

NOTICE
MONTGOMERY COUNTY COMMON PLEAS COURT, GENERAL DIVISION
AMENDMENTS TO LOCAL RULES 1.33, 2.01, 2.03, 2.35 & 2.39

The General Division of the Montgomery County Common Pleas Court *adopted* amendments to the following Local Rules effective **Monday, May 11, 2009**:

Rule 1.33 – Examination, Certification, Renewal and
Removal of Notaries Public

Rule 2.01 – Civil Case Management

Rule 2.03 – Costs

Rule 2.35 – Arbitration

Rule 2.39 – Civil Mediation

Rule 1.33 – Examination, Certification, Renewal and Removal of Notaries Public

Amended 1/10/96; Effective 2/15/96

Amended 12/16/02; Effective 1/1/03

Amended 5/5/09; Effective 5/11/09

I. CERTIFICATE OF QUALIFICATION:

A. Any applicant for a notary public commission may obtain a certificate of qualifications from any Judge of the Court of Common Pleas. Any certificate issued shall indicate that the applicant is of good moral character; that the applicant is a resident of Montgomery County, Ohio; that the applicant is possessed of sufficient qualifications and ability to discharge the duties of the office of Notary Public; and whether the applicant is an attorney at law qualified and admitted to practice in Ohio. No Judge shall issue a certificate until:

1. The Judge is satisfied from personal knowledge that the applicant possesses the qualifications necessary to a proper discharge of the duties of the office; or
2. The applicant has passed the examination set forth in this rule.

II. EXAMINATION:

A. Judges' Committee on Notaries Public:

1. Composition:

- a. All examinations of applicants for the office of Notary Public shall be administered by the Judges' Committee on Notaries Public. The Judges' Committee shall be composed of members of the Dayton Bar Association, shall be appointed by the President and approved by the Executive Committee of the Dayton Bar Association, and shall be approved by the Administrative Judge of the General Division of the Court of Common Pleas.

2. Duties:

- a. The Judges' Committee on Notaries Public or its subcommittee from time to time, but not less than once each month, conducts examinations of all applicants

for the office of Notary Public. The purpose of the examination shall be to determine whether applicants possess the qualifications necessary for the proper discharge of the office of Notary Public as set forth in O.R.C. Section 147.02 and this rule.

B. Procedure:

1. All examinations of applicants for Notary Public Commissions shall be conducted by the following procedures:

a. Original Examinations:

(1) Applicants:

(a) All applicants for Notary Public Commissions shall appear before the Secretary of the Judges' Committee on Notaries Public and shall file the following items:

i) An application with a sworn written statement which shall be in the form prescribed by the committee and shall contain all the information requested by the committee; and

ii) A fee equivalent to \$4555.00 plus the statutory fee prescribed by the Ohio Revised Code.

(2) Secretary of the Committee:

(a) The Secretary of the Judges' Committee on Notaries Public shall refer the application to the Committee.

(3) Committee on Notaries Public:

(a) If the applicant fails to appear for the initial scheduled examination, the Committee shall:

i) Notify the applicant by mail that unless the applicant appears for the next scheduled examination, the application will be cancelled and the fee will be forfeited; and

ii) Cancel the application and retain the applicant's fee if the applicant fails to appear for the next scheduled examination after notifying the applicant.

(b) If the applicant appears for the examination as scheduled (or rescheduled), the Committee or its subcommittee shall:

i) Conduct an examination of the applicant and the applicant's application;

ii) Prepare a written report of the examination which indicates whether the applicant passed or failed the examination and whether the Committee or its subcommittee has or has not recommended certification of the applicant's qualifications for the office of Notary Public;

iii) Notify the applicant by mail of its decision within five (5) days of the examination; and

- iv) Submit the written report to the Administrative Judge of the General Division of the Court of Common Pleas within five (5) days after the examination.

(4) Administrative Judge:

- (a) Upon receipt of the Committee's written report, the Administrative Judge or designee shall:
 - i) Review the application and statement in light of the Committee report; and
 - ii) Grant or deny the applicant a certificate of qualification as required by law.

b. Appeal from Adverse Committee Reports:

- (1) Any applicant may obtain a rehearing of an adverse Committee report. The rehearing shall be obtained and conducted as follows:
 - (a) Applicants shall provide written notice of their desire for a rehearing of the Committee's examination to the Administrative Judge and the Committee. Notice shall be provided within five (5) days after receiving notice of the adverse committee report.
 - (b) Upon receiving notice from the applicant, the Administrative Judge shall set a time and place for the hearing. If necessary, the Administrative Judge may designate another Judge of the Court or Magistrate appointed by the Court to hear the matter.
 - (c) After the hearing has been completed, the Administrative Judge, designated Judge, or Magistrate shall grant or deny the applicant a certificate of qualifications as required by O.R.C. Section 147.02 and this rule.

c. Re-examination:

- (1) In the event that the Judges' Committee on Notaries Public decides an applicant is not qualified for appointment to the Office of Notary Public and/or failed the examination, the applicant may file a new application for re-examination. All applications for re-examination shall be governed by Section II (B) (a) of this rule except that the applicant will only be charged a fee of \$20.00 per reapplication and will be required to file the application(s) in accordance with the following schedule:
 - (a) Application for Re-examination after First Examination:
 - i) Upon the unsuccessful completion of the first examination, an applicant may file an application for re-examination thirty (30) days after the date of the first examination.
 - (b) Application for Re-examination after Second Examination:
 - i) Upon the unsuccessful completion of a second examination, an applicant may file an application for re-examination thirty (30) days after the date of the second examination.

- (c) Application for Re-examination after Third Examination:
 - i) Upon the unsuccessful completion of a third examination, an applicant may file an application for re-examination sixty (60) days after the date of the third examination.
- (d) Applications for Re-examination after Fourth and Subsequent Examinations:
 - i) Upon the unsuccessful completion of a fourth or any other subsequent examination, an applicant may file an application for re-examination one (1) year after the date of the preceding examination.
- d. Renewal Application:
 - (1) Any person who has been commissioned as a Notary Public in accordance with this rule may seek renewal of commission as follows:
 - (a) Application for Renewal:
 - i) Every person seeking renewal of commission shall file an application for renewal with the Secretary of the Judges' Committee on Notaries Public. The application shall:
 - a. Be in writing under oath;
 - b. Shall provide information as requested by the Committee; and
 - c. Be accompanied by a \$~~455~~55.00 fee plus the statutory fee prescribed by the Ohio Revised Code.
 - (b) Examination and Approval of Application:
 - i) Every application for renewal shall be examined by the Chair of the Judges' Committee on Notaries Public or some member of the committee designed by the Chair for that purpose and, unless for good cause shown, approved by the Chair. Upon approval of an application for renewal, the applicant shall be considered qualified for renewal of commission unless the Court or the Committee orders otherwise.
 - (c) Appeal of Examination:
 - i) In the event the Committee disapproves an application for renewal, the applicant may appeal the refusal in accordance with the procedure set for in Section II (B) (b) of this rule.
- e. Removal:
 - (1) The Judges' Committee on Notaries public may seek the removal, suspension or discipline of any Notary by filing a complaint with the Clerk of the Court of Common Pleas. Such complaint shall be heard and determined by the Administrative Judge of the General Division of the Court of Common Pleas after notice of the hearing is provided to the Judges' Committee on Notaries Public and to the individual or individuals against whom the complaint is filed.

III. ACCOUNTING FOR FEES:

- A. All fees set forth herein shall be paid to the Dayton Bar Association and cover the expenses of the Judges' Committee on Notaries Public and the costs of the secretarial, clerical, and accounting services rendered to the committee. The Dayton Bar Association shall present to the Administrative Judge of the General Division of the Court of Common Pleas on or before September 1 of each year an accounting of all fees received by virtue of the rule and all expenditures made by the committee.

