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SUPREME COURT
STATE OF WASHINGTON
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BY SUSAN L. CARLSON
CLERK

No. 96044-5

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

Court of Appeals No. 76501-9-I

ENDRE D. GLENN
Petitioner
(Defendants/Appellants)

v.

NORDIC SERVICES, INC., Respondents
(Plaintiffs/-Appellee)

PETITION FOR REVIEW

Endre Glenn, Pro Se
(425) 869-7484
advx@frontier.com

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I. TABLE OF AUTHORITIES

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I. IDENTIFY OF PETIONER

Endre' Glenn, Pro SE, *Petitioner*, makes this petition for review pursuant to RAP 13.4(b), (2), (3), & (4). The Court should accept review under to resolve a issues of due process, and conflict between Washington Court of Appeals Divisions One & Two.

II. COURT OF APPEALS DECISION

Mr. Glenn seeks review of Court of Appeals April 23, 2018 *Unpublished Opinion (Appx 2) affirming* King County Superior Court Judge Catherine Shaffer, order confirming arbitration award for NORDIC Services, January 27, 2017 CP 545-549 and dismissing Glenn's claims against Plaintiff NORDIC Services, and their subcontractor who ignored subpoena and court order to produce discovery, denied him discovery and opportunity to depose key witnesses, his request for a continuance of arbitration schedule, trial de Novo, and selection of arbitrator substantially prejudiced his rights to due process, and fair impartial hearing.

On May 14, 2018 Mr. Glenn filed a timely motion for reconsideration in the Court of Appeals. The motion was denied by an order entered by the Court of Appeals on June 6, 2018.

Reference (*Appx 1*).

III. ISSUES PRESENTED FOR REVIEW

- A. U.S. Constitutional Amend XIV, and Washington State Constitution Article 1, Section 3 guarantees US citizens, homeowner due process in the arbitration; i.e. the selection of arbitrator, and execution of arbitrator's discovery order.

- B. There is a direct conflict between Division I Court of Appeal and Division III ruling when parties to voluntary arbitration stipulate to invoke mandatory arbitration rules.

IV. STATEMENT OF THE CASE

C. FACTUAL BACKGROUND

On August 14, 2014 NORDIC Services, and Endre' Glenn entered into a contract