

Court Rules and Procedures Committee

AGENDA

January 14, 2019
9:30 a.m. – 12:30 p.m.

Conference Call: 1-866-577-9294, Code: 55419#

Call to Order/ Preliminary Matters

- Diversity in Decision-Making Training (Robin Nussbaum, Inclusion & Equity Specialist)
- Approval of Minutes:
 - October 19, 2018 **(pp. 2-3)**

Subcommittee Reports

1. Evidence Rules (ER)
 - Subcommittee Chair Kirk Miller **(Oral Report)**
2. Infraction Rules for Court of Limited Jurisdiction (IRLJ)
 - Subcommittee Chair Jon Zimmerman (Tim Morano) **(pg. 4)**
3. Subcommittee X
 - Subcommittee Chair Tony DiTommaso **(pg. 5-13)**
4. Mandatory Arbitration Rules (MAR)
 - Subcommittee Chair Stephanie Dikeakos **(pg. 14-86)**

Other Business/Good of the Order

Adjourn

Next meeting is scheduled for February 11, 2019



Meeting Minutes
October 19, 2018

Members Present:

Chair Jefferson Coulter (by phone), Mimy Bailey, Olga Blotnis (by phone), Claire Carden (by phone), Jody Cloutier (by phone), Rike Connelly, Stephanie Dikeakos, Tony Di Tommaso, Geoff Grindeland, D. Jack Guthrie (by phone), Joyce Heritage, Karen Horowitz (by phone), Alison Markette, Kirk Miller (by phone), Tim Mora, Isham Reavis, Ashton Rezayat (by phone), Rachel Rogers (by phone), Rooein Roshandel (by phone), Dalynne Singleton (by phone), James Smith (by phone), Ann Summers, Brian Zuanich, and Judge Kevin Korsmo.

Members Excused:

Bertha Fitzer, Richard Greene, John Ledford, Sarah Lee, Jon Zimmerman, and Judge Blaine Gibson.

Also Attending:

Nicole Gustine (WSBA Assistant General Counsel), Shannon Hinchcliffe (AOC Liaison), and Sherry Lindner (WSBA Paralegal).

Chair Jefferson Coulter called the meeting to order at 9:30 a.m.

Welcome and Introductions

The Chair welcomed the Committee and asked each member to introduce him or herself.

The Chair explained that the rules up for review this year's cycle are the Superior Court Evidence Rules (ER) (subcommittee chaired by Kirk Miller), the Superior Court Infractions Rules for Courts of Limited Jurisdiction (IRLJ) (subcommittee chaired by Jon Zimmerman), and the Subcommittee X (subcommittee chaired by Tony Di Tommaso).

The Chair explained that the majority of the work is done in the subcommittees and attendance at those meetings is crucial. It is also very important that subcommittees reach out to stakeholders and interested parties or receive feedback and input. Subcommittee meetings are open to the public.

The Chair discussed the rule making process and stated that getting the input of the other members and stakeholders is very crucial to vetting and scrubbing a rule. The Chair further discussed the Committee's timeline and deadlines in order for the Board of Governors (BOG) to get materials to the Supreme Court by their annual deadline.

MAR Subcommittee Report

Subcommittee Chair Stephanie Dikeakos report to the Committee the enacted EHB 1128-Civil Arbitration which went into effect September 1, 2018, and this Committee (by the Court's request) was asked to review the rule to make the MARs consistent with the bill and the corresponding amendments to RCW Chapter 7.06, Mandatory Arbitration of Civil Actions.

Chair Dikeakos explained the title references to the word "mandatory" are removed through the arbitration law, and "Mandatory Arbitration" is replaced with "Civil Arbitration." The title is changed accordingly to Superior Court Civil Arbitration Rules or SCCAR.

Chair Dikeakos will make the appropriate changes to the proposals and the proposals will be sent to stakeholders by the end of October.

GR 12.4 – Public Records Request to Bar Records

Ms. Gustine discussed that WSBA is subject to public disclosure requirements that are similar but not identical to those governing state agencies. Communications of the Committee, including emails on which WSBA staff is copied, are subject to disclosure if a records request is made.

Reimbursement Policy

Ms. Lindner explained the reimbursement policy – parking and mileage will be reimbursed. The WSBA will reimburse the cheapest method of travel and ask members to be considerate if they need hotel accommodations. Ms. Lindner also stated that if it is easier to attend meetings by telephone to please do so.

Ms. Lindner also stated that she will provide a template "Report" for subcommittee chairs to complete on month basis so that all members of the Committee are kept apprised of each subcommittee's work and progress.

Chair Coulter thanked everyone and is looking forward to a very productive year.

There being no further business, the meeting was adjourned at 10:30 a.m.

IRLJ Subcommittee Report, Prepared by Jon Zimmerman, Subcommittee Chair
JANUARY 10, 2019

Subcommittee:

Subcommittee members are Rooein Roshandel, Joyce Heritage, Tim Moran, Olga Blotnis, Karen Horowitz, Claire Carden, Ann Summers, and Jon Zimmerman

The goals of the Subcommittee are to

1. Review all of the rules in the IRLJ;
2. Where appropriate, make recommendations based upon committee feedback in light of practical considerations, statutes, case law, and stakeholder feedback (see below);
3. Work with stakeholders, such as but not limited to the DMCJA, to solicit feedback.

Overview of Current Practices:

The IRLJ applies only in courts of limited jurisdiction.

Research Conducted:

The Subcommittee first conducts a review of the rules for discussion with subcommittee members.

Issues Being Worked On:

The entire Subcommittee met via conference call on January 9, 2019. Nicole Gustine appeared on behalf of the WSBA. Members volunteered to take rules or whole titles of the rules to review.

The Subcommittee Chair will gather comments from members and will disseminate them for discussion to the Subcommittee. The Subcommittee will meet again the last week of January or first week of February.

The Subcommittee Chair has reached out to AOC's DMCJA liaison for communication with DMCJA Rules Committee representatives for their feedback.

The Subcommittee will review rules to determine if the Subcommittee suggests any changes, a copy of which will be forwarded with comments to the Chair for Rules Committee consideration.

Guidance:

None at this time.

Recommendation:

None at this time.

Law Office of Tony DiTommaso, P.S.

Tony DiTommaso
tony@ditommasolaw.net

Morris Building
23 S. Wenatchee Avenue, Ste. 201
Wenatchee, Washington 98801
(509)665-8776 / Fax (509)665-0397

Kambra Mellergaard
kambra@ditommasolaw.net

January 4, 2019

Jefferson Coulter
jeffersonc@nwjustice.org

Sherry Linder
sherryl@wsba.org

Dear Jefferson and Sherry:

Being emailed to you is Subcommittee X's report for the meeting scheduled January 14. If you have any questions or suggestions please let me know.

Sincerely,

LAW OFFICE OF TONY DITOMMASO, P.S.



Tony DiTommaso
Attorney at Law

TD:st

Enclosure

WASHINGTON STATE BAR ASSOCIATION

Court Rules and Procedures Committee

Subcommittee X Subcommittee Report

January 4, 2019

Subcommittee:

Subcommittee X consists of the following individuals:

Tony DiTommaso
Jack Guthrie
Jody Cloutier
Judge Kevin Korsmo
Judge Blaine Gibson
John Ledford
Kathleen Goodman
Brian Zvanich

The Subcommittee had meetings on December 13, 2018 and January 3, 2019. In attendance at the December 13 meeting were Tony DiTommaso, Blaine Gibson, Jody Cloutier and John Ledford. In attendance at the January 3 meeting were Tony DiTommaso, Blaine Gibson and Kevin Korsmo.

Issues Being Worked On:

The subcommittee's first assignment dealt with a proposed change to GR 30(3) adding an additional definition and comment to the term "electronic document". See attached Exhibit A. The proposal was to make it clear that the signature of non-attorneys include a digital signature.

Mr. Coultier submitted this proposal due to certain courts not accepting documents with a client's digital signature.

RCW 19.34.020 was reviewed and discussed which defines a digital signature which includes an electronic signature. After reviewing RCW 19.34.020 and GR 30 itself, the committee voted that no action should be taken on the proposal because the rule itself already authorizes the filing of electronic documents with digital non-attorneys signatures. It was apparent to the committee that the specific county where such signatures were not being accepted were simply not following the rule as written. A suggestion was made in the subcommittee that perhaps AOC could send out a friendly reminder of the rule to all counties noting that non-attorney signatures can be filed electronically.

