

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 The clerk shall unseal the award if all requests for a trial de novo are withdrawn or at the conclusion of the trial de novo, whichever occurs first.”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

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2 (a) Sealing. The clerk shall seal any award if a trial de novo is requested. Judicial officer
3 access to the award is prohibited while it is sealed. The clerk shall unseal the award if all
4 requests for a trial de novo are withdrawn or at the conclusion of the trial de novo, whichever
5 occurs first.
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7 (b) No Reference to Arbitration; Use of Testimony.

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

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

15 (c) Relief Sought. The relief sought at a trial de novo shall not be restricted by RCW
16 7.06, local arbitration rule, or any prior waiver or stipulation made for purposes of arbitration.

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