

**RULES OF PRACTICE
OF THE
COURT OF COMMON PLEAS OF
MEDINA COUNTY, OHIO**

It is ordered that the following shall be the local rules for the regulation of the practice and proceedings in the Common Pleas Court of Medina County, Ohio, (General Division) until otherwise ordered by the Court.

All previous local rules are hereby repealed and rescinded.

RULE 1

I. ASSIGNMENT OF CASES.

1.01 Each case shall be assigned to the docket of a specific judge as soon as it is filed and shall be retained on his/her docket until final disposition or reassignment by the Administrative Judge. All questions including all motions, except those referred to a Referee, shall be considered and determined only by such judge. All entries including dismissal entries shall be presented to and signed by only the judge to whom the case is assigned unless he/she has authorized another judge to act in his/her absence. Nothing herein shall prevent the transfer of a case or cases from one judge to another for good cause with the concurrence of the Administrative Judge.

1.02 All questions relating to the listing, consolidating and severing of cases shall be submitted to the judge to whom the cases are assigned. The Court may on its own motion consolidate or sever cases at any time before the taking of testimony.

RULE 2

II. CASE MANAGEMENT.

2.01 At any time after service of the Complaint, the judge assigned to the case may make a scheduling order. The scheduling order shall limit the time:

- (a) To join new parties and to amend the pleadings;
- (b) To file and hear motions;

- (c) To complete discovery;
- (d) Any other matters appropriate to the particular case.

RULE 3

III. LEAVES TO PLEAD.

3.01 When a party desires a leave to plead to a Complaint, Cross-Claim, Counter-Claim, Third Party Petition, Answers to Interrogatories, or Requests for Admissions, such party, if he/she has not previously obtained any leaves to plead, may obtain one automatic leave to plead for not more than twenty-eight (28) days by preparing and submitting to the Court a judgment entry setting forth the date by when a responsive pleading or answers to interrogatories must be filed. A copy of the judgment entry shall be served upon all counsel of record by movant.

3.02 After the expiration of the time specified above, counsel may by written stipulation filed with the Clerk and with Court approval, extend the time for filing answers, answers to interrogatories, or other responsive pleadings or briefs.

3.03 If additional time to plead is requested following the expiration of the time granted above, and, if counsel cannot stipulate to additional time as provided for in paragraph 3.02 above, the party requesting additional time may apply to the Court in writing for additional time. Such application shall state the facts why an appropriate pleading cannot be filed within the time previously allowed and the Court shall grant the applicant such additional time as it deems appropriate under the circumstances. If additional time is granted ex parte, any party opposed to the additional time granted to the applicant shall have the right to object and file with the Court his/her reasons why the time period should be reduced. A hearing on the objection may be afforded said party at the earliest opportunity with telephone notice to opposing counsel given by the Court of the date and time of the hearing.

RULE 4

VI. PRE-TRIAL PROCEDURE.

For the purpose of insuring the readiness of cases for pre-trial and trial, the following procedure shall be in effect.

4.01 A pre-trial conference may be conducted in all civil cases prior to being scheduled for trial. The judge may for good cause shown waive the pre-trial requirements stated herein.

4.02 **PRE-TRIAL STATEMENTS**

- (A) At least one week prior to the scheduled pre-trial hearing, the judge shall require counsel for both sides to completely execute and file a separate Pre-trial Statement in the Clerk's office on behalf of their respective clients. Before the submission of such statements counsel must confer with each other and the statements must reflect the results of their conference. In the event of any unnecessary delay or failure to cooperate as required herein, the judge shall invoke the sanctions authorized under Ohio Civil Rule 37. Copies of a pre-trial form may be obtained from the Court, or counsel may use their own form.
- (B) The Pre-trial Statements will recite a brief description of the case and the injuries involved, will list item by item, the ascertainable damages such as medical expenses, lost earnings, property damage, etc.; will indicate the status of depositions and physical examinations, and reflect the lowest demand and highest offer. Reports of medical and expert witnesses should be exchanged. Expert witnesses whose reports have not been furnished prior to 60 days of the trial date will not be permitted to testify at the trial. Lay witnesses must be identified at least 30 days prior to trial or they will not be permitted to testify.
- (C) The provisions of this rule shall apply to the extent to which they are appropriate to cases other than for the recovery of damages for injury to person or property. A counterclaimant shall be considered a plaintiff and shall comply with provisions applicable to plaintiffs.

4.03 **PRE-TRIAL CONFERENCE**

- (A) For the purpose of this rule, "pre-trial" shall mean a court supervised conference chiefly designed to produce an amicable settlement. The term "party" or "parties" used hereinafter shall mean the party or parties to the action, and/or

his/her/their attorney or attorneys of record.

