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No. 101329-9

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

CROSSROADS MANAGEMENT, LLC,
Plaintiff,

vs.

LACY K. RIDGWAY (formerly Lacy Caldwell) and MATTHEW RIDGWAY, wife and husband,
Respondents, and

CARL and SUZAN LEWIS, et al.,
Petitioners.

BRIEF OF AMICUS CURIAE WASHINGTON STATE ASSOCIATION FOR JUSTICE FOUNDATION

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TABLE OF CONTENTS

		Page
I.	IDENTITY AND INTEREST OF AMICUS CURIAE	1
II.	INTRODUCTION AND STATEMENT OF THE CASE	1
III.	ISSUES ADDRESSED	6
IV.	SUMMARY OF ARGUMENT	7
V.	ARGUMENT	10
	A. Properly Construed, RCW 7.06.050 And MAR 7.1, As Amended, Require That A Request For Trial De Novo Must Be Signed By The Party; The Signature Of Counsel Is Insufficient.	10
	1. The plain language of RCW 7.06.050(1) and SCCAR 7.1(b) unambiguously require that requests for trial de novo must be signed by the party; signature by counsel is insufficient.	11
	2. Should the Court deem RCW 7.06.050(1) and SCCAR 7.1(b) ambiguous, prior caselaw demonstrates the Legislature's intent to require a party's signature on a request for trial de novo.	16

3. Requiring strict compliance with the requirement that a party sign a request for trial de novo effectuates the Legislature's intent in enacting chapter 7.06 RCW. 20

B. Requiring Strict Compliance With The Signature Requirement In The Amended Versions Of RCW 7.60.050(1) And SCCAR 7.1(b) Comports With Washington Caselaw. 22

1. This Court has consistently required strict compliance with filing requirements for requesting trials de novo following arbitration. 22

2. Following amendments to the statute and court rule providing that a request for trial de novo from arbitration "must be signed by the party," Washington court of appeals' decisions have uniformly held a party must sign the request and an attorney's signature alone is insufficient. 24

C. In Light Of The Amendments To RCW 7.06.050(1) And MAR 7.1(b), Neither The Authorized Signature Of A Party's Attorney Nor Compliance With Local Court Rules Is Sufficient To Satisfy The Requirement That A Party Sign A Request For Trial De Novo. 26

1. The common law rule authorizing an attorney to act on behalf of a client has been supplanted by the amendments to

the statute and court rule and an attorney's signature cannot excuse the requirement that a party sign a request for trial de novo. 27

2. Compliance with a local court rule that is inconsistent with a statute and superior court rule adopted by the Supreme Court cannot excuse noncompliance with the requirements of the statute and superior court rule. 29

VI. CONCLUSION 31

TABLE OF AUTHORITIES

Page(s)

Cases

Alvarez v. Banach,
153 Wn.2d 834, 109 P.3d 402 (2005)............................21, 23

Anderson v. Seattle,
78 Wn.2d 201, 471 P.2d 87 (1970)..19

Bearden v. McGill,
190 Wn.2d 444, 415 P.3d 100 (2018).......................11, 12, 15

Butler v. Finneran,
22 Wn. App. 2d 763, 516 P.3d 395 (2022)..........................26

Clay v. Portik,
84 Wn. App. 553, 929 P.2d 1132 (1997).............................28

Crossroads Management v. Lewis,
200 Wn.2d 1022, 522 P.3d 51 (Table) (2023)........................6

Crossroads Mgmt., LLC v. Ridgway,
2022 WL 4090923 (Wash. Ct. App. Sep. 7, 2022).........2, 5, 6

Dep't of Ecology v. Campbell & Gwinn, LLC,
146 Wn.2d 1, 43 P.3d 4 (2002)...29

Engstrom v. Goodman,
166 Wn. App. 905, 271 P.3d 959,
review denied, 175 Wn.2d 1004 (2012) 18, 19, 20, 25

Hanson v. Luna-Ramirez,
19 Wn. App. 2d 459, 496 P.3d 314 (2021)........................... 26

Harbor Enters., Inc. v. Gudjonsson,
116 Wn.2d 283, 803 P.2d 798 (1991)................................... 30

Hudson v. Hapner,
170 Wn.2d 22, 239 P.3d (2010)..................................... 11, 21

In re Carrier,
173 Wn.2d 791, 272 P.3d 209 (2012)............................ 17, 18

In re Marriage of Lemon,
118 Wn.2d 422, 823 P.2d 1100 (1992)................................. 30

Jametsky v. Olsen,
179 Wn.2d 756, 317 P.3d 1003 (2014)................................. 16

Keeton v. Dep't of Soc. & Health Servs.,
34 Wn. App. 353, 661 P.2d 982.. 17

Kelso v. City of Tacoma,
63 Wn.2d 913, 390 P.2d 2 (1964)... 17

King County v. Vinci Constr. Grands Projets/Parsons RCI/Frontier-Kemper, JV,
188 Wn.2d 618, 398 P.3d 1093 (2017)........................... 28, 29

Malted Mousse Inc. v. Steinmetz,
150 Wn.2d 518, 79 P.3d 1154 (2005)................................... 23

Mangan v. Lamar,
18 Wn. App. 2d 93, 496 P.3d 1213 (2021)........................... 25

Nevers v. Fireside, Inc.,
133 Wn.2d 804, 947 P.2d 721 (1997)............................ passim

Ohio Sec. Ins. Co. v. Axis Ins. Co.,
190 Wn.2d 348, 413 P.3d 1028 (2018)................................ 14

PeaceHealth Med. Ctr. v. Dep't of Revenue,
196 Wn.2d 1, 468 P.3d 1056 (2020).................................... 12

Perez v. Garcia,
148 Wn. App. 131, 198 P.3d 539 (2009).............................. 30