The committee at the December 13 meeting also started an initial discussion of a proposed amendment to Criminal Rule 8.2 which is a carry-over from last year's committee. Attached hereto as Exhibit B is a

GR 9 coversheet and proposed amendment to Criminal Rule 8.2 which was forwarded to our committee to continue work on. The consensus expressed by last year's rules committee were that the criminal rules should explicitly allow motions for reconsideration and that such a motion needed to be considered within 30 days, as in CR 59.

At the January 3 meeting, present were Tony DiTommaso, Blaine Gibson and Kevin Korsmo. The case law as to whether a motion for reconsideration can be made in criminal cases are in conflict as noted in the GR 9 coversheet with the proposed amendment to rule 8.2 in Exhibit B.

As noted in the GR 9 coversheet, there is a need for clarification that a motion for reconsideration is or should be allowed in criminal matters. The issue is the placement and language of the rule authorizing reconsideration.

After discussion it was unanimously voted on that placement of the motion for reconsideration should be in Criminal Rule 8.2 and the subcommittee will draft a rule and finalize the language to present to the committee at the February, 2019 meeting. It is anticipated that the rule will make reference to Civil Rule 59 for the procedure to follow when filing a motion for reconsideration in a criminal case.

Although not discussed at the meeting, during last years committee a suggestion was made that if a change was going to be made to the superior court rule, there should also be a change included in the district court criminal rules.

GR 30
ELECTRONIC FILING AND SERVICE

(a) Definitions.

(1) "Digital signature" is defined in RCW 19.34.020.

(2) "Electronic Filing" is the electronic transmission of information to a court or clerk for case processing.

(3) "Electronic Document" is an electronic version of information traditionally filed in paper form, except for documents filed by facsimile which are addressed in GR 17. An electronic document has the same legal effect as a paper document. An "Electronic Document" also includes a document that is filed in paper form, but which contains an Electronic Signature in lieu of a traditional ink signature.

Comment: It is the intent of this rule to make clear that an a document that the filer signs electronically may not be rejected simply because the signature is electronic and not traditional ink-based.

(4) "Electronic Filing Technical Standards" are those standards, not inconsistent with this rule, adopted by the Judicial Information System committee to implement electronic filing.

(5) "Filer" is the person whose user ID and password are used to file an electronic document.

Comment: The form of "digital signature" that is acceptable is not limited to the procedure defined by chapter 19.34 RCW, but may include other equivalently reliable forms of authentication as adopted by local court rule or general order.

(b) Electronic filing authorization, exception, service, and technology equipment.

(1) The clerk may accept for filing an electronic document that complies with the Court Rules and the Electronic Filing Technical Standards.

(2) A document that is required by law to be filed in non-electronic media may not be electronically filed.

Comment: Certain documents are required by law to be filed in non-electronic media. Examples are original wills, certified records of proceedings for purposes of appeal, negotiable instruments, and documents of foreign governments under official seal.

(3) Electronic Transmission from the Court. The court or clerk may electronically transmit notices, orders, or other documents to all attorneys as authorized under local court rule, or to a party who has filed electronically or has agreed to accept electronic documents from the court, and has provided the clerk the address of the party's electronic mailbox. It is the responsibility of

all attorneys and the filing or agreeing party to maintain an electronic mailbox sufficient to receive electronic transmissions of notices, orders, and other documents.

(4) A court may adopt a local rule that mandates electronic filing by attorneys and/or electronic service of documents on attorneys for parties of record, provided that the attorneys are not additionally required to file paper copies except for those documents set forth in (b)(2). Electronic service may be made either through an electronic transmission directly from the court (where available) or by a party's attorney. Absent such a local rule, parties may electronically serve documents on other parties of record only by agreement. The local rule shall not be inconsistent with this Rule and the Electronic Filing Technical Standards, and the local rule shall permit paper filing and/or service upon a showing of good cause. Electronic filing and/or service should not serve as a barrier to access.

Comment: When adopting electronic filing requirements, courts should refrain from requiring counsel to provide duplicate paper pleadings as "working copies" for judicial officers.

(c) Time of Filing, Confirmation, and Rejection.

(1) An electronic document is filed when it is received by the clerk's designated computer during the clerk's business hours; otherwise the document is considered filed at the beginning of the next business day.

(2) The clerk shall issue confirmation to the filing party that an electronic document has been received.

(3) The clerk may reject a document that fails to comply with applicable electronic filing requirements. The clerk must notify the filing party of the rejection and the reason therefor.

(d) Authentication of Electronic Documents.

(1) Procedures

(A) A person filing an electronic document must have received a user ID and password from a government agency or a person delegated by such agency in order to use the applicable electronic filing service.

Comment: The committee encourages local clerks and courts to develop a protocol for uniform statewide single user ID's and passwords.

(B) All electronic documents must be filed by using the user ID and password of the filer.

(C) A filer is responsible for all documents filed with his or her user ID and password. No one shall use the filer's user ID and password without the authorization of the filer.

(2) Signatures

(A) Attorney Signatures. An electronic document which requires an attorney's signature may be signed with a digital signature or signed in the following manner:

s/ John Attorney
State Bar Number 12345
ABC Law Firm
123 South Fifth Avenue
Seattle, WA 98104
Telephone: (206) 123-4567
Fax: (206) 123-4567
E-mail: John.Attorney@lawfirm.com

(B) Non-attorney signatures. An electronic document which requires a non-attorney's signature and is not signed under penalty of perjury may be signed with a digital signature or signed in the following manner:

s/ John Citizen
123 South Fifth Avenue
Seattle, WA 98104
Telephone: (206) 123-4567
Fax: (206) 123-4567
E-mail: John.Citizen@email.com

(C) Non-attorney signatures on documents signed under penalty of perjury. Except as set forth in (d)(2)(D) of this rule, if the original document requires the signature of a non-attorney signed under penalty of perjury, the filer must either:

(i) Scan and electronically file the entire document, including the signature page with the signature, and maintain the original signed paper document for the duration of the case, including any period of appeal, plus sixty (60) days thereafter; or

(ii) Ensure the electronic document has the digital signature of the signer.

(D) Law enforcement officer signatures on documents signed under penalty of perjury.

(i) A citation or notice of infraction initiated by an arresting or citing officer as defined in IRLJ 1.2(j) and in accordance with CrRLJ 2.1 or IRLJ 2.1 and 2.2 is presumed to have been signed when the arresting or citing officer uses his or her user id and password to electronically file the citation or notice of infraction.

(ii) Any document initiated by a law enforcement officer is presumed to have been signed when the officer uses his or her user ID and password to electronically submit the document to a court or prosecutor through the Statewide Electronic Collision & Traffic Online Records application, the Justice Information Network Data Exchange, or a local secured system that the presiding judge designates by local rule. Unless otherwise specified, the signature shall be

presumed to have been made under penalty of perjury under the laws of the State of Washington and on the date and at the place set forth in the citation.

(E) Multiple signatures. If the original document requires multiple signatures, the filer shall scan and electronically file the entire document, including the signature page with the signatures, unless:

(i) The electronic document contains the digital signatures of all signers; or

(ii) For a document that is not signed under penalty of perjury, the signator has the express authority to sign for an attorney or party and represents having that authority in the document.

If any of the non-digital signatures are of non-attorneys, the filer shall maintain the original signed paper document for the duration of the case, including any period of appeal, plus sixty (60) days thereafter.

(F) Court Facilitated Electronically Captured Signatures. An electronic document that requires a signature may be signed using electronic signature pad equipment that has been authorized and facilitated by the court. This document may be electronically filed as long as the electronic document contains the electronic captured signature.

(3) An electronic document filed in accordance with this rule shall bind the signer and function as the signer's signature for any purpose, including CR 11. An electronic document shall be deemed the equivalent of an original signed document if the filer has complied with this rule. All electronic documents signed under penalty of perjury must conform to the oath language requirements set forth in RCW 9A.72.085 and GR 13.

(e) Filing fees, electronic filing fees.

(1) The clerk is not required to accept electronic documents that require a fee. If the clerk does accept electronic documents that require a fee, the local courts must develop procedures for fee collection that comply with the payment and reconciliation standards established by the Administrative Office of the Courts and the Washington State Auditor.