Rule 2.01 – Civil Case Management Plan

Amended 11/2/94; Effective 11/15/95

Amended 7/13/95; Effective 7/13/95

Amended 6/6/01; Effective 6/18/01

Amended 9/17/04; Effective 9/17/04

Amended 6/3/08; Effective 6/9/08

Amended 5/5/09; Effective 5/11/09

I. PURPOSE:

- A. The purpose of this rule is to establish, pursuant to Rule 5 (B) (1) of the Rules of Superintendence for Courts of Ohio, an automated system for civil case management which will achieve the prompt and fair disposition of civil cases, provide the Court with an efficient means of controlling the flow of civil cases, and save time by providing members of the bar with information and case management facilities.

II. SCHEDULING OF EVENTS:

- A. The scheduling of events begins when a civil action is filed. Thereafter, the case is managed in four steps: Clerical Step I, Clerical Step II, Judicial Step I, Judicial Step II. The clerical steps are performed by administrative personnel. The judicial steps are performed by the assigned Judge or their personal staff.
- B. Events which are indicated by a double asterisk are automatically computer generated and dated from the last preceding double asterisk.
- C. Events indicated by a single asterisk are computer generated forms.

III. CLERICAL STEP I:

- A. ****Service of summons, in accordance with Rule 4.1 - 4.6 of the Ohio Rules of Civil Procedure, shall be checked twenty-one (21) days after the action is filed:**
 - 1. If the service is complete on all parties and the case is an administrative appeal:
 - a. ***A briefing schedule shall be automatically ordered as follows:**
 - (1) Appellant's assignment of errors brief due forty (40) days after the filing of the notice of appeal or the filing of the transcript, whichever is later;
 - (2) Appellee's answer brief due thirty (30) days after service of appellant's brief;
 - (3) Appellant may file a reply brief due fourteen (14) days after service of appellee's answer brief.

- b. ****Notice that case is ready for decision shall be sent to the assigned Judge;**
 - c. ****If no decision is filed within thirty (30) days, a reminder that a decision should be filed shall be sent to the assigned Judge every thirty (30) days.**
 - B. All cases, other than administrative appeals, go to Clerical Step II when service is complete.
 - C. If there is no return of service, Clerical Step I is repeated every fourteen (14) days until all returns are filed.
 - D. If service of summons is incomplete:
 1. ****Notice shall be served on plaintiff's attorney directing that unless service is obtained, the case will be dismissed; and**
 2. ****Fourteen (14) days after this notice is served, the action shall be dismissed * if no effort has been made to obtain service; or**
 3. ****If service has been completed, then the case shall continue to Clerical Step II.****
 - E. If service is being accomplished by publication, then:
 1. After the last publication, the publisher or agent shall file with the Court: (i) an affidavit showing publication was made, and (ii) a copy of the notice of publication. Both the affidavit and copy of the notice shall constitute proof of service.
 2. Twenty-eight (28) days after the last publication, the case shall go to Clerical Step II.**
 - F. If no defendant has been served:
 1. ****Counsel for plaintiff shall be served notice directing that unless service is obtained, the case will be dismissed.**
 2. ****The case shall be dismissed * fourteen (14) days after counsel for plaintiff has been served notice to obtain service if counsel for plaintiff has either failed to obtain service or has made no effort to obtain service.**

IV. CLERICAL STEP II:

- A. ****This step assumes that service upon all defendants is complete. The clerical person shall re-examine the action twenty-eight (28) days after Clerical Step I has been completed:**
 1. After all party defendants have filed an answer, the clerical person shall submit the file to the assigned Judge for assignment of a pretrial conference. ***The clerical person shall continue to monitor the case until the notice is served.**
 2. If no answer has been filed, then the clerical person shall send counsel for plaintiff notice *** to either proceed with a default judgment or dismiss the action. **If neither action has been taken after fourteen (14) days, then an entry * dismissing the action shall be submitted to the assigned Judge for approval and filing.**
 3. If an extension to plead has been filed and the motion has been granted, the action shall be recycled **** to Clerical Step II at the end of the extension period.**
 4. Any motion(s) that:

- a. Requires a ruling shall be taken to the assigned Judge on the morning following the day in which the motion(s) is filed;
- b. Has been pending fourteen (14) days or longer shall be listed on a printout * which shall be sent to the assigned Judge informing the assigned Judge that the motion(s) is ready for a decision. The motion(s) shall be rechecked ** every fourteen (14) days until a decision is made; or
- c. Has been decided in an action in which no answer has been filed shall be recycled to Clerical Step II.

V. JUDICIAL STEP I:

- A. At the initial pretrial conference, the Judge will, among other inquiries, determine the status of the case with reference to settlement.
 - 1. In each case that is reported settled, whether at pretrial conference or later:
 - a. Counsel shall be instructed to present a termination entry for approval within fourteen (14) days;
 - b. The fact that a settlement has been reached shall be transmitted to the clerical person who shall check ** for the filing of the termination entry at the end of the fourteen (14) day period;
 - c. If the termination entry has not been filed, then a notice * shall be sent to counsel informing them that they have fourteen (14) days to file a termination entry; and
 - d. **If no entry has been filed fourteen (14) days after notice has been sent to counsel, then an administrative dismissal entry * shall be sent to the assigned Judge for approval.
 - 2. In each non-jury case, the Judge shall determine whether the case is to be tried by the Judge or referred to a Magistrate. In either event:
 - a. The trial date and all other intervening events shall be scheduled; and
 - b. The clerical person shall check ** for a decision and/or judgment entry thirty (30) days after the designated trial date. If no decision and/or judgment entry has been made, then the clerical person shall send the assigned Judge or Magistrate a reminder. Thereafter, the clerical person shall continue to check for a decision and/or judgment entry and shall also send the assigned Judge or Magistrate a reminder every thirty (30) days until the judgment entry is journalized.

~~3. A case may be ordered to arbitration if a jury is demanded and the amount in controversy does not exceed \$50,000.00 for each party, unless the action involves title to real estate, equitable relief, or appeals. Where all parties to the action agree, the \$50,000.00 limit is waived. In the event that a case is ordered to arbitration, a back-up trial date shall be set.~~

4.3. Every case that has not been reported as settled shall have:

- a. A trial date set; and

b. A pretrial order served and journalized. The pretrial order shall set the dates for final pretrial conference and trial and establish deadline dates for disclosure of experts, completion of discovery, motions to add a necessary party, motions for summary judgment, trial materials exchange, objections to trial materials, filing pretrial statements, and taking of perpetuation depositions.

(1) Disclosure of Experts:

(a) Each party shall reveal to opposing counsel the name and address of any expert witness expected to be called at trial no later than the established deadline date in the pretrial order.

(2) Discovery Cutoff:

(a) All discovery shall be completed no later than the established deadline date in the pretrial order. The deadline date is inflexible and may be modified only by the Court upon a filing of a motion showing good cause.

(3) Motions to Add a Necessary Party:

(a) Motions to add a necessary party (e.g., subrogated insurers, etc.) shall be filed no later than the established deadline date in the pretrial order. Responses and replies shall be in compliance with [Local Rule 2.05, Section II \(B\) and II \(C\)](#).

(4) Motions for Summary Judgment:

(a) Motions for summary judgment shall be filed no later than the established deadline date in the pretrial order. Responses shall be filed within fourteen (14) days after the motion is filed. Replies shall be filed by the movant within seven (7) days from filing of responses. Upon the filing of motions for summary judgment, counsel shall take notice that a non-oral hearing will be held twenty-four (24) days after the filing of the motion, allowing for memorandum contra and movant reply. The Court may grant an extension for response and if so granted, the non-oral hearing shall take place eight (8) business days after the filing of the memorandum contra, allowing seven (7) days for movant's reply or if deadline for reply is extended, one business day following its filing.

