for the parties may be provided to their respective counsel upon request to the Clerk of Courts.

**RULE 19**

**STANDARD COMPANIONSHIP ORDER**

A. The following standard companionship guidelines will be applied in all cases unless otherwise ordered:

1. Presumptions:
  - a. Shared parenting is in the best interest of the children;
  - b. Equal division of the available companionship time is in the best interest of the children;
  - c. Whenever possible, it is in the best interest of the children that they be in the care and supervision of a parent, rather than third persons.
2. The presumptions are rebuttable and may be rebutted by competent credible evidence.
3. In the event the parties cannot agree upon a companionship schedule, they shall participate in mediation.
4. If the parties cannot develop their own companionship schedule through mediation, both parties shall provide the court with verification of their work schedules and available companionship times. The court will then assign companionship time, based upon the presumptions.

B. In the absence of an agreement by the parties, the court has wide discretion in determining what companionship schedule is reasonable and in the best interests of the children, and each judge may develop a uniform fixed schedule of companionship time.

C. Unless the court finds that companionship time should be restricted, the minimum time afforded to the nonresidential parent shall be as follows:

Companionship between the child(ren) and the non-residential parent may take place at such times as the parties may agree, but shall not be less than:

1. Weekends: Alternate weekends from Friday at 6:00 P.M. until Sunday at 6:00 P.M., commencing \_\_\_\_\_.

2. Weekdays: On Wednesday evening, prior to the weekend the non-residential parent has companionship, from 4:00 P.M. to 8:00 P.M. On Tuesday and Thursday evenings, prior to the weekend the non-residential parent does not have companionship, from 4:00 P.M. to 8:00 P.M.

The starting time for weekday companionship must be flexible and will depend upon the work schedule of the non-residential parent and the activity schedule of the child(ren).

3. Holidays: For companionship there are eight holidays:

- (1) New Year's Day;
- (2) Easter;
- (3) Memorial Day;
- (4) July Fourth;
- (5) Labor Day;
- (6) Thanksgiving;
- (7) Christmas Eve;
- (8) Christmas Day.

In the odd-numbered years, the mother shall have the child(ren) on the odd-numbered holidays and the father shall have them on the even-numbered holidays. In the even-numbered years, the father shall have the odd-numbered holidays and the mother the even-numbered holidays. Hours for holiday companionship for the non-residential parent shall be from 9:00 A.M. to 8:00 P.M., except for Christmas Day, which shall be from 8:00 P.M. Christmas Eve to noon Christmas Day. Except for Christmas Eve and Christmas Day, when a holiday companionship time falls on a Monday following that parent's regular weekend companionship, the companionship time will be continuous.

4. Precedence: Holiday companionship times take precedence over every other scheduled companionship times. Vacation and school break companionship shall take precedence over regular companionship.
5. Mother's Day, Father's Day: Mother's Day shall be spent with the mother and Father's Day spent with the father, regardless of which parent is entitled to the weekend. Hours for companionship shall be from 9:00 A.M. to 8:00 P.M.
6. Child's Birthday: A child's birthday shall always be spent with the mother in odd numbered years, and with the father in even numbered years. Hours shall be from 9:00 A.M. to 8 P.M.

7. Extended Summer Companionship: The non-residential parent shall be entitled to five weeks companionship during the child(ren)'s summer vacation from school. If the parties cannot agree on the times, the five weeks for the non-residential parent shall be the last two weeks of June, beginning at 9 A.M. on June 17, and the first three weeks of July, ending at 8 P.M. on July 21. During the extended period of companionship with the non-residential parent, the residential parent shall have companionship with the child(ren) on alternating weekends and weekday evenings, in accordance with the same schedule the non-residential parent has at other times.

During the child(ren)'s summer vacation from school, and as part of the five weeks available to the non-residential parent, the non-residential parent is entitled to two weeks exclusive possessory vacation time, provided that not less than 30 days prior written notice is given to the residential parent. Likewise, the residential parent shall also be entitled to two weeks exclusive possessory vacation time, provided that not less than 30 days prior written notice is given to the non-residential parent.

8. School Breaks: If the non-residential parent has companionship on Christmas Day, he/she shall have companionship from 9 A.M. on December 19, until 8 P.M. on December 23. If the non-residential parent has companionship on Christmas Eve, he/she shall have companionship from 9 A.M. on December 26, until 8 P.M. on December 30.

