

PORTAGE COUNTY
RULES OF PRACTICE OF THE COURT OF
COMMON PLEAS
GENERAL DIVISION

Fee for Court Rules \$10.00

Effective June 21, 1993
(Revised May 5, 1998 - Arbitration Limits)
(Revised May 12, 1998 - Arbitration Limits)

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The following rules govern the practice and procedure in the General Division of the Court of Common Pleas of Portage County, Ohio, pursuant to Article IV, section 5(B), of the Constitution of Ohio.

RULE 1. Time table for lawyers under Civil Rules

1.01. The time allowed for the performance or completion of any act shall be as established by the Ohio Rules of Civil Procedure ("Civil Rules"), the Ohio Rules of Criminal Procedure ("Criminal Rules"), and Rules of Superintendence for the Court of Common Pleas ("Rules of Sup."). If a particular matter is not covered by these rules, the time shall be established by court order.

1.02. The time table for lawyers under the Civil Rules is as prescribed in the "Rules Governing the Courts of Ohio," published by the Anderson Publishing Company.

RULE 2. Presiding Judge

2.01. The Presiding Judge will be selected by the majority of the Judges of all Divisions and will serve at their pleasure pursuant to the Rules of Sup. Rule 2.

2.02. The Judge(s) of each Division will meet at the call of the Presiding Judge for the purpose of discussing and resolving administrative problems common to all Divisions. Such a meeting shall occur at least once annually. The Presiding Judge will chair all meetings.

RULE 3. Administrative Judge

3.01. The Judges in the General Division will select one Judge to serve as Administrative Judge pursuant to the Rules of Sup. Rule 3(A). The Administrative Judge may also be the Presiding Judge.

3.02. The Administrative Judge will exercise the powers set forth in Rules of Sup. Rule 3(B). The judges of the General Division will meet at the call of the Administrative Judge for the purpose of discussing and resolving administrative problems common to that Division.

RULE 4. Terms of Court: hours of Court sessions

4.01. Each Court shall be in continuous sessions for the transaction of judicial business. Each calendar year will be divided into three (3) terms of court. Each term will begin at 9:00 a.m. on the following dates: The January term will begin on the first Monday following the first day of January; the April term will begin on the first Monday of April; and the September term will begin on the Monday following Labor Day.

4.02. The sessions of each Court shall be Monday through Friday from 8:00 a.m to 4:00 p.m. Each Court will be in session at such other times and hours as the Judge therein prescribes.

RULE 5. Dockets and calendars

5.01. The Clerk of Court ("Clerk") shall prepare and maintain for the use of the Judges the following dockets and calendars:

- (a) A General Appearance Docket consisting of Civil and Criminal parts;
- (b) A journal consisting of Civil and Criminal parts;
- (c) A separate Execution Docket; and
- (d) An index to the General Appearance Docket and Execution Docket, direct and reverse, and to all other books, direct.

5.02. The Clerk shall receive and process the necessary procedures required for Notary Public in accordance with Ohio RC section 147.01 et seq.

5.03. All cases received by the Clerk for filing shall be numbered consecutively in a new series each calendar year. The case number shall carry as a prefix the last two digits of the year, followed by the designation "CV" (for civil cases) or "CR" (for criminal cases), and a suffix of the consecutive number beginning with "0001." For example, 90CV0001, 90CV0002; 90CR0001, 90CR0002, etc.

5.04. At the time of initial filing of a civil case, the Clerk shall designate the courtroom number and the Judge to whom the case is assigned. Assignment of cases shall be by lot pursuant to the Rules of Sup. Rule 4.

5.05. The Clerk shall provide the assignment commissioner of each Court with daily notice of all cases filed the previous day in that Court, and thereafter with all pleadings and motions filed the previous day in each case.

RULE 6. Court reporters

6.01. The format of the transcript of proceedings prepared by the official court reporters will be as follows:

- (a) No fewer than 25 typed lines on standard 8 1/2 x 11 paper;
- (b) Q & A to begin on separate line with carryover to begin at left hand margin;
- (c) Colloquy material to begin no more than 15 spaces from left hand margin; identification of speakers should be in upper case letters; and
- (d) An index to proceeding should be included in all transcripts.

6.02. The court reporters will retain their notes and make them available for transcription for five (5) years. At the end of the five-year period, all notes and records will be disposed of.

All exhibits in civil cases will be held for one (1) year from the date of the final entry of judgment. Parties desiring return of exhibits should apply to the Court within the one-year period. All exhibits will be disposed of after the one-year period, unless otherwise ordered by the Court.

6.03. In every case reported, the Judge will make an appropriate entry taxing the statutory fee for each day's service to be collected as other costs in the case. The compensation of court reporters for making transcripts and copies shall be paid to the court reporter by the party for whose benefit the same was made. No bill for any transcript ordered by the Judge shall be approved unless the same bears a certificate by the court reporter that the amount charged is fair and in conformity with the law. Every bill of exceptions filed in each Court shall bear the name, address, and the telephone number of the court reporter making up the same. A court reporter will not be required to prepare a transcript for any attorney until satisfactory arrangements for payment have been made.

RULE 7. Pleadings and motions

7.01. All pleadings and motions shall be typewritten or printed on letter-size (8 1/2 x 11) white bond paper with black ink, securely bound and unfolded. The Clerk is authorized to refuse for filing any pleading or motion that, in the Clerk's opinion, will not preserve on microfilm due to lack of contrast between type and paper. All complaints shall state the name and address, if known, of each party, and the general nature of the action as follows:

- (A) Professional Tort
- (B) Product Liability
- (C) Other Tort
- (D) Workers Compensation
- (E) Foreclosure
- (F) Administrative Appeal
- (H) Other Civil
- (I) Criminal

Designation (G) is omitted. The Clerk is authorized to refuse for filing any complaint without a designation.