Potter v. Washington State Patrol,
165 Wn.2d 67, 196 P.3d 691 (2008)............................... 27, 28

Rivers v. Wash. State Conf. of Mason Contractors,
145 Wn.2d 674, 41 P.3d 1175 (2002)................................... 28

Russell v. Maas,
166 Wn. App. 885, 272 P.3d 273,
review denied, 175 Wn.2d 1016 (2012) 18, 19, 20, 25

Seto v. American Elevator, Inc.,
159 Wn.2d 767, 154 P.3d 189 (2007)...................... 10, 11, 12

Shepler v. Terry's Truck Ctr., Inc.,
__Wn. App. 2d__, 522 P.3d 126 (2022)............................... 26

State v. Ervin,
169 Wn.2d 815, 239 P.3d 354 (2010)............................ 11, 17

State v. Haggard,
195 Wn.2d 544, 461 P.3d 1159 (2020)................................ 17

State v. J.P.,
149 Wn.2d 444, 69 P.3d 318 (2003).................................... 13

State v. Krall,
125 Wn.2d 146, 881 P.2d 1040 (1994)................................ 20

State v. O'Neill,
103 Wn.2d 853, 700 P.2d 711 (1985).................................. 17

State v. Roggenkamp,
153 Wn.2d 614, 106 P.3d 196 (2005).................................. 12

Vita Food Prods., Inc. v. State,
91 Wn.2d 132, 587 P.2d 535 (1978).................................... 20

Wiley v. Rehak,
143 Wn.2d 339, 20 P.3d 404 (2001)........................21, 23, 24

Woodson v. State,
95 Wn.2d 257, 623 P.2d 683 (1980)........................16, 17, 18

Statutes

RCW 4.04.010 27

RCW 7.06.020 3

RCW 7.06.050(1) ....passim

RCW 59.18.280(2) 3

Rules

CR 83 30

MAR 7.1(a) 23

MAR 7.1(b) .... passim

MAR 7.3 11

SCCAR 7.1(b) .... passim

RAP 18.17 31

Other Authorities

Senate Journal, 46th Legislature (1979) 21

4A Elizabeth A. Turner, Washington Practice: Rules Practice SCCAR 7.1 (8th ed. June 2022 Update) 15

I. IDENTITY AND INTEREST OF AMICUS CURIAE

The Washington State Association for Justice Foundation (WSAJ Foundation) is a not-for-profit corporation organized under Washington law, and a supporting organization to Washington State Association for Justice. WSAJ Foundation operates an amicus curiae program and has an interest in the rights of persons seeking redress under the civil justice system.

II. INTRODUCTION AND STATEMENT OF THE CASE

In 2018, the Legislature amended RCW 7.06.050 to require that a request for a trial de novo following arbitration "must be signed by the party." In 2019, the Supreme Court renamed Mandatory Arbitration Rule (MAR) 7.1 as Superior Court Civil Arbitration Rule (SCCAR) 7.1 and amended that rule to incorporate the statutory change and require that a request for a trial de novo following arbitration "must be signed by the party." Among other issues, this case asks the Court to determine whether the amended statute and rule, properly construed,

require the actual party to sign the request for trial de novo, and if so, whether this requirement may be excused where the party authorized his attorney to sign the request, the party complied with an outdated local rule and form that did not provide for a party's signature, and/or Covid recommendations encouraged limiting personal contact. The facts are drawn from the unpublished court of appeals opinion and the parties' briefing. *See Crossroads Mgmt., LLC v. Ridgway,* 2022 WL 4090923, at *2-3 (Wash. Ct. App. Sep. 7, 2022); Lewis Pet. for Rev. at 3-6; Ridgway Resp. to Pet. for Rev. at 1-8; Lewis Ct. App. Op. Br. at 1-5; Ridgway Ct. App. Resp. Op. Br. at 8-15; Lewis Ct. App. Reply Br. at 3-4.[1]

Carl and Suzan Lewis (Lewis) moved out of a residence they had leased from Lacy and Matthew Ridgway (Ridgway).

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[1] The factual background set forth in this brief is limited to those facts relevant to the issue regarding the signature requirement on a notice of trial de novo following arbitration.

The parties disputed the amount of the security deposit that Ridgway was required to reimburse Lewis. The property manager, Crossroads Management, filed an interpleader action and deposited the security deposit in the court registry. Lewis filed a cross-claim in the interpleader action against Ridgway, seeking the full amount of the security deposit and alleging entitlement to attorney fees and double damages under RCW 59.18.280(2). The trial court granted Ridgway's motion for partial summary judgment and dismissed Lewis's claim for attorney fees and double damages under RCW 59.18.280(2), thus capping the available damages at the amount of the security deposit.

The case was transferred to arbitration under RCW 7.06.020 and SCCAR 1.2. The arbitrator awarded Lewis the entire $1,695 amount of the security deposit, but awarded Ridgway $14,386 in attorney fees under chapter 4.84 RCW

because Ridgway had offered more to settle the case than Lewis recovered. Lewis filed a request for trial de novo.

Ridgway moved to strike the request for trial de novo because it was not signed by Lewis as required by RCW 7.60.050(1) and SCCAR 7.1(b), but only signed by Lewis's attorney. In response, Lewis submitted declarations stating they authorized their attorney to request a trial de novo, and showing that their attorney's office used the form and complied with the procedure on Pierce County's superior court website for requesting a trial de novo, which form included only a signature line for a party's attorney and no signature line for the requesting party.

Relying on agency law and compliance with the local court procedure, Lewis argued that "purely as a matter of law" an attorney signature alone on a request for trial de novo is sufficient under the amended statute and rule. Lewis Resp. to Motion to Strike at 1 (CP 634). Lewis also noted "importantly,

this process played out in the context of the unfolding of the Coronavirus, which requires that direct contact between people, such as in-person meetings to sign documents, be limited and avoided." Lewis Resp. to Motion to Strike at 3 (CP 636).