Each parent shall have companionship for one-half of the days the child(ren) are off school for spring break, which shall alternate according to the Easter Day schedule. When the non-residential parent has companionship on Easter Day, he/she shall have the half that includes Easter Day.

9. Cancellation: The non-residential parent shall give the residential parent at least 48 hours notice if visitation is to be canceled, unless there is an emergency. Visitation time canceled by the non-residential parent is forfeited and shall not be made up. Visitation canceled by the residential parent is not forfeited and shall be made up at the earliest possible time. (For example, if weekend visitation is canceled by the residential parent due to illness of a child, it shall be made up on the next weekend.)
10. Waiting: The child(ren) and residential parent have no duty to await the visiting parent for more than thirty (30) minutes of the visitation time. A parent who is late forfeits companionship for that period, unless there is an emergency.

11. Address and Phone Numbers: Each parent must keep the other informed of his or her current address and telephone number and an alternate telephone number in the event of an emergency.
12. Clothing: The residential parent is responsible for providing sufficient appropriate clothing for every visitation period. All clothing sent by the residential parent must be returned immediately after the visitation period.
13. Transportation: The non-residential parent has responsibility for picking up and returning the child(ren). No person transporting the child(ren) may be under the influence of drugs or alcohol.
14. Illness or Injury of Child: If a child becomes ill or injured, warranting the giving of medication or consultation with a doctor or dentist, each parent must notify the other parent as soon as reasonably possible.
15. Telephone Access: Both the child(ren) and the parents must be allowed reasonable communication by telephone at reasonable times, regardless of with whom the child(ren) are currently residing. If it is the child(ren) calling a parent, the party with whom the child(ren) are residing at the time of the call shall bear the expense, unless the child(ren) are permitted to telephone the other parent collect. If the parties' cannot agree, telephone access shall be at least twice a week during the hours that the child(ren) are normally awake.
16. Moving: The residential parent shall not be permitted to move his or her residence from the jurisdiction of the court, without the prior written consent of the non-residential parent, or permission of the court.

## **RULE 20**

### **SUPPORT ORDERS**

Separate Judgment Entries on a form provided or approved by the Court, with appropriate mandatory orders required by the Ohio Revised Code, shall accompany all final divorce, legal separation, and dissolution of marriage, or post decree modification entries providing for child support and/or spousal support, and any entry establishing or modifying a support order. All child support orders shall be accompanied by the appropriate mandatory health insurance orders required by Ohio Revised Code §3113.217, and health insurance information forms approved by the Court. In addition, the entry establishing or modifying a support order shall specify a date certain on which such support provision commences, and the date payments shall commence through the Ohio Child Support Payment Central, if different.

**RULE 21**

**MOTION TO SHOW CAUSE**

If a motion asserts nonpayment of medical or dental bills, or support orders other than periodic payments, the motion shall also itemize such expenses and state whether demand for payment has been made prior to the filing of the motion.

## **RULE 22**

### **GUARDIAN AD LITEM**

Upon motion of either party, or the Court's own motion, the Court may appoint a Guardian ad Litem. The order of appointment shall state the name of the guardian, the amount to be deposited with the Clerk of Court's office for the guardian's services and by whom, and the date when the deposit is to be made.

The parties shall cooperate fully with the guardian. The guardian shall file an itemized fee statement every sixty days during the term of the guardian's appointment. A copy of the itemization shall be filed with Clerk of Courts and served on all attorneys and pro se parties.

The guardian's fees shall be approved by the Court and payment for the guardian's fees shall be borne equally by the parents unless otherwise ordered by the Court.

## **RULE 23**

### **PARENT EDUCATION PROGRAM**

In all divorce, dissolution and legal separation cases with child(ren), the parties shall, unless excused by the Court for cause shown, successfully complete the Court sponsored Parent Education Seminar.

In divorce cases and legal separation cases, along with service of the Complaint, the Clerk of Court shall serve the Defendant with an Order to contact Family Court Services within fourteen (14) days of service of the Complaint to schedule a date for attendance at the seminar. The Clerk of Court shall further serve the Plaintiff with the same Order by ordinary mail. The parties shall complete the seminar within sixty (60) days of service of the Complaint.

