

**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#

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**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*







**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

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- 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**

1  
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.  
6

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  
18 novo.  
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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](#)

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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*

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**From:** Sherry Lindner [mailto:[sherryl@wsba.org](mailto:sherryl@wsba.org)]  
**Sent:** Friday, March 22, 2019 8:51 AM  
**To:** Hinchcliffe, Shannon <[Shannon.Hinchcliffe@courts.wa.gov](mailto:Shannon.Hinchcliffe@courts.wa.gov)>; Siddoway, Laurel <[Laurel.Siddoway@courts.wa.gov](mailto:Laurel.Siddoway@courts.wa.gov)>; Maxa, Bradley <[J\\_B.Maxa@courts.wa.gov](mailto:J_B.Maxa@courts.wa.gov)>; Judge Gibson <[blaine.gibson@co.yakima.wa.us](mailto:blaine.gibson@co.yakima.wa.us)>; [gsm.judge@gmail.com](mailto:gsm.judge@gmail.com); Judge Jeffrey Goodwin <[jeffrey.goodwin@snoco.org](mailto:jeffrey.goodwin@snoco.org)>  
**Cc:** Jefferson Coulter <[Jeffersonc@NWJustice.org](mailto:Jeffersonc@NWJustice.org)>; Nicole Gustine <[nicoleg@wsba.org](mailto: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](mailto: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](mailto:sherryl@wsba.org)



1325 Fourth Avenue, Suite 600 | Seattle, WA 98101-2539 | [www.wsba.org](http://www.wsba.org)

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**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](#)

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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](#)

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Received.

Thanks,  
Sherry

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

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**From:** Liz Berry <[liz@washingtonjustice.org](mailto:liz@washingtonjustice.org)>  
**Sent:** Thursday, April 18, 2019 2:44 PM  
**To:** WSBA CourtRules <[WSBACourtRules@wsba.org](mailto:WSBACourtRules@wsba.org)>  
**Cc:** Larry Shannon <[larry@washingtonjustice.org](mailto:larry@washingtonjustice.org)>; john allison <[jdallison@eahjlaw.com](mailto:jdallison@eahjlaw.com)>; Ann Rosato <[rosato@pwrfl-law.com](mailto:rosato@pwrfl-law.com)>; Jane Morrow <[jm@medilaw.com](mailto:jm@medilaw.com)>; Chris Love <[chris@pcvalaw.com](mailto: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 7<sup>th</sup> Avenue, Suite 1500

Seattle, WA 98101

206.464.1011 (office)

202.250.1234 (cell)

[liz@washingtonjustice.org](mailto:liz@washingtonjustice.org)

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

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