(5) Trial Material Exchange:

(a) Counsel shall assemble for each other sets of all depositions, documents and other tangible items to be used at trial only if these have not already been furnished to opposing counsel during discovery. If these materials already have been provided, a list shall be provided as outlined in the pretrial statement below. Otherwise, each set of trial materials shall be placed in a binder or cover. Separate sets of materials shall be delivered to opposing counsel no later than 4:00 p.m. on the established deadline date in the pretrial order. The Court shall be provided with the parties' trial materials on the morning of the first day of trial unless the Court otherwise orders.

(6) Objections to Trial Materials:

(a) Objections/Motions in Limine as to the use or admission of trial materials at trial must be made in writing and delivered to the Court's Bailiff no later than 4:00 p.m. on the established deadline date in the pretrial order. Objections/motions shall state grounds and contain citation of authority. Failure to include a document, photograph or other item in the materials required by the pretrial order will prevent its use at trial. Relief from this provision may be obtained only upon motion for good cause shown.

(7) Pretrial Statement:

(a) The pretrial order shall require the parties to file a separate or joint pretrial statement. The pretrial statement shall be hand-delivered by counsel (plaintiff's counsel in joint pretrial statement) to the Court in chambers no later than 4:00 p.m. on the established deadline date in the pretrial order. The established deadline shall be firm and may not be extended except by leave of Court. Failure to submit the pretrial statement or to comply with any other Court order in a timely manner may result in the imposition of appropriate sanctions, including exclusion of testimony or exhibits, denial of claims, directed verdicts, dismissal of the case or contempt of court. The pretrial statement shall be in the following format:

- i) A concise statement of the general claims and defenses of the parties;
- ii) Facts established by admission, discovery, pleading content and/or stipulation of counsel;
- iii) Contested issues of fact;
- iv) Contested issues of law accompanied by counsel's citations of authority for counsel's position;
- v) Names and addresses of witnesses and a brief summary of expected testimony of each witness;
- vi) Names, addresses and qualifications of expert witnesses expected to testify at trial and a brief statement of the subject matter of each expert witness' testimony;
- vii) A list of exhibits and depositions counsel intends to offer into evidence in their cases in chief marked as follows:
 - a. Joint exhibits with Roman numerals;
 - b. Plaintiff(s) exhibits with Arabic numerals;
 - c. Defendant(s) exhibits with letters; and
 - d. Third party exhibits identified as such:
 - i. (Please note that materials that may be used as rebuttal or for impeachment purposes need not be listed.)
- viii) Motions in Limine, whether or not already filed;

- ix) A list of all special damages being requested;
- x) Counsel's expectation of trial time needed to present each side of the case;
- xi) The status of settlement negotiations including specific demands or offers; and
- xii) Requested special jury instructions, other than boilerplate

(8) Perpetuation Depositions and Filing Deadline:

- (a) The deadline for taking perpetuation depositions shall be no later than the established deadline date in the pretrial order. The deadline for filing all perpetuation deposition transcripts shall be three (3) working days prior to trial.

VI. JUDICIAL STEP II:

- A. Beginning fourteen (14) days after the assigned trial date, the procedure set for in Section V (A) (1) (a) of this rule shall be followed.

VII. No event required by this rule shall be deemed complete until the next event is scheduled and entered into the computer.

Rule 2.03 – Costs

Amended 2/24/03; Effective 3/1/03
 Amended 5/8/03; Effective 6/1/03
 Amended 2/6/07; Effective 3/1/07
 Amended 11/4/08; Effective 1/1/09
Amended 4/21/09; Effective 5/11/09

- I. No civil action or proceeding shall be accepted for filing unless there is deposited as security for costs the amount of \$250.00 for all civil complaints, except for mortgage foreclosure actions which shall be \$500.00. Additional deposits may also be required as set forth in [Appendix G](#).
- II. If the party initiating the civil action is unable to give security or a cash deposit as provided under this rule, then said party shall file a poverty affidavit along with the complaint. The affidavit shall be accepted by the Clerk of Courts and the collection of costs shall be postponed until the case is terminated.
- III. APPROPRIATE DISPUTE RESOLUTION FEE:
 - A. Pursuant to Ohio Revised Code, Section 2303.201 (E) (1), the General Division of the Court of Common Pleas for Montgomery County, Ohio, has determined that for the efficient operation of the Court, additional funds are necessary to pay for dispute resolution services.
 - B. As authorized under Section 2303.201 (E) (1) of the Revised Code, the Clerk of Courts for Montgomery County, Ohio, shall charge in addition to all other court costs, a fee of forty-five dollars (\$45.00) that is to be collected on the filing of each criminal cause, civil action or proceeding, or judgment by confession.

- C. All fees collected shall be used to implement ~~mediation, arbitration, and any other~~any procedures established for the resolution of disputes between parties to any civil or criminal action that is within the jurisdiction of the Court. All fees collected shall be paid to the Montgomery County Treasurer. The Treasurer shall place the funds from the fees in a separate appropriate dispute resolution fee fund to be disbursed upon an order of the General Division of the Court of Common Pleas for Montgomery County, Ohio.

IV. GENERAL SPECIAL PROJECT FEE:

- A. Pursuant to Ohio Revised Code, Section 2303.201 (E) (1), the General Division of the Court of Common Pleas for Montgomery County, Ohio, has determined that for the efficient operation of the Court, additional funds are necessary to acquire and pay for special projects of the Court.
- B. As authorized under Section 2303.201 (E) (1) of the Revised Code, the Clerk of Courts for Montgomery County, Ohio, shall charge, in addition to all other court costs, a fee of ~~twenty-four~~thirty dollars (\$~~24~~30.00) that is to be collected on the filing of each criminal cause, civil action or proceeding, or judgment by confession.
- C. As authorized under Section 2303.201 (E) (1) of the Revised Code, the Clerk of Courts for Montgomery County, Ohio, shall charge, in addition to all other court costs, a fee of twenty-five (\$25.00) that is to be collected on the filing of each criminal cause, civil action or proceeding, or judgment by confession. This fee shall be utilized for special projects related to electronic filing and storage of case records and related materials.
- D. All fees collected shall be used for special projects consistent with Ohio Revised Code 2003.201 (E) (1). All fees collected shall be paid to the Montgomery County Treasurer. The Treasurer shall place the funds from the fees in separate general special project fund to be disbursed upon an order of the General Division of the Court of Common Pleas for Montgomery County.

Rule 2.35 – Arbitration

Amended 11/2/94; Effective 11/15/94
Amended 1/26/96; Effective 3/1/96
Amended 1/20/98; Effective 3/1/98
Amended 4/9/99; Effective 4/15/99
Amended 9/7/99; Effective 9/8/99
Amended 5/9/00; Effective 5/15/00
Amended 7/1/03; Effective 7/1/03
Amended 11/6/03; Effective 1/1/04
Amended 6/2/04; Effective 7/1/04
Repealed 5/5/09; Effective 5/11/09

~~I.—Any Judge of the General Division of the Court of Common Pleas may by order refer any case to be mandatorily arbitrated, subject to the exceptions below. The purpose of arbitration is to provide a fair and expeditious method for resolution of factual disputes and controversies under applicable law. Arbitration enables a third neutral party to hear and consider evidence and then render a decision. The determination of whether the case is to~~

~~be mandatorily arbitrated shall be made at the scheduling conference or any later time after notice has been given. The orders are subject to the following provisions:~~

~~II. CASES FOR ARBITRATION:~~

~~A. Arbitration shall not be permitted in the following cases:~~

- ~~1. Actions involving title to real estate, equitable relief and appeals; and~~
- ~~2. Actions where the amount in controversy (exclusive of interest and costs) as determined by the assigned Judge exceed \$50,000.00 for each party. Arbitration may be ordered in cases where the monetary amount in controversy exceeds \$50,000.00 for any party where all parties to the action agree to arbitration. Once a case has been referred to arbitration, the Arbitrator or arbitration panel, after hearing the evidence, may award an amount greater than \$50,000.00 for any party, if appropriate.~~
- ~~3. In the event that any party believes that arbitration should be vacated because the monetary amount in controversy exceeds \$50,000.00 for any party, the party shall file a motion to vacate arbitration at the time of the filing of the arbitration joint pretrial statement or fourteen (14) days prior to the arbitration hearing whichever is sooner. Parties filing a motion to vacate arbitration shall promptly serve the Arbitration Clerk with a copy of the motion.~~