(2) Anyone entitled to waiver of non-electronic filing fees will not be charged electronic filing fees. The court or clerk shall establish an application and waiver process consistent with the application and waiver process used with respect to non-electronic filing and filing fees.

[Adopted effective September 1, 2003; December 4, 2007; September 1, 2011; December 9, 2014.]

GR 9 COVER SHEET

Suggested Amendment

SUPERIOR COURT CRIMINAL RULES (CrR)

Rule 8.2 MOTIONS

A. Proponent: Washington State Bar Association Rules Committee, CrR Subcommittee

B. Spokespersons: Ann Summers, Subcommittee Chair

C. Purpose:

There is currently a conflict in the case law as to whether the criminal rules allow a motion for reconsideration. State v. Batsell, 198 Wn. App. 1066, unpublished (issued May 2, 2017), illustrates that there is some confusion as to whether a motion for reconsideration is allowed under the criminal rules. The Batsell court noted that State v. Gonzalez, 110 Wn.2d 738, 744, 757 P.2d 925 (1988), noted that civil rules are instructive as to matters of procedure on which the criminal rules are silent. However, State v. Keller, 32 Wn. App. 135, 647 P.2d 35 (1982), held that CR 59 did not apply in criminal cases. In contrast, as the Batsell court noted, “at least two reported decisions in criminal appeals have involved motions for reconsideration without questioning CR 59’s application in criminal cases.” (citing State v. Englund, 186 Wn. App. 444, 459, 345 P.3d 859, review denied, 183 Wn.2d 1011, 352 P.3d 188 (2015); State v. Chaussee, 77 Wn. App. 803, 806–07, 895 P.2d 414 (1995)).

This confusion results in inconsistency across courts. It also presents a problem when a party in a criminal case wishes to move for discretionary review, as the time for filing a notice of discretionary review runs from the entry of an order deciding a timely motion for reconsideration pursuant to RAP 5.2(b).

D. Hearing: A hearing is not recommended.

E. Expedited Consideration: Expedited consideration is not requested.

F. Supporting Material: Suggested rule amendment.

SUPERIOR COURT CRIMINAL RULES (CrR)
Rule 8.2 MOTIONS

Rules 3.5 and 3.6 and CR 7(b) shall govern motions in criminal cases. A motion for reconsideration shall be filed not later than 10 days after the entry of the order or other decision.

COURT RULES AND PROCEDURE COMMITTEE
MAR Subcommittee Report
January 8, 2019

To: WSBA Court Rules and Procedures Committee
From: Stephanie Dikeakos, MAR Subcommittee Chair
Date: January 8, 2019
Re: Summary of January 8, 2019 meeting

Attendance: Members attending the meeting were Stephanie Dikeakos, Ashton Rezayat, Alison Markette, and Geoffrey Grindeland.

Background: On May 29, 2018, the WSBA received a request from Justice Johnson to review the Mandatory Arbitration Rules (MARs) considering EHB 1128 which took effect on September 1, 2018. The subcommittee drafted amendments to the MARs renaming them Superior Court Mandatory Arbitration Rules (SCCARs) and effectuating the changes made to RCW Chapter 7.06 by EHB 1128. The full committee discussed the amendments on October 19th where friendly amendments were proposed and accepted. On October 24, 2018 Sherry Lindner sent the proposed amendment to stakeholders for comment. The committee received 7 comments.

Discussion at meeting: The subcommittee members had reviewed the comments in advance of the meeting.

- *Comment to be referred to Subcommittee X:* The committee received a letter from Justice Johnson dated October 23, 2018 with an attached letter from King County Superior Court Clerk Barbara Miner. Ms. Miner proposed amendments to MAR 7.2 on the issue of who should have access to an arbitration award following a trial de novo request. Given the scope of this subcommittee's role in implementing EHB 1128 and the timing, the subcommittee – with guidance from Jefferson Coulter, Nicole Gustine and Sherry Lindner will refer this to Subcommittee X.
- *No other changes needed:* Some of the remaining comments raised issues including arbitrator qualifications, scope of discovery and the new arbitration limit increase from \$50,000 to \$100,000. The subcommittee discussed the remaining comments and agreed there was no need to propose any revised amendments.

Going forward, the subcommittee recommends sending the suggested amendments to the Supreme Court.

The Supreme Court
State of Washington

CHARLES W. JOHNSON
JUSTICE
TEMPLE OF JUSTICE
POST OFFICE BOX 40929
OLYMPIA, WASHINGTON
98504-0929



(360) 357-2020
FACSIMILE (360) 357-2103
E-MAIL J_C.JOHNSON@COURTS.WA.GOV

October 23, 2018

Ms. Paula Littlewood
Executive Director
Washington State Bar Association
1325 Fourth Avenue, Suite 600
Seattle, WA 98101-2539

Dear Ms. Littlewood:

Recently, the Supreme Court Rules Committee requested the Washington State Bar Association's Court Rules and Procedures Committee review the current statewide Mandatory Arbitration Rules (MAR) as a result of legislation enacted effective September 1, 2018. I understand that a MAR subcommittee has been convened to complete this request.

On August 15, 2018, the Rules Committee received a request from Ms. Barbara Miner, King County Superior Court Clerk, to clarify the language of MAR 7.2. I am sharing this request with you in case it may be prudent for the subcommittee to consider it during its review process.

Very truly yours,

Charles W. Johnson, Chair
Supreme Court Rules Committee

Enclosure

cc: Ms. Nicole Gustine, WSBA Assistant General Counsel
Mr. Jefferson Coulter, WSBA Court Rules and Procedures Committee Chair



King County

Department of Judicial Administration
Barbara Miner
Director and Superior Court Clerk
(206) 296-9300 (206) 296-0100 TTY/TDD

August 15, 2018

Justice Charles Johnson, Chair
Supreme Court Rules Committee
PO Box 40929
Olympia, WA 98504-0929

Re: Mandatory Arbitration Rule 7.2

Dear Justice Johnson:

I write with a question and possible suggested rule edit regarding MAR 7.2.

Highlighted below is section (a) of MAR 7.2 which dictates the sealing of the arbitration award upon the filing of a de novo request. The language in the other sections goes on to instruct keeping the arbitration award information completely out of court filings and hearings as the case proceeds through the de novo process.

My question is in regard to the audience to whom the arbitration award is sealed. Pursuant to the current rule language, Clerks around the state would seal the document and not allow public or parties access to the arbitration award. However, it is regular procedure that a document which is sealed is accessible to any judicial officer of that court. Is that what is intended by this rule language?

Historically we interpreted old rule language or case law to mean that judicial officers were prohibited from accessing/viewing arbitration awards, though parties were allowed access. It appears the current language does the exact opposite: it allows judicial officers to see the award, but the parties are prohibited.

If the intent of the language is to keep judicial officers who might be handling the de novo trial from seeing the award, I would suggest that a rule change is necessary. Perhaps something like this language could be added to the current language: "judicial officer access to the award is also prohibited." Or this edit could be applied: "The clerk shall seal any arbitration award from judicial officers if a de novo is requested."

Seattle:
516 Third Avenue Room E609
Seattle, WA 98104-2386

Regional Justice Center:
401 Fourth Avenue North Room 2C
Kent, WA 98032-4429

Juvenile Division:
1211 East Alder Room 307
Seattle, WA 98122-5598

Current Mandatory Arbitration Rule 7.2 language:

RULE 7.2

PROCEDURE AFTER REQUEST FOR TRIAL DE NOVO

~~(a) Sealing. The clerk shall seal any award if a trial de novo is requested.~~

~~(b) No Reference to Arbitration; Use of Testimony.~~

~~(1) The trial de novo shall be conducted as though no arbitration proceeding had occurred. No reference shall be made to the arbitration award, in any pleading, brief, or other written or oral statement to the trial court or jury either before or during the trial, nor, in a jury trial, shall the jury be informed that there has been an arbitration proceeding.~~

~~(2) Testimony given during the arbitration proceeding is admissible in subsequent proceedings to the extent allowed by the Rules of Evidence, except that the testimony shall not be identified as having been given in an arbitration proceeding.~~

~~(c) Relief Sought. The relief sought at a trial de novo shall not be restricted by RCW 7.06, local arbitration rule, or any prior waiver or stipulation made for purposes of arbitration.~~

~~(d) Arbitrator as Witness. The arbitrator shall not be called as a witness at the trial de novo.~~

Proposed Mandatory Arbitration Rule 7.2 language:

RULE 7.2 (version 1)

PROCEDURE AFTER REQUEST FOR TRIAL DE NOVO

~~(a) Sealing. The clerk shall seal any award from judicial officers if a trial de novo is requested.~~

....