In dissolution cases, within seven (7) days of the filing of the Petition, the Clerk of Court shall, by regular mail, serve both parties with an Order to Attend the Parent Education Seminar. The parties shall contact Family Court Services immediately to schedule a date for attendance, and shall complete the seminar within sixty (60) days of the filing of the Petition.

Family Court Services shall be responsible for mailing informational brochures and class schedules to the parties within seven (7) days of filing. Family Court Services shall file a notice with the Clerk of Court after each party attends the class. Copies of this notice shall be sent by Family Court Services to the parties or their attorneys, if the

parties are represented. It is the attorney's responsibility to check Clerk of Court's file or contact Family Court Services prior to hearing date.

The Court may refuse to conduct a final hearing, or enter a final order allocating the primary rights and responsibilities for a child(ren), or may refuse to grant visitation to or on behalf of any parent who has not completed the Court approved seminar, or may take other action deemed appropriate.

## **RULE 24**

### **FAMILY MEDIATION (PARENTAL RIGHTS AND RESPONSIBILITIES)**

A. Pursuant to R.C. §3109.052, in all divorce and legal separation cases with children, as well as post decree filings involving the allocation of parental rights and responsibilities and visitation issues, the parties shall be ordered to attend a mediation assessment. After consideration of the factors set forth in R.C. §3109.052(A), if mediation is determined to be appropriate by the mediator making the assessment, the parties shall be required to mediate visitation and parenting issues, including shared parenting.

Mediation will be waived only upon the filing of a Motion to Waive Mediation Assessment which shall have attached a written agreement of the parties allocating parental rights and responsibilities and visitation rights, or a statement of other good cause for waiving the mediation (e.g. incarceration of one of the parties or out of state residence). A copy of the motion and/or order with agreement shall be provided to Family Court Services.

B. After both parents have attended the Parent Education Seminar, they will be contacted by a court mediator to schedule an appointment for mediation.

Any post decree filings dealing with allocation of parental rights and responsibilities will be referred for mediation at the direction of the Court. A Motion for Mediation may be filed by the parties and/or their attorneys.

C. Mediation will be provided by court mediators from Family Court Services or Joint Court Mediation Project, at no cost to the parties. Mediators will be assigned to cases on a rotating basis by the Family Court Services coordinator. Mediators will file a Mediation Report with the Clerk of Courts in regard to the status of the mediation process and upon completion of the mediation. Copies will be sent to attorneys representing the parties. Parties may also choose a qualified private mediator.

D. All court approved mediators shall have those qualifications set forth in Rule 16 of the Supreme Court of Ohio Rules of Superintendence for the Courts of Common Pleas. Further, all court approved mediators shall complete the forms and evaluations required by the court.

E. Absent extraordinary circumstances, no family investigation shall be ordered until the mediation has concluded.

If a family investigation was previously ordered (and initiated), it shall be suspended during the pendency of the mediation.

F. While the case is in mediation, no ex parte orders allocating parental rights and responsibilities shall be entered by the Court, unless extraordinary circumstances are alleged in an affidavit, which in the Judge's discretion justify an ex parte order. Absent extraordinary circumstances, an ex parte order which is entered, shall only provide for "physical placement" of the children, and that the parents shall not remove the children from the jurisdiction.

G. The provisions of R.C. §3109.052 regarding confidentiality shall apply to any case ordered to mediation pursuant to this Local Rule.

**RULE 25**

**ASHTABULA COUNTY**  
**JOINT COURT MEDIATION PROJECT**

**COMMON PLEAS COURT**  
**GENERAL DIVISION**

A. Mediation Policy

(1) In any civil case, the Court may, upon its own motion or upon the motion of either party, refer the case to mediation. Attorneys may also refer cases to mediation upon agreement of parties.

(2) Referral of a case to mediation shall not operate as a stay of proceedings unless otherwise ordered by the Court. Copies of Judgment Entries issued for cases ordered to mediation shall be forwarded to the Joint Court Mediation office.

B. Referral to Mediation

(1) **Participation.** Parties so ordered shall participate in the mediation process and cooperate in all matters pertaining to the mediation. Along with face-to-face sessions, the mediation process shall provide an opportunity to parties and their attorneys to engage in whatever other appropriate steps may be helpful in settling the matters in dispute.

