

Court Rules and Procedures Committee

AGENDA

March 18, 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:
 - February 11, 2019 (pp. 2-3)

Subcommittee Reports

1. Mandatory Arbitration Rules (MAR)
 - Subcommittee Chair Stephanie Dikeakos (pp. 4-7)
2. Subcommittee X
 - Subcommittee Chair Tony DiTommaso (Oral Report)
3. Evidence Rules (ER)
 - Subcommittee Chair Kirk Miller (Oral Report)
4. Infraction Rules for Court of Limited Jurisdiction (IRLJ)
 - Subcommittee Chair Jon Zimmerman (Oral Report)

Other Business/Good of the Order

Adjourn

Next meeting is scheduled for April 15, 2019



Meeting Minutes
February 11, 2019

Members Present (all by telephone):

Chair Jefferson Coulter, Olga Blotnis, Clair Carden, Rike Connelly, Stephanie Dikeakos, Tony DiTommaso, Geoff Grindeland, Karen Horowitz, John Ledford, Alison Markette, Tim Moran, Isham Reavis, Ashton Rezayat, Rooein Roshandel, Dalynne Singleton, James Smith, Ann Summers, Jon Zimmerman, Judge Blaine Gibson, Judge Kevin Korsmo, and Judge Jeffrey Goodwin.

Members Excused:

Mimy Bailey, Jody Cloutier, Bertha Fitzer, Richard Greene, Jack Guthrie, Joyce Heritage, Sarah Lee, Kirk Miller, Rachael Rogers, Brian Zuanich, Kathleen Goodman, Jeremy Wood, and Shannon Hinchcliffe (AOC Liaison).

Also Attending (all by telephone):

Nicole Gustine (WSBA Assistant General Counsel), Brian Tollefson (BOG Liaison), Mike Chait (WDTL representative), Eileen Farley (NWAJ representative)

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

The January 14, 2019 meeting minutes were conditionally approved upon correction of an attendance matter. Olga Blotnis was present although the draft stated that she was dismissed. That error was corrected and the the minutes were approved unanimously.

Subcommittee X

Subcommittee chair Tony DiTommaso reported on the subcommittee's work and proposed amendment to CrR 8.2, and CrRLJ 8.2 allowing motions for reconsideration. There was some discussion among the Committee at large regarding the purpose and need for the addition of such language in the rules. It was moved, seconded, and the motion passed that the Subcommittee should take the issue back for further consideration of the impact of including reference to CrR 59(e) into any rule modification.

Evidence Rule (ER) Subcommittee

Subcommittee chair Kirk Miller was not present. Subcommittee member Ashton Rezayat reported that the subcommittee is getting started on assignment of the ER rules to be considered. Chair Coulter will follow up with Miller as to the status of the subcommittee's work.

Infraction Rules for Court of Limited Jurisdiction (IRLJ) Subcommittee

Subcommittee chair Jon Zimmerman reported that the rules have been divided among the members and that he is seeking DMCJA thoughts on which rule(s) the subcommittee should review.

MAR Subcommittee

Subcommittee Chair Stephanie Dikeakos reported to the Committee that the proposed amendments submitted to and approved by the Committee are now before the BOG to be considered at their March meeting.

Chair Dikeakos reported that the subcommittee is currently evaluating the following:

MAR 3.1: issues related to arbitrator certification requirements, and

MAR 7.2: issues related to the sealing of the arbitration award amount

There being no further business, the meeting was adjourned at 10:25 a.m.

COURT RULES AND PROCEDURE COMMITTEE
MAR Subcommittee Report
March 18, 2019 meeting

TO: WSBA Court Rules and Procedures Committee

FR: Stephanie Dikeakos, MAR Subcommittee Chair

Date: March 13, 2019

RE: Summary of January 8, 2019 meeting

MAR Subcommittee members are Stephanie Dikeakos, Ashton Rezayat, Alison Markette, Geoffrey Grindeland, Judge Blaine Gibson, Cody Cloutier, and Timothy Moran.

Since our last full committee meeting on February 11, 2019, the subcommittee has continued to discuss amendments to MAR 7.2(a).

Background: 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.

Preliminary Proposed Amendment: A clean and redline version of MAR 7.2(a) is presented at the March 18 meeting for discussion and input. GR 9 cover sheet is also attached. The amendments to all the MAR rules is still pending before the Board of Governors but we expect their amendment to be Superior Court Civil Arbitration Rules shortly.

GR 9 COVER SHEET

Suggested Amendment

SUPERIOR COURT MANDATORY ARBITRATION RULES (MAR)

- 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 keeping court records open to the public, we have also provided for unsealing the award at the conclusion of the trial de novo or a withdrawal of such a request.

Rule 7.2 Amendment:

Amendment to 7.2(a) adding, “Judicial officer access to the award is prohibited while it is sealed. The clerk shall unseal the award if a request for a trial de novo is withdrawn or at the conclusion of the trial de novo.”

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 a request for a trial de novo is withdrawn or at the conclusion of the trial de novo.

(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.

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