Or

RULE 7.2 (version 2)

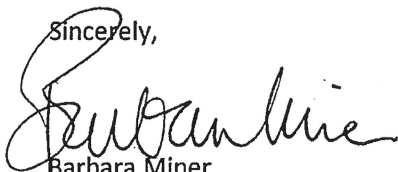
PROCEDURE AFTER REQUEST FOR TRIAL DE NOVO

~~(b) Sealing. The clerk shall seal any award if a trial de novo is requested. Judicial officer access to the award is also prohibited.~~

....

Thank you for your attention to this and please feel free to contact me should you have questions or need more information. I can be reached at (206) 477-0777.

Sincerely,



Barbara Miner
King County Superior Court Clerk

cc: Shannon Hinchcliffe; Office of Legal Services and staff to Superior Court Rules Committee

From: Sherry Lindner
To: ["Jon C. Parker"](#)
Subject: RE: EHB 1128 - MAR Amendments
Date: Thursday, October 25, 2018 8:56:00 AM

Received.

Thank you for your comment.

Sherry Lindner | Paralegal | Office of General Counsel
Washington State Bar Association |T 206.733.5941|F 206.727.8314| sherryl@wsba.org
1325 Fourth Avenue, Suite 600|Seattle, WA 98101-2539

From: Jon C. Parker [mailto:jon@hoquiamlaw.com]
Sent: Wednesday, October 24, 2018 2:21 PM
To: WSBA CourtRules
Subject: EHB 1128 - MAR Amendments

I realize that the request for comments is largely an exercise in cosmetics but I am submitting my thoughts anyway.

1. I have been an attorney for 44 years and have mediated and arbitrated many cases. I do not think I need additional CLE to do that job. Why not state in the rule that the CLE requirement applies to attorneys that have not been in practice for at least 10 years or cannot swear that they have arbitrated/mediated at least X number of cases?
2. Allowing discovery defeats the purpose of the rule. Insurance company attorneys and wealthy parties can take advantage of poorer parties with discovery. The current rule works fine by halting discovery for the most part.
3. I do not see a good reason for a party having to sign the request for a *de novo* trial. An attorney is defined as one who is appointed and authorized to act in the place or stead of another. Attorneys sign pleading for clients all of the time and there are times when the client is not available to sign and return such a document.

Jon C. Parker

Parker, Winkelman & Parker, PS
P.O. Box 700
813 Levee Street
Hoquiam, WA. 98550
(360) 532-5780
Fax (360) 532-5788

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recommending to another party any transaction or matter that is addressed herein.

From: Sherry Lindner
To: ["Roger Leed"](#)
Subject: RE: new arbitration rules to replace MAR
Date: Friday, October 26, 2018 10:15:00 AM

Received.

Thank you for your comment.

Sherry Lindner | Paralegal | Office of General Counsel
Washington State Bar Association |T 206.733.5941|F 206.727.8314| sheryl@wsba.org
1325 Fourth Avenue, Suite 600|Seattle, WA 98101-2539

From: Roger Leed [<mailto:rmleed@comcast.net>]
Sent: Thursday, October 25, 2018 12:55 PM
To: WSBA CourtRules
Subject: new arbitration rules to replace MAR

Non-lawyers should not be allowed to handle Superior Court arbitrations. The parties have no right to transfer a court-authorized and supervised proceeding to the hands of someone not under court supervision and not subject to the legal ethics standards that apply to member of the Bar. There are no standards applicable to this non-lawyer arbitrator chosen by stipulation. Does the arbitrator need to be of age? a citizen? may a felon serve? Can it be someone who does not subscribe to the U.S. Constitution and regime of law? Proposed Rule 3.1 should be amended accordingly.

Rule 4.2 leaves it unclear whether the arbitrator has authority to enforce the discovery court rules. Who has that authority when the discovery takes places after the matter is assigned to arbitration? This needs to be explicitly addressed.

Rule 5.1 should be amended to authorize the parties to stipulate to hearing venue. I usually hold the hearing at the offices of one of the parties since that is more convenient for witnesses and parties. We consider factors such as commute time, availability of facilities for video or conference calls, parking, availability of public transit, handicapped access, and distance traveled by those involved in the hearing. Why restrict this practice?

Law Offices of Roger M. Leed
1826 East Hamlin Street
Seattle, WA 98112-2006
(206) 795-0513 (cell)
rmleed@comcast.net

From: [Korsmo, Kevin](#)
To: [Sherry Lindner](#); [Hinchcliffe, Shannon](#); [Siddoway, Laurel](#); [Maxa, Bradley](#); hdclarke@spokanecounty.org; gsm.judge@gmail.com; fdacca@co.pierce.wa.us
Cc: [Jefferson Coulter](#); [Nicole Gustine](#)
Subject: RE: Feedback Requested: WSBA Court Rules and Procedures Committee/MAR Proposals
Date: Tuesday, October 30, 2018 9:19:46 AM
Attachments: [image001.png](#)

The Court of Appeals Rules Committee has reviewed the proposed rules and will not be commenting on them.

Thank you for asking.

KK

From: Sherry Lindner [mailto:sherryl@wsba.org]
Sent: Wednesday, October 24, 2018 10:52 AM
To: Hinchcliffe, Shannon <Shannon.Hinchcliffe@courts.wa.gov>; Siddoway, Laurel <Laurel.Siddoway@courts.wa.gov>; Maxa, Bradley <J_B.Maxa@courts.wa.gov>; Korsmo, Kevin <Kevin.Korsmo@courts.wa.gov>; hdclarke@spokanecounty.org; Michael.downes@snoco.org; gsm.judge@gmail.com; fdacca@co.pierce.wa.us
Cc: Jefferson Coulter <Jeffersonc@NWJustice.org>; Nicole Gustine <nicoleg@wsba.org>
Subject: Feedback Requested: WSBA Court Rules and Procedures Committee/MAR Proposals

Greetings,

The legislature enacted [EHB 1128](#)-Civil Arbitration which was effective September 1, 2018. The Supreme Court has asked the WSBA Court Rules and Procedures Committee to review the legislation. These proposed changes would make the entire class of MARs consistent with that bill and corresponding amendments to RCW Chapter 7.06, Mandatory Arbitration of Civil Actions (Now, Arbitration of Civil Actions). GR 1 is also amended to change the acronym from MAR to SCCAR.

The Committee is reaching out to stakeholders for comments and feedback on its proposals.

Stakeholder input is crucially important in the rulemaking process and assists the subcommittee in making an informed decision.

Attached please find materials submitted by Stephanie Dikeakos.

Please submit your feedback/comments to WSBACourtRules@wsba.org by January 1, 2019.

Thank you,



Sherry Lindner | Paralegal | Office of General Counsel

Washington State Bar Association | T 206-733-5941 | F 206-727-8314 | sherryl@wsba.org

1325 Fourth Avenue, Suite 600 | Seattle, WA 98101-2539 | www.wsba.org

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From: Sherry Lindner
To: ["Favian Valencia"](#)
Subject: RE: Proposed Arbitration Edits
Date: Wednesday, October 31, 2018 8:31:00 AM

Received.

Thank you,

Sherry Lindner | Paralegal | Office of General Counsel
Washington State Bar Association |T 206.733.5941|F 206.727.8314| sherryl@wsba.org
1325 Fourth Avenue, Suite 600|Seattle, WA 98101-2539

From: Favian Valencia [mailto:favian@sunlightlaw.com]
Sent: Wednesday, October 31, 2018 8:14 AM
To: WSBA CourtRules
Subject: Proposed Arbitration Edits

Thanks for reaching out. I approve the proposed amendments to the rule. Thanks!

Favian Valencia
Attorney
Sunlight Law, PLLC
402 E. Yakima Ave, Suite 730
Yakima Washington 98901
800.307.1261
www.sunlightlaw.com

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From: Sherry Lindner
To: "[Brad Smith](#)"
Subject: RE: Comments on Civil Arbitration Rules
Date: Monday, November 05, 2018 9:43:00 AM

Received.