(2) **Scheduling mediation.** The parties and/or their attorneys shall contact the Joint Court Mediation staff to schedule sessions as needed to resolve the issues in dispute. Rescheduling of cases shall also be done through the Joint Court Mediation staff.

C. Attendance

The following persons shall physically attend the mediation session:

(1) All individual parties; or an officer, director, or employee having authority to settle the claim for a corporate party, or in the case of a governmental entity or agency, a representative with full authority to negotiate on behalf of the entity or agency and to recommend settlement to the appropriate decision making body; and

(2) The party's counsel primarily responsible for handling of the matter, if any; and

(3) A representative of the insurance carrier for any insured party who has full authority to settle without further consultation.

D. Sanctions for Failure to Attend

If parties identified in Section C above fail to attend a duly ordered mediation without good cause, the Court may impose sanctions, including an award of attorneys fees and other costs, contempt or other appropriate sanctions.

E. Confidentiality

**Statutory restrictions.** Statutory provisions regarding confidentiality apply to any case ordered to mediation pursuant to this local rule.

F. Concluding Mediation

Immediately upon conclusion of the mediation, the mediator shall submit a report to the Court indicating only the status of mediation. In cases in which parties or party representatives having full authority to settle are not present, this shall also be noted in the mediation report.

No agreements developed in mediation shall be legally binding until reviewed and approved by the parties and their attorneys. In cases in which an agreement is reached, the parties or their attorneys shall submit final judgment entries to the Court.

## **RULE 26**

### **ATTORNEY FEES**

In cases wherein the Court has jurisdiction to award attorney fees, the following procedure shall apply:

A. How requested:

1) A request for attorney fees and expenses to prosecute an action shall be included in the body of the motion or other pleading that gives rise to the request for fees.

2) A request for attorney fees and expenses to defend an action shall be made by motion filed at least fourteen (14) days prior to the hearing on the motion being defended.

3) No oral motion for fees shall be entertained.

4) An itemized statement describing the services rendered, the time for such services, and the requested hourly rate for the in court time and out of court time shall be filed with the Court, and exchanged with opposing counsel or pro se party no later than seven (7) days before the hearing in which the fees requested will be adjudicated.

B. Evidence in support of motion: At the time of the final hearing on the motion or pleading that gives rise to the request for attorney fees, the attorney seeking the fees shall present:

1) testimony as to whether the case was complicated by any or all of the following: new or unique issues of law; difficulty in ascertaining or valuing the parties' assets; problems with completing discovery; any other factor necessitating extra time being spent with the case;

2) testimony regarding the attorney's years of practice and expertise; and

3) evidence of the parties' respective incomes and expenses, if not otherwise disclosed during the hearing.

C. Expert testimony is not required to prove reasonableness of attorney fees.

D. Failure to comply with the provisions of this rule shall result in the denial of the request for the attorney fees, unless jurisdiction to determine the issues of fees is expressly reserved in any order resulting from the hearing.

## **RULE 27**

### **JURY USE AND MANAGEMENT**

A. The opportunity for jury service shall not be denied or limited on the basis of race, national origin, gender, age, religious belief, income, occupation, disability, or any other factor that discriminates against a cognizable group.

B. The jury commissioners appointed by the Judges of the Court of Common Pleas shall be responsible for the administration of the jury system, acting under the supervision of the Administrative Judge of the court.

C. The names of potential jurors shall be drawn from the list of electors certified annually by the Ashtabula County Board of Elections, using an automated process that assures random selection procedures throughout the jury selection process and that provides each eligible person with an equal probability of selection.

D. Persons called for jury service shall not be required to remain available for a period of more than two weeks.

E. All requests for exemptions, excuses or deferrals, must be in writing and approved by a Judge of the Common Pleas Court.

F. Jurors shall be compensated in accordance with the fees adopted by the Ashtabula County Board of Commissioners, and the Judges shall review the fees annually to assure that they are reasonable.

G. Persons who fail to respond to a summons for jury service may be subject to contempt of court proceedings.

H. Each Court will provide an orientation for persons called for jury service and such instructions as may be appropriate and necessary to increase their understanding of the judicial system and each phase of the trial process, and to prepare them to serve competently as jurors.