~~III. ARBITRATORS:~~

~~A. Allotment Per Case:~~

- ~~1. All cases subject to compulsory arbitration shall be heard by a single Arbitrator appointed in accordance with Section III (C) (b) (1) of this rule. Upon request of any party, the Court shall appoint a panel of three Arbitrators in accordance with Section III (C) (b) (2) of this rule. In cases where a panel of three Arbitrators is appointed, the party requesting a panel of three Arbitrators shall be responsible for paying the fee of two Associate Arbitrators. In cases where both sides request a panel of three Arbitrators, each side shall be responsible for paying the fee of one Associate Arbitrator.~~

~~B. Qualifications:~~

- ~~1. All Arbitrators shall:
 - ~~a. Be attorneys admitted to practice in Ohio;~~
 - ~~b. Submit a completed application which includes a summary of the provider's area of legal expertise and whether his or her practice is primarily plaintiff oriented, defense oriented, or evenly divided;~~
 - ~~c. Have actively engaged in the practice of law for five (5) years to be designated as a single Arbitrator or chairperson, or have actively engaged in the practice of law for two (2) years to be designated as an Associate Arbitrator;~~
 - ~~d. Demonstrate adequate knowledge of the law and experience relating to the case being heard.~~
 - ~~e. Be approved by the Court and complete any training program required by the Court.~~~~

~~C. Appointment:~~

~~1. All single Arbitrators and arbitration panels shall be appointed in accordance with the following procedure:~~

~~a. Arbitrator Lists:~~

~~(1) The list of qualified Arbitrators set forth under Section III (B) of this rule shall be divided into two (2) groups: single Arbitrators/chairpersons and Associate Arbitrators. The single Arbitrators/chairpersons group shall consist of attorneys selected by the Court. Attorneys desiring to be added or deleted to the arbitration lists shall notify the Arbitration Clerk.~~

~~b. Appointment:~~

~~(1) Court Appoints Single Arbitrator:~~

~~(a) A single Arbitrator will be appointed in alphabetical order from the single Arbitrators/chairpersons list. When feasible, consideration shall be given to the attorney's area of expertise.~~

~~(2) Court Appointment Arbitration Panel:~~

~~(a) If any party requests a panel of three Arbitrators, the Arbitration Clerk shall appoint an arbitration panel from the Arbitrator lists. Appointments to the arbitration panel shall include at least one member from the qualified list of single Arbitrators/chairpersons. Appointments shall be made in alphabetical order from the lists. However, when feasible, consideration shall be given to the attorney's expertise so as to achieve a balanced panel.~~

~~(3) Selection of Arbitrators:~~

~~(a) No more than one member of a law partnership or an association of attorneys shall be appointed to the same panel, nor shall any attorney be appointed to a case who has a specific interest in the determination of the case or a relationship with the parties or their counsel which would interfere with the fair and impartial consideration of the case or create a conflict of interest.~~

~~(4) Exceptions to Arbitrators:~~

~~(a) Exceptions to the appointment of an Arbitrator shall be by motion stating the reasons for the exception. The motion shall be filed within fourteen (14) days of the filing of notice of appointment of Arbitrators or two (2) days prior to the scheduled hearing whichever is earlier. All exceptions to an Arbitrator shall be referred to the assigned Judge.~~

~~D. Oath of Arbitrators:~~

~~1. All Arbitrators shall be sworn by oath or affirmation to properly try all matters that are submitted to them. The oath or affirmation shall be administered by a person having authority to administer oaths.~~

~~E. General Powers:~~

~~1. All Arbitrators shall have the following general powers:~~

~~a. The general powers of the Court; and~~

~~b. The power to judge the relevancy and materiality of the evidence offered. All evidence shall be taken in the presence of the single Arbitrator or arbitration panel and of all the parties except where any of the parties is absent, is in default, or has waived the right to be present. The single Arbitrator or arbitration panel may receive the witness' evidence by affidavit or written report and shall give it the weight they deem appropriate after considering any objections that have been made to it.~~

~~F. Specific Powers:~~

~~1. All Arbitrators shall have the following specific powers:~~

~~a. Subpoenas:~~

~~(1) The power to subpoena persons to attend before them as witnesses and in proper cases to bring with them books, records, papers, or documents deemed material evidence in the case. If any person so subpoenaed to testify refuses or neglects to obey the subpoena, the single Arbitrator or arbitration panel may petition the court to compel the attendance of the person or to punish the person for contempt.~~

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

~~b. Depositions:~~

~~(1) The power to petition the court to direct the taking of depositions to be used as evidence before the single Arbitrator or arbitration panel.~~

~~c. Administer Oaths and Affirmations:~~

~~(1) The power to administer oaths or affirmations to witnesses.~~

~~d. Conduct Hearing:~~

~~(1) The power to determine the admissibility of evidence, to permit testimony to be offered by depositions and decide the law and the facts of the case submitted to them. The power to maintain order and direct the order of the presentation of evidence and/or witnesses.~~

~~e. Evidence — Medical Bills, Property Damage Bills, Estimates:~~

~~(1) The power to accept the following bills, estimates, and any accompanying data as evidence in personal injury and/or property damage cases. The evidence may be offered and received in evidence without further proof for the purpose of proving the reasonableness of the charges for services, labor, materials, and any other items contained within the bill, estimate, and/or accompanying data. However, no medical bill, property, damage, bill, estimate, or accompanying data shall be admitted unless both parties have agreed to the admission of the evidence or the adverse party has been given one week's written notice of the evidence and a copy of the evidence to be admitted:~~

~~(a) Bills of Health Care Providers (including medicine and medical equipment):~~

~~i) Bills of hospitals, doctors, dentists, nurses, therapists, and all other health care providers, including medicine and medical equipment, that are dated, itemized, and printed on the official letterhead or bill head and are in compliance with Section 2317.421 of the Ohio Revised Code. Further, said bills shall be accompanied by a statement which certifies that the charges are correct and reasonable and that the services rendered were necessary and causally connected with the incident involved, in the opinion of the doctor or dentist.~~

~~(b) Property and Repair Bills or Estimates:~~

~~i) Property repair bills or estimates, when identified and itemized setting forth the charges for labor and material used in the repair of the property, provided that sufficient proof of ownership is offered by the party seeking to introduce such bill or estimate.~~

~~(c) Procedure in Case of Estimates:~~

~~i) Before an estimate may be admitted into evidence, the proponent of the estimate shall forward the following to the opponent:~~

~~a. A copy of the estimate;~~

~~b. A statement indicating whether or not the property was repaired, and if it was, whether the estimated repairs were made in full or in part; and~~

~~c. A copy of a receipt of the bill which shows the items of repair that were made and the amount paid for each item of repair.~~

~~(d) Exhibits:~~

~~i) All exhibits to be submitted at the arbitration hearing shall be served upon the adverse parties or their counsel and the Arbitration Clerk at least seven (7) days prior to the arbitration hearing. Failure to serve the evidence upon opposing parties and the Arbitration Clerk can be sufficient grounds for exclusion of the evidence, at the discretion of the single Arbitrator or the chairperson. The single Arbitrator or the chairperson shall not exclude evidence unless it unfairly surprises the non-offering party or otherwise unfairly prejudices the non-offering party.~~

~~ii) Counsel is required to submit a one page summary with page numbers referencing all depositions that will be submitted as evidence.~~

~~iii) All exhibits submitted by the parties at the arbitration hearing shall be marked by and kept in the custody of the single Arbitrator or Arbitration Chair. After the report and award is filed, the single Arbitrator or Arbitration Chair shall either return exhibits to the proponents of the exhibits or dispose of the exhibits.~~