7.02. All subsequent pleadings, motions, and other papers filed shall state the name of the first-party plaintiff and first-party defendant, the case number, the name of the Judge assigned to the case, the title, the name of counsel (or of the party if not represented) with his/her ID number assigned by the Clerk of the Supreme Court of Ohio, and the office address, telephone number, and firm (if any) of counsel.

7.03. Each filing shall be accompanied by a computer information sheet (available at the Clerk's office) to be completed by the party. The Clerk is authorized to refuse for filing any pleading or motion without the completed sheet, or a paper containing the same information.

7.04. The parties may obtain by written stipulation of counsel an initial extension of time, not to exceed thirty (30) days, to answer, plead, move, or file memorandum (see local rule 8.02). The stipulation shall be filed with the Clerk and shall affirmatively state that no prior extension has been granted by the Court. If no stipulation is obtained or if additional time is requested, an extension may be granted by the Court upon written application for good cause shown.

7.05. The pleadings and motions may be amended as provided under Civil Rule 15. No pleading or motion shall be amended by interlineation or obliteration, except upon leave of court. Upon the filing of an amended pleading or motion, the original or any prior amendment shall not be withdrawn from the file, unless otherwise ordered by the Court.

7.06. In submitting interrogatories or requests for admissions, counsel shall file with the Clerk the notice of service and mail the original to opposing counsel. Two (2) copies of the original shall then be mailed to opposing counsel within 28 days of service. On the original, counsel shall leave enough space (not less than one inch) between each interrogatory or request question for opposing counsel to type the answer. The number of interrogatories or requests for admissions shall not exceed thirty-five (35), including subdivisions.

When interrogatories accompany the complaint, the notice of service only shall be annexed to the complaint. Counsel shall otherwise follow the procedure set forth in this rule.

An objection to an interrogatory or request question shall be noted in the space provided on the original. On separate paper, counsel shall type the question, explain the objection, and cite his/her authority for the objection.

An objection to a video tape deposition shall be submitted to the Court in writing at least three (3) days before trial. On separate paper, counsel shall cite his/her authority for the objection.

7.07 After trial or disposition of the case, where no appeal is taken, all depositions filed, unless filed with a motion, shall be returned to the parties. At the close of the case, those depositions filed but unclaimed shall be discarded and shall not be microfilmed.

7.08. Pleadings, except for complaints and administrative appeals, and all motions may be filed by facsimile transmission as follows:

(A) A facsimile shall be accepted as original and the signature accepted as original pursuant to Civil Rule 5(E). No additional paperwork needs to be filed.

(B) Counsel shall telephone the Clerk and request a FAX log number to identify the incoming facsimile. Counsel shall also provide the Clerk with his/her name, the case number, the nature of the facsimile, the number of pages, and the billing information. The Clerk shall maintain a log of this information.

(C) The facsimile shall not be longer than ten (10) pages.

(D) Counsel shall transmit the facsimile at a time and to a telephone number specified by the Clerk. Such time will ordinarily be from 8:00 a.m. to 4:00 p.m.

(E) Counsel shall attach a FAX cover sheet (available at the Clerk's office), or otherwise provide the information thereon, to any facsimile. The Clerk is authorized to refuse for filing any facsimile without the completed FAX cover sheet, or a paper containing the same information.

(F) The Clerk shall time-stamp the FAX cover sheet and return a copy to counsel in a window envelope. So, counsel shall provide his/her name and address in the designated area on the FAX cover sheet.

(G) Court costs shall be \$1.00 per transmission plus \$1.00 per page transmitted. All costs shall be paid as directed by the Clerk.

RULE 8. Hearings and submission of motions

8.01. The Clerk shall accept for filing only those motions that are accompanied by a memorandum in support. The memorandum shall be a brief statement of the grounds for the motion, with citations to authorities relied upon. Where counsel relies on an unreported opinion, a copy of that opinion shall be attached to the memorandum. The motion shall be served upon opposing counsel in accordance with Civil Rule 5. (In all cases where a party is not represented by counsel notice shall be served upon the party.)

8.02. Any memorandum in opposition to the motion shall be filed and served upon the movant within fourteen (14) days from the date the motion is served. Any memorandum in reply shall be filed and served upon opposing counsel within seven (7) days from the date the memorandum in opposition is served. These times may be extended pursuant to local rule 7.03.

8.03. With the exception of motions for a new trial, motions for judgment notwithstanding the verdict, motions for urgent equitable relief, and motions wherein the Judge directs otherwise, all motions shall be decided on the memorandums timely filed and served unless (1) a written request by either party for oral argument is made within seven (7) days from the date the motion is filed, and (2) the Court grants such request.

In motions to be decided on the memorandums, the Court will decide the matter after the memorandum in reply is filed. In motions for a new trial, motions for judgment notwithstanding the verdict, and motions in which the Court grants oral argument, the assignment commissioner will set a hearing within thirty (30) days from the date the motion is filed. In motions for urgent equitable relief, the assignment commissioner will set a hearing for the next available date.

8.04. 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 attached to the memorandum(s), or listed therein and separately

filed. See local rules 7.06 and 7.07.

8.05. To reduce undue delay, all motions in objection or opposition to a discovery procedure under Civil Rules 26-37 shall not be considered by the Court unless the movant first demonstrates to the Court that after personal consultation and sincere attempts to resolve the differences the parties are unable to reach an accord. The memorandum attached to any discovery motion shall recite those matters that remain in dispute, the date, time, and place of the personal consultation, and the names of the parties participating therein. It is the movant's responsibility to initiate such consultation.

8.06. The filing of unnecessary motions and unwarranted opposition of motions, which in either case unduly delay the Court, may subject the offender to appropriate discipline including the imposition of costs and fees.

RULE 9. Initial conference (case management order).

9.01. After the complaint is filed, the assignment commissioner may (1) if an answer is filed, set the case for initial conference per this rule, or (2) if no answer is filed, set the case for a default hearing. If the defendant files a motion under Civil Rule 12(B), the assignment commissioner may set the case for initial conference when and if an answer is filed. No initial conference shall be set in appeals from an administrative agency (see local rule 18).