- (B) Notice of the pre-trial conference shall be given to all counsel of record by mail not less than fourteen (14) days prior to conference. Any application for continuance of the conference shall be addressed to the judge to whom the case has been assigned.
- (C) The Court may at the pre-trial conference set time limitations for completion of discovery, filing of motions, set forth stipulations, admissions and other such matters. The Court may enter a pre-trial order setting forth such matters.
- (D) The Court may determine if the case shall be submitted to arbitration, and set the date therefor.
- (E) The discovery proceedings which continue after the pre-trial conference shall not delay the trial of the case. The Court reserves the right to set the case for trial before the completion of any further discovery and without additional pre-trials.
- (F) Any judge presiding at a pre-trial conference or trial shall have the authority:
 - 1. To dismiss an action for want of prosecution on motion of defendant upon failure of plaintiff and/or counsel to appear in person at any pre-trial conference or trial.
 - 2. To order the plaintiff to proceed with the case and to decide and determine all matters ex parte upon failure of the defendant to appear in person or by counsel at any pre-trial conference or trial.
 - 3. To make such other order as the court may deem appropriate.
- (G) At all pre-trial conferences:
 - 1. Plaintiffs must be present if within the jurisdiction of the court. If not within the jurisdiction, plaintiff's counsel must have authority to discuss all phases of the case and power to settle the case.

2. If within the jurisdiction of the court, the defendant must be present except where the real party in interest is an insurance company, common carrier, corporation or other artificial legal entity in which case a representative thereof with authority to negotiate and power to settle the case must be present.
3. Counsel must have full authority to negotiate and must have conferred with each other prior to the pre-trial conference. Counsel must have reviewed their files prior to pre-trial, and must be prepared to discuss discovery matters, applicable pretrial motions, and settlement possibilities.

RULE 5

V. DISMISSAL PURSUANT TO CIVIL RULE 41(B)(1).

5.01 If no trial or pretrial notice has been received within six (6) months after the filing of a complaint, or three (3) months in domestic relations cases, the plaintiff shall file a request for trial and any required pre-trial statement. Failure to file such a request and pre-trial statement when required will result in a case being dismissed. Notice will be sent to counsel of record or the party of his/her inaction. Failure to file a request for trial and pre-trial statement when required within ten (10) days of notice will result in dismissal by the court's own entry.

RULE 6

VI. HEARING AND SUBMISSION OF MOTIONS.

Except as otherwise provided in these local rules, the following procedures shall apply to all motions and applications filed.

6.01 Motions and applications shall be accompanied by a brief stating the grounds thereof and citing the legal authorities and points relied upon.

6.02 Within fourteen (14) days after service of a copy of such motion or application, opposing counsel may file an answer brief.

6.03 Unless oral argument has been requested, upon the expiration of the time for filing briefs, the matter shall be

deemed submitted unless otherwise ordered by the Court. Further time for filing answer or reply briefs may be allowed by the Court for good cause shown. Service shall be deemed completed as per Civil Rule.

6.04 If oral argument is desired, the movant shall place the words "Oral Argument Requested" in prominent type in the upper right hand portion of the first page. If such legend is not prominently so displayed, the Motion will be determined without oral argument. The movant or applicant shall obtain a hearing time from the Court in advance of the filing of the motion or application. A copy of such motion or application shall be forthwith sent to opposing counsel with a Proof of Service endorsed thereon showing the date and time of the Hearing and the name of the Judge or Referee before whom the matter shall be heard.

6.05 Except for good cause shown, the hearing date for oral argument will not be scheduled sooner than fourteen (14) days after the motion is filed, if requested by the movant, or seven (7) days after the answer brief has been filed, if requested by a party filing an answer brief. If more than one party is entitled to file answer briefs, the oral hearing shall not be set sooner than seven (7) days after the last date when an answer brief might be filed by other counsel. If oral argument is requested by the movant, opposing counsel shall automatically be entitled to an oral hearing and subsequent waiver of oral motion by the movant shall not terminate the right of opposing counsel to appear at the time set and make his/her argument to the Court.

6.06 If a party who has requested oral argument intends to waive oral argument and submit the matter to the Court on his/her brief, it shall be incumbent upon that party to notify all opposing counsel and the Court of his/her intention not to appear for oral argument no later than two (2) days prior to the day set for the oral hearing.

6.07 On hearing of any motion or application, oral testimony will not be received except by leave of Court. Supporting data where appropriate may be submitted in the form of affidavit, deposition or exhibit.

6.08 If the time previously set for hearing is changed at the instance of counsel, it shall be the obligation of the party requesting the continuance to notify all other counsel of the new hearing date and shall file with the Court a copy of any written notice mailed or delivered to opposing counsel or his/her certificate that oral notice was given.

6.09 The Court shall notify counsel of record or parties not in default of all changes in hearing dates made by the Court on its own motion. In all other cases, counsel requesting a change in a hearing date, whether by stipulation between counsel or with the consent of the Court, shall be obligated to notify opposing counsel.

RULE 6A

VI.A MOTIONS FOR SUMMARY JUDGMENT.

Motions for summary judgment pursuant to Civil Rule 56 shall be submitted on written argument. No oral argument shall be afforded. Written arguments and all documentation must be submitted within the time periods provided by Civil Rule 56. Thus, the Court will continue to set such motions at least fourteen (14) days prior to the scheduled "hearing". The nonmoving party will have until the day preceding the "scheduled hearing" to present any documentary evidence as required by Civil Rule 56.

RULE 7

VII. JUDGMENT ENTRIES.

7.01 Judgment entries shall be prepared by counsel for the party in whose favor an order, decree or judgment is rendered, or as ordered by the Court. Each entry shall be submitted to opposing counsel for approval, which shall be executed within five (5) days, and the entry then returned to counsel who prepared it. Counsel for the prevailing party shall cause such approved entry to be delivered to the Court. Upon signature of the judge, the entry shall be filed with the Clerk of Courts and journalized.

