

**RULES OF PRACTICE
OF THE
COURT OF COMMON PLEAS**

STATEMENT OF PURPOSE

Delay in criminal and civil cases in the Courts of Common Pleas throughout the state of Ohio is a serious problem in the administration of justice. Constitutional courts were created to serve the litigants and the interest of the public at large, not for the convenience or benefit of judges and lawyers. Unnecessary delay erodes the public's confidence in the judicial system.

It is the obligation of the judges of the Court of Common Pleas, Franklin County, Ohio, to operate the Court in a manner that is lawful, fair, just, and efficient for the benefit of the citizens of Franklin County and all other litigants that come before it. To that end, the following rules are designed (1) to expedite the disposition of both criminal and civil cases in this Court, while at the same time safeguarding the rights of litigants to the just processing of their cases; (2) to expedite and make consistent the disposition of cases in the general branch of the Court; and (3) to serve the public interest which mandates the prompt disposition of all cases before this Court.

RULE 103 - COMPULSORY ARBITRATION - [11/1/93]

103.00 Introduction

A. Applicability. These rules shall proscribe the procedure to be followed in all Rule 103 Procedures.

B. Court Proceedings. Rule 103 Arbitration's are formal proceedings of the Franklin County Court of Common Pleas and all arbitrators, counsel, parties, witnesses and others shall conduct themselves accordingly.

C. Construction. These rules shall be construed and applied to effect just results by eliminating unfair surprise, unnecessary delay, unnecessary expenditures of time and money and all other impediments to the prompt and inexpensive administration of justice.

D. Purpose. The purpose of these rules is to serve the citizens of Franklin County, Ohio by providing a fair and impartial dispute resolution system that is dignified, faithful to the law and that is less time consuming and less expensive than a trial, and that may be used whenever appropriate.

E. Control by the Court. As indicated below, the Court maintains full supervisory power over all aspects of all Rule 103 proceedings including, but not limited to, the application and the interpretation of these rules. Therefore, the Court, for good cause shown, may modify and amend these rules in appropriate cases in order to do justice and/or avoid injustice.

103.01 Cases for Arbitration

A. Any judge of the general division of the Court of Common Pleas may, at any time, by a general entry, order any case assigned to that judge to be heard and decided by a Board of Arbitration, consisting of three (3) members who are licensed attorneys and members of the Columbus Bar Association, and the Bar of Franklin County, Ohio, to be selected as provided in this rule (except cases involving title to real estate, equitable relief and appeals), provided the following conditions are satisfied:

- (1) The case must be at least 60 days old; and
- (2) All of the parties must have appeared in the case; and
- (3) The apparent value of the claim or claims of the plaintiff or the plaintiffs shall not exceed Fifty Thousand Dollars (\$50,000.00) exclusive of interest and costs; and
- (4) Generally, the case should not involve any complicated issues of significant fact; and
- (5) The case should not involve any complicated legal issues that are central to the case; and
- (6) The case should be of the type that is capable of being arbitrated pursuant to these rules, including, but not limited to, the rules regarding evidence and time limitations.

B. **(04-26-00)** Cases in which the apparent value of the claim or claims of the plaintiff or the plaintiffs is less than fifty thousand dollars (\$50,000) shall be referred for arbitration as required by Ohio Rules of Superintendence Rule 15(a)(1).

C. **(04-26-00)** Anytime after all parties have appeared in the case, up to ninety (90) days before trial, any party may file a motion to arbitrate. Regardless of the apparent value of the claim or claims.

D. **(04-26-00)** A party who wishes to oppose arbitration shall file a memorandum contra within 14 days of the service of the Entry to Arbitrate or the motion to arbitrate.

The Court shall then determine whether the action is ready and appropriate for arbitration in accordance with the standards listed in Rule 103.01(A).

103.02 Selection of Arbitrators

A. **(04-26-00)** When the order of arbitration is made by the judge, the judge shall select the chairperson, and forward the entry to the arbitration clerk who shall select the time and location of the hearing, file the entry and forward a copy of the entry to all parties.