9.02. With the exception of appeals from an administrative agency, in cases not set for initial conference, which have been pending for at least three (3) months, the bailiff or assignment commissioner will conduct a general call of the case by telephone or mail with all counsel. The purpose will be to set a pretrial date. No further notice of the pretrial date shall be given.

All cases on the docket for over six (6) months without any proceedings taken therein may be dismissed by the Court pursuant to Rules of Sup. Rule 6(A).

9.03. At the initial conference all counsel must be present. The parties need not attend if represented by counsel. The assignment commissioner will notify all counsel of the initial conference by telephone or mail. The initial conference may be rescheduled by the Court upon written application for good cause shown, but no later than fourteen (14) days from the original date. If the case is dismissed or settled, entirely or as to any party, before the initial conference, plaintiff's counsel shall promptly notify the bailiff or assignment commissioner.

The initial conference may be held over the telephone where conference calling is available. Any party who desires a telephone conference, after getting the other party's approval for such a conference, shall call the assignment commissioner at least three (3) days before the conference and have the conference designated a telephone initial conference.

9.04. The following decisions shall be made at the initial conference and all counsel attending must have full authority to enter into a binding case management order:

- (a) Determination shall be made concerning immediate assignment of the case to arbitration (local rule 13);
- (b) If the case is not referred to arbitration, a definite discovery schedule shall be agreed upon by counsel for the completion of all discovery, including exchange of expert witness names, addresses, and reports;
- (c) A definite date for the filing of all motions, which date shall not be later than seven (7) days before the pretrial conference; and
- (d) A date for a status or pretrial conference shall be set by the Court.

9.05. At the conclusion of the initial conference, a case management order shall be prepared and submitted to the Court for signature. This order shall include definite dates for 9.04(a)-(d) of this rule. The order form will be provided by the Court. No further notice of the status or pretrial conference shall be given. The order shall be an order of court signed by the Judge and filed with the Clerk.

RULE 10. Pretrial conference

10.01. A pretrial conference (or status conference) shall be held on the date set at the initial conference or the general call of the case. At the pretrial conference all parties and their counsel must appear. The Court may excuse a party represented by counsel for good cause shown. In all cases involving insurance, the insurance company's representative, with authority, must appear. The Court may excuse the representative for good cause shown. All excuses for good cause under this rule shall be presented to the Court at least one (1) day before the pretrial conference. If the case is dismissed or settled, entirely or as to any party, before the pretrial conference, plaintiff's counsel shall promptly notify the bailiff or assignment commissioner.

10.02. All pretrial conferences shall be conducted by the Judge assigned to the case. At the pretrial conference, the following will be considered:

- (a) Settlement of the case;
- (b) Agreement upon and simplification of the issues;
- (c) The necessity or desirability of amendments to the pleadings;
- (d) The obtaining of admissions and stipulations of fact and making them part of the record;
- (e) Determination of whether documents are to be offered into evidence;
- (f) The number of witnesses and probable length of time for trial;
- (g) In personal injury cases, plaintiff and defendant shall exchange copies of medical reports;
- (h) In cases involving insurance, the defendant shall have information concerning limits of insurance;

- (i) All depositions and medical examinations requested by defendant shall be completed before the pretrial conference;
- (j) Such other matters as may aid in the disposition of the case; and
- (k) Selection of a trial date pursuant to local rule 11.03.

At the pretrial the parties must exchange all lists of witnesses and exhibits. No witness or exhibit that has not been so exchanged can be used at trial. Any objection to an exhibit must be made in writing to the Court within 10 days after the pretrial or the exhibit is deemed admitted.

10.03. If neither the plaintiff nor his/her counsel appears for the pretrial conference, the Court may dismiss the case without prejudice.

10.04. At plaintiff's request, if neither the defendant nor his/her counsel appears for the pretrial conference, the Court may hear evidence and decide a case to court; or, where a case before a jury, the Court may accept plaintiff's waiver of the jury and hear evidence and decide the case.

10.05. At the conclusion of the pretrial conference, the Court may assign to counsel the responsibility of preparing a pretrial order. The order shall recite the results of the pretrial conference (items 10.02(a)-(k)). The order shall be an order of court signed by the Judge and filed with the Clerk. The counsel who prepares the order shall furnish opposing counsel(s) with a copy of the order. The order shall control all subsequent proceedings including the trial, unless modified by the Court for good cause shown. The Court has the authority to reschedule the pretrial conference in any case.

RULE 11. Assignment of civil cases for trial

11.01. All civil cases shall be assigned to a Judge pursuant to local rule 5.04.

11.02. If a companion case(s) is filed, whether simultaneously or not, it shall be the duty of plaintiff's counsel to call that fact to the attention of the Clerk. The case(s) shall then be assigned to the same Judge in the original case. The Administrative Judge will prepare the entry.

11.03. At the conclusion of the pretrial conference, counsel for all parties and the assignment commissioner shall select the trial date. If counsel and the assignment commissioner are unable to agree on a trial date, the Judge will set the trial date.

11.04. If a party seeking affirmative relief, either in person or by counsel, fails to appear for trial, the Judge will enter an order dismissing the claim for relief for want of prosecution. If a defendant, seeking affirmative relief does appear, the Judge will order that party to proceed with the case and the Judge will decide all matters ex parte.

11.05. If a party or counsel appears for trial but shows good cause as to why he is not ready for trial, the Judge will make such order as he/she deems proper. If a party or counsel appears for trial but indicates he/she is not ready without showing good cause, the Judge, if that party is one seeking affirmative relief, will enter an order dismissing the claim for want of prosecution, or if that party is defending a claim, order the party seeking relief to proceed with the case and the Judge will decide all matters ex parte.

11.06. Any motion for continuance shall be in writing and shall contain the reasons for the request. A copy of the motion shall be served upon opposing counsel in accordance with local rule 8. The motion is not granted unless an entry is signed and journalized by the Judge assigned to the case.