Your comment will be forwarded to the Committee.

Thank you,
Sherry

Sherry Lindner | Paralegal | Office of General Counsel
Washington State Bar Association |T 206.733.5941|F 206.727.8314| sherryl@wsba.org
1325 Fourth Avenue, Suite 600|Seattle, WA 98101-2539

From: Brad Smith [mailto:brads@feltmanewing.com]
Sent: Monday, November 05, 2018 8:19 AM
To: WSBA CourtRules
Subject: Comments on Civil Arbitration Rules

First a Disclaimer. I am the Legislative Committee Chair for the WDTL. I was very involved in the last three years in the negotiations and actions resulting in the current legislative change. Many of the arguments below were proposed (and ultimately rejected) by the WA legislature in adopting the new changes.

The 100K limit is too high, especially without changes in: 1) Discovery allowed in MAR's; and 2) trial de novo requests.

Discovery: We're essentially transferring fairly large, 100K cases, into MAR, with extreme limits on discovery. If the other party or arbitrator do not agree, defendants are faced with only one depo of the plaintiff, limited discovery of experts, etc, and we have to get permission of the arbitrator even for a CR 35 exam. All in a compressed time period. Discovery in cases from 50K to 100K should be expanded.

Trial De Novo: After a trial de novo, costs will go up, and often add'l medical expenses are incurred. All of which add to the plaintiff's eventual recovery. However, there is no provision in the existing legislation or former statute which allows the trial judge, in determining whether the appealing party, has "improved their position" from the arbitration award. At a minimum, the trial judge should have discretion to review all the factors in determining whether attorneys fees should be awarded.

Arbitrator Qualification: The judges should have approved the alternative qualification procedure for experienced arbitrators to avoid having to have the 3 credit CLE to qualify. The Spokane county panel certainly lost many older, experienced arbitrators who did not want to shoulder the expense and time of the CLE.

Brad Smith

WSBA 16435

Brad E. Smith



FELTMAN | EWING

1600 Paulsen Center | 421 W. Riverside Avenue
Spokane, WA 99201-0495
509.838.6800 | 509.744.3436 (Fax)
brads@feltmanewing.com
www.feltmanewing.com

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Peter M. Ritchie

Meyer Fluegge & Tenney, P.S.
509.575.8500
ritchie@mftlaw.com

PRESIDENT-ELECT

Rachel Reynolds

Lewis Brisbois
206.455.7442
rachel.reynolds@lewisbrisbois.com

TREASURER

Jillian Hinman

Soha & Lang, P.S.
206.624.1800
Hinman@sohalang.com

SECRETARY

Allison Krashan

Schwabe, Williamson & Wyatt
206.689.1216
akrashan@schwabe.com

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Holly Brauchli, Seattle
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F. Lee Campbell • Hoyt Wilbanks • Jack P. Scholfeld

December 31, 2018

Sherry Lindner
Office of General Counsel
Washington State Bar Association
1325 Fourth Avenue, Suite 600
Seattle, WA 98101-2539
sherryl@wsba.org

Re: WDTL's Position on Proposed Changes to the Mandatory Arbitration Rules

Dear Ms. Lindner,

Thank you for reaching out and requesting input regarding the Washington Defense Trial Lawyers' (WDTL) position on the WSBA Court Rules and Procedures Committee's Suggested Amendments to the Superior Court Mandatory Arbitration Rules (MAR) and General Rules (GR) 1.

WDTL remains opposed to the increase in limits and adoption of HB 1128, which unfairly expand the cases subject to Civil Arbitration while limiting discovery tools essential to preparation of a meaningful defense. The WDTL maintains its belief that the increase in limits for Civil Arbitration will continue to have adverse consequences to the fair and equal administration of justice, as well as to the stated goal of reducing court congestion. A fuller detailing of the reasons for the WDTL's opposition is outlined in the comments WDTL filed prior to adoption of that bill.

Given that the legislature has enacted HB 1128, however, WDTL does not oppose the proposed changes to the Mandatory Arbitration Rules in order to accurately reflect the state of the law. Accordingly, the WDTL does not have any comments to the proposed changes, as they merely reflect the statutory language contained in RCW 7.06.010 *et. seq.*

Sincerely,

Peter M. Ritchie
President
Washington Defense Trial Lawyers

GR 9 COVER SHEET

Suggested Amendments

SUPERIOR COURT MANDATORY ARBITRATION RULES (MAR) AND GENERAL RULES (GR) 1

GR 1 and all MAR rules

- A. Proponent:** WSBA Court Rules and Procedures Committee
- B. Spokespersons:** Stephanie P. Dikeakos, Subcommittee Chair
- C. Purpose:** The legislature enacted EHB 1128-Civil Arbitration which was effective September 1, 2018. These proposed changes would make the entire class of MARs consistent with that bill and the corresponding amendments to RCW Chapter 7.06, Mandatory Arbitration of Civil Actions (Now, Arbitration of Civil Actions). GR 1 is also amended to change the acronym from MAR to SCCAR.

General Rule 1: Strike the word “mandatory” and replace with “civil.” The acronym will accordingly be changed from MAR to SCCAR.

MAR Title: References to the word “mandatory” are removed throughout the arbitration laws. “Mandatory arbitration” is replaced with “civil arbitration.” The title is change accordingly to Superior Court Civil Arbitration Rules or SCCAR.

Rule 1.1 Amendment:

Striking the word “mandatory.”

Rule 1.2 Amendment:

Striking the word “mandatory” in two places.

Rule 1.3 Amendment:

Amendment only to the title to change classification to SCCAR.

Rule 2.1 Amendment:

Amendment only to the title to change classification to SCCAR.

Rule 2.2 Amendment:

Amendment only to the title to change classification to SCCAR.

Rule 2.3 Amendment:

Amendment only to the title to change classification to SCCAR.

Rule 3.1 Amendment:

Striking MAR from the title of the rule and adding the word RULE before 3.1.

The suggested amendments reflect the amendments in Sec. 5 of EHB 1128 and the corresponding amendments to RCW 7.06.040 about the necessary qualifications for an arbitrator.

Rule 3.2 Amendment:

Striking MAR from the title of the rule.

Rule 4.1 Amendment:

Striking MAR from the title of the rule.

Rule 4.2 Amendment:

Striking MAR from the title of the rule.

These suggested amendments are consistent with the new section added by EHB 1128 to RCW Chapter 7.06. The section addresses the allowed discovery after the case has been assigned to an arbitrator.

Rule 4.3 Amendment:

Amendment only to the title to change classification to SCCAR.

Rule 5.1 Amendment:

Amending “63” to “75” to reflect the new limit on the how soon the case must be set for a hearing after it is assigned to an arbitrator. This is consistent with the new section under EHB 1128, Sec. 3.

Rule 5.2 Amendment:

Amendment only to the title to change classification to SCCAR.

Rule 5.3 Amendment:

Changing “MAR” to “SCCAR” to reflect the new abbreviation for the civil arbitration rules.

Rule 5.4 Amendment:

Amendment only to the title to change classification to SCCAR.

Rule 6.1 Amendment:

Amendment only to the title to change classification to SCCAR.

Rule 6.2 Amendment:

Striking MAR from the title of the rule.

Rule 6.3 Amendment:

Striking MAR from the title of the rule.

Rule 6.4 Amendment:

Striking MAR from the title of the rule.

Rule 7.1 Amendment:

Striking MAR from the title and adding the word RULE before 7.1.

Also, this rule is amended to reflect the changes in EHB 1128, Sec. 6 and reflected in RCW 7.06.050. This requires that the aggrieved party sign the request for the trial de novo. The Subcommittee also proposes changes to the signature line to reflect this amendment and to provide for information about the signatory when a party is an organization/corporation.

Rule 7.2 Amendment:

Amendment only to the title to change classification to SCCAR.

Rule 7.3 Amendment:

Amendment only to the title to change classification to SCCAR.

Rule 8.1 Amendment:

Amendment only to the title to change classification to SCCAR.

Rule 8.2 Amendment:

Amendment only to the title to change classification to SCCAR.

Rule 8.3 Amendment:

Amendment only to the title to change classification to SCCAR.

