WASHINGTON STATE
BAR ASSOCIATION

Court Rules and Procedures Committee

AGENDA

June 17, 2019
(Telephonic Meeting)
9:30 a.m. – 11:00 a.m.

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

Call to Order/ Preliminary Matters

- Approval of Minutes:
  - May 20, 2019 **(pp. 2-3)**

Subcommittee Reports

1. Mandatory Arbitration Rules (MAR)
   - Subcommittee Chair Stephanie Dikeakos **(pp. 4-12)**

Other Business/Good of the Order

Adjourn

Next meeting is scheduled for July 15, 2019

TELEPHONIC MEETING
Meeting Minutes
May 20, 2019

Members Present:
Chair Jefferson Coulter, Claire Carden, Stephanie Dikeakos, Tony DiTommaso, Richard Greene, Geoff Grindeland, Joyce Heritage, Karen Horowitz, Alison Markette, Kirk Miller, Tim Moran, Isham Reavis, Rachael Rogers, Dalynne Singleton, James Smith, Ann Summers, Jon Zimmerman, and Brian Zuanich.

Members Excused:
Mimy Bailey, Olga Blotnis, Jody Cloutier, Rike Connelly, D. Jack Guthrie, John Ledford, Sarah Lee, Ashton Rezayat, and Rooein Roshandel.

Also Attending:
Judge Blaine Gibson (SCJA Liaison), Judge Bradley Maxa (COA Rules Committee Chair), Shannon Hinchcliffe (AOC Liaison), Mike Chait (WDTL), Nicole Gustine (WSBA Assistant General Counsel), and Sherry Lindner (WSBA Paralegal).

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

April 15, 2019, minutes were approved by consensus.

Subcommittee X
Subcommittee Chair Tony DiTommaso reported on CrR 8.2 and CrRLJ 8.2. The Committee discussed and voted on CrR 8.2 and CrRLJ 8.2.

Motion was made and seconded. Motion passed by consensus.

MAR Subcommittee
Subcommittee Chair Stephanie Dikeakos report on the MAR package that was sent to the BOG for approval at their May meeting. The BOG voted to approve the Committee's recommendations. The BOG did have some concerns regarding MAR 7.1 and will submit their own letter to the Court expressing their concerns.

Chair Dikeakos reported that the comment period for MAR 7.2 is over and will provide a final report to the Committee in June to vote.

ER Subcommittee
Subcommitee Chair Kirk Miller reported that the Subcommittee is continuing to review the rules and hope to have something for the Committee in July or August.

IRLJ Subcommittee
Subcommittee Chair Jon Zimmerman reported that the members of the subcommittee are continuing review of the rules.

There being no further business, the meeting was adjourned.

COURT RULES AND PROCEDURE COMMITTEE
MAR Subcommittee Report
June 17, 2019 meeting

TO: WSBA Court Rules and Procedures Committee

FR: Stephanie Dikeakos, MAR Subcommittee Chair

Date: June 6, 2019

RE: Status of proposed amendment to MAR 7.2(a)

Amendment to MAR 7.2(a): At the March 18, 2019 meeting the MAR Subcommittee presented proposed changes to MAR 7.2(a). The full committee proposed some friendly amendments which the Subcommittee accepted. The full committee moved to approve the proposed amendment to MAR 7.2(a) and circulate the amendment to stakeholders. The stakeholders then had until May 17, 2019 to comment.

The Subcommittee received two comments which are attached:

1. Chief Judge Bradley A. Maxa of the Washington Court of Appeals, Division II, responded and wrote the Court of Appeals "has no comment on this proposed amendment."
2. Attorney Brandon Casey of Casey Law Offices responded and agreed and endorsed the proposed amendment.

Recommendation: The Subcommittee recommends the full committee move to forward the proposed amendment to the Board of Governors at their next meeting.

GR 9 COVER SHEET

Suggested Amendment

SUPERIOR COURT MANDATORY ARBITRATION RULE (MAR) 7.2

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

B. Spokespersons: Stephanie P. Dikeakos, Subcommittee Chair

C. Purpose: The King County Superior Court Clerk alerted the Supreme Court Rules Committee to an issue with MAR 7.2(a). The current rule provides, "The clerk shall seal any award if a trial de novo is requested." According to the King County Clerk and her experience with practices by other courts, the arbitration award was not sealed from judicial officers, only from the public. The concern is that a judge may see the arbitration award and, if that same judge presides over the trial de novo, this may affect the judge's decision. To eliminate any ambiguity, the subcommittee proposes adding a sentence to make it clear that the award shall be sealed from everyone including judicial officers. In keeping with the policy of open court records, we have also provided for unsealing the award at the conclusion of the trial de novo or the withdrawal of any and all requests for a trial de novo, whichever occurs first.

Rule 7.2 Amendment:

Amendment to MAR 7.2(a) adding, "Judicial officer access to the award is prohibited while it is sealed. The clerk shall unseal the award if all requests for a trial de novo are withdrawn or at the conclusion of the trial de novo, whichever occurs first."