11.07. When a case set for trial is settled, counsel for the party seeking affirmative relief shall immediately notify the bailiff or assignment commissioner and prepare an entry pursuant to local rule 15.

11.08. If two cases set for trial on the same date under this rule are not resolved at trial time, and the Judge believes that both cases will require trial, at the request of the Judge the Administrative Judge may transfer one case to another Judge for trial.

11.09. A criminal trial date is to take precedence over a civil trial date.

RULE 12. Reproduction of hospital records

12.01. Upon motion for good cause of any party and upon notice to all other parties, the Judge may order any hospital in the county, by the agent thereof competent to act in its behalf, to photocopy designated hospital records or X-rays, not privileged, that contain evidence pertinent to a pending case. The order shall direct the hospital to describe by cover-letter the portion or portions of the records copied and any omissions therefrom and to specify the charges therefor. The order shall also designate the person to whom the copies shall be delivered to.

12.02. Objections to the admissibility of such hospital records on the grounds of materiality or competence shall be deemed reserved for ruling at the time of trial without specific reservation in the order. Copies made pursuant to this rule may be admitted into evidence without further identification or authentication but subject to rulings on objections, unless the order otherwise provides.

12.03. Costs for copies of hospital records shall be paid to the hospital by the movant.

12.04. Where original records are produced in court and copies subsequently substituted by agreement of the parties or by

court order, the movant shall be responsible for the costs. Unless otherwise ordered by the Court, all original records shall be returned by the court reporter to the hospital upon entry of judgment.

RULE 13. Arbitration

13.01. To expedite the administration of justice, the following procedures for arbitration shall be followed in all civil cases.

13.02. Case for Submission to Arbitration:

(A) Every civil case, except those involving title to real estate, equitable relief, appeal, or declaratory judgment, in which the value of each plaintiff's claim is Forty Thousand Dollars (\$40,000.00) or less, excluding interest and costs, may be submitted to arbitration. (Revised May 5, 1998).

[Former section read as follows: (A) Every civil case, except those involving title to real estate, equitable relief, appeal, or declaratory judgment in which the claim of each plaintiff, and any counterclaim or crossclaim, is Twenty-five Thousand Dollars (\$25,000.00) or less, excluding interest and costs, may be submitted to arbitration.]

(B) In any civil case, the parties may stipulate in writing that the case will be submitted to arbitration in accordance with this rule. Upon filing of the stipulation, together with a pretrial statement from each party, the case shall be submitted to arbitration.

(C) In any civil case at least three (3) months old, counsel for either party may move, or the Court on its on motion may mandate, that the case be submitted to arbitration in accordance with this rule. Exceptions to an order submitting a case to arbitration shall be made by motion filed within ten (10) days of the order.

13.03. Selection of Arbitrators:

Unless the parties otherwise request, one (1) arbitrator shall be appointed by the assignment commissioner from the list of members of the Portage County Bar Association. The members of the Bar qualified to arbitrate shall be only those who have filed with the assignment commissioner their consent to be an arbitrator. The members who desire to be eliminated from the list must notify the assignment commissioner by letter.

The parties may request the appointment of three (3) arbitrators provided the parties comply with the requirements of 13.12. The three (3) arbitrators shall constitute a board with one arbitrator acting as chairperson. The first arbitrator selected by the assignment commissioner will be the chairperson.

13.04. Hearing Notice:

(A) The hearings shall be held at the place designated by the arbitrator or chairperson of the board of arbitrators, preferably in the Courthouse or other County building. The arbitrator or

chairperson shall fix the time and date of hearing and shall notify the parties. The chairperson shall also notify the other arbitrators. No hearing shall be fixed for Saturdays, legal holidays, or evenings, except upon agreement of the arbitrator(s) and the parties.

(B) Since time is available to the parties prior to the hearing date to settle or compromise the case, once a hearing date is set the hearing shall proceed at the scheduled time. There shall be no unilateral communications by counsel or the parties with the arbitrator(s) concerning the merits of the case at any time prior to the filing of the report and award.

13.05. Default of a Party:

The hearing may proceed in the absence of any party, who, after due notice, fails to appear or obtain an adjournment. An award shall not be made solely on the default of any party, the arbitrator(s) shall require the other party to submit such evidence as the arbitrator(s) may require for the making of an award.

13.06. Conduct at Hearing:

(A) The arbitrator(s) shall judge the relevancy and materiality of the evidence. Conformity to the rules of evidence shall not be necessary. All evidence shall be taken in the presence of the arbitrator(s) and the parties, except where any of the parties are absent, in default, or have waived their right to be present. The arbitrator(s) may receive the evidence of witnesses by affidavit or written report and shall give it such weight as they deem fit after consideration of any objections made to its admission.

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

(C) The arbitrator(s) 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 them and to request the issuance of an attachment according to the practices of the Court for failure to comply;
- (2) Production of documents: to compel the production of all documents that they shall deem material to the case;
- (3) Administer 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; and
- (4) Medical bills/property damage bills and estimates: in cases involving personal injury or damage to property, the following bills or estimates may be offered into evidence without further proof, for the purpose of proving the value of services, labor, and material on the condition that seven (7) days written notice be given to the adverse party, accompanied by a copy of the bills to be offered into evidence:
 - (a) hospital bills: hospital bills on the letterhead or billhead of the hospital, when dated and itemized;

- (b) bills of doctors/dentists: bills for each doctor or dentist not to exceed \$500, when dated and containing a statement showing the date of each visit and the charge for each visit;
- (c) bills of nurses, etc.: bills of registered nurses, licensed practical nurses, or physical therapists, aggregating not more than \$250 for each, when dated and containing an itemized statement of the days and hours of service and the charges for each service;
- (d) bills for medicines, etc.: bills for medicines, eye glasses, prosthetic devices, appliances, or similar items, each bill not to exceed \$100 but not limited to any one category;
- (e) property repair bills or estimates: property repair bills or estimates not to exceed \$500 when identified and itemized setting forth the charges for labor and material used in the repair of the property; and
- (f) procedure where estimate: where an estimate is offered, the offering party shall forward with his/her notice to the adverse party together with the copy of the estimate a statement indicating whether the property was repaired, and if it was, whether the estimated repairs were made in full or in part. The party shall attach a copy of the receipted bill showing the items of repair made and the amount paid.