The trial court denied the motion to strike, noting a problem with the form on the county's website and concluding Lewis had acted timely and in good faith. *See Crossroads*, 2022 WL 4090923, at *4. The trial court explained "that it had found 'substantial compliance' with the trial de novo statute and court rule, as well as 'good faith,' because the county's failure to update its online form resulted in the parties having 'no ability to comply' fully with the requirements for submission." *Id.* at *4.

At the trial de novo, a jury found that Lewis was entitled to return of the $1,695 security deposit. The trial court found that Ridgway was entitled to the $14,386 attorney fee awarded by the arbitrator and awarded an additional $13,346.42 in attorney fees

because Lewis had failed to improve on the arbitration award in the trial de novo.

Lewis appealed the trial court's order granting Ridgway's motion for partial summary judgment and the attorney fee awards. Ridgway cross-appealed the trial court orders denying their request to strike the trial de novo. The Court of Appeals concluded that the plain language of both RCW 7.60.050(1) and SCCAR 7.1(b) require an aggrieved party's signature on a request for trial de novo, and did not review the merits of Lewis's claims because the failure to properly request a trial de novo should have ended the proceedings. *See Crossroads*, at **1-2.

Lewis petitioned for review, which this Court granted. *See Crossroads Management v. Lewis*, 200 Wn.2d 1022, 522 P.3d 51 (Table) (2023).

III. ISSUES ADDRESSED

1. Whether under RCW 7.06.050(1) and SCCAR 7.1(b), a request for trial de novo must be signed by the aggrieved

party, and a request signed solely by the aggrieved party's attorney is insufficient?

2. Whether a party's failure to sign a request for trial de novo pursuant to RCW 7.06.050(1) and SCCAR 7.1(b) may be excused on the basis that the party authorized his attorney to sign the request or that the attorney followed the procedure in a local rule which provided a form that did not include a signature line for a party?[2]

IV. SUMMARY OF ARGUMENT

Washington law is governed by the common law to the extent it is not inconsistent with statutory law. At common law, an attorney is authorized to act on behalf of his or her client. In the context of requests for trials de novo following civil arbitration, prior to the 2018 amendment to RCW 7.06.050 and the 2019 amendment to SCCAR 7.1, no statute or court rule specified who must sign such requests. In the absence of a statute or rule speaking to the issue, the common law rule in Washington

[2] This amicus brief does not address Lewis's argument that the Covid pandemic provides an equitable basis to excuse his noncompliance with the signature requirements in RCW 7.06.050 and SCCAR 7.1.

which permits an attorney to act on behalf of the client was applicable.

The Legislature is empowered to supplant common law rules by statute. The Legislature amended RCW 7.06.050 in 2018 and the Washington Supreme Court followed suit by amending SCCAR 7.1 in 2019. These amendments specified that in filing a request for trial de novo following civil arbitration, the request must be signed by the aggrieved party.

Statutory construction is concerned with discerning legislative intent, and to determine whether the Legislature intends to replace a common law rule by statute, courts employ standard rules of statutory construction. Washington law applies the plain meaning rule, which states that the surest evidence of legislative intent is the plain language of the statute, related statutes, amendments, and other relevant textual evidence. Only if the language is ambiguous, meaning that it is reasonably susceptible to different meanings, will courts consult outside

indicia of legislative intent, such as caselaw, legislative history and canons of construction. The rules governing construction of statutes are equally applicable when construing court rules.

In this case, the plain language of RCW 7.06.050 and SCCAR 7.1, as amended, provides that requests for trials de novo "must be signed by the party." This language is not ambiguous because it is not susceptible to an interpretation that would permit a request that is not signed by the party. However, even if the Court were to deem the language ambiguous and consult other evidence of legislative intent, caselaw preceding the amendments offers context that sheds light on the problems the Legislature sought to solve by amending the statute, reinforcing the conclusion that the Legislature intentionally chose to require aggrieved parties to sign requests for trials de novo. Properly construed, RCW 7.06.050 and SCCAR 7.1 require the aggrieved party to sign a request for a trial de novo, and the signature of the party's counsel does not suffice.

Nor can Lewis's noncompliance be excused on the basis that he complied with either the supplanted common law rule or the local rule, now both obsolete in light of the statutory amendments to the statute and court rule.

V. ARGUMENT

A. Properly Construed, RCW 7.06.050 And MAR 7.1, As Amended, Require That A Request For Trial De Novo Must Be Signed By The Party; The Signature Of Counsel Is Insufficient.

Requests for trial de novo following arbitration are governed by RCW 7.06.050 and SCCAR 7.1.[3] The construction of a statute and the interpretation of court rules, including superior court rules governing civil arbitration, are matters of law requiring de novo review. *See Nevers v. Fireside, Inc.*, 133 Wn.2d 804, 809, 947 P.2d 721 (1997); *Seto v. American*

[3] By amendment effective December 3, 2019, Mandatory Arbitration Rules (MAR) were changed to Superior Court Civil Arbitration Rules (SCCAR). *See* Washington Supreme Court Order No. 25700-A-1271 (November 6, 2019); 194 Wn.2d 1101 (2019).

Elevator, Inc., 159 Wn.2d 767, 772, 154 P.3d 189 (2007). MARs, like any other court rules, are interpreted in the same manner as statutes, as though they were drafted by the Legislature. *See Hudson v. Hapner*, 170 Wn.2d 22, 29, 239 P.3d 759 (2010); *Seto*, 159 Wn.2d at 772; *Nevers*, 133 Wn.2d at 809. "As such, we construe them in accord with their purpose." *Nevers, id.* (citations omitted).