B. The chairperson shall have at least three (3) years of legal experience, and shall be appointed on a rotating basis from a list of volunteers created by the Court of the Columbus Bar Association and maintained by the Arbitration Clerk.

C. **(04-26-00)** Within fifteen (15) days of the filing of the entry, each side shall appoint an arbitrator who can be available for the scheduled date, and shall notify all parties and the Arbitration Clerk in writing. A party's failure to comply with this rule constitutes a waiver of their right to so appoint and the assigned judge shall appoint their arbitrator for them.

D. Where there is more than one plaintiff or more than one defendant, each side shall nominate one arbitrator. If any conflict arises out of the differing interests of the parties, the judge shall make appropriate rulings.

E. By agreement or by waiver, the parties may proceed with the chairman as the sole arbitrator.

F. On the day of the hearing, the chairperson shall obtain the Court file on the case, along with the appropriate forms for the required Report and Award.

No disclosure shall be made to an arbitrator prior to the filing of the report and award of any offers of settlement made by either party, except by agreement of the parties. Prior to the delivery of the court file to the Chairman of the Board of Arbitrators, the Arbitration Clerk shall remove from the file and retain all papers or any notations referring to demands or offers for settlement.

G. No more than one member of a law firm or association of attorneys shall be appointed to the same board, nor shall any attorney be appointed to a board who has a specific interest in the determination of the case or a relationship with the parties or their counsel which would interfere with the fair and impartial consideration of the case.

103.03 Compensation of Arbitrators

A. Each member of a board who has signed an award or files a minority report shall receive as compensation for his or her services in each case a fee of One Hundred Dollars (\$100.00). 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 hearings of unusual duration involving questions of unusual complexity, the assigned judge, on motion of the members of the board and for cause shown, may allow additional compensation. 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.

B. The chairman shall receive as additional compensation the sum of Fifty Dollars (\$50.00) for each case heard by the board. If the chairperson serves as a sole arbitrator, he or she shall receive compensation of the entire Three Hundred Fifty Dollars (\$350.00) deposited.

C. Each side shall be responsible for paying the fee of one arbitrator and one-half the fee of the chairperson. Payments shall be made to the Clerk of Courts no later than fourteen (14) days before the date set for the arbitration hearing or a show cause hearing may be scheduled anytime after the report and award is filed with the Clerk of Courts. After the show cause hearing, the Court may order the delinquent party to pay the entire cost of the arbitration and at such time order the Clerk of Courts to refund the fees deposited by the non-delinquent party.

In the event that one or more parties is unable due to poverty to make the payment for arbitrators' fees, he may file a motion and affidavit under Rule 103.14(A)(1)(c) herein, and all of the provisions of that rule shall apply.

D. If a case is settled or dismissed more than two (2) days prior to the date scheduled for the hearing, the board members shall not be entitled to any fee except in cases where the arbitrators are not notified of the settlement or dismissal by that date. If a case is settled or dismissed within that two-day period, the board members shall be entitled to receive the fee. The parties are required to notify the chairperson and the Arbitration Clerk immediately of settlement or dismissal.

E. If a case is settled or dismissed more than two (2) days prior to the date scheduled for the hearing, the parties shall file the standard settlement and dismissal entry, shall serve the Arbitration Clerk with a copy, and shall notify all of the arbitrators of the settlement. If the settlement is within two (2) days or less prior to

the arbitration, the settlement and dismissal entry, shall also contain an order for payment of fees to the arbitrators, designating their names, addresses and amount due.

103.04 Hearing: When and Where Held - Notice

A. Hearings shall be held at a time scheduled by the Arbitration Clerk at a courtroom or hearing room unless the chairperson, upon agreement by all parties, shall designate another place, such as a law office, a Columbus Bar Association office or room, or another appropriate office. A hearing shall be scheduled not less than forty-five (45) but no more than sixty (60) days after the appointment of the chairperson.