13.07. Supervisory Powers of the Court:

The Administrative Judge will have full supervisory powers with regard to any questions that arise in all arbitration proceedings and in the application of these rules.

13.08. Witness Fees:

Witness fees in any case referred to arbitration shall be in the same amount as provided for witnesses in court trials, and may be ordered taxed as costs in the case. The costs in any case shall be paid by the same party or parties by whom they would have been paid had the case been tried in court.

13.09. Transcript of Testimony:

The arbitrator(s) shall not be required to make a transcript of the proceedings. If any party desires a transcript, he/she shall provide a court reporter and cause a record to be made. The party requesting the transcript shall 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, based upon the usual charges for a copy of a deposition.

13.10. Report and Award:

Within twenty (20) days after the hearing, the arbitrator or chairperson of the board of arbitrators shall file a report and award with the Clerk, and on the same day shall mail or otherwise forward copies thereof to all parties. The time for appeal under

13.13 shall commence on the day the report and award is served upon the party seeking an appeal. An award may not exceed \$40,000, excluding interest and costs, unless the parties otherwise stipulate. The report and award shall be signed by the arbitrator(s). If a member on the board of arbitrators does not agree on the findings and award, he/she shall write the word "minority" before his/her signature. A minority report shall not be required unless the dissenting arbitrator elects to submit a report.

13.11. Legal effect of Report and Award--Entry of Judgment:

The report and award, unless appealed as provided in this rule, shall be final and shall have the legal effect of a verdict. If no appeal is taken within the time and in the manner specified in this rule, the Court will enter judgment in accordance with the report and award and Local Rule 15. After entry of judgment, an execution process may be issued as in any other judgment.

13.12. Compensation of Arbitrators:

(A) Where one (1) arbitrator is used, he/she shall receive as compensation for his/her services a fee of \$90. 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 arbitrator is concerned. In cases requiring a hearing of unusual duration or involving questions of unusual complexity, the Administrative Judge, on petition of the arbitrator and for good cause shown, may allow additional compensation. The arbitrator shall not be entitled to receive his/her fees until after the filing of the report and award with the Clerk.

(B) Where three (3) arbitrators are used, the chairperson of the board of arbitrators shall receive as compensation for his/her services a fee of \$90.

(C) All compensation for the arbitrator(s) under local rules 13.15(A)&(B) shall be paid from the funds of Portage County that have been allocated for the operation of the Court.

(D) Where three (3) arbitrators are used, the two (2) non-chairperson arbitrators shall receive as compensation for their services a fee of \$75 each, for a total fee of \$150. One half (1/2) of the total fee shall be paid by the plaintiff(s) and one half (1/2) shall be paid by the defendant(s). Each party shall deposit with the chairperson their respective share at least seven (7) days prior to the arbitration date.

(D) If a case is settled or dismissed sooner than two (2) days before the date scheduled for hearing, the arbitrator(s) shall not be entitled to compensation. If a case has been settled or dismissed within that two-day period, the arbitrator(s) shall be entitled to compensation. Upon receiving notice that the case has been settled or dismissed more than two days before the date set for hearing, the assignment commissioner shall assign another case to the same arbitrator(s).

13.13. Right of Appeal:

Any party may appeal the report and award of the arbitrator or the board of arbitrators to the Court. The right of appeal shall accrue within thirty (30) days after the report and award is

entered on the Clerk's docket and served upon the party seeking appeal (see 13.10). The right of appeal shall be subject to the conditions set forth in 13.15.

13.14. Notice of Appeal and Costs:

(A) The appellant shall pay an appeal fee of \$20 to the Clerk and shall file with the Clerk and the assignment commissioner 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. A copy of the documents shall be served upon the opposing parties.

(B) In addition to the payment of the appeal fee, at the time of the filing of the notice of appeal, the appellant shall also repay the fee received by the arbitrator(s) (where one arbitrator \$90/where a board of arbitrators \$240) by depositing that amount with the Clerk.

(C) If the appeal results in a judgment different from that found by the arbitrator(s), the Court shall assess costs, including the reimbursement of the amounts required to be paid by the appellant to effect the appeal, against either or both of the parties as it may determine to be just.

13.15. Poverty Affidavit on Appeal:

A party without funds 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 opposing parties, the Judge is satisfied of the truth of the statements in the affidavit, the Judge may order that the appeal of the party be allowed although the amounts are not paid by the appellant.

13.16. Return to Active Trial List--Trial de novo:

(A) Upon the filing of the notice of appeal and the payment or waiver of the costs as provided in this rule, the assignment commissioner shall cause the case to be returned to the Judge for trial.

(B) All cases that have been appealed shall be tried de novo by the Court.

13.17. Testimony of Arbitrator(s) on Appeal Prohibited:

If an appeal from the report and award of the arbitrator or the board of arbitrators is taken, the arbitrator(s) shall not be called as witnesses in the trial de novo.

13.18. Exceptions and Reasons Therefor:

(A) Any party may file exceptions to the report and award of the arbitrator or the board of arbitrators within thirty (30) days after the filing of the report and the award for either misconduct or corruption of the arbitrator or the board of arbitrators or of an arbitrator on the board.

(B) Copies of the exceptions shall be mailed to the arbitrator(s) and the assignment commissioner within 48 hours after filing. The exceptions shall be assigned for hearing before the Judge assigned to the case.

(C) If the exceptions are sustained, the report and award of the arbitrator or the board of arbitrators shall be vacated and the case either assigned to a new arbitrator or board of arbitrators or set for trial.

RULE 14. Supplementary rules of criminal procedure

14.01. Judge and Term of Grand Jury:

(A) Each of the Judges sitting in the General Division will serve as a Judge in Criminal Proceedings for a period of four (4) months consisting of one term of Court.