~~G. Compensation of Arbitrators:~~

- ~~1. Each single Arbitrator or member of the arbitration panel who has signed an award or filed a minority report shall be compensated according to the following schedule. However, no Arbitrator shall receive fees until the award and report is filed with the Arbitration Clerk and no fees paid to Arbitrators shall be taxed as costs:
 - ~~a. Each single Arbitrator or chairperson shall receive a fee of two hundred dollars (\$200.00) in cases requiring four (4) hours or less of time. In cases requiring more than four (4) hours, each single Arbitrator or chairperson shall receive a fee of four hundred dollars (\$400.00).~~
 - ~~b. Each Associate Arbitrator shall receive a fee of one hundred fifty dollars (\$150.00) in cases requiring four (4) hours or less of time. In cases requiring more than four (4) hours, each Arbitrator shall receive a fee of three hundred dollars (\$300.00).~~
 - ~~c. 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.~~
 - ~~d. In cases requiring hearings of unusual duration or involving questions of unusual complexity, the assigned Judge, on petition of the single Arbitrator or members of the arbitration panel and for cause shown, may allow additional compensation.~~~~
- ~~2. All compensation for single Arbitrators or chairpersons shall be paid upon proper warrant, from funds of Montgomery County, Ohio, which have been allocated for the operation of the Common Pleas Court of Montgomery County, Ohio.~~
- ~~3. In cases where a panel of three Arbitrators is appointed, the party requesting a panel of three Arbitrators shall be responsible for paying the fee of two Associate Arbitrators in the amount of three hundred dollars (\$300.00) in cases requiring four hours or less of time or six hundred dollars (\$600.00) in cases requiring more than four (4) hours of time. In cases where both sides request a panel of three Arbitrators, each side shall be responsible for paying the fee of one Associate Arbitrator in the amount of one hundred fifty dollars (\$150.00) in cases requiring four (4) hours or less of time or three hundred dollars (\$300.00) in cases requiring more than four (4) hours of time. If the duration of the hearing is longer than anticipated, additional fees will be assessed by the Court for any additional compensation paid to the Arbitrators. Fees shall be deposited with the Clerk of Courts no later than fourteen (14) days before the arbitration hearing date. A copy of the receipt for fees deposited shall be delivered to the Arbitration Clerk. If fees are not deposited, the delinquent party may be subject to sanctions determined by the Court.~~
- ~~4. An indigent party may file a motion and affidavit under Section XII (3) of this rule asking for relief from the requirement of paying the arbitration fees.~~
- ~~5. If a case is continued, settled, or dismissed more than seven (7) days prior to the scheduled hearing date, the Arbitrator(s) shall not be entitled to compensation except in cases where the Arbitration Clerk is not notified of the continuance,~~

- ~~settlement, or dismissal by that date. If a case is continued, settled, or dismissed less than seven (7) days but more than two (2) days prior to the scheduled hearing date, the Arbitrator(s) shall be entitled to a cancellation fee in the amount of one-half of the compensation rate for conducting the hearing. If a case is continued, settled or dismissed less than two (2) days prior to the scheduled hearing date, the Arbitrator(s) shall be entitled to a cancellation fee in the amount of the full compensation rate for conducting the hearing.~~
- ~~6. If a case is reported settled less than seven (7) days prior to the scheduled hearing date, a fee in the amount of the cancellation fee paid to the Arbitrator(s) under Section III (G) (5) of the rule will be assessed to the parties as agreed upon by the parties. If there is no agreement among the parties, each side of the controversy will be assessed a fee in the amount of one-half of the cancellation fee paid to the Arbitrator(s) under Section III (G) (5) of this rule.~~
- ~~a. If the case is voluntarily dismissed by the plaintiff less than seven (7) days prior to the scheduled hearing date, a fee in the amount of the cancellation fee paid to the Arbitrator(s) under Section III (G) (5) of this rule will be assessed to the plaintiff(s).~~
- ~~b. If the case is dismissed by the Court less than seven (7) days prior to the scheduled hearing date, a fee in the amount of the cancellation fee paid to the Arbitrator(s) under Section III (G) (5) of this rule will be assessed to the party against whom the dismissal was granted, unless otherwise ordered by the Court.~~
- ~~c. All assessed fees shall be deposited with the Clerk of Courts.~~
- ~~7. If a case is continued less than seven (7) days prior to the scheduled hearing date, the party requesting the continuance will be assessed a fee in the amount of the cancellation fee paid to the Arbitrator(s) under Section III (G) (5) of this rule. The assessed fee shall be deposited with the Clerk of Courts when the entry granting the continuance is filed.~~
- ~~8. The assessed fees shall not be taxed as costs in the case. All funds generated by the assessment of these fees shall be paid to the Court's ADR fund.~~

~~IV. ASSIGNMENT OF CASES:~~

- ~~A. When the trial Judge determines that a case shall be assigned to arbitration, the trial Judge shall notify the Arbitration Clerk during the scheduling conference to determine a mutually convenient arbitration hearing date. The Arbitration Clerk shall provide the name of a single Arbitrator scheduled to conduct hearings on that date. At the scheduling conference, counsel for parties shall agree to either the single Arbitrator scheduled to conduct hearings on the arbitration hearing date or request that a panel of three Arbitrators be appointed to conduct the hearing. Counsel may request that the parties be given up to fourteen (14) days to consider the use of a single arbitrator other than the single Arbitrator appointed to conduct all hearings on the scheduled hearing date. The parties' agreed upon single Arbitrator shall be on the Court's qualified list of single Arbitrators/chairpersons. Counsel for parties are to contact the agreed upon single Arbitrator to determine the Arbitrator's availability for the scheduled arbitration hearing date. Parties are to notify the Arbitration Clerk, in writing, of the name of the agreed upon single Arbitrator or make a written request for a panel of three Arbitrators~~

~~within fourteen (14) days of the scheduling conference. Failure to notify the Arbitration Clerk within the fourteen (14) days constitutes a waiver of the parties' right to elect a three-person panel, and the Arbitration Clerk shall appoint to the case a single Arbitrator from the Court's qualified list of single Arbitrators/chairpersons. If the parties have agreed to a single Arbitrator, the Court shall not change the Arbitrator without the parties' agreement to the substitute. If the parties do not agree to the replacement, a three-person panel shall hear the case using the same hearing date.~~

~~B. The trial Judge's order referring the case to arbitration shall:~~

~~1. Contain the date and time of the arbitration hearing and the name(s) of the single Arbitrator or the panel of three Arbitrators appointed to hear cases on the scheduled hearing date:~~

~~a. If the panel of three Arbitrators has not been appointed for the scheduled hearing date at the time of the referral order, a notice of appointment of Arbitrators will be filed upon completion of the appointment.~~

~~2. Establish a final pretrial order with a discovery deadline date set at fourteen (14) days prior to the arbitration hearing date.~~

~~C. Once a time and place is set for a hearing, the hearing shall proceed forthwith at the scheduled time. There shall be no communications concerning the merits of the controversy by counsel or parties with the Arbitrator(s) prior to the commencement of the hearing.~~

~~1. In the absence of agreement of counsel, persons who have the burden of proof are required to attend the arbitration hearing. Failure to appear or be able to go forward at an arbitration hearing shall subject parties to a sanction in the amount of the cancellation fee paid to the Arbitrator(s) under Section III (G) (5) of this rule.~~

~~D. No disclosure of any offer of settlement made by any party shall be made to any Arbitrator before the report and award are filed with the Arbitration Clerk. The Arbitration Clerk shall remove and retain all papers and notations from the case file that refers to offers and/or demands for settlement before the case file is delivered to the single Arbitrator or members of the arbitration panel.~~

~~V. EXCEPTION TO ORDER ASSIGNING A CASE TO ARBITRATION:~~

~~A. All exceptions to orders assigning cases to arbitration shall be raised by motion filed within ten (10) days of the order assigning the case to arbitration.~~