7.02 If counsel for any adverse party does not approve of the submitted entry she/he shall either state in writing his/her objections and attach the same to said entry and sign his/her name thereto, or prepare what is in his/her opinion a proper entry and return both the original entry and the proposed entry to counsel for the prevailing party for delivery to the Court. The Court may hold a hearing, or may choose one of the entries, or may direct counsel to prepare a different entry. If a hearing is to be held, the Court will notify counsel for all parties of the time for hearing.

7.03 If by reason of the absence of counsel for the adverse party/parties, or for other cause, such entry cannot be

submitted to such counsel for approval it shall be submitted to the Court with an explanation of the nonsubmission.

7.04 If, by reason of the number of counsel, it would be too time consuming to circulate the judgment entry to each for direct approval, the prevailing party may submit the original entry directly to the Court for approval. Such entry shall, in lieu of the approvals of other counsel, contain the certificate of the submitting counsel that on a specified date s/he mailed a copy of the judgment entry to all counsel whose approvals are not endorsed thereon. The Court will withhold filing the entry until seven (7) days from the date copies were sent to other counsel. If no written objections or alternative entries are received by the Court by the end of such period, and the entry is otherwise found acceptable to the Court, the same shall be filed forthwith with the Clerk.

RULE 8

VIII. CONTINUANCES.

8.01 Only the Judge to whom a case is assigned may grant a continuance of any matter relating to said case, or if he/she is unavailable, the Administrative Judge may so act.

8.02 A continuance may be granted only upon written application, setting forth the reason therefore, the signature of the client, and the name of the attorney making the request.

8.03 The applicant shall prepare a judgment entry which shall contain the reason for the continuance, the name of the attorney who made the request, and the new date certain to which the matter has been continued; which date shall be first obtained from the Court and confirmed with opposing counsel. The applicant shall thereupon notify the opposing counsel by sending a copy of such entry with proof of service noted thereon, immediately after filing. All continuances are discouraged. Counsel who plan to be away on vacation or otherwise, should notify the Court well in advance of their anticipated absence. After trial schedule is published, counsel who have a conflict with a scheduled trial date should immediately notify the Court so that their case may be re-scheduled and a replacement case inserted in its stead.

RULE 9

IX. WITHDRAWAL OF COUNSEL.

9.01 Only attorneys of record shall be considered as representatives of any parties in a case. Withdrawal of such counsel shall be only upon application with Judgment Entry of Approval by the Court made seasonable before trial, and, where possible, the name of the successor attorney shall be included in the Judgment Entry. Upon allowance of withdrawal by the Court such withdrawing counsel shall serve a copy of said Judgment Entry on the client, together with a letter, copy of which shall be deposited with the Clerk of Courts.

RULE 10

X. RECEIVERS.

In all cases where Receivers are appointed by this Court, the following shall apply:

10.01 Unless the Court by entry, specifically authorizes the receiver to continue a business, he/she shall expeditiously take control of the assets of the defendant debtor, give notice to all known creditors of his/her appointment and afford them opportunity to present and prove their claims, cause the assets to be inventoried and appraised, determine the validity and priority of creditors' claims, take such steps as may be necessary to reduce the assets to cash, and make distribution of said cash between the various classes of creditors.

10.02 Within two months after his/her appointment the receiver shall report to the Court, submitting his/her inventory and appraisal, and including his/her account of receipts and expenditures to date. The several matters herein referred to shall be considered by the judge to whom the case is assigned and his/her approval thereof shall be by entry, approved first by the Receiver and his/her counsel.

10.03 At least semi-annually after filing the first report with inventory, appraisal and account, the Receiver shall file with the Court for approval consecutively numbered reports with accounts, as to all receipts and expenditures made by the Receiver during the reporting period and a summary of plans for the future conduct of the receivership.

10.04 In cases involving Receivers appointed to take charge of property and to collect rents and other income, the receiver may expend funds, without first having obtained Court approval, to pay for insurance premiums, water and utility bills, and make emergency repair as are necessary for the proper maintenance of the property. For authority other than that

conferred upon the Receiver by virtue of this rule, the Receiver shall make application to the Court for such authority.

10.05 In all receiverships in which property appraised in excess of \$2,500.00 is to be put up for public or private sale, the Receiver shall file in advance of such sale, a report with the Court showing the amount of expenditures incurred or to be incurred prior to the time the sale is to be conducted.

10.06 An application for payment of Receiver's and counsel for Receiver's fees (partial or final) shall be submitted for approval by the Court. Written notice of the hearing on application for fees in excess of \$500.00 shall be submitted personally or by mail to all creditors, or to their attorney of record, unless otherwise provided by Court Order. Such applications shall show time spent on enumerated items, amounts of money collected, disbursed and on hand, the status of secured and unsecured creditors' claims, including amounts claimed, payments made thereon and balances due, the amounts and dates of prior fees authorized in the case, and an estimate of the amount of time necessary to complete work in the receivership and make final distribution.

10.07 Failure to file an inventory and appraisal, accounts, or other reports as contemplated by the rule will constitute cause for removal of the Receiver and or his/her attorney, and for withholding of fees for the Receiver and or his/her attorney.