Rule 8.4 Amendments:

Inserting the word “Civil” and striking the word “Mandatory” before Arbitration.
Also changing the abbreviation from MAR to SCCAR.

Rule 8.5 Amendment:

Amendment only to the title to change classification to SCCAR.

D. Hearing: A hearing is not recommended.

E. Expedited Consideration: Expedited consideration is requested.

F. Supporting Material: Suggested rule amendments.

PROOF TO ROD 2/15/17

GR 1

CLASSIFICATION SYSTEM FOR COURT RULES

PART I: RULES OF GENERAL APPLICATION

| | |
|---|-------|
| General Rules | GR |
| Code of Judicial Conduct | CJC |
| Discipline Rules for Judges | DRJ |
| Board for Judicial Administration Rules | BJAR |
| Admission to Practice Rules | APR |
| Rules of Professional Conduct | RPC |
| Rules for Enforcement of Lawyer Conduct | ELC |
| Judicial Information System Committee Rules | JISCR |
| Rules of Evidence | ER |

PART II: RULES FOR APPELLATE COURT ADMINISTRATION

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|---------------------------------------|-----|
| Supreme Court Administrative Rules | SAR |
| Court of Appeals Administrative Rules | CAR |

PART III: RULES ON APPEAL

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| Rules of Appellate Procedure | RAP |
|------------------------------|-----|

PART IV: RULES FOR SUPERIOR COURT

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|---|------------------------|
| Superior Court Administrative Rules | AR |
| Superior Court Civil Rules | CR |
| Superior Court CivilMandatory Arbitration Rules | MSCCAR |
| Superior Court Special Proceedings Rules | SPR |
| Superior Court Guardian ad Litem Rules | GALR |
| Superior Court Criminal Rules | CrR |
| Superior Court Special Proceeding Rules--Criminal | SPCR |
| Superior Court Mental Proceedings Rules | MPR |
| Juvenile Court Rules | JuCR |

PART V: RULES FOR COURTS OF LIMITED JURISDICTION

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| Administrative Rules for Courts of Limited Jurisdiction | ARLJ |
| Rules for Appeal of Decisions of Courts of Limited Jurisdiction | RALJ |
| Civil Rules for Courts of Limited Jurisdiction | CRLJ |
| Criminal Rules for Courts of Limited Jurisdiction | CrRLJ |
| Infraction Rules for Courts of Limited Jurisdiction | IRLJ |

GR 1
CLASSIFICATION SYSTEM FOR COURT RULES

PART I: RULES OF GENERAL APPLICATION

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| Rules for Enforcement of Lawyer Conduct | ELC |
| Judicial Information System Committee Rules | JISCR |
| Rules of Evidence | ER |

PART II: RULES FOR APPELLATE COURT ADMINISTRATION

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|---------------------------------------|-----|
| Supreme Court Administrative Rules | SAR |
| Court of Appeals Administrative Rules | CAR |

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|------------------------------|-----|
| Rules of Appellate Procedure | RAP |
|------------------------------|-----|

PART IV: RULES FOR SUPERIOR COURT

| | |
|---|-------|
| Superior Court Administrative Rules | AR |
| Superior Court Civil Rules | CR |
| Superior Court Civil Arbitration Rules | SCCAR |
| Superior Court Special Proceedings Rules | SPR |
| Superior Court Guardian ad Litem Rules | GALR |
| Superior Court Criminal Rules | CrR |
| Superior Court Special Proceeding Rules--Criminal | SPCR |
| Superior Court Mental Proceedings Rules | MPR |
| Juvenile Court Rules | JuCR |

PART V: RULES FOR COURTS OF LIMITED JURISDICTION

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| Administrative Rules for Courts of Limited Jurisdiction | ARLJ |
| Rules for Appeal of Decisions of Courts of Limited Jurisdiction | RALJ |
| Civil Rules for Courts of Limited Jurisdiction | CRLJ |
| Criminal Rules for Courts of Limited Jurisdiction | CrRLJ |
| Infraction Rules for Courts of Limited Jurisdiction | IRLJ |

SUGGESTED AMENDMENT
SUPERIOR COURT ~~CIVIL MANDATORY~~ ARBITRATION RULES
(SCCARMAR)

RULE 1.1
APPLICATION OF RULES

1 | These arbitration rules apply to ~~mandatory~~ arbitration of civil actions under RCW 7.06. These
2 | rules do not apply to arbitration by private agreement or to arbitration under other statutes,
3 | except by stipulation under rule 8.1.
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SUGGESTED AMENDMENT
SUPERIOR COURT CIVIL ARBITRATION RULES (SCCAR)

RULE 1.1
APPLICATION OF RULES

1 These arbitration rules apply to arbitration of civil actions under RCW 7.06. These rules do not
2 apply to arbitration by private agreement or to arbitration under other statutes, except by
3 stipulation under rule 8.1.
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SUGGESTED AMENDMENT
SUPERIOR COURT ~~CIVIL MANDATORY~~ ARBITRATION RULES
(SCCARMAR)

RULE 1.2
MATTERS SUBJECT TO ARBITRATION

1 A civil action, other than an appeal from a court of limited jurisdiction, is subject to arbitration
2 under these rules if the action is at issue in a superior court in a county which has authorized
3 ~~mandatory~~ arbitration under RCW 7.06, if (1) the action is subject to ~~mandatory~~ arbitration as
4 provided in RCW 7.06, (2) all parties, for purposes of arbitration only, waive claims in excess of
5 the amount authorized by RCW 7.06, exclusive of attorney fees, interest and costs, or (3) the
6 parties have stipulated to arbitration pursuant to rule 8.1.
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SUGGESTED AMENDMENT
SUPERIOR COURT CIVIL ARBITRATION RULES (SCCAR)

RULE 1.2
MATTERS SUBJECT TO ARBITRATION

1 A civil action, other than an appeal from a court of limited jurisdiction, is subject to arbitration
2 under these rules if the action is at issue in a superior court in a county which has authorized
3 arbitration under RCW 7.06, if (1) the action is subject to arbitration as provided in RCW 7.06,
4 (2) all parties, for purposes of arbitration only, waive claims in excess of the amount authorized
5 by RCW 7.06, exclusive of attorney fees, interest and costs, or (3) the parties have stipulated to
6 arbitration pursuant to rule 8.1.
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SUGGESTED AMENDMENT
SUPERIOR COURT CIVIL MANDATORY ARBITRATION RULES
(SCCAR MAR)

RULE 1.3

RELATIONSHIP TO SUPERIOR COURT JURISDICTION AND OTHER RULES

1 [Unchanged]

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SUGGESTED AMENDMENT
SUPERIOR COURT CIVIL ARBITRATION RULES (SCCAR)
RULE 1.3
RELATIONSHIP TO SUPERIOR COURT JURISDICTION AND OTHER RULES

1 [Unchanged]

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SUGGESTED AMENDMENT
SUPERIOR COURT CIVIL MANDATORY ARBITRATION RULES
(SCCAR MAR)

RULE 2.1
TRANSFER TO ARBITRATION

1 [Unchanged]

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SUGGESTED AMENDMENT
SUPERIOR COURT CIVIL ARBITRATION RULES (SCCAR)
RULE 2.1
TRANSFER TO ARBITRATION

1 [Unchanged]

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SUGGESTED AMENDMENT
SUPERIOR COURT CIVIL MANDATORY ARBITRATION RULES
(SCCAR MAR)

RULE 2.2
COURT MAY DETERMINE ARBITRABILITY

1 [Unchanged]

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SUGGESTED AMENDMENT
SUPERIOR COURT CIVIL ARBITRATION RULES (SCCAR)
RULE 2.2
COURT MAY DETERMINE ARBITRABILITY

1 [Unchanged]

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SUGGESTED AMENDMENT
SUPERIOR COURT CIVIL MANDATORY ARBITRATION RULES
(SCCAR MAR)

RULE 2.3
ASSIGNMENT TO ARBITRATOR

1 [Unchanged]

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SUGGESTED AMENDMENT
SUPERIOR COURT CIVIL ARBITRATION RULES (SCCAR)
RULE 2.3
ASSIGNMENT TO ARBITRATOR

1 [Unchanged]

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SUGGESTED AMENDMENT
SUPERIOR COURT ~~CIVIL MANDATORY~~ ARBITRATION RULES
(SCCARMAR)
RULE MAR 3.1
QUALIFICATION

1 Unless otherwise ordered or stipulated, an arbitrator must be a member in good standing of the
2 Washington State Bar Association who has been admitted to the Bar for a minimum of 5 years,
3 or who is a retired judge. The parties may stipulate to a nonlawyer arbitrator.