1. The plain language of RCW 7.06.050(1) and SCCAR 7.1(b) unambiguously require that requests for trial de novo must be signed by the party; signature by counsel is insufficient.

"Because '[t]he surest indication of legislative intent is the language enacted by the legislature,'" interpretation of a superior court arbitration rule "must begin by attempting to ascertain the plain meaning of that provision." *Bearden v. McGill*, 190 Wn.2d 444, 449, 415 P.3d 100 (2018) (interpreting MAR 7.3) (quoting *State v. Ervin*, 169 Wn.2d 815, 820, 239 P.3d 354 (2010)); *see*

also Seto, 159 Wn.2d at 772 (applying plain meaning rule to interpret MARs).

Ascertaining the plain meaning of an MAR looks "to the text of the statutory provision in question, as well as 'the context of the statute in which that provision is found, related provisions, and the statutory scheme as a whole.'" *Bearden*, 190 Wn.2d at 449 (citations omitted); *see also PeaceHealth Med. Ctr. v. Dep't of Revenue*, 196 Wn.2d 1, 7-8, 468 P.3d 1056 (2020) ("[w]e derive legislative intent solely from the plain language of the statute, considering the text of the provision, the context of the statute, related provisions, *amendments*, and the statutory scheme as a whole" (brackets added; emphasis added)).

In ascertaining the plain meaning of statutory language, "each word of a statute is to be accorded meaning." *State v. Roggenkamp*, 153 Wn.2d 614, 624, 106 P.3d 196 (2005) (citation omitted). "Statutes must be interpreted and construed so that all the language used is given effect, with no portion rendered

meaningless or superfluous." *State v. J.P.*, 149 Wn.2d 444, 450, 69 P.3d 318 (2003) (citation omitted).

The only change made by the amendment of RCW 7.06.050(1), which took effect September 1, 2018, is set forth below in ***bold italics***; the rest of the statutory provision is the same as it was before the amendment:

> (1) Following a hearing as prescribed by court rule, the arbitrator shall file his or her decision and award with the clerk of the superior court, together with proof of service thereof on the parties. Within 20 days after such filing, any aggrieved party may file with the clerk a written notice of appeal and request for a trial de novo in the superior court on all issues of law and fact. ***The notice must be signed by the party***. Such trial de novo shall thereupon be held, including a right to jury, if demanded.

Laws of 2018, ch. 36 § 6.

The only change made by the amendment of MAR 7.1(b), effective December 3, 2019, is set forth below in ***bold italics***; the rest of the rule is the same as before the amendment:

> (b) Form. The request for a trial de novo shall not refer to the amount of the award, including any award of costs or

> attorney fees, and shall be substantially in the form set forth below, ***and must be signed by the party***...

SCCAR 7.1, 194 Wn.2d at 1101, 1112 (2019).

The form for requesting a trial de novo set forth in SCCAR 7.1 was changed to add a line for "Signature of aggrieved party." The form included a separate line to identify the aggrieved party's attorney. *See* SCCAR 7.1(b), 194 Wn.2d at 1113. Before the change, the form in MAR 7.1 only had a signature line for "Name of attorney for aggrieved party." *See id.*

RCW 7.06.050 and SCCAR 7.1 were amended to include the requirement that a request for trial de novo "must be signed by the party." "The word 'must' means 'is required... to' and places a mandatory duty on the subject of the clause." *Ohio Sec. Ins. Co. v. Axis Ins. Co.*, 190 Wn.2d 348, 352, 413 P.3d 1028 (2018) (quoting Webster's Third New International Dictionary 1492 (2002)). "The amendments reflect the new statutory requirement that the request for trial de novo *must* be signed by

the 'aggrieved party'; signature of that party's attorney alone will not suffice." 4A Elizabeth A. Turner, Washington Practice: Rules Practice SCCAR 7.1 (8th ed. June 2022 Update).

Mandatory arbitration rules are meant to be understood by ordinary people. In *Bearden,* the Court stated that an MAR "is intended to shape the conduct of the parties, and the rule should be interpreted as an ordinary party to an action would understand it." 190 Wn.2d at 451 (citations omitted). An ordinary person, if asked who should sign a request for a trial de novo under the amended versions of RCW 7.06.050 and SCCAR 7.1, would respond that the request is required to be signed by the party, not the party's attorney.

The amendments to the statute and the court rule unambiguously require that a request for a trial de novo *must* be signed by the party, which renders insufficient the signature solely of a party's attorney. To ignore this language or dilute its meaning would render the amendments meaningless and would

be inconsistent with Washington law governing statutory interpretation.

2. Should the Court deem RCW 7.06.050(1) and SCCAR 7.1(b) ambiguous, prior caselaw demonstrates the Legislature's intent to require a party's signature on a request for trial de novo.

Where a statute is reasonably susceptible to different meanings, it is deemed ambiguous, and the Court may consult other sources, including common law, legislative history, and canons of construction to discern the statute's meaning. *See Jametsky v. Olsen*, 179 Wn.2d 756, 762, 317 P.3d 1003 (2014) (citation omitted). Caselaw offers valuable insight into legislative intent because "the legislature is presumed to know the existing state of the case law in those areas in which it is legislating." *Woodson v. State*, 95 Wn.2d 257, 262, 623 P.2d 683 (1980).