RULE 11

XI. ATTORNEY FEES IN PARTITION CASES.

11.01 The attorney/attorneys in an action before this Court for the partition of real estate pursuant to Section R.C. 5307.01 to R.C. 5307.25 inclusive, who have rendered services in connection with such partition litigation shall be allowed compensation for services rendered taxed as costs out of the fund created by virtue of said services. Further, all other counsel representing parties to the action shall likewise be compensated out of the fund, taxed as costs for services rendered in accordance with the relationship said services have to the creation of the fund for the common benefit of all parties. All counsel requesting compensation for their services shall submit an itemized statement under oath, to the Court which shall contain the following information:

- (A) The Attorney's usual hourly rate and designation as to whether he/she represents a plaintiff or a

defendant.

- (B) A detailed accounting of the time which the attorney has involved in the case.
- (C) The amount the attorney expects to be compensated for said services.
- (D) The Court in arriving at the fee to be allowed any counsel shall consider the following criteria:
 - (1)The extent to which the attorney's services contributed to the creation of the fund.
 - (2)The time required to conclude the matter.
 - (3)The complexity of the issues of fact and law involved.
 - (4)The skill required of counsel.
 - (5)The usual and ordinary hourly charge made by attorneys.

These criteria shall not be construed to limit the matter which the Court may consider in determining fees.

RULE 12

XII. JUDICIAL CERTIFICATE OF TITLE.

12.01 In any real property foreclosure, the Medina County Treasurer shall be listed as a party defendant, but need not be served with the pleading unless the lien of the State for taxes, real, personal, or otherwise is being challenged, either as to its amount, or as first and best lien.

12.02 The treasurer need not be served with any answer or other pleadings thereafter unless the party involved intends to challenge the taxes claimed by the treasurer on the tax records, either as to amount, validity, or as to priority as first and best lien.

12.03 As part of any journal entry for confirmation of sale and distribution of the proceeds of a foreclosure, a certificate of the county treasurer shall be obtained through the prosecutor's office certifying that all taxes due through the date of sale have been paid, or are secured to be paid by the

journal entry presented.

12.04 In all actions for partition, foreclosure of mortgage or other cases in which the title to real property is a primary issue, the party bringing the action shall attach to the complaint a judicial certificate of title unless same be dispensed with by order of Court, and the clerk shall not file such complaint unaccompanied by such judicial certificate.

12.05 Such certificate of title shall cover the chain of title for a period of at least fifty (50) years, and all liens and encumbrances, rights or interests in or upon the property, as the same appear of record. The form of such certificate shall be approved by the Court. The reasonable costs of such certificate shall be included in the costs of said action.

RULE 13

XIII. Pursuant to "Superintendence Rule 16" of the Rules of Superintendence, Supreme Court of Ohio, and in order to facilitate and expedite the administration of justice in Medina County, Ohio, the following procedures are hereby adopted.

13.01 ARBITRATION AND MEDICAL MALPRACTICE ARBITRATION.

- (A) A case shall be sent to arbitration when so ordered by a judge at pre-trial upon his/her determining that the amount actually in controversy, exclusive of interest and costs, is Twenty Thousand Dollars (\$20,000) or less except actions involving title to real estate, equitable relief and appeals. Arbitration shall be permitted in cases where the amount in controversy exceeds the sum specified in the plan for mandatory arbitration where all the parties to the action agree to the arbitration.
- (B) For medical malpractice claims, upon the filing of a claim as defined in Section 2305.11 Ohio Revised Code, in the Court of Common Pleas, said claim shall be set for a pre-trial. At the pre-trial conference, counsel shall agree, if possible, on a date for the arbitration hearing. The attorneys may agree at any time after the filing of the complaint to one arbitrator instead of three.
- (C) Exceptions to an order sending a case to arbitration shall be raised by a motion filed within ten (10) days of the mailing of notice of such order, and

shall be heard by the assigned judge.

13.02 SELECTION OF ARBITRATORS.

- (A) For medical malpractice claims, each party shall select one arbitrator and notify the Court of said selection. Upon receipt of the names of the two chosen by the parties, the Court shall select the chairperson, from a list of attorneys who have previously consented to serve.
- (B) If either party fails to appoint an arbitrator, the Court shall, on application, appoint an arbitrator or arbitrators pursuant to Section 2711.04, Ohio Revised Code.
- (C) For all other arbitration cases, the Court shall appoint three arbitrators.
- (D) Not more than one member of a law partnership or an association of attorneys shall be appointed to the same Board.
- (E) Exceptions to an arbitrator shall be raised by motion filed within five (5) days of the mailing of notice of assignment and shall be heard by the assigned judge.

13.03 HEARINGS: WHEN AND WHERE HELD: NOTICE.

- (A) Hearings shall be held in the Grand Jury Room, Basement Floor of the New Court House Building, Medina, Ohio or at such other place as all the parties and their attorneys may agree in writing.
- (B) The court shall notify arbitrators and the parties and their counsel in writing at least thirty days before hearing of the time and place of the hearing, the names of the arbitrators, and the attorneys involved.
- (C) No hearing shall be fixed for Saturdays, Sundays, legal holidays, or evenings except upon agreement by counsel for all parties and the arbitrators.
- (D) Once a hearing date is set the hearing shall proceed forthwith at the scheduled time, absent extraordinary circumstances.
- (E) Continuances, if any, shall be at the discretion of

the chairperson of the arbitration panel. The party who obtains the continuance is responsible for confirming the new date with opposing counsel and all arbitrators, and notifying the Court of the new date.