4 ~~Unless waived pursuant to RCW 7.06.040(2)(b), a person may not serve~~To qualify as an
5 arbitrator ~~unless the,~~ a person ~~has~~must completed a minimum of three credits of Washington
6 ~~State Bar Association approved continuing legal education credits on the professional and ethical~~
7 ~~considerations for serving as an arbitrator. A person serving as an arbitrator must file a~~
8 ~~declaration or affidavit stating or certifying to the appointing court that the person is in~~
9 ~~compliance with the qualifications described in RCW 7.06.040~~sign and file an oath of office,
10 ~~either to serve in a particular case, or as a member of a panel of arbitrators.~~ The court is
11 authorized to remove an individual from a list of qualified arbitrators for good cause.
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SUGGESTED AMENDMENT
SUPERIOR COURT CIVIL ARBITRATION RULES (SCCAR)

RULE 3.1
QUALIFICATION

1 Unless otherwise ordered or stipulated, an arbitrator must be a member in good standing of the
2 Washington State Bar Association who has been admitted to the Bar for a minimum of 5 years,
3 or who is a retired judge. The parties may stipulate to a nonlawyer arbitrator.

4 Unless waived pursuant to RCW 7.06.040(2)(b), a person may not serve as an arbitrator unless
5 the person has completed a minimum of three credits of Washington State Bar Association
6 approved continuing legal education credits on the professional and ethical considerations for
7 serving as an arbitrator. A person serving as an arbitrator must file a declaration or affidavit
8 stating or certifying to the appointing court that the person is in compliance with the
9 qualifications described in RCW 7.06.040. The court is authorized to remove an individual from
10 a list of qualified arbitrators for good cause.
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SUGGESTED AMENDMENT
SUPERIOR COURT CIVIL MANDATORY ARBITRATION RULES
(SCCAR MAR)

RULE ~~MAR~~ 3.2
AUTHORITY OF ARBITRATORS

1 [Unchanged]

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SUGGESTED AMENDMENT
SUPERIOR COURT CIVIL ARBITRATION RULES (SCCAR)
RULE 3.2
AUTHORITY OF ARBITRATORS

1 [Unchanged]

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SUGGESTED AMENDMENT
SUPERIOR COURT CIVIL MANDATORY ARBITRATION RULES
(SCCAR MAR)

RULE ~~MAR~~ 4.1
RESTRICTIONS ON COMMUNICATION BETWEEN ARBITRATOR AND PARTIES

1 [Unchanged]

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SUGGESTED AMENDMENT
SUPERIOR COURT CIVIL ARBITRATION RULES (SCCAR)

RULE 4.1
RESTRICTIONS ON COMMUNICATION BETWEEN ARBITRATOR AND PARTIES

1 [Unchanged]

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SUGGESTED AMENDMENT
SUPERIOR COURT CIVIL MANDATORY ARBITRATION RULES
(SCCARMAR)
RULE ~~MAR~~ 4.2
DISCOVERY

1 After the assignment of a case to the arbitrator, a party may ~~demand a specification of damages~~
2 ~~under RCW 4.28.360, may conduct discovery as follows: (1) request from the arbitrator an~~
3 examination under CR 35; ~~(2), may request admissions from a party under CR 36;~~ and ~~(3) may~~
4 take the deposition of another party, ~~unless the arbitrator orders otherwise. No A party may~~
5 request additional discovery from the arbitrator, including interrogatories, and the arbitrator will
6 allow additional discovery shall be allowed, except as the parties may
7 stipulate or as the arbitrator may order. The arbitrator will allow discovery only when reasonably
8 necessary. ~~The conference requirements of CR 26(i) shall not apply to motions to the arbitrator~~
9 ~~to allow additional discovery under this rule.~~

SUGGESTED AMENDMENT
SUPERIOR COURT CIVIL ARBITRATION RULES (SCCAR)

RULE 4.2
DISCOVERY

1 After the assignment of a case to the arbitrator, a party may conduct discovery as follows: (1)
2 request from the arbitrator an examination under CR 35; (2) request admissions from a party
3 under CR 36; and (3) take the deposition of another party. A party may request additional
4 discovery from the arbitrator, including interrogatories, and the arbitrator will allow additional
5 discovery only when reasonably necessary.

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SUGGESTED AMENDMENT
SUPERIOR COURT CIVIL MANDATORY ARBITRATION RULES
(SCCAR MAR)

RULE 4.3
SUBPOENA

1 [Unchanged]

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**SUGGESTED AMENDMENT
SUPERIOR COURT CIVIL ARBITRATION RULES (SCCAR)**

**RULE 4.3
SUBPOENA**

1 [Unchanged]

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SUGGESTED AMENDMENT
SUPERIOR COURT ~~CIVIL MANDATORY~~ ARBITRATION RULES
(SCCARMAR)

RULE 5.1
NOTICE OF HEARING

1 The arbitrator shall set the time, date, and place of the hearing and shall give reasonable notice of
2 the hearing date to the parties. Except by stipulation or for good cause shown, the hearing shall
3 be scheduled to take place not sooner than 21 days, nor later than ~~75~~63 days, from the date of the
4 assignment of the case to the arbitrator. The hearing shall take place in appropriate facilities
5 provided or authorized by the court.
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SUGGESTED AMENDMENT
SUPERIOR COURT CIVIL ARBITRATION RULES (SCCAR)

RULE 5.1
NOTICE OF HEARING

1 The arbitrator shall set the time, date, and place of the hearing and shall give reasonable notice of
2 the hearing date to the parties. Except by stipulation or for good cause shown, the hearing shall
3 be scheduled to take place not sooner than 21 days, nor later than 75 days, from the date of the
4 assignment of the case to the arbitrator. The hearing shall take place in appropriate facilities
5 provided or authorized by the court.
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SUGGESTED AMENDMENT
SUPERIOR COURT CIVIL MANDATORY ARBITRATION RULES
(SCCAR MAR)

RULE 5.2
PREHEARING STATEMENT OF PROOF

1 [Unchanged]

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SUGGESTED AMENDMENT
SUPERIOR COURT CIVIL ARBITRATION RULES (SCCAR)
RULE 5.2
PREHEARING STATEMENT OF PROOF

1 [Unchanged]

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SUGGESTED AMENDMENT
SUPERIOR COURT ~~CIVIL MANDATORY~~ ARBITRATION RULES
(~~SCCARMAR~~)

RULE 5.3
CONDUCT OF HEARING –WITNESSES—RULES OF EVIDENCE

1 **(a) – (c)** [Unchanged]

2 **(d)** Certain Documents Presumed Admissible. The documents listed below, if relevant, are
3 presumed admissible at an arbitration hearing, but only if (1) the party offering the document
4 serves on all parties a notice, accompanied by a copy of the document and the name, address and
5 telephone number of its author or maker, at least 14 days prior to the hearing in accordance with
6 ~~SCCARMAR~~ 5.2; and (2) the party offering the document similarly furnishes all other related
7 documents from the same author or maker. This rule does not restrict argument or proof relating
8 to the weight of the evidence admitted, nor does it restrict the arbitrator's authority to determine
9 the weight of the evidence after hearing all of the evidence and the arguments of opposing
10 parties. The documents presumed admissible under this rule are:

11 **(d)(1) – (d)(7)** [Unchanged]

12 **(e)** [Unchanged]

SUGGESTED AMENDMENT
SUPERIOR COURT CIVIL ARBITRATION RULES (SCCAR)
RULE 5.3
CONDUCT OF HEARING –WITNESSES—RULES OF EVIDENCE

1 **(a) – (c)** [Unchanged]