"A familiar and fundamental rule for the interpretation of a statute is that it is presumed to have been enacted in the light

of existing judicial decisions that have a direct bearing upon it." *Kelso v. City of Tacoma*, 63 Wn.2d 913, 917, 390 P.2d 2 (1964). This includes a presumption that the Legislature is aware of judicial constructions of prior statutes. *See Ervin*, 169 Wn.2d at 825; *Woodson*, 95 Wn.2d at 262. Judicial decisions that precede legislative action may offer context that can shed light on the Legislature's intent in enacting a given statutory provision. *See State v. O'Neill*, 103 Wn.2d 853, 861-62, 700 P.2d 711 (1985) (noting legislative intent regarding Washington surveillance statutes and amendments had been gleaned by reference to relevant contemporaneous caselaw construing their provisions); *Keeton v. Dep't of Soc. & Health Servs.*, 34 Wn. App. 353, 360, 661 P.2d 982, *review denied*, 99 Wn.2d 1022 (1983) (noting the timing of an amendment to civil service law suggested it was a legislative response to a decision of this Court); *State v. Haggard*, 195 Wn.2d 544, 559-60, 461 P.3d 1159 (2020); *In re*

Carrier, 173 Wn.2d 791, 806-07, 272 P.3d 209 (2012); *Woodson*, 95 Wn.2d at 262.

In this case, the amendments were adopted at a time when courts had grappled with disputes as to whether the requested trial de novo was actually sought by the party, or rather was desired only by the party's insurer and/or counsel. *See Russell v. Maas*, 166 Wn. App. 885, 887-89, 272 P.3d 273, *review denied*, 174 Wn.2d 1016 (2012); *Engstrom v. Goodman*, 166 Wn. App. 905, 908, 912-13, 271 P.3d 959, *review denied*, 175 Wn.2d 1004 (2012). The version of the statute in effect at the time these cases were decided provided that a party may file a request for a trial de novo, and did not include any specification as to whether the party had to sign the request or whether the party's attorney could sign the request on the party's behalf. *See Russell*, 166 Wn. App. at 889; *Engstrom*, 166 Wn. App. at 915. Citing the common law rule that the actions of an attorney authorized to appear for a client are binding on the client, the courts held that requests for

trials de novo signed by a party's attorney satisfied the requirement for filing by a party. *See Russell*, 166 Wn. App. at 889-91; *Engstrom*, 166 Wn. App. at 916. The Legislature is presumed to have been aware of these cases when it added the requirement that a request for trial de novo "must be signed by the party."

The Legislature could have chosen to solve the problem illustrated in these cases by amending the statute to require that requests for trial de novo be *authorized* by the aggrieved party. It did not do so; rather, the pertinent inquiry under the statute and rule is whether the request was *signed* by the party. The Legislature resolved the problem that had arisen pre-amendment by removing all doubt and requiring the signature of the party. "It is neither the function nor the prerogative of courts to modify legislative enactments." *Anderson v. Seattle*, 78 Wn.2d 201, 202, 471 P.2d 87 (1970).

In determining legislative intent, it is presumed that "every amendment is made to effect some material purpose." *State v. Krall*, 125 Wn.2d 146, 149, 881 P.2d 1040 (1994) (quoting *Vita Food Prods., Inc. v. State*, 91 Wn.2d 132, 134, 587 P.2d 535 (1978)). The Legislature is presumed to have been aware of the appellate court decisions in *Russell* and *Engstrom* when it amended RCW 7.06.050 to require that a request for a trial de novo "must be signed by a party." This Court should presume that the Legislature intended the addition of that language to effect some material purpose. To the extent this Court considers the amended language ambiguous, these precedents and rules of statutory construction offer insight into the reasons the Legislature required the aggrieved party to sign the request for a trial de novo.

3. Requiring strict compliance with the requirement that a party sign a request for trial de novo effectuates the Legislature's intent in enacting chapter 7.06 RCW.

In *Nevers*, this Court stated that while its ruling requiring strict compliance with filing requirements was dictated by the plain language of MAR 7.1, strict compliance also effectuates the Legislature's intent. *See Nevers*, 133 Wn.2d at 815. The primary goal of the statutes providing for mandatory arbitration and the civil rules designed to implement those statutes is to "reduce congestion in the courts and *delays in hearing civil cases*." *Id.* (citing Senate Journal, 46th Legislature (1979), at 1016-17); *see also Hudson*, 170 Wn.2d at 30. Requiring strict compliance with filing requirements in the court rule better effectuates that goal. *See Wiley v. Rehak*, 143 Wn.2d 339, 344, 20 P.3d 404 (2001); *Nevers*, 133 Wn.2d at 815. Requiring only substantial compliance with the filing requirements in the rule "would be subverting the Legislature's intent by contributing, inevitably, to increased delays in arbitration proceedings." *Nevers, id.*; *see also Alvarez v. Banach*, 153 Wn.2d 834, 838, 109 P.3d 402 (2005).

Similarly, allowing substantial compliance with the requirement that a party sign a request for trial de novo, rather than requiring a party's signature pursuant to the plain language of the statute and court rule, would lead to inevitable delays in arbitration proceedings. Ancillary litigation concerning whether a party authorized a request and excuses for noncompliance, just as is present in this case, would be required in the trial court and delay resolution through arbitration. Allowing substantial compliance with the signature requirement would subvert the Legislature's purpose in amending RCW 7.06.050(1).

B. Requiring Strict Compliance With The Signature Requirement In The Amended Versions Of RCW 7.60.050(1) And SCCAR 7.1(b) Comports With Washington Caselaw.

1. This Court has consistently required strict compliance with filing requirements for requesting trials de novo following arbitration.

While this Court has not considered the requirement that a party sign a request for trial de novo, it has mandated strict

compliance with other filing requirements of MAR 7.1. *See, e.g.*, *Alvarez*, 153 Wn.2d at 840 (parties must strictly comply with the filing requirements of MAR 7.1(a), and a declaration stating that a copy is "to be delivered" does not satisfy the requirement that proof of service of a request for trial de novo be served on the parties); *Malted Mousse Inc. v. Steinmetz*, 150 Wn.2d 518, 529, 534-35, 79 P.3d 1154 (2005) (denying a request for a *partial* trial de novo because it did not strictly comply with MAR 7.1); *Wiley*, 143 Wn.2d at 347 (the unambiguous language in MAR 7.1 did not allow for amended requests for trial de novo, and a party who was left off of the request due to a scrivener's error would not be allowed to amend as his amended request would be untimely); *Nevers*, 133 Wn.2d at 811, 815 (strict compliance with MAR 7.1 requires timely proof of service of a request for trial de novo).