~~VI. CONTINUANCE OF HEARING, INABILITY OF HEARING TO PROCEED:~~

~~A. Only the Judge who referred the matter to arbitration may grant a continuance, in writing, on motion for good cause shown after a mutually acceptable future hearing date has been arranged with all concerned parties. A copy of the entry granting the continuance shall be delivered to the Arbitration Clerk after the original entry has been filed with the Clerk of Courts.~~

~~B. If a case is settled or dismissed prior to the scheduled hearing date, the parties shall promptly file a settlement and conditional dismissal entry and serve the Arbitration Clerk with a copy. The Arbitration Clerk shall notify all of the Arbitrators of the settlement or dismissal.~~

~~C. Any motion that has not been ruled on prior to the arbitration hearing shall be disregarded by the single Arbitrator or arbitration panel for the purposes of arbitration.~~

~~VII. 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 a party. The single Arbitrator or arbitration panel shall require the non-defaulting party to submit the evidence as it may require for the making of an award.~~

~~VIII. SUPERVISORY POWERS OF THE COURT:~~

~~A. All Judges of the General Division of the Court of Common Pleas shall have full supervisory powers over any question that arises in all arbitration proceedings and in the application of these rules.~~

~~B. Violations of the provisions governing compulsory arbitration shall subject all offending parties to the assessment of costs or such other sanctions as determined by the Court.~~

~~IX. WITNESS FEES:~~

~~A. Witness fees in all compulsory arbitration cases shall be the same as witness fees in cases tried in the Court of Common Pleas. These fees may be taxed as costs in the case and shall be paid by the party or parties who would have paid the fees had the case been tried in the Montgomery County Court of Common Pleas.~~

~~X. TRANSCRIPTION OF ARBITRATION PROCEEDINGS:~~

~~A. There shall be no recording or transcription of arbitration proceedings by stenography or other methods except upon a motion to the Court for good cause shown or upon agreement of all parties. A copy of the motion shall be delivered to the Arbitration Office immediately after the original motion has been filed with the Clerk of Courts.~~

~~B. If the Court grants a motion to record or take transcription during an arbitration hearing, the requesting party shall cause a record to be made and shall pay the expenses, which shall not be considered costs in the case.~~

~~C. If a party desires a copy of a prepared transcript, the party shall contact the preparer of the transcript and a transcript shall be provided upon the payment of a fee. Fees for copies of prepared transcripts in arbitration cases shall be based upon the usual charges for copies of depositions.~~

~~XI. REPORT AND AWARD:~~

~~A. Signatures:~~

~~1. Each report and award shall be signed by the single Arbitrator or each member of the arbitration panel. In the event that all members of the panel are not in agreement on the finding and award, the dissenting member shall write "Dissents" before his/her name.~~

~~B. Minority Report:~~

~~1. A minority report shall not be required unless the dissenting Arbitrator elects to file a minority report due to unusual circumstances.~~

~~C. Filing Requirements:~~

~~1. For Single Arbitrator or Arbitration Panel:~~

- ~~a. Within seven (7) days after the hearing, the single Arbitrator or the chairperson of the arbitration panel shall file a report and award with the Arbitration Clerk. An award may exceed \$50,000.00 exclusive of interest. However, this authority for the award to exceed \$50,000.00 does not change the basic referral requirement in Section II (A) (2).~~

~~2. For Arbitration Clerk:~~

- ~~a. Upon receipt of a report and award and/or a minority report, the Arbitration Clerk shall note the report and award and/or minority report on the docket and file the original report(s) with the Clerk of Courts, and forward copies of the reports(s) to all parties or their counsel on the same day that the report(s) are filed with the Clerk of Courts.~~

~~D. Legal Effect on Report and Award; Entry of Judgment:~~

- ~~1. All reports and awards shall be final and shall have the legal effect of a verdict unless they are appealed as provided herein.~~
- ~~2. If no appeal is made and the time for an appeal has expired, the prevailing parties shall be responsible for preparing and submitting a judgment entry to the assigned Judge and the court shall enter judgment in accordance with the report and award.~~

~~XII. APPEAL:~~

~~A. An appeal may be taken from an award made in an arbitration proceeding. All appeals shall be taken to the assigned Judge and subject to the following conditions:~~

- ~~1. All appeals shall be taken and all conditions of appeal shall be complied with within thirty (30) days after the entry of the award of the single Arbitrator or arbitration panel is on the docket in the office of the Clerk of Courts.~~

~~2. Notice of Appeal and Cost:~~

- ~~a. An appellant shall file a notice of appeal de novo in the office of the Clerk of Courts, together with an affidavit indicating that the appeal is not being taken for delay but because the appellant believes the arbitration award is not justified. The appellant shall serve a copy of the notice of appeal and affidavit upon all parties or their counsel and the Arbitration Clerk of the Court.~~
- ~~b. The appellant shall pay an appeal fee to the Clerk of Courts in the amount of the fee paid to the single Arbitrator or the chairperson of the arbitration panel. The sum so paid shall not be taxed as costs in the case and shall not be recoverable by the appellant. All funds generated by this appeal fee shall be paid to the Court's ADR Fund.~~

~~3. Poverty Affidavit:~~

- ~~a. Any party who desires to appeal an award but is financially unable to do so may apply to the court by written motion and affidavit whichever that by reason of poverty the party is unable to make the payments required for an appeal. Any party who files such motion and affidavit shall serve a copy of the motion and affidavit on the opposing parties. If after due notice to the opposing party the~~

~~Judge is satisfied that the statements in the motion and affidavit are true, the Judge may issue an order allowing the moving party to appeal even though the appeal costs have not been paid.~~

~~4. Return to Active List:~~

- ~~a. If an appeal is taken from an arbitration order, the case will be set for trial and returned to the Judge who originally placed the case on the arbitration list.~~

~~5. Appeal De Novo:~~

- ~~a. All appeals shall be de novo proceedings.~~

~~6. Testimony of Arbitrators on Appeal:~~

- ~~a. No single Arbitrator or member of the arbitration panel shall be a witness at any de novo appeal proceeding.~~

~~7. Exceptions:~~

- ~~a. Exceptions to the decisions of the single arbitrator or arbitration panel based on either misconduct or corruption of the single Arbitrator or arbitration panel may be filed by any party within twenty one (21) days after the filing of the report.~~

- ~~b. The following actions shall be taken within forty eight (48) hours after exceptions are filed with the Clerk of Courts:~~

~~(1) Copies of the exceptions shall be served upon:~~

~~(a) The single Arbitrator or members of the arbitration panel; and~~

~~(b) The Arbitration Clerk.~~

~~(2) The exceptions shall be referred to the assigned Judge for hearing.~~

- ~~c. If the exceptions are sustained, the report shall be vacated and the case shall be placed on the active list of the Judge who ordered the case to mandatory arbitration. The Judge who ordered the case to mandatory arbitration may withhold compensation from any Arbitrator.~~

~~XIII. FORMS OF BINDING ARBITRATION:~~

~~A. The parties to an arbitration may agree in advance and in writing, that the action of the single Arbitrator or the arbitration panel will be unconditionally binding with no right of appeal. In so agreeing, the parties may elect to proceed within the applicable monetary limits, within specified different limits or without any limits. If the parties agree to binding arbitration, the Court shall not change the single Arbitrator or the composition of the arbitration panel without the parties' agreement.~~

~~B. The parties to an arbitration may agree in advance, in writing, that the action of the single Arbitrator or the arbitration panel will be conditionally binding with no right of appeal, if all of the following conditions are met:~~

- ~~1. At least fourteen (14) days prior to the arbitration hearing, each plaintiff shall submit in writing to the Arbitration Clerk the lowest acceptable award to be received through arbitration, and each defendant shall submit in writing to the Arbitration Clerk the highest acceptable award to be paid through arbitration. Said acceptable~~

~~amounts shall be received by the Arbitration Clerk no later than fourteen (14) days prior to the arbitration hearing, shall be sealed in envelope(s) clearly identifying the case by caption and case number and retained in confidentiality pursuant to #3 below;~~