- (F) There shall be no communications by counsel or the parties with the arbitrators concerning the merits of the controversy prior to the commencement of the hearing. No disclosure shall be made to the arbitrators prior to the filing of the report and award of any offers of settlement made by any party.

13.04 OATH OF ARBITRATORS.

- (A) When the whole number of the arbitrators shall be assembled, they shall be sworn or affirmed substantially as follows:

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

13.05 DEFAULT OF A PARTY.

- (A) The arbitration may proceed in the absence of any party, who, after due notice, fails to be present or fails to obtain an adjournment. An award shall not be made solely on the default of the party; the panel shall require the other party to submit such evidence as they may require for the making of an award. If neither party appears at the time set for the arbitration hearing, the award shall be one dismissing the action for want of prosecution subject to the right to recommence within one year.

13.06 CONDUCT OF HEARING: GENERAL POWERS.

- (A) A majority of the three members of the panel, unless the parties agree to a lesser number, shall be the judge of the relevancy and materiality of the evidence offered and conformity to legal rules of evidence shall not be necessary.
- (B) All evidence shall be taken in the presence of the arbitrators and of all the parties except where any of the parties is absent, in default, or any of the parties have waived his right to be present.
- (C) The panel may receive the evidence of witnesses by

deposition, affidavit or written report and shall give it such weight as they deem it is entitled to after consideration of any objections which may be made to it.

- (D) Counsel shall upon request, whenever possible, produce a party of witness at the hearing without the necessity of a subpoena.

13.07 SPECIFIC POWERS.

- (A) The panel 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 the practice of courts for failure to comply therewith.
 - (2) Production of Documents: To compel the production of all books, papers and documents which they shall deem material to the case.
 - (3) Administering Oaths: Admissibility of Evidence: To administer oaths or affirmations to witnesses, to determine the admissibility of evidence, to permit testimony to be offered by depositions and to decide the law and the facts of the case submitted to them.

13.08 SUPERVISORY POWERS OF COURT.

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

13.09 WITNESS FEES.

- (A) Witness fees shall be in the same amount as now or hereafter provided for witnesses in trials in the Common Pleas Court of Medina County, Ohio, which shall be taxed as costs.

13.10 TRANSCRIPT OF TESTIMONY.

- (A) The Arbitrators shall not be required to make a transcript of the proceedings before them, if any party shall desire a transcript he/she shall provide

a reporter and cause a record to be made.

- (B) The party requesting the same shall pay the cost thereof which shall not be considered costs in the case.
- (C) Any party desiring a copy of any transcript shall be provided same by the reporter upon payment therefor, based upon the usual charges made for a copy of a deposition plus one-half of the costs of the reporter at the hearing.

13.11 REPORT AND AWARD.

- (A) Within thirty (30) days after the hearing, the Chairperson shall file a report and award, which for medical malpractice shall contain findings of fact, with the Clerk of Courts and on the same day shall mail or otherwise forward copies thereof to all parties or their counsel.
- (B) The report and award shall be signed by all members of the Board. In the event all three members do not agree on the finding and award, the dissenting member shall write "Dissents" before his/her signature. A minority report shall not be required unless the dissenting arbitrator elects to submit the same due to unusual circumstances.
- (C) Except for medical malpractice awards, an award may not exceed \$20,000 exclusive of interest unless, in an action containing several party claimants, the Court, when referring the case to arbitration, orders that the \$20,000 limitation apply separately to one or more of the claimants or as agreed to by the parties.

13.12 RIGHT OF APPEAL.

- (A) Any party may appeal from the action of the Board of Arbitration to the Common Pleas Court of Medina County.
- (B) The right of appeal shall be subject to the following conditions, all of which shall be complied with within thirty (30) days after the entry of the award of the Board on the Docket in the office of the Clerk of Courts.

13.13 NOTICE OF APPEAL AND COSTS.

- (C) The appellant shall pay an Appeal Fee of Thirty-Five Dollars (\$35.00) to the Clerk of the Courts and shall file with the Clerk of Courts, and a copy at the office of the Arbitration Clerk, a notice of appeal, together with an affidavit that the appeal is not taken for delay but because he/she believes an injustice has been done.
- (D) A copy of such instrument shall be served upon opposing parties or their counsel.

13.14 REPAYMENT OF ARBITRATION FEES.

- (A) The appellant shall first repay to Medina County, Ohio, by depositing with the Clerk of Courts, all fees received by the members of the Board of Arbitration in the case in which the appeal is taken. The sum so paid shall not be taxed as costs in the case and shall not be recoverable by the appellant in any proceeding.

13.15 POVERTY AFFIDAVIT AND NOTICE.

- (A) A party desiring to appeal an award, may apply by a written motion and affidavit to the Court averring that by reason of poverty he/she is unable to make the payments required for an appeal. If after due notice to the opposite parties, the judge is satisfied of the truth of the statements in such affidavit he/she may order that the appeal of such party be allowed although the said amounts are not paid by the appellant. However, in the event of recovery, such sums shall first be deducted from said recovery and paid to the Clerk of Courts.
- (B) In a claim accompanied by a poverty affidavit supported by written motion, the cost of arbitration shall be born by the Court.