To the argument that substantial compliance should suffice, the Court has explained that "'failure to strictly comply with MAR 7.1(a)'s *filing* requirement prevents the superior court

from conducting a trial de novo.'... Substantial compliance with the rule is insufficient." *Wiley*, 143 Wn.2d at 344 (quoting *Nevers*, 133 Wn.2d at 811-12). Strict compliance is mandated "based on the plain, unambiguous language of the rule." *Wiley*, 143 Wn.2d at 344.[4]

Strict construction of the party's signature requirement in the amended versions of RCW 7.60.050(1) and SCCAR 7.1(b) is consistent with this Court's precedents interpreting and requiring strict compliance with other filing requirements in the prior versions of that statute and court rule.

2. Following amendments to the statute and court rule providing that a request for trial de novo from arbitration "must be signed by the party," Washington court of appeals' decisions have

[4] While these Court decisions predate the 2018 RCW 7.06.050(1) amendment and the 2019 MAR 7.1(b) amendment, their holdings that the plain language of the statute and rule mandate strict compliance with the filing requirements for requesting a trial de novo remain applicable, as the only material changes to the statute and court rule was to add the requirement that the request "must be signed by the party."

uniformly held a party must sign the request and an attorney's signature alone is insufficient.

Cases preceding the amendments to the statute and rule properly applied the common law to permit attorneys to sign requests for trials de novo on behalf of their clients. *See Russell*, 166 Wn. App. at 887, 889-90; *Engstrom*, 166 Wn. App. at 916. It is unremarkable that these cases predating the amendments recognized attorneys' authority to sign requests for trials de novo, as the common law rule applied in the absence of an inconsistent statute or court rule.

Following the amendments to RCW 7.06.050(1) and SCCAR 7.1(b) stating that a request for trial de novo "must be signed by the party," court of appeals' decisions have uniformly affirmed trial court orders striking a trial de novo because the request was not signed by a party. *See Mangan v. Lamar*, 18 Wn. App. 2d 93, 97, 496 P.3d 1213 (2021) (Division 1) ("[n]oncompliance is not substantial compliance" (brackets

added)); *Hanson v. Luna-Ramirez*, 19 Wn. App. 2d 459, 462, 496 P.3d 314 (2021) (Division 1) ("[t]he amendments reflect the new statutory requirement that the request for trial de novo must be signed by the 'aggrieved party'; signature of that party's attorney alone is not sufficient" (brackets added)); *Butler v. Finneran*, 22 Wn. App. 2d 763, 770, 516 P.3d 395 (2022) (Division 2) (same); *Shepler v. Terry's Truck Ctr., Inc.*, __Wn. App. 2d__, 522 P.3d 126, 128-29 (2022) (Division 3) (affirming order striking trial de novo request signed only by attorney, where requesting party filed declaration stating he authorized the request signed by his attorney and attorney filed declaration stating he relied on outdated procedure and form on local superior court website; "actual compliance, not substantial compliance, is required").

C. In Light Of The Amendments To RCW 7.06.050(1) And MAR 7.1(b), Neither The Authorized Signature Of A Party's Attorney Nor Compliance With Local Court Rules Is Sufficient To Satisfy The Requirement That A Party Sign A Request For Trial De Novo.

Relying on agency law regarding the authority of an attorney to act on behalf of a client and his attorney's compliance with the local court rule concerning requests for trials de novo, Lewis argues that "purely as a matter of law" his attorney's signature on his request for trial de novo is sufficient under the amended versions of RCW 7.06.050(1) and SCCAR 7.1(b). Neither the common law regarding an attorney's authority to act for a client nor the attorney's compliance with local rules excuses Lewis's failure to sign the request for trial de novo.

1. The common law rule authorizing an attorney to act on behalf of a client has been supplanted by the amendments to the statute and court rule and an attorney's signature cannot excuse the requirement that a party sign a request for trial de novo.

Washington is governed by the common law to the extent the common law is not inconsistent with constitutional or statutory law. *See Potter v. Washington State Patrol*, 165 Wn.2d 67, 76, 196 P.3d 691 (2008); RCW 4.04.010. At common law,

an attorney is authorized to act on behalf of a client. *See Rivers v. Wash. State Conf. of Mason Contractors*, 145 Wn.2d 674, 679, 41 P.3d 1175 (2002) (citation omitted). "Accordingly, an attorney's procedural acts accomplished in the regular conduct of her client's case are considered those of her client..." *Clay v. Portik*, 84 Wn. App. 553, 561, 929 P.2d 1132 (1997).

Prior to the amendments of RCW 7.06.050 and MAR 7.1, neither the statute nor the court rule included any requirement specifying who must sign a request for trial de novo following arbitration. Because neither the statute nor the rule specified who must sign the party's request for a trial de novo, the general common law rule permitting the attorney to act on behalf of the client applied.

The Legislature has the power to supersede or modify the common law by statute. *See King County v. Vinci Constr. Grands Projets/Parsons RCI/Frontier-Kemper, JV*, 188 Wn.2d 618, 627, 398 P.3d 1093 (2017); *Potter*, 165 Wn.2d at 76. Whether the

common law is abrogated by a given statute is a question of statutory construction, and the intent of the Legislature is determined by the language of the statute. *See King County*, 188 Wn.2d at 628; *Dep't of Ecology v. Campbell & Gwinn, LLC*, 146 Wn.2d 1, 9, 43 P.3d 4 (2002).