(B) The grand jury tenure and proceedings will be conducted in accordance with Criminal Rule 6.

(C) The Judge in Criminal Proceedings will handle all grand jury matters including the appointment of grand jury foreman, the receiving of reports by the grand jury, and the giving of any necessary instructions.

(D) Appointment of counsel for indigent defendants will be made by the Judge in Criminal Proceedings when necessary, and by the Judge to whom the case is assigned after indictment.

(E) Summons on indictment--each indictment shall contain a formal, printed order to the defendant to appear in the courtroom of the assigned Judge on a specific day and hour for arraignment to be determined by the assignment commissioner and shall contain an appropriate place for the return by the Sheriff of the service of the notice and of the indictment.

If the defendant was released on his/her recognizance or is on bond the Sheriff may notify the defendant to pick up his/her indictment and notice within 48 hours.

The arraignment on the indictment shall be held within two (2) weeks from the service of the indictment.

(F) If a plea of not guilty is entered at the arraignment, the Judge will set a pretrial within a time to assure compliance with the defendant's right to a speedy trial. At the pretrial, the following shall be discussed:

- (1) the status of all discovery;
- (2) whether a plea or a trial is anticipated; and
- (3) whether any motions are to be filed.

At the close of the pretrial if no plea is entered or anticipated, the Judge will set the case for trial at the next available date.

(G) Upon a plea or conviction, the Judge will set sentencing, with or without a pre-sentence investigation, as the cause directs pursuant to Rules of Sup. Rule 8(C). Thereafter, all post-judgment and post-sentencing proceedings shall be pursuant to Rules of Sup. Rule 8(D).

14.02. Fees for Indigent Defendants:

The following is a suggested schedule of fees to be allowed to attorneys who have been appointed to represent indigent defendants. The amounts are intended as a guide to the Judge in the allowance of fees, it being further suggested that if, because of the number of days required to try a case, or because of an extraordinary amount of investigative work, the Judge may allow an amount greater than the limits of the law.

(A) Expenses must be approved by the Judge before incurred, and then must be itemized, when allowed such fees, as follows:

- | | |
|--|----------|
| (1) Per hour for time in-court..... | \$ 40 |
| (2) Per hour for time out-of-court..... | \$ 30 |
| (3) Aggravated Murder (w/specs.) (one lawyer).... | \$12,000 |
| (Maximum--more than one lawyer)..... | \$25,000 |
| (per ORC 2929.04(A) & ORC 2941.14(B)) | |
| (4) Aggravated Murder (w/o specs.) (one lawyer) | \$ 6,000 |
| (5) Murder (two lawyers)..... | \$ 8,000 |
| (6) Aggravated Felonies (Degrees 1-3)..... | \$ 2,000 |
| (7) Felonies (Degrees 1-4)..... | \$ 1,500 |
| (8) Misdemeanors (Degrees 1-4)..... | \$ 750 |
| (9) Parole, Probation and all other proceedings
not elsewhere classified..... | \$ 500 |
| (10) Contempt of Court..... | \$ 200 |

14.03. Withdrawal of Appointment:

When an attorney appointed by the Court to represent an indigent defendant discovers that the defendant has sufficient income or other means, the attorney shall report the facts in open court in the defendant's presence. If the Court cancels the appointment, the defendant shall be advised by the Court that he/she is free to employ counsel of his/her choice.

14.04. Criminal Case Filing and Court Designation:

(A) The Clerk, upon receiving a criminal transcript from a municipal court, shall immediately assign a case number as well as the courtroom and Judge.

(B) The Clerk shall number each case in accordance with local rule 5.03.

(C) The prosecuting attorney, when drawing an indictment in compliance with the findings of the grand jury, shall observe strict compliance with Criminal Rules 6 and 7 in all respects and endeavor to maintain the original case number assigned. Where the indictment joins two or more defendants the indictment should be returned under the lowest case number.

(D) The Judge assigned to the case number of the "indictment" will be responsible for further proceedings thereon according to law.

14.05. Entry of Appearance of Counsel:

(A) An attorney who accepts private employment in a criminal case for any purpose shall sign the following entry which shall be delivered to the bailiff in the case: "The undersigned has been retained as counsel for the above named defendant and requests that such fact be entered of record."

(B) An attorney who appears or enters his appearance for a defendant shall not be permitted to withdraw except in open court in the presence of the defendant and upon written entry approved and filed thirty (30) days before the date assigned for trial.

RULE 15. Journal entries

15.01. Where the Court has not incorporated the judgment entry into its decision, order, or opinion counsel for the party in whose favor a calendar entry, decision, order, opinion, or judgment is entered shall, within ten (10) days thereafter, prepare a judgment entry and submit it to opposing counsel, who shall approve or reject it within three (3) days after receipt. The opposing counsel may file objections to the entry in writing to the Court.

15.02. The Judge will approve a judgment entry deemed by him to be proper, sign it, and cause it to be filed with the Clerk. Notice of the filing of each judgment entry shall be in accordance with Civil Rule 58(B). The time for the doing of any other act resulting, caused, or required by the filing of the judgment entry shall not commence until such notice has been given.

RULE 16. Court files and papers

16.01. The Clerk is authorized to establish a policy for the removal of court papers or files from the custody of the Clerk. The policy shall provide for the removal of court files in accordance with local rule 13.

RULE 17. Security for costs

17.01. No civil action or proceedings shall be accepted by the Clerk for filing unless the party shall have first deposited a sum to secure the payment of the costs that may be accrued in such action or proceeding, except as otherwise provided by law. The deposit shall be in accordance with the schedule approved by the Court and prepared and published by the Clerk from time to time.

17.02. On cases transferred to the Court in which the demand of the cross complaint exceeds the monetary jurisdiction of a municipal court, the cross complainant shall post security for costs in a sum equal to the amount required as if the case was originally filed in this Court.