The sixty (60) day period may be extended only by the Court. No hearing shall be fixed for Saturdays, Sundays, legal holidays, or evenings, except upon agreement of counsel for all parties, the board, and the Arbitration Clerk.

B. Since sufficient notice is given to the parties prior to the hearing date, the hearing should proceed at the scheduled time.

103.05 Duties and Oath of Arbitrators

A. The Arbitrators shall:

1. Perform their duties fairly, impartially and diligently; and
2. Be patient, dignified and courteous to all who come before them; and
3. Be faithful to the law; and
4. Be unswayed by personal interests or fear of criticism; and
5. Not identify themselves as Plaintiff or Defendant's Arbitrator.

B. The Arbitrator's sole function is to consider the evidence, to apply the facts to the law in a fair and impartial manner and to render a just decision.

C. When all the arbitrators are assembled and before the hearing begins, each arbitrator shall take an oath or affirmation, as follows:

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

This oath shall not be waived. Any arbitrator who fails to take this oath shall not be entitled to any compensation for serving as an arbitrator.

D. There shall be no communications by counsel or the parties with any arbitrator concerning the merits of the controversy prior to the commencement of the arbitration hearing nor following the conclusion of the arbitration hearing until the Report and Award has been filed and served on all parties.

103.06 Default of a Party

The arbitration may proceed in the absence of any party who, after due notice, fails to be present,

appoint its arbitrator, obtain a continuance, or to present evidence. An award shall not be made solely on the default of a party. The board shall require the other party to submit such evidence as it may require for the making of an award.

103.07 Supervisory Powers of the Court

The assigned judge, or when he or she is unavailable, the Administrative 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.

103.08 Witness Fees, Written Depositions, Videotape Deposition

Witness fees in any case referred to arbitration shall be in the same amount as now or hereafter provided for witnesses in trials in the Common Pleas Court. Costs of witness fees may be ordered taxed as costs. 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.

103.09 Transcript of Testimony

The arbitrators shall not be required to make a transcript of the hearing. If any party desires a transcript, that party shall provide a reporter and cause a record to be made. The party requesting the record shall pay the expenses, which 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 of the usual charges for a copy of a deposition, plus the party's proportionate share of the cost of the reporter's attendance.

103.10 Continuance of Hearing, Inability of Hearing to Proceed

A. The chairperson may continue a hearing date only upon a showing by a party or parties of extraordinary reasons. In such event, it shall be the responsibility of the party requesting the continuance to reschedule the hearing at a date and time not later than forty-five (45) days, mutually agreeable to the Arbitration Clerk, the arbitrators and the parties, and provide written notice of the rescheduled hearing date to the Arbitration Clerk, the arbitrators and the parties. In no event shall a case be continued more than twice without a Continuance Entry and the approval of the trial judge.

B. If one or two members of the arbitration board are unable to attend the hearing, the parties shall obtain a substitute arbitrator, or may agree that the hearing proceed before a board of less than three arbitrators.

In no event shall the hearing proceed in the absence of the assigned chairperson. If the assigned chairperson cannot attend the hearing, the arbitration clerk shall attempt to locate a substitute chairperson whose appointment will not cause any conflict of interest. If no substitute can be located, the hearing shall be continued to a date and time mutually agreeable to the arbitrators, the parties, and the Arbitration Clerk.

C. If the hearing is unable to proceed as a result of the death or long-term illness or disability of a party, or counsel, the chairperson shall return the case file to the Court with notice of such fact. The judge shall summon the parties or their counsel and make such orders as are just relative to further proceedings in the case.

D. Any motion that has not been ruled on prior to the date of the arbitration shall be disregarded by the board for the purposes of arbitration. Any motion objecting to the referral of the case to arbitration that has not been ruled on prior to the date of the arbitration shall, at the request of any party, cause the hearing to be continued.