13.16 RETURN TO ASSIGNED JUDGE.

- (A) The case shall thereupon be returned to the judge to whom the case was originally assigned for trial.

13.17 APPEAL DE NOVO

- (A) All cases which have been duly appealed shall be tried de novo.

13.18 TESTIMONY OF ARBITRATORS ON APPEAL

- (A) Except for medical malpractice cases, in the event of an appeal from the award or decision of the Board of Arbitration, the arbitrators shall not be called as witnesses as to what took place before them in their official capacity as arbitrators upon any hearing de novo.

**13.19 LEGAL EFFECT OF REPORT AND AWARD:
ENTRY OF JUDGMENT: MEDICAL MALPRACTICE**

- (A) The report and award shall become final thirty (30) days after its filing and the Court shall enter judgment in accordance therewith unless prior to said thirty (30) days a party files with the Clerk of Courts a notice of non-acceptance of such report and award.
- (B) However, if a party files an application to vacate the award accompanied by a detailed affidavit or affidavits alleging one or more of the following:
- (1) Specifying the findings of fact by the Arbitration Board which were clearly erroneous.
 - (2) The decision is not in accordance with applicable law; and filing a brief in support of such contention.
 - (3) Specifying the procedure required for conducting the hearing and rendering the decision which were not followed fairly and properly but with prejudice to a party.
 - (4) The assigned judge shall schedule a hearing to inquire into the allegations thereof and determine the merits of the application. If the application is granted the pleading shall not be amended and neither the decision of the Arbitration Board nor any dissenting opinion shall be admitted into evidence at the subsequent trial and there shall be no cross-examination of the arbitrators. If the application is denied, the decision of the Arbitration Board and any dissenting opinion will be admitted into evidence upon the offer of any party and the opposing party may cross-examine the arbitrators.

13.20 TIME LIMIT TO AMEND PLEADINGS--MEDICAL MALPRACTICE,

- (A) If the notice of non-acceptance referred to above is filed, the pleadings shall be amended in accordance with Section 2711.21 of the Ohio Revised Code and filed with the Clerk of Courts within thirty (30) days after the filing of such notice of non-acceptance. The party making such pleading amendments shall serve the other parties pursuant to the Ohio Rules of Civil Procedure.

13.21 EXCEPTIONS AND REASONS THEREFOR.

- (A) Any party may file exceptions with the Clerk of Courts, at the office of the Arbitration Clerk, from the decision of the Board of Arbitration within thirty (30) days from the filing of the report and award for either or both of the following reasons and for no other:
- (1) That the Arbitrators misbehaved themselves in the conduct of the case.
 - (2) That the action of one or more of the Arbitrators was procured by misconduct or corruption.
- (B) Copies of said exceptions shall be served upon each Arbitrator and the Court within 48 hours after filing and shall be forthwith assigned for hearing before the Administrative Judge or a Judge assigned by him/her to conduct a hearing thereon.
- (C) If such exceptions shall be sustained the report of the Board shall be vacated by the Court, and the case set for trial. 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.

13.22 COMPENSATION OF ARBITRATORS.

- (A) Each member of a Board of Arbitration who has signed an award or files a minority report may receive as compensation for his/her services in each case, a fee of Fifty Dollars (\$50.00).
- (B) 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.

- (C) In cases requiring hearing of unusual duration or involving questions of unusual complexity, the Administrative Judge or the Judge assigned, on motion of one member of the Board, and for cause shown, may allow additional compensation.
- (D) The members of a Board shall not be entitled to receive their fees until after filling the report and award with the Clerk of Courts.
- (E) Fees paid to arbitrators shall not be taxed as costs nor follow the award as other costs.
- (F) All compensation for arbitrators shall be paid, upon proper warrant, from funds of Medina County, Ohio which have been allocated for the operation of the Common Pleas Court of Medina County, Ohio.
- (G) In the event that a case shall be settled or dismissed more than two (2) days prior to the date scheduled for the hearing, the Board members shall not be entitled to the aforesaid fee. In the event that a case has been settled or dismissed within said two day period, the Board members shall be entitled to receive said fee.

13.23 COMPENSATION-MEDICAL MALPRACTICE ARBITRATORS.

- (A) Each party shall be responsible for the payment of his/her selected arbitrator.
- (B) The compensation of the chairperson, selected by the Court, shall be paid by both/all parties, and the amount shall be mutually agreed upon. If the amount cannot be agreed upon, the Judge to whom the case is assigned will set the fee.

PROCEDURE FOR CRIMINAL MATTERS

RULE 14

XIV. CRIMINAL ASSIGNMENTS.

14.01 Criminal cases will be assigned for hearing or trial under the supervision of the judge to whom the case is assigned. Such cases shall be assigned as nearly as practicable in consecutive order according to date of arraignment unless otherwise directed by the judge to whom the case is assigned.

RULE 15

XV. PRELIMINARY MOTIONS.

15.01 Motions and other written requests in criminal cases shall be filed within thirty (30) days after arraignment or pleas unless otherwise allowed by the court.