17.03. In cases with multiple parties, the Clerk may require the party requesting service to deposit an amount estimated by the Clerk to be sufficient to cover the costs.

17.04. In place of cash deposit, costs may be secured by bond with surety approved by the Clerk, provided that no member of the Bar shall be accepted as such surety.

17.05. A poverty affidavit filed in place of a cash deposit must state the reasons for the inability to prepay costs and is subject to Court review at any stage of the proceedings.

17.06. This rule shall be subject to the provisions of Ohio RC sections 2323.30 and 2323.31.

17.07. Any advanced deposits for costs shall be waived for

those cases brought by the Portage County Prosecuting Attorney on behalf of himself, the Portage County Board of Commissioners, the Portage County Combined General Health District, any board or agency of Portage County, or a board of trustees of a township located within Portage County, or for any child support enforcement agency.

Rule 18. Appeals from an administrative agency

18.01. In all administrative appeals under Ohio RC section 119.12 and Ohio RC chapter 2506, the time for filing memorandum(s) shall be as follows:

- (a) Within twenty (20) days after receipt of notice of the filing of the record or transcript, the appellant shall file his/her assignment of error and memorandum in support;
- (b) Within twenty (20) days from the date the memorandum in support is served, the appellee shall file its memorandum in opposition (and assignment of error, if any); and
- (c) Within ten (10) days from the date the memorandum in opposition is served, the appellant may file his/her memorandum in reply.

The time for filing memorandum may be extended by the court upon written application for good cause shown.

18.02. All appeals shall be decided on the memorandums timely filed and served unless (1) a written request by either party for oral argument is made within seven (7) days from the date the record or transcript is filed, and (2) the court grants such request.

In appeals to be decided on the memorandums, the Court will decide the matter after the memorandum in reply is filed. In appeals in which the Court grants oral argument, the assignment commissioner will set a hearing within sixty (60) days from the date the record or transcript is filed.

The party requesting the introduction of additional evidence shall file a motion therefor within ten (10) days after the filing of the record or transcript. If the motion is sustained, the memorandum schedule set forth in this rule shall begin on the date of the hearing.

In all hearings, the parties shall be given fifteen (15) minutes per side to present oral argument.

18.03. Upon receipt of the record or transcript, the Clerk shall serve notice upon all parties of the date on which the record or transcript was filed.

18.04. The above rules do not apply to appeals from the Industrial Commission pursuant to Ohio RC section 4123.519.

RULE 19. Receivership

19.01. In all cases where receivers are appointed by this Court, the following shall apply:

(A) Unless the court by entry specifically authorizes the receiver to continue a business, the receiver shall (1) expeditiously take control of the assets of the defendant debtor, (2) give notice to all known creditors of his appointment and afford them opportunity to present their claims, (3) cause the assets to be inventoried and appraised, determine the validity and priority of creditors' claims, (4) take such steps as may be necessary to reduce the assets to cash, and (5) make distribution of said cash between the various classes of creditors.

(B) Within two (2) months after his appointment, the receiver shall report to the court, submitting his inventory and appraisal, and including his account of receipts and expenditures to date. Such documents shall be filed with the Clerk. The matters referred shall be considered by the Judge and his approval shall be by entry, approved first by the receiver and his/her counsel.

(C) Semi-annually after filing the first report with inventory, appraisal, and account, the receiver shall file with the Clerk, consecutively numbered reports with accounts, for approval by entry by the Court 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.

(D) 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 repairs as are necessary for the proper maintenance of the property. For authority other than that conferred upon the receiver under this rule, the receiver shall make application to the Court for such authority.

(E) In all receiverships in which property appraised in excess of \$1,000 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.

(F) An application for payment of receiver's and counsel for receiver's fee (partial or final) shall be filed with the Clerk for approval by the court. Notice of filing shall be mailed by ordinary mail to all counsel. Such applications shall (1) show time spent on enumerated items, (2) the amounts of money collected, dispersed and on hand, (3) the status of secured and unsecured creditors' claims, including amounts claimed, (4) payments made and balances due, (5) the amounts and dates of prior fees authorized in the case, and (6) an estimate of the amount of time necessary to complete work in the receivership and make final distribution. The Court may approve or set for hearing the matter of receiver's fees or counsel for receiver's fees not sooner than ten (10) days after the filing of the application therefor.

(G) Failure to file an inventory and appraisal, accounts or other reports in accordance with this rule will constitute a cause for removal of the receiver or his attorney and for withholding of fees for the receiver or his attorney.

RULE 20. Designation of counsel (trial attorney)

20.01. All pleadings and motions, served and filed on behalf of any party represented by counsel in a civil action, shall be signed by one attorney in his/her individual name as required by Civil Rule 11, as the trial attorney for that party, as provided in Rules of Sup. Rule 3. Such trial attorney shall be the attorney who is to try the case, unless otherwise ordered by the court, and shall be responsible for the case. Following the information require under local rule 7.02, there shall be set forth the designation "Trial Attorney" for the party whom he represents. Firm names and the names of co-counsel or associate counsel may appear on the pleadings and motions for information only as "of counsel."

20.02. All copies of pleadings or other court filings required by local rule or Civil Rule 5 to be served upon counsel shall be served upon the trial attorney.

20.03. All notices and communications from the Judge with respect to a case shall be sent to the trial attorney. When the appearance of a trial attorney is required in court, the Judge will advise the assignment commissioner, who will notify the trial attorney advising him/her of the required appearance. The notice shall specify the number and title of the case, the date and time of the required appearance, the courtroom number, name of the Judge, and the reason for such appearance. The notice shall be addressed to the trial attorney in his/her individual name, at his/her office address. The trial attorney shall be responsible for notifying his/her co-counsel or associate counsel of all matters affecting the case.