SUGGESTED AMENDMENT
SUPERIOR COURT MANDATORY ARBITRATION RULES (MAR)
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. Judicial officer access to the award is prohibited while it is sealed. The clerk shall unseal the award if all requests for a trial de novo are withdrawn or at the conclusion of the trial de novo, whichever occurs first.

(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.

Washington State Bar Association
1325 Fourth Ave - Suite 600
Seattle, WA 98101-2539

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From:	Maxa, Bradley
To:	WSBA CourtRules
Cc:	Sherry Lindner
Subject:	RE: Feedback Requested: WSBA Court Rules and Procedures Committee/ MAR 7.2 Proposal
Date:	Monday, April 01, 2019 9:24:08 AM
Attachments:	image001.png

The Court of Appeals rules committee has no comment on this proposed amendment.

Chief Judge Bradley A. Maxa
Washington Court of Appeals, Division II

950 Broadway, Suite 300
Tacoma, WA 98402
(253)552-2251

From: Sherry Lindner [mailto:sherryl@wsba.org]
Sent: Friday, March 22, 2019 8:51 AM
To: Hinchcliffe, Shannon <Shannon.Hinchcliffe@courts.wa.gov>; Siddoway, Laurel <Laurel.Siddoway@courts.wa.gov>; Maxa, Bradley <J_B.Maxa@courts.wa.gov>; Judge Gibson <blaine.gibson@co.yakima.wa.us>; gsm.judge@gmail.com; Judge Jeffrey Goodwin <jeffrey.goodwin@snoco.org>
Cc: Jefferson Coulter <Jeffersonc@NWJustice.org>; Nicole Gustine <nicoleg@wsba.org>
Subject: Feedback Requested: WSBA Court Rules and Procedures Committee/ MAR 7.2 Proposal

Greetings,

The Court Rules and Procedures Committee is proposing to amend the Mandatory Arbitration Rules (MAR) 7.2.

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 Committee in making an informed decision.

Attached please find materials submitted by Stephanie Dikeakos.

Please submit your feedback/comments to WSBACourtRules@wsba.org by May 17, 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

From: Brandon Casey
To: WSBA CourtRules
Subject: MAR 7.2 proposed rule
Date: Tuesday, April 09, 2019 1:33:19 PM
Attachments: mar-7-2_compiled.pdf

Dear Rules Committee,

I agree with and endorse the proposed amendment to MAR 7.2(a): "Judicial officer access to the award is prohibited while it is sealed. The clerk shall unseal the award if all requests for a trial de novo are withdrawn or at the conclusion of the trial de novo, whichever occurs first."

Brandon R. Casey
Casey Law Offices, P.S.
421 West Riverside, Ste. 308
Spokane, WA 99201
Phone: (509) 252-9700
Fax: (509) 252-9703
Direct No: (509) 960-7463

"I see in the near future a crisis approaching that unnerves me and causes me to tremble for the safety of my country... Corporations have been enthroned and an era of corruption in high places will follow, and the money power of the country will endeavor to prolong its reign by working upon the prejudices of the people until all wealth is aggregated in a few hands and the Republic is destroyed."
Abraham Lincoln - Nov 21, 1864

PROTECT THE SEVENTH AMENDMENT: ***"TRIAL BY JURY IN CIVIL CASES. In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be reexamined in any court of the United States, than according to the rules of the common law."***

From:	Sherry Lindner
To:	"Liz Berry"; WSBA CourtRules
Cc:	Larry Shannon; john allison; Ann Rosato; Jane Morrow; Chris Love
Subject:	RE: Feedback Requested: WSBA Court Rules and Procedures Committee/ MAR 7.2 Proposal
Date:	Monday, April 22, 2019 9:47:00 AM
Attachments:	image001.png

Received.

Thanks,
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: Liz Berry <liz@washingtonjustice.org>
Sent: Thursday, April 18, 2019 2:44 PM
To: WSBA CourtRules <WSBACourtRules@wsba.org>
Cc: Larry Shannon <larry@washingtonjustice.org>; john allison <jdallison@eahjlaw.com>; Ann Rosato <rosato@pwrfl-law.com>; Jane Morrow <jm@medilaw.com>; Chris Love <chris@pcvalaw.com>
Subject: RE: Feedback Requested: WSBA Court Rules and Procedures Committee/ MAR 7.2 Proposal

Dear Court Rules and Procedures Committee,

WSAJ has no opposition to this rule. Please let me know if you have any questions.

Thank you,

Liz Berry
Executive Director
Washington State Association for Justice
1809 7th Avenue, Suite 1500
Seattle, WA 98101
206.464.1011 (office)
202.250.1234 (cell)
liz@washingtonjustice.org

From: Sherry Lindner [mailto:sherryl@wsba.org]
Sent: Friday, March 22, 2019 8:57 AM
Cc: Jefferson Coulter <Jeffersonc@NWJustice.org>; Nicole Gustine <nicoleg@wsba.org>
Subject: Feedback Requested: WSBA Court Rules and Procedures Committee/ MAR 7.2 Proposal

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