15.02 Motions not filed in such time or not disposed of will be heard and decided before the trial at a time to be set within the discretion of the trial judge. An assignment for trial will not be continued because of the filing of such a motion.

15.03 All motions must be supported by a brief containing citations of authority pursuant to Ohio Criminal Rule 47.

RULE 16

XVI. CRIMINAL PRETRIALS.

16.01 All criminal cases will be set for a pretrial at the time of arraignment.

16.02 Discovery should be completed by the time of the pretrial.

RULE 17

XVII. REQUEST FOR TREATMENT IN LIEU OF CONVICTION OR
CONDITIONAL PROBATION

17.01 At the time of filing motions pursuant to Ohio Revised Code Sections 2951.04 and 2951.04.1 shall at the time of

filing counsel shall refer the client to the Adult Probation Department so that a preliminary investigation may be done as to eligibility.

RULE 18

XVIII. PROBATION DEPARTMENT.

18.01 The Adult Probation Department shall conduct a presentence investigation and submit to the court a presentence report on all cases where the defendant has pleaded guilty or was found guilty of a felony, before the defendant is granted probation.

18.02 The Court may order similar reports to be submitted on those defendants who have pleaded guilty or when found guilty of misdemeanors.

18.03 Reports shall also be prepared and submitted to the court on motions for Treatment in Lieu of Conviction, Conditional Probation, Shock Probation, and Expungement.

18.04 Counsel who file motions pursuant to Section 2947.061 of the Ohio Revised Code shall provide any written support for the motion to the Adult Probation Department within 15 days of the date of the filing.

18.05 The Probation Department will request institutional reports to be included in the report to the Court.

18.06 Counsel who file motions pursuant to Ohio Revised Code Section 2953.32 or 2953.52 shall provide the Adult Probation Department any supporting documents, including a written statement by the defendant indicating why the record should be expunged, within 15 days of the filing.

RULE 19

XIX. ASSIGNMENT AND COMPENSATION OF COUNSEL TO DEFEND

19.01 Upon arraignment or subsequent thereto, where it appears to the Court that the defendant is without counsel and desires to have the Court assign counsel, the Court, before doing so, may require the defendant to execute an affidavit of indigency upon the form provided by the Court; the Court having first determined from an examination of the defendant under oath that he/she is indigent.

19.02 Counsel shall be assigned at arraignment or as soon thereafter as possible.

19.03 Attorneys wishing to be appointed as counsel for indigent defendants should inform the courts.

19.04 Assigned counsel shall receive compensation for professional services and shall be reimbursed for expenses in accordance with the schedule of fees adopted by the Board of County Commissioners. In all such cases and upon completion of the service, it shall be the duty of such assigned counsel to submit a statement of the services rendered and/or time spent in connection with such services in the preparation, trial, or other disposition of the case and any out-of-pocket expenses incurred therein. The trial judge, after due consideration of such statement, shall determine the amount of compensation within the schedule limits.

19.05 Attorneys in probation violation hearings shall receive as compensation a sum computed at the hourly rate.

19.06 Defendants returned to this Court from Lima State Hospital for a hearing pursuant to R.C. 2947.27 shall be represented by counsel who shall be appointed and compensated at the hourly rate.

RULE 20

XX. INVESTIGATORS AND EXPERTS.

20.01 It is intended that counsel assigned to represent indigent defendants shall themselves investigate cases to which they have been assigned.

20.02 Investigators shall not be employed by defense counsel except by leave of court being first obtained, and then only in those cases where the defendant is charged with aggravated murder or murder. In such cases, counsel shall make application for the use of such investigator in writing at least thirty (30) days before trial. Said application should set forth in detail the reasons for the need for such investigator and the approximate amount of expense that would be incurred if the request were granted.

Such hearing shall be conducted by the trial judge and the Presiding Judge, or a judge appointed by him. The appointment of an investigator, should the application be granted, shall be made by the Presiding Judge.

20.03 Application for experts shall also be by motion, and will be granted only upon a showing of extraordinary need.

20.04 Bills for such investigations shall be filed with defense counsel's application for attorney fees, on a separate sheet, and will be paid from the witnesses fee account. If needed, experts or investigators may be paid prior to trial by the court, upon application to the court.

PROCEDURE FOR CLERK OF COURTS
RULE 22

23 **WITHDRAWAL OF FILES**

23.1 The Clerk of this Court shall no permit original files of her/his office, pertaining to cases entered upon the appearance docket, to be taken from her/his office and custody, unless the same are to be delivered to a Judge of said court, under his/her direct order.

23.1 All divisions within the jurisdiction of the court may remove the files from the clerk's office upon the filing of a receipt card. Files must be returned to the file clerk in the Office of the Clerk of Courts.

II. **DEPOSITS TO SECURE COSTS**

23.1 No civil action or proceeding shall be accepted by the clerk of Courts for filing unless the party or parties offering the same for filing have first deposited a sum of money to secure the payment of costs.

23 **RECORD**

23.1 The clerk of Courts shall make a record in all cases involving title to real estate. A set flat rate shall be taxed in all other cases to cover the expense of microfilming for security purposes.