103.11 Conduct of Hearing - General Powers

A. Strict conformity to the Rules of Evidence is not necessary. However, except as indicated below, there shall be substantial compliance with the Ohio Rules of Evidence and inadmissible hearsay shall be kept to a minimum. Evidence received shall be given such weight as the board deems appropriate after consideration of any objections. Rulings upon objections shall be made by the chairperson. All evidence shall be taken in the presence of the arbitrators and all the parties except where any of the parties is absent and consents, or is in default, or has waived the right to be present. The board may receive evidence in the following forms:

- (1) Testimony. Testimony by competent witnesses, whether live or by deposition, signed and dated witness statements or transcripts of the same, or affidavits. The chairperson shall administer oaths or affirmations to all live witnesses;
- (2) Documentary Evidence.
 - (a) In actions involving personal injury and/or damage to property, the following documents may be offered and shall be received into evidence.
 - (b) Medical bills, including the following:
 - (i) Health Care Providers. Bills of hospitals, doctors, dentists, nurses, therapists, and all other health care providers, on the proper form or letterhead, when itemized and dated.
 - (ii) Bills for Medicines, etc. Bills for medicines, eye glasses, prosthetic devices, medical appliances, or similar items.
 - (c) 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, provided that sufficient proof of ownership is offered by the party seeking to introduce such bill or estimate.
 - (d) Procedure in Case of Estimate. In the case of an estimate, the party intending to offer the estimate shall forward with his or her notice to the adverse party, together with a 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 or repair made and the amount paid.

- (e) Records and Reports.
 - (i) Police, sheriff and highway patrol reports.
 - (ii) Hospital, medical, therapy, doctor's reports, and x-rays.
 - (iii) Employer's reports on lost wages and economist reports.
- (f) Similar materials. Any reports and/or records and/or other materials that are substantially similar to any of the items specifically set forth in Rule 103.11 may be offered and shall be admitted into evidence.

B. All written or documentary evidence as listed above must be served upon the adverse parties or their counsel at least fourteen (14) days before the hearing, unless counsel otherwise agrees. Failure to give such notice or serve that evidence upon opposing parties can be sufficient grounds for exclusion of the evidence, at the discretion of the chairperson. The chairperson shall not exclude evidence unless it unfairly surprises the non-offering party or otherwise unfairly prejudices the non-offering party.

C. Counsel shall, upon request, whenever possible, produce a party or witness at the hearing without the necessity of a subpoena. Subpoenas are to be issued as provided in Civil Rule 45 through the Clerk's office as in any other case. Except as indicated above, the parties are not required to appear at the hearing and such absence shall not be held against them.

D. The chairperson may compel the reasonable production of books, papers and documents which may be material to the case.

Should a party or witness fail to produce documents or to testify as to a matter after being ordered to do so by the chairperson, the board may treat that particular matter as not controverted and proceed to make a final award without the necessity of issuing a citation for contempt.

E. Where documentary evidence including, but not limited to, the types of evidence referred to above, will be offered for admission at the hearing, counsel for the party offering the evidence shall provide a copy of each document to each arbitrator.

F. The chairperson, may request that counsel provide the board with brief written or oral arguments of law, together with supporting authorities, if necessary to a just determination of the issues. The board shall decide the case submitted to it in accordance with their duties and oath as specified above in Rule 103.05.

G. The hearings should last not more than three (3) hours total except for good cause shown, and the chairperson shall divide the hearing time fairly among the parties.

103.12 Report and Award (04-26-00)

Within thirty (30) days after the hearing, the chairperson shall file a Report and Award with the Clerk and the Arbitration Clerk, and on the same day shall mail or otherwise forward copies to all parties or their counsel. An award may exceed \$50,000.00 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 findings and award, the dissenting member shall write the word "Dissents" before his or her signature. A minority report shall not be required unless the dissenting arbitrator elects to submit one. The Clerk of Courts shall note the Report and Award on the docket, and shall provide a copy to the assigned judge.