Here, the statutory construction of the 2018 amendment to RCW 7.06.050 and the intent of the Legislature, *see supra*, § V.A, abrogate the common law rule permitting an attorney to act on behalf of the client in the limited circumstance of the requirement that a party sign a request for trial de novo.

2. Compliance with a local court rule that is inconsistent with a statute and superior court rule adopted by the Supreme Court cannot excuse noncompliance with the requirements of the statute and superior court rule.

Lewis argues that the trial court erred by striking his request for trial de novo because he used a form on the county website that had not been updated following the 2019

amendment to MAR 7.1 to specify that a party must sign the request.

CR 83 provides that superior courts can adopt local court rules if they are not inconsistent with the Superior Court Civil Rules. Reliance on local court rules cannot supersede or conflict with state court rules or statutes. *See In re Marriage of Lemon*, 118 Wn.2d 422, 424, 823 P.2d 1100 (1992) (citing *Harbor Enters., Inc. v. Gudjonsson*, 116 Wn.2d 283, 293, 803 P.2d 798 (1991)); *Perez v. Garcia*, 148 Wn. App. 131, 140, 198 P.3d 539 (2009).

The plain, unambiguous language of RCW 7.06.050(1) and SCCAR 7.1(b) mandate that a party sign the request for a trial de novo. The signature of a party's attorney is insufficient, and compliance with an outdated local court rule cannot supersede the statute and Superior Court rule.

VI. CONCLUSION

The Court should adopt the analysis advanced in this brief in the course of resolving the issues on appeal.

This document contains 5,000 words, excluding the parts of the document exempted from the word count by RAP 18.17.

DATED this 24th day of March, 2023.

Daniel E. Huntington for Valerie D. McOmie

On behalf of WSAJ Foundation

APPENDIX

A-1: RCW 7.06.050 (2018)
A-2: Laws of 2018, ch. 36, § 6
A-3: SCCAR 7.1 (2019)
A-4: MAR 7.1

PDF **RCW 7.06.050**

Decision and award—Appeals—Trial—Judgment.

(1) Following a hearing as prescribed by court rule, the arbitrator shall file his or her decision and award with the clerk of the superior court, together with proof of service thereof on the parties. Within twenty days after such filing, any aggrieved party may file with the clerk a written notice of appeal and request for a trial de novo in the superior court on all issues of law and fact. The notice must be signed by the party. Such trial de novo shall thereupon be held, including a right to jury, if demanded.

(a) Up to thirty days prior to the actual date of a trial de novo, a nonappealing party may serve upon the appealing party a written offer of compromise.

(b) In any case in which an offer of compromise is not accepted by the appealing party within ten calendar days after service thereof, for purposes of MAR 7.3, the amount of the offer of compromise shall replace the amount of the arbitrator's award for determining whether the party appealing the arbitrator's award has failed to improve that party's position on the trial de novo.

(c) A postarbitration offer of compromise shall not be filed or communicated to the court or the trier of fact until after judgment on the trial de novo, at which time a copy of the offer of compromise shall be filed for purposes of determining whether the party who appealed the arbitrator's award has failed to improve that party's position on the trial de novo, pursuant to MAR 7.3.

(2) If no appeal has been filed at the expiration of twenty days following filing of the arbitrator's decision and award, a judgment shall be entered and may be presented to the court by any party, on notice, which judgment when entered shall have the same force and effect as judgments in civil actions.

[**2018 c 36 § 6**; **2011 c 336 § 164**; **2002 c 339 § 1**; **1982 c 188 § 2**; **1979 c 103 § 5**.]

NOTES:

Applicability—Effective date—2018 c 36: See notes following RCW **7.06.043**.

CERTIFICATION OF ENROLLMENT

ENGROSSED HOUSE BILL 1128

Chapter 36, Laws of 2018

65th Legislature
2018 Regular Session

CIVIL ARBITRATION

EFFECTIVE DATE: September 1, 2018

Passed by the House January 18, 2018
Yeas 77 Nays 19

FRANK CHOPP

Speaker of the House of Representatives

Passed by the Senate February 28, 2018
Yeas 41 Nays 8

CYRUS HABIB

President of the Senate

Approved March 13, 2018 10:35 AM

JAY INSLEE

Governor of the State of Washington

CERTIFICATE

I, Bernard Dean, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **ENGROSSED HOUSE BILL 1128** as passed by House of Representatives and the Senate on the dates hereon set forth.

BERNARD DEAN

Chief Clerk

FILED

March 13, 2018

Secretary of State
State of Washington

professional and ethical consideration for serving as an arbitrator. A person serving as an arbitrator must file a declaration or affidavit stating or certifying to the appointing court that the person is in compliance with this section.

(b) The superior court judge or judges in any county may choose to waive the requirements of this subsection (2) for arbitrators who have acted as an arbitrator five or more times previously.

(3) The parties may stipulate to a nonlawyer arbitrator. The supreme court may prescribe by rule additional qualifications of arbitrators.

(4) Arbitrators shall be compensated in the same amount and manner as judges pro tempore of the superior court.

Sec. 6. RCW 7.06.050 and 2011 c 336 s 164 are each amended to read as follows:

(1) Following a hearing as prescribed by court rule, the arbitrator shall file his or her decision and award with the clerk of the superior court, together with proof of service thereof on the parties. Within twenty days after such filing, any aggrieved party may file with the clerk a written notice of appeal and request for a trial de novo in the superior court on all issues of law and fact. The notice must be signed by the party. Such trial de novo shall thereupon be held, including a right to jury, if demanded.