23 **PROCESS OF SERVICE OF WRITS**

23.1 All summons per Rule IV will be issued by certified mail, unless otherwise directed by written instructions. All other writs, by order of court, or under rules of procedure require written instructions before issuance of same.

23 **FILING CATEGORY**

23.1 Upon filing of any civil case the attorney filing such a case shall file the form designated as " Filing Category" , thereby notifying the Court of the type of case filed. The form is required before the complaint can be filed by the Clerk of Courts.

23 **CIVIL SUBPOENA**

23.1 All civil cases will now require the witness fee be attached to the witness subpoena.

(A) The check shall be made payable to the witness.
Fee: \$12.00 per day, plus 10 cents per mile round trip from residence to the courthouse. \$6.00 per ½ day, plus 10 cents per mile round trip from residence to the courthouse.

23.1 Any subpoena to be served through the clerk's office to a foreign sheriff shall required a \$15.00 deposit to guarantee the foreign sheriff's fee. The deposit check shall be made payable to the Clerk of Courts.

23.1 the subpoena shall indicate in the upper right corner the amount of the fee attached and which courtroom, No. 1, No. 2 or referee, the witness is to appear.

23.1 As per rule 45(A) the clerk shall issue a subpoena, or a subpoena for production of evidence, signed and sealed, but otherwise blank, to a party requesting it, who shall fill it in and file e a copy thereof with the clerk before service.

VII. **SHERIFF'S SALE**

23.1 All cases wherein a sheriff's sale has been ordered and is canceled by any party before sale, the party wishing to cancel or postpone the sale shall first deposit with the Clerk of Courts the amount of Five Hundred Dollars (\$500.00) as surety of court costs.

23 **REQUEST FOR TRANSCRIPT**

23.1 A request for copy of transcript prepared by the court reporter shall not be allowed without the permission of the court reporter.

TRANSCRIPT REVIEW

- 23.1 Transcripts for review shall not be taken out of the building by attorneys of record without a court order.

IN THE COURT OF COMMON PLEAS
MEDINA COUNTY, OHIO

IN THE MATTER OF THE :
 ADDITION OF RULE 23 :
 (MEDIATION) TO THE LOCAL :
 RULES OF COURT : **JOURNAL ENTRY**

It is hereby ordered that the Rules of Practice of the Court of Common Pleas of Medina County, Ohio (" Local Rules") be modified such the Rule 23 is hereby added and shall read as follows:

RULE 23

XXIII MEDIATION

- 23.1 Upon order of the Court, a civil action filed in this court may be submitted to mediation as provided in this rule.
- 23.2 Any civil case may be referred to mediation.
- 23.1 The case is referred to mediation by order of the Court. The Court may issue the order on its own motion, upon the motion of counsel, or upon agreement of the parties.
- 23.1 Continuances shall be granted only for good cause shown. Except as authorized by the Court the existence of pending motions shall not be good cause for a continuance and no continuance will be granted unless the mediation can be rescheduled prior to the schedule trial date.
- 23.1 All scheduling orders shall remain in effect. Discovery shall continue during the mediation process in accordance with the Civil Rules of Procedure.
- 23.1 CONFIDENTIALITY

(A) Pursuant and subject to Ohio Revised Code 2317.023, the rules of Evidence, and any other pertinent judicial rules, all written or verbal communications related to the mediation or made during the mediation process shall be confidential.

(B) The mediator shall inform the Court who attended the mediation and whether the case settled, then the mediator shall inform the Court whether the case is scheduled for further mediation or is returned to the Court for further proceedings. No other information shall be communicated by the mediator to the Court.

(C) This provision does not affect the admissibility of a written summary of agreement signed by the parties and/or counsel.

23.1 The mediator acting pursuant to this local rules shall have all immunity conferred by statute, rule and common law.

23.1 The efforts of the mediator shall not be construed as giving legal advice.

23.1 **DUTIES OF ATTORNEYS/PARTIES**

(A) Trial counsel who is primarily responsible for each party's case shall personally attend the mediation conference and shall be prepared and authorized to discuss all relevant issues, including settlement. All parties, and if applicable, insurance adjusters, all with authority to settle without further consultation, shall personally attend all mediation conferences. A party other than a natural person must be represented by a person other than counsel, with authority to agree to a settlement.

(B) All necessary discovery, including documents, medical records, and bills should be exchanged by the parties five (5) days prior to the conference.

(C) Upon reaching agreement the parties shall reduce the essential terms to writing in

summary form and sign it along with their counsel.

23.1 Failure to mediate may result in sanctions being imposed by the Court. Such sanctions may include attorney's fees and other sanctions the court deems appropriate.

23.1 If the parties fail to dismiss a settled case within 60 days of the filing of the status report that gave the court notice of the settlement, then the Court may dismiss the case administratively.

SO ORDERED.

JUDGE JAMES L. KIMBLER

JUDGE CHRISTOPHER J. COLLIER

AMENDMENT
TO
LOCAL RULE XVII
Section 17.04

Psychological evaluations shall be made available as set forth in the Ohio Rules of Civil Procedure, as amended July 1, 1991; specifically Rule 75 (D). The term "shall be made available to either party or their counsel" is deemed to mean

that the party or counsel may read the report, but not necessarily receive a copy of the report. The report shall be available at the referee's office, upon written request not less than seven days before trial.