~~2. The acceptable amounts, or, in the case of multiple plaintiffs or defendants, the aggregate acceptable amounts submitted to the Arbitration Clerk overlap to create a range of mutual acceptability;~~

~~3. The acceptable amounts submitted to the Arbitration Clerk by each party, and any resulting range of mutual acceptability, shall not in any way have been disclosed to, or become known by the single Arbitrator or any member of the arbitration panel prior to rendering of the written report and award;~~

~~4. After the hearing has been concluded and the arbitration report and award has been reduced to writing and signed by the single Arbitrator or all panel members, the Arbitration Clerk shall open the sealed envelope(s) containing the acceptable amounts submitted by each party and determine that the arbitration report and award falls within a range of mutual acceptability.~~

~~C. If the above conditions are met, the Arbitration Clerk shall submit an appropriate entry to the assigned Judge for signature, attaching the acceptable amounts of the parties as exhibits.~~

Rule 2.39 – Civil Mediation

Adopted 7/14/99; Effective 7/15/99
Amended 12/16/02; Effective 1/1/03
Amended 9/7/05; Effective 10/31/05
Amended 3/9/06; Effective 3/13/06
Amended 3/6/07; Effective 6/11/07
Amended 5/5/09; Effective 5/11/09

I. REFERRAL TO MEDIATION:

- A. Any civil case may be referred to mediation pursuant to a party's motion, or by agreement of the parties, or on the Court's own motion. The referral to mediation may occur at the pretrial scheduling conference or at any other time prior to trial.
- B. Cases may be referred to only one form of alternative dispute resolution. Therefore, cases referred to mediation will not be referred to ~~arbitration. If all parties advise the Court that they would prefer arbitration, the Court may order the case to arbitration under Mont. C. P. R. 2.35.~~ any other alternative dispute resolution programs.
- C. If any case in which a mediation referral is requested or ordered, all parties and counsel have a continuing duty to and shall disclose to the assigned Judge, the Mediator, and the mediation staff whether any of the opposing parties have either resided in a common residence or are related by blood, adoption, or marriage, and have known or alleged domestic abuse at any time prior to or following the referral of the case to mediation and before conclusion of the mediation process. Such party shall have a duty to participate in any screening required by the Supreme Court of Ohio's Rules of

Superintendence Rule 16 both prior to, and, in the Mediator's discretion during the mediation session(s).

- D. No referral to Mediation shall be made in this Division in any of the following circumstances:
 - 1. As an alternative to the prosecution or adjudication of domestic violence;
 - 2. In determining whether to grant, modify or terminate a protection order;
 - 3. In determining the terms and conditions of a protection order; and
 - 4. In determining the penalty for violation of a protective order.
- E. Nothing in Section I (D) 1 – 4 of this rule shall prohibit the use of mediation in a subsequent divorce or custody case in another Division or court even though that case may result in the termination of the provisions of a protection order issued by this Court.

II. OBJECTION TO MEDIATION:

- A. For good cause, a party may object to the referral to mediation by the Court on its own motion by filing a written request for reconsideration within ten (10) days of the date of the Court's order of referral to mediation.
- B. Mediation processes shall be stayed pending decision on the request for reconsideration, unless otherwise ordered by the Court.

III. CASE MANAGEMENT OF MEDIATION CASES:

- A. For those cases referred to mediation, the assigned Judge will continue to manage the case in the appropriate manner by setting a future trial date and establishing appropriate deadlines.
- B. In cases identified for mediation, a specific order of referral shall go out to counsel indicating the case has been referred to mediation and notifying them of the date and time of the following events:
 - 1. Telephone Status Conference: A telephone status conference between the Court Mediator and counsel primarily responsible for the case shall be scheduled approximately thirty (30) days prior to the mediation conference. During the telephone status conference, the case is reviewed for readiness for mediation. Any substantive issues, discovery matters, or areas of conflict between counsel shall be discussed during the telephone status conference. Counsel must be available for any scheduled telephone status conference on a mediated case.
 - 2. Mediation Conference: A mediation conference shall be scheduled no later than ninety (90) days prior to the scheduled trial date, unless otherwise ordered by the Court. Parties and persons necessary with authority to settle the case, as well as counsel for all parties, are required to be present at the mediation conference.
- C. Each party shall submit a mediation conference statement not to exceed three (3) pages to the Court Mediator and all other parties no later than ten (10) business days prior to the mediation conference. The statement shall set forth the relevant positions of the parties concerning factual issues, issues of law, damages, and the settlement negotiation history of the case, including a recitation of any specific demands and offers

that have been conveyed. **These statements are not to be filed with the Clerk of Courts and will be maintained separate and apart from the case file.**

1. Any party that desires to convey confidential information to the assigned Mediator with the provision that the information not be disclosed to the other party without the submitting party's later consent, shall submit the information to the assigned mediator clearly indicating the request for confidentiality. **The information is not to be filed with the Clerk of Courts and will be maintained separate and apart from the case file.**

IV. MEDIATOR:

- A. Mediation conferences for cases referred to mediation will be conducted by the Court Mediator. In the event that the Court Mediator is not available to conduct a mediation conference prior to the scheduled trial date, the assigned Judge may appoint another Mediator from a list of qualified Mediators that is maintained by the Court.
- B. In accordance with O.R.C. 2710.08 (A) and (B), the Mediator assigned by the Court to conduct a mediation shall disclose to counsel, the mediation parties, and any nonparty participants any known possible conflicts that may affect the Mediator's impartiality as soon as such conflict(s) become known to the assigned Mediator. If counsel or a mediation party requests that the assigned Mediator withdraw because of the facts so disclosed, the assigned Mediator may withdraw and request that the assigned Judge appoint another Mediator. If the assigned Mediator determines that withdrawal is not warranted, the assigned Mediator may elect to continue. The objecting party may then request the assigned Judge to remove the assigned Mediator. The assigned Judge may remove the assigned mediator and appoint another mediator from a list of qualified Mediators that is maintained by the Court. If the assigned Judge decides that the objection is unwarranted, the mediation conference shall proceed as scheduled, or, if delay was necessary, as soon after the scheduled date as possible.
- C. List of Qualified Mediators: The Court maintains a list of qualified Mediators which shall be maintained by the ADR Office and a copy shall be distributed to all Judges of the Court:
 1. All persons whose names are placed on the list of qualified Mediators shall submit to the ADR Office a regularly updated Curriculum Vitae (including a list of professional or association memberships) which CV shall be provided by the ADR Office to those requesting information on the assigned Mediator's qualifications to mediate a dispute as required by O.R.C. 2710.08 (C).
 2. The Court will review applications of persons seeking to be added to the list of qualified Mediators in accordance with the procedures adopted from time to time by the Judges of the Court.
- D. An assigned Mediator shall receive a fee of two hundred dollars (\$200.00) for conducting mediation conferences requiring four (4) hours or less of time. In mediation conferences requiring more than four (4) hours, an assigned Mediator shall receive a fee of four hundred dollars (\$400.00):

1. In cases requiring conferences of unusual duration, the assigned Judge, on petition of the assigned Mediator and for good cause shown, may allow additional compensation.
2. All compensation for assigned Mediators shall be paid upon proper warrant, from funds of Montgomery County, Ohio, which have been allocated for the operation of the Common Pleas Court of Montgomery County, Ohio.
3. If a case is continued, settled, or dismissed more than seven (7) days prior to the scheduled mediation conference date, the assigned Mediator shall not be entitled to compensation except in cases where the ADR Office is not notified of the continuance, settlement, or dismissal by that date. If a case is continued, settled or dismissed less than seven (7) days but more than two (2) days prior to the scheduled mediation conference date, the assigned Mediator shall be entitled to a cancellation fee in the amount of one-half of the compensation rate for conducting the mediation conference. If a case is continued, settled, or dismissed less than two (2) days prior to the scheduled mediation conference date, the assigned Mediator shall be entitled to a cancellation fee in the amount of the full compensation rate for conducting the mediation conference.