2 **(d)** Certain Documents Presumed Admissible. The documents listed below, if relevant, are
3 presumed admissible at an arbitration hearing, but only if (1) the party offering the document
4 serves on all parties a notice, accompanied by a copy of the document and the name, address and
5 telephone number of its author or maker, at least 14 days prior to the hearing in accordance with
6 SCCAR 5.2; and (2) the party offering the document similarly furnishes all other related
7 documents from the same author or maker. This rule does not restrict argument or proof relating
8 to the weight of the evidence admitted, nor does it restrict the arbitrator's authority to determine
9 the weight of the evidence after hearing all of the evidence and the arguments of opposing
10 parties. The documents presumed admissible under this rule are:

11 **(d)(1) – (d)(7)** [Unchanged]

12 **(e)** [Unchanged]

SUGGESTED AMENDMENT
SUPERIOR COURT CIVIL MANDATORY ARBITRATION RULES
(SCCAR MAR)

RULE 5.4
ABSENCE OF PARTY AT HEARING

1 [Unchanged]

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SUGGESTED AMENDMENT
SUPERIOR COURT CIVIL ARBITRATION RULES (SCCAR)
RULE 5.4
ABSENCE OF PARTY AT HEARING

1 [Unchanged]

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SUGGESTED AMENDMENT
SUPERIOR COURT CIVIL MANDATORY ARBITRATION RULES
(SCCAR MAR)

RULE 6.1
FORM AND CONTENT OF AWARD

1 [Unchanged]

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SUGGESTED AMENDMENT
SUPERIOR COURT CIVIL ARBITRATION RULES (SCCAR)
RULE 6.1
FORM AND CONTENT OF AWARD

1 [Unchanged]

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SUGGESTED AMENDMENT
SUPERIOR COURT CIVIL MANDATORY ARBITRATION RULES
(SCCAR MAR)
RULE MAR6.2
FILING OF AWARD

1 [Unchanged]

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SUGGESTED AMENDMENT
SUPERIOR COURT CIVIL ARBITRATION RULES (SCCAR)

RULE 6.2
FILING OF AWARD

1 [Unchanged]

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SUGGESTED AMENDMENT
SUPERIOR COURT CIVIL MANDATORY ARBITRATION RULES
(SCCAR MAR)

RULE ~~MAR~~6.3
JUDGMENT ON AWARD

1 [Unchanged]

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SUGGESTED AMENDMENT
SUPERIOR COURT CIVIL ARBITRATION RULES (SCCAR)
RULE 6.3
JUDGMENT ON AWARD

1 [Unchanged]

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SUGGESTED AMENDMENT
SUPERIOR COURT CIVIL MANDATORY ARBITRATION RULES
(SCCAR MAR)

RULE ~~MAR~~6.4
COSTS AND ATTORNEY FEES

1 [Unchanged]

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SUGGESTED AMENDMENT
SUPERIOR COURT CIVIL ARBITRATION RULES (SCCAR)
RULE 6.4
COSTS AND ATTORNEY FEES

1 [Unchanged]

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SUGGESTED AMENDMENT
SUPERIOR COURT ~~CIVIL MANDATORY~~ ARBITRATION RULES
(~~SCCARMAR~~)

RULE MAR 7.1
REQUEST FOR TRIAL DE NOVO

1 (a) [Unchanged]

2 (b) Form. The request for a trial de novo shall not refer to the amount of the award,
3 including any award of costs or attorney fees, and shall be substantially in the form set
4 forth below, and must be signed by the party:

6 SUPERIOR COURT OF WASHINGTON
7 FOR (_____) COUNTY

| | | |
|------------|---|---------------|
| |) | |
| |) | No. _____ |
| Plaintiff, |) | |
| v. |) | REQUEST FOR |
| |) | TRIAL DE NOVO |
| |) | |
| |) | |
| Defendant. |) | |

13 TO: The clerk of the court and all parties:

14 Please take notice that (name of aggrieved party) requests a trial de novo from the award filed
15 _____(date)_____.

16 Dated: _____

17 _____
(Signature Name of attorney for aggrieved party)
(Printed Name):
18 _____
(Title, if applicable)

19 _____

20 _____
(Name of attorney for aggrieved party)

21 (c) – (d) [Unchanged]

SUGGESTED AMENDMENT
SUPERIOR COURT CIVIL ARBITRATION RULES (SCCAR)

RULE 7.1
REQUEST FOR TRIAL DE NOVO

1 (a) [Unchanged]

2 (b) Form. The request for a trial de novo shall not refer to the amount of the award,
3 including any award of costs or attorney fees, and shall be substantially in the form set
4 forth below, and must be signed by the party:
5

6 SUPERIOR COURT OF WASHINGTON
7 FOR (_____) COUNTY

| | | |
|------------|---|---------------|
| _____ |) | |
| |) | No. _____ |
| Plaintiff, |) | |
| |) | REQUEST FOR |
| v. |) | TRIAL DE NOVO |
| |) | |
| _____ |) | |
| |) | |
| Defendant. |) | |

13 TO: The clerk of the court and all parties:

14 Please take notice that (name of aggrieved party) requests a trial de novo from the award filed
15 ____ (date) ____.

16 Dated: _____

(Signature of aggrieved party)
(Printed Name): _____
(Title, if applicable) _____

(Name of attorney for aggrieved party)

21 (c) – (d) [Unchanged]
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SUGGESTED AMENDMENT
SUPERIOR COURT CIVIL MANDATORY ARBITRATION RULES
(SCCAR MAR)

RULE 7.2
PROCEDURE AFTER REQUEST FOR TRIAL DE NOVO

1 [Unchanged]

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**SUGGESTED AMENDMENT
SUPERIOR COURT CIVIL ARBITRATION RULES (SCCAR)**

**RULE 7.2
PROCEDURE AFTER REQUEST FOR TRIAL DE NOVO**

1 [Unchanged]

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SUGGESTED AMENDMENT
SUPERIOR COURT CIVIL MANDATORY ARBITRATION RULES
(SCCAR MAR)

RULE 7.3
COSTS AND ATTORNEY FEES

1 [Unchanged]

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SUGGESTED AMENDMENT
SUPERIOR COURT CIVIL ARBITRATION RULES (SCCAR)
RULE 7.3
COSTS AND ATTORNEY FEES

1 [Unchanged]

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SUGGESTED AMENDMENT
SUPERIOR COURT CIVIL MANDATORY ARBITRATION RULES
(SCCAR MAR)

RULE 8.1
STIPULATIONS

1 [Unchanged]

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**SUGGESTED AMENDMENT
SUPERIOR COURT CIVIL ARBITRATION RULES (SCCAR)**

**RULE 8.1
STIPULATIONS**

1 [Unchanged]

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SUGGESTED AMENDMENT
SUPERIOR COURT CIVIL MANDATORY ARBITRATION RULES
(SCCAR MAR)

RULE 8.2
LOCAL RULES

1 [Unchanged]

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**SUGGESTED AMENDMENT
SUPERIOR COURT CIVIL ARBITRATION RULES (SCCAR)**

**RULE 8.2
LOCAL RULES**

1 [Unchanged]

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SUGGESTED AMENDMENT
SUPERIOR COURT CIVIL MANDATORY ARBITRATION RULES
(SCCAR MAR)

RULE 8.3
EFFECTIVE DATE

1 [Unchanged]

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**SUGGESTED AMENDMENT
SUPERIOR COURT CIVIL ARBITRATION RULES (SCCAR)**

**RULE 8.3
EFFECTIVE DATE**

1 [Unchanged]

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SUGGESTED AMENDMENT
SUPERIOR COURT ~~CIVIL MANDATORY~~ ARBITRATION RULES
(SCCARMAR)

RULE 8.4
TITLE AND CITATION

1 These rules shall be known and cited as the Superior Court ~~Civil Mandatory~~ Arbitration Rules.

2 SCCARMAR is the official abbreviation.

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SUGGESTED AMENDMENT
SUPERIOR COURT CIVIL ARBITRATION RULES (SCCAR)

RULE 8.4
TITLE AND CITATION

1 These rules shall be known and cited as the Superior Court Civil Arbitration Rules. SCCAR is
2 the official abbreviation.

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SUGGESTED AMENDMENT
SUPERIOR COURT CIVIL MANDATORY ARBITRATION RULES
(SCCAR MAR)

RULE 8.5
STATUS OF COMMENTS

1 [Unchanged]

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**SUGGESTED AMENDMENT
SUPERIOR COURT CIVIL ARBITRATION RULES (SCCAR)**

**RULE 8.5
STATUS OF COMMENTS**

1 [Unchanged]

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