103.13 Legal Effect of Report and Award: Entry of Judgment

The Report and Award, unless appealed from, shall be final. If no appeal is taken within the time and in the manner specified, the Court shall enter judgment on such award. After the appeal time runs, the prevailing party shall prepare a judgment entry, which shall be submitted to opposing counsel for approval and to the assigned judge for signature. If no entry has been submitted to the Court as set out in Rule 25.01 of the Local Rules, from the date of the filing of the Report and Award, the Court will file its own entry. The Court shall order the Clerk of Courts to pay the arbitrators, as soon as practicable, following the filing of an Award by the chairperson, or a settlement or dismissal entry or stipulation entitling the arbitrators to payment under these rules.

103.14 Appeals

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

- (1) (a) Notice of Appeal and Costs. An appellant shall file a Notice of Appeal de novo, in the office of the clerk, together with an affidavit indicating that the appeal is not being taken for delay but because the appellant believes an injustice has been done. The appellant shall pay to the Clerk of Courts the sum mentioned in (1)(b) below. The appellant shall serve a copy of the notice of appeal and affidavit upon all parties or their counsel and the Arbitration Clerk.

(b) (04-26-00) Payment of Appeal Fees. The party filing the appeal shall reimburse the county for all fees paid to the arbitrator or arbitrators in the case. Further, the appellant shall pay to Franklin County, Ohio, by depositing with the Clerk of Courts, One Hundred Fifty Dollars (\$150.00). The sum so paid shall not be taxed as costs in the case and shall not be recoverable by the appellant in any proceeding. Expenditure of these funds shall be at the discretion of the court

(c) Poverty Affidavit and Notice. A party, desiring to appeal an award, may concurrently with the filing of a Notice of Appeal de Novo file with the assigned judge a written motion and affidavit averring that by reason of poverty the party is unable to make the payments required for an appeal and requesting the Court to allow an appeal de novo without payment of the amount specified above in (1)(b). If after due notice to the opposing parties, the judge is satisfied with the truth of the statement in the affidavit, the judge may order that the appeal of such party be allowed although the amounts are not paid by the appellant. If, however, the plaintiff or party appealing, who has filed a poverty affidavit as described above, receives a settlement, or judgment in the case, the defendant or party who agrees to or is ordered to pay the judgment, shall pay first to the Clerk of Courts out of the settlement or judgment, before making payment to anyone else, an amount equal to all arbitration compensation fees and appeal de novo fees previously waived by an affidavit of poverty.

(2) Return to Assigned Judge. After perfection of the appeal, the case shall be returned to the assigned judge for trial.

B. Appeal De Novo. All cases which have been duly appealed shall be tried de novo. No mention of the arbitration or its result shall be made at the time of trial. However, this section shall not be construed to prohibit a party from employing the transcript of testimony of a witness or party made at the arbitration hearing for the purpose of impeachment, or for any other purpose allowed by law or the Ohio Rules of Civil or Criminal Procedure, or the Ohio Rules of Evidence.

C. Testimony of Arbitrators on Appeal. In the event of an appeal from the award or decision of the board, the arbitrators shall not be called as witnesses as to what took place before them in their capacity as arbitrators.

D. Exceptions and Reasons Therefor. Any party may file exceptions with the Clerk of Courts from the decision of the board, within thirty (30) days from the filing of the Report and Award for reasons set out in O.R.C. 2711.10.

Copies of the exceptions shall be served upon each arbitrator within three (3) days after filing and shall be forthwith assigned for hearing before the Administrative Judge or a judge assigned by him or her to conduct a hearing.

If the exceptions are sustained, the report of the board shall be vacated by the Court and the Court shall return the case to the trial docket for trial or assign the case again to arbitration before a new board of arbitrators. The judge vacating the Report and Award may also withhold arbitrator's compensation, or require a refund of compensation, from any one or more of the arbitrators. The filing of exceptions shall toll the running of the

thirty (30) day appeal period provided in (A) above until a determination of the exceptions by the Court.

103.15 Misconduct of Arbitrator(s) (04-26-00)

Exceptions to the decision of the board or single arbitrator based on either misconduct or corruption of the board or single arbitrator may also be filed by any party within thirty (30) days after the filing of the report, and, if sustained, the report shall be vacated.