I. A jury shall not be sequestered, except for good cause, or when required by law.

**RULE 28**

**TRANSCRIPTS**

Any party or counsel requesting or requiring a transcript of any proceeding for any purpose shall notify the Court Reporter directly of the request and obtain an estimate of the anticipated cost. One-half (1/2) of such estimate shall be paid in advance to the Court Reporter with the balance due upon delivery of the transcript.

Pursuant to Ohio Revised Code §2301.21, the compensation of the Court Reporters of this Court for making transcript of trial and Grand Jury proceedings is hereby fixed as follows:

Original & 1 copy	\$2.50 per page
Copy to opposing side	\$1.25 per page
Expedited copy	\$3.50 per page

Such compensation shall be paid forthwith by the party for whose benefit a transcript is made. The compensation for transcripts of testimony requested by the trial judge, in either civil or criminal cases, and copies of decisions and charges furnished by direction of the Court shall be paid from the County treasury, and taxed and collected as costs.

## **RULE 29**

### **DESTRUCTION OF STENOGRAPHIC NOTES AND EXHIBITS**

Any stenographic notes, pen shorthand notes, reel-to-reel tapes, exhibits, index cards and notebooks of any Court Reporter presently or in the past employed by the Ashtabula County Court of Common Pleas that are ten (10) or more years old may be destroyed, without notice to counsel or the parties, at said Court Reporter's discretion.

Any exhibits that are under ten (10) years old may be destroyed after any appeal period has run by the following procedure. The Court Reporter shall notify counsel in writing to determine whether or not they desire the exhibits returned to them or if they wish the exhibits to be destroyed. If counsel decline the return of exhibits, or if counsel do not respond within thirty (30) days of the inquiry, the Court Reporter may destroy the exhibits. The Court Reporter shall file with the Clerk of Courts Office notice of the final return of exhibits to counsel or notice of their destruction. Exhibits from criminal cases shall be returned to the Office of the Prosecuting Attorney or the appropriate law enforcement agency to be disposed of according to law. Said destruction of exhibits shall also be at the Court Reporter's discretion.

## **RULE 30**

### **CUSTODY OF FILES**

No papers or files shall be taken from the custody of the Clerk unless authorized by the Court. Before taking such papers or files, a receipt must be given the Clerk therefor. Papers or files in the courtroom during the time a cause is on trial shall be considered in the custody of the Clerk. The Clerk is required to keep files of pending cases in a place secure from promiscuous handling and inspection and under his or her personal supervision.

**RULE 31**

**FILING FEES AND COURT COST DEPOSITS**

A. Filing fees and costs in the Court of Common Pleas shall be as set forth in the Filing Fee and Costs Schedule maintained by the Clerk of Courts.

B. All filing fees and deposits shall be paid at the time of filing.

C. The Clerk shall not accept any document for filing unless the correct deposit is made unless:

1) An affidavit of indigency in such form as prescribed by the Court is filed as provided in Ohio Revised Code §2323.31. In any case in which a private attorney files an affidavit of indigency, the attorney shall also submit an affidavit certifying that he or she has not received any retainer fee for undertaking the case.

2) The party filing such document is exempt from such requirement by law or this Rule.

3) No deposit for costs shall be required in proceedings filed by the County Prosecutor or Bureau of Support.

## **RULE 32**

### **STATEMENT FOR COSTS AND EXECUTION FOR COSTS**

The Clerk shall keep a list of all unpaid and accrued costs in all proceedings where costs have been taxed, and shall send statements to all persons against whom costs have been taxed in all proceedings that have become final, at least once every three months, if practical. After two such notices if the costs have not been paid, the Clerk shall issue a Certificate of Judgment for the amount of such costs without further order.

No Complaint will be accepted for filing by the Clerk where the party seeking the filing of said action has failed to pay costs previously incurred unless costs are waived by the Court due to indigency of the party.

## **RULE 33**

### **AMENDMENTS**

These rules may be amended by a concurrence of a majority of the trial Judges upon motion of a Judge at a special meeting called for such purpose. Each Judge is to be provided with a written copy of the proposed amendment at least ten (10) days prior to such meeting.

The Ashtabula County Bar Association may also propose amendments and/or new rules at a special meeting, upon request, and pursuant to a duly adopted resolution of the association at a meeting called for that purpose.