(a) Up to thirty days prior to the actual date of a trial de novo, a nonappealing party may serve upon the appealing party a written offer of compromise.

(b) In any case in which an offer of compromise is not accepted by the appealing party within ten calendar days after service thereof, for purposes of MAR 7.3, the amount of the offer of compromise shall replace the amount of the arbitrator's award for determining whether the party appealing the arbitrator's award has failed to improve that party's position on the trial de novo.

(c) A postarbitration offer of compromise shall not be filed or communicated to the court or the trier of fact until after judgment on the trial de novo, at which time a copy of the offer of compromise shall be filed for purposes of determining whether the party who appealed the arbitrator's award has failed to improve that party's position on the trial de novo, pursuant to MAR 7.3.

(2) If no appeal has been filed at the expiration of twenty days following filing of the arbitrator's decision and award, a judgment

shall be entered and may be presented to the court by any party, on notice, which judgment when entered shall have the same force and effect as judgments in civil actions.

Sec. 7. RCW 36.18.016 and 2016 c 74 s 4 are each amended to read as follows:

(1) Revenue collected under this section is not subject to division under RCW 36.18.025 or 27.24.070.

(2)(a) For the filing of a petition for modification of a decree of dissolution or paternity, within the same case as the original action, and any party filing a counterclaim, cross-claim, or third-party claim in any such action, a fee of thirty-six dollars must be paid.

(b) The party filing the first or initial petition for dissolution, legal separation, or declaration concerning the validity of marriage shall pay, at the time and in addition to the filing fee required under RCW 36.18.020, a fee of fifty-four dollars. The clerk of the superior court shall transmit monthly forty-eight dollars of the fifty-four dollar fee collected under this subsection to the state treasury for deposit in the domestic violence prevention account. The remaining six dollars shall be retained by the county for the purpose of supporting community-based domestic violence services within the county, except for five percent of the six dollars, which may be retained by the court for administrative purposes. On or before December 15th of each year, the county shall report to the department of social and health services revenues associated with this section and community-based domestic violence services expenditures. The department of social and health services shall develop a reporting form to be utilized by counties for uniform reporting purposes.

(3)(a) The party making a demand for a jury of six in a civil action shall pay, at the time, a fee of one hundred twenty-five dollars; if the demand is for a jury of twelve, a fee of two hundred fifty dollars. If, after the party demands a jury of six and pays the required fee, any other party to the action requests a jury of twelve, an additional one hundred twenty-five dollar fee will be required of the party demanding the increased number of jurors.

(b) Upon conviction in criminal cases a jury demand charge of one hundred twenty-five dollars for a jury of six, or two hundred fifty

REQUEST FOR TRIAL DE NOVO

(a) Service and Filing. Any aggrieved party not having waived the right to appeal may request-a trial de novo in the superior court. Any request for a trial de novo must be filed with the clerk and served, in accordance with CR 5, upon all other parties appearing in the case within 20 days after the arbitrator files proof of service of the later of: (1) the award or (2) a decision on a timely request for costs or attorney fees. A request for a trial de novo is timely filed or served if it is filed or served after the award is announced but before the 20-day period begins to run. The 20-day period within which to request a trial de novo may not be extended.

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

SUPERIOR COURT OF WASHINGTON
FOR [______________] COUNTY

____________________________,	)	No. ______
Plaintiff,	)	
v.	)	REQUEST FOR
____________________________,	)	TRIAL DE NOVO
Defendant.	)	

TO: The clerk of the court and all parties:

Please take notice that [*name of aggrieved party*] requests a trial de novo from the award filed ____[*date*]____.

Dated: ______________________ ____________________________________

[Signature of aggrieved party]
[Printed Name]:
[Title, if applicable]

____[Name of attorney for aggrieved party]

(c) Proof of Service. The party filing and serving the request for a trial de novo shall file proof of service with the court. Failure to file proof of service within the 20-day period shall not void the request for a trial de novo.

(d) Calendar. When a trial de novo is requested as provided in section (a), the case shall be transferred from the arbitration calendar in accordance with rule 8.2 in a manner established by local rule.

[Adopted effective July 1, 1980; Amended effective September 1, 1989; September 1, 2001; September 1, 2011; December 3, 2019.]

MAR 7.1
REQUEST FOR TRIAL DE NOVO

(a) Service and Filing. Any aggrieved party not having waived the right to appeal may request a trial de novo in the superior court. Any request for a trial de novo must be filed with the clerk and served, in accordance with CR 5, upon all other parties appearing in the case within 20 days after the arbitrator files proof of service of the later of: (1) the award or (2) a decision on a timely request for costs or attorney fees. A request for a trial de novo is timely filed or served if it is filed or served after the award is announced but before the 20-day period begins to run. The 20-day period within which to request a trial de novo may not be extended.

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

SUPERIOR COURT OF WASHINGTON
FOR (______________) COUNTY

______________________________, Plaintiff,	))	No. ______
v.	)	REQUEST FOR
______________________________, Defendant.	))	TRIAL DE NOVO

TO: The clerk of the court and all parties:

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

Dated: ________________________ ____
(Name of attorney
for aggrieved party)

(c) Proof of Service. The party filing and serving the request for a trial de novo shall file proof of service with the court. Failure to file proof of service within the 20-day period shall not void the request for a trial de novo.

(d) Calendar. When a trial de novo is requested as provided in section (a), the case shall be transferred from the arbitration calendar in accordance with rule 8.2 in a manner established by local rule.

[Adopted effective July 1, 1980; amended effective September 1, 1989; September 1, 2001; September 1, 2011.]

CERTIFICATE OF SERVICE

I hereby certify that on the 24th day of March, 2023, I electronically filed with the Clerk of the Court using the Washington State Appellate Courts Portal and also electronically served on the following parties, according to the Court's protocols for electronic filing and service:

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