20.04. Application for leave to withdraw as trial attorney in a civil case shall be made by written motion filed with the Clerk, with copies served upon all other trial attorneys in the case in accordance with these rules and Civil Rule 5. The motion may be heard within ten (10) days of filing by the Judge. Written notice of such application shall be given to the client of the trial attorney seeking to withdraw, by certified mail, return receipt requested, stating the time when and before which Judge such application will be made. If such application is granted and the client does not appear at the hearing, the trial attorney, if permitted to withdraw, shall notify the client by certified mail, return receipt requested, to secure a new trial attorney within such time as may be designated by the Court. A copy of such notice, together with the order authorizing withdrawal and the certified mail shall be filed in the case with a copy provided to the assignment commissioner.

RULE 21. Magistrate

21.01. A Magistrate may be appointed by the Court as provided in Civil Rule 53 and Criminal Rule 19, and may serve as a full-time employee of the Court, as. The Magistrate shall operate and be governed by Civil Rule 53, Criminal Rule 19, and by this rule.

21.02. In addition to those proceedings included in Civil Rule 53 and Criminal Rule 19, the following matters may be submitted by the Court to the Magistrate without further order:

- (a) conferences (civil and criminal);
- (b) all hearings (civil and criminal);
- (c) debtor examinations;
- (d) criminal arraignments;
- (e) plea proceedings under Criminal Rule 11;
- (f) bail proceedings under Criminal Rule 46;
- (g) motions to suppress in criminal cases;
- (h) trials without a jury;
- (i) trials with a jury where the parties consent in writing;
and
- (j) those proceedings included in section 21.06 below;
- (k) any other matter referred by court order.

21.03. All matters before the Magistrate shall be conducted in accordance with those standards in existence and in use by the court, and in accordance with these rules. A record, by court reporter or video tape or audio tape, will be made of all matters before the Magistrate.

21.04. The Magistrate will submit his order or decision to the Court in accordance with Civil Rule 53 and Criminal Rule 19, as applicable. No report is required after a conference unless required by Criminal Rule 19 or ordered by the assigned Judge.

The Magistrate may require the parties to brief any issue before submitting such order or decision. After trial by the Magistrate, and upon motion of any party for findings of fact and conclusions of law, the Magistrate may order any or all parties to submit proposed findings of fact and conclusions of law.

21.05. Objections to the order or decision of the Magistrate, with a brief in support, may be filed by any party within the time set forth in Civil Rule 53 or Criminal Rule 19, as applicable. Opposition briefs may be filed by any party within seven (7) days of the filing of the objections, except objections under Criminal Rule 19.

These times may be extended by the Magistrate or assigned Judge upon written application supported by an affidavit stating facts that indicate a practical impossibility of compliance. If a transcript is necessary to support the objections, the transcript must be filed within thirty (30) days after filing the objections, unless the Magistrate or assigned Judge, in writing, extends the time due to the inability of the court reporter (or transcriber of the audio tape) to complete the transcript in such time. A written Praecipe for a transcript shall be served on the court reporter and filed with the Clerk within three (3) days of filing the objections.

21.06. In addition to those orders or decisions included in the Civil and Criminal Rules, the Magistrate shall have the authority to enter the following interlocutory or final orders without approval of the assigned Judge:

- (a) An order transferring venue to another county when the parties mutually agree under Civil Rule 3(C);
- (b) An order naming a person to serve as a process server under Civil Rule 4.1(2);
- (c) An order permitting the filing of claims as described under Civil Rule 13;
- (d) An order permitting amended and supplemental pleadings under Civil Rule 15(A), (B), and (E);
- (e) An order permitting actions to be taken as a result of status conferences and pre-trials under Civil Rule 16 and these rules;
- (f) An order appointing a guardian ad litem under Civil Rule 17(B);
- (g) An order permitting joinder under Civil Rule 18, 19(A), and 19.1;
- (h) An order permitting joinder or separate trials under Civil Rule 20;
- (i) An order permitting the addition of a party or, when the parties mutually agree, an order permitting the dropping of a party under Civil Rule 21;
- (j) An order for the safekeeping of a thing pending disposition of the matter under Civil Rule 22;
- (k) An order permitting intervention under Civil Rule 24;
- (l) An order governing, administering, and supervising discovery as described under Civil Rules 26 through 36 and these rules, and an order imposing a sanction under Civil Rule 37 and these rules, except for the sanction of dismissing the action, entering a judgment in default, or imposing any penalty for contempt;
- (m) An order permitting voluntary dismissal under Civil Rule 41(A);
- (n) An order consolidating or separating trials under Civil Rule 42;
- (o) An order granting or denying a temporary restraining order or preliminary injunction under Civil Rule 65;
- (p) An order granting or denying a motion to suppress in criminal cases;
- (q) An order regulating discovery under Criminal Rule 16;
- (r) An order under Criminal Rule 19;
- (s) An order entered at arraignment assigning counsel consistent with local practice and Criminal Rule 44; and
- (t) An order ruling on interlocutory motions wherein the ruling does not serve to make any final determination of the rights of the parties.

F

RULE 22. Service upon Treasurer in foreclosure actions

22.01. In actions for the marshalling and foreclosure of liens on real property or for the partition of real estate, the Portage County Treasurer need not be made a party to the action for taxes and assessments existing upon such real estate, except where the amount of the taxes or assessments are contested. The Treasurer's appearance will be presumed for purposes of jurisdiction, and the Court will take judicial notice that the Treasurer has first and best lien for such taxes and assessments.

In all such actions, the Treasurer need not file an answer to the complaint or to any cross-claim.

In all cases, the Treasurer shall be served with a copy of the confirmation of sale or dismissal entry.

RULE 23. Mediation

23.01. The Judge may set for a mediation conference (a) all cases in which a continuance of a trial date becomes necessary due to the unavailability of the Judge, (b) all cases, regardless of the amount in controversy, in which the chances of settlement would be improved with mediation, and (c) all cases in which the parties consent to mediation.

23.02. The Court will notify all parties of the time and place for the mediation conference. In case in which the trial has been continued, the mediation conference may be held at the same time as the trial date.

Note: On May 14, 1994 the Court adopted a Jury Use and Management Plan which can be found at 94 MS 0038.