V. MEDIATION CONFERENCE:

- A. At the mediation conference, the assigned Mediator shall help the parties identify areas of agreement and explore the possibility of settling the case through mediation techniques:
 1. The facts and issues will be discussed by each side and a good faith effort will be made to settle the case;
 2. Any discovery or problems that are standing in the way of resolution will be identified including whether domestic violence is a factor impacting the continuation of mediation efforts;
 3. Possible solutions will be discussed and pursued to agreement, if possible;
 4. In the event the case is not ready for resolution, parties will identify the information or discovery they require in order to be in a position to negotiate further.
 5. Where appropriate, determining and encouraging referrals to legal counsel or other support services for all parties, including victims of and suspected victims of domestic violence. For that purpose, the ADR Office has available for distribution to clients a brochure which includes local attorney referral contact information; information regarding Children Services; and resource information for local domestic violence prevention, counseling, substance abuse, and mental health services.
- B. Any additional mediation conferences shall be scheduled within sixty (60) to ninety (90) days following the initial mediation conference, unless the assigned Mediator determines that an earlier or later date is necessary. Agreed upon information exchange may be required prior to the next scheduled mediation conference.

VI. ATTENDANCE AT MEDIATION CONFERENCES:

- A. Parties:

1. All persons whose consent is required to resolve a dispute, whether or not named as parties in the pleadings shall attend all mediation conferences, unless their attendance has been excused by the assigned Mediator. This attendance requirement reflects the Court's view that one of the principal purposes of the mediation process is to afford litigants an opportunity to articulate their interests and to learn about the interests expressed by their opposing parties.
2. If counsel or any mediation party or non-party participant becomes aware of the identity of a person or entity whose consent is required to resolve the dispute, but who have not yet been joined as a party in the pleadings, they shall promptly inform the assigned Mediator as well as the assigned Judge of such fact.
3. Where attendance of a party is required, a party other than a natural person satisfies the attendance requirement if it is represented by a person or persons, other than outside or local counsel, with authority to enter into stipulations, with reasonable settlement authority, and with sufficient stature in the organization to have direct access to those who make the ultimate decision about settlement.
4. In accordance with R. C. 2710.09, a party shall be permitted to have in attendance at a mediation session a designated attorney or counsel and/or other individual of their choosing. However, parties should recognize that attendance of some individuals may hinder discussion or settlement in mediation and that all parties have power to decide whether to continue discussions, what terms of a proposed agreement are acceptable, and whether to enter into a settlement agreement.
5. Failure of a party to attend a mediation conference shall be reported by the assigned Mediator to the assigned Judge who may impose sanctions, which may include, but are not limited to, the award of attorneys' fees and other costs, contempt or other appropriate sanctions at the discretion of the assigned Judge.

B. Counsel:

1. Counsel who is primarily responsible for each party's case shall attend all mediation conferences and shall be prepared and authorized to discuss all relevant issues, including settlement.

C. Adjusters:

1. Unless excused by the assigned Mediator the responsible adjuster handling the case for an insurer shall be present at the mediation conferences.

VII. PROCEDURE AT MEDIATION SESSIONS:

- A. Participation in mediation pursuant to an Order of this Court shall constitute agreement pursuant to O.R.C. 2710.07 by the participants that all "mediation communications" as defined in O.R.C. 2710.01 (B), in addition to being subject to the privileges set out in Chapter 2710, shall be treated by the parties, their counsel, the assigned Mediator, and the Court as confidential and shall not be disclosed without consent of the other participants in the mediation process, except for the following:
 1. Information that is statutorily mandated to be reported.
 2. Information that is permitted to be reported by O.R.C. 2710.06 (B).

3. Information that is not privileged pursuant to O.R.C. 2710.05.
- B. If the assigned Mediator determines that further mediation efforts would be of no benefit to the parties, he or she shall inform all interested parties and the Court that the mediation is terminated.
- C. Upon reaching a settlement in mediation:
 1. The assigned Mediator, upon his or her discretion, may immediately prepare a written memorandum memorializing the agreement reached by the parties. The memorandum shall be signed by the parties and counsel.
 2. Counsel shall be instructed to present a termination entry for approval within fourteen (14) days.
 - a. The fact that a settlement has been reached shall be transmitted to a clerical person who shall check for the filing of the termination entry at the end of the fourteen (14) day period;
 - b. If the termination entry has not been filed, then a notice shall be sent to counsel informing them that they have fourteen (14) days to file a termination entry; and
 - c. If no entry has been filed fourteen (14) days after notice has been sent to counsel, then an administrative dismissal entry shall be sent to the assigned Judge for approval.

VIII. CONTINUANCE OF A MEDIATION CONFERENCE, INABILITY OF MEDIATION TO PROCEED:

- A. The Court Mediator may grant a continuance of a mediation conference for good cause shown after a mutually acceptable future date has been arranged with all concerned parties. In no event shall a mediation conference be continued more than twice without a continuance entry and approval of the assigned Judge.
- B. If a case is settled or dismissed prior to a scheduled mediation conference, the parties shall promptly file a settlement and conditional dismissal entry. Counsel for plaintiff(s) shall inform the ADR Office by phone that the assigned mediation date will not be needed. This contact shall be made immediately following agreed settlement. Failure to so notify the ADR Office will result in assessment of the fees set out in paragraph C below.
- C. If a case is continued, settled, or dismissed less than seven (7) days prior to the scheduled mediation conference date, the following fees shall be assessed.
 1. If a case is continued less than seven (7) days prior to the scheduled mediation conference date, a fee in the amount of the cancellation fee paid to the qualified Mediator under Section IV (D) (3) of the rule will be assessed to the party requesting the continuance:
 - a. If counsel appears for a mediation conference and is not prepared to proceed, a fee in the amount of the cancellation fee may be assessed.
 2. If a case is reported settled less than seven (7) days prior to the scheduled mediation conference date, a fee in the amount of the cancellation fee paid to the assigned Mediation under Section IV (D) (3) of the rule will be assessed to the parties as agreed upon by the parties. If there is no agreement among the parties, each side of

the controversy will be assessed a fee in the amount of one-half of the cancellation fee paid to the assigned Mediator under Section IV (D) (3) of this rule.

3. If the case is voluntarily dismissed by the plaintiff less than seven (7) days prior to the scheduled mediation conference date, a fee in the amount of the cancellation fee paid to the assigned Mediator under Section IV (D) (3) of this rule will be assessed to the plaintiff(s).
4. If the case is dismissed by the Court less than seven (7) days prior to the scheduled mediation conference date, a fee in the amount of the cancellation fee paid to the assigned Mediator under Section IV (D) (3) of this rule will be assessed to the party against whom the dismissal was granted, unless otherwise ordered by the Court.
5. Assessed fees due to cancellations shall be assessed on all cases, including mediation conferences scheduled before the Court Mediator.
6. All assessed fees shall be deposited with the Clerk of Courts.
7. The assessed fees shall not be taxed as costs in the case. All funds generated by the assessment of these fees shall be paid to the Court's ADR Fund.

IX. WRITTEN CONFIDENTIALITY AGREEMENT:

- A. In furtherance of the confidentiality agreement imposed by resort to the mediation process ordered by the Court, a written confidentiality agreement shall be executed by all those in attendance prior to beginning the mediation session. If new or different persons attend a subsequent session, their signatures shall be obtained prior to proceeding further in the process. The form of agreement is available for review by any prospective participant by logging onto the mediation tab of the ADR pages of the Court's website at www.montcourt.org.

X. GOOD FAITH:

- A. Each party shall proceed with mediation in good faith to reach an agreement. Any party who participates in mediation shall perform all obligations expeditiously and shall not use the mediation process for purposes of delay or discovery in any manner other than in a good faith attempt at resolution. Failure to comply with any portion of this rule may result in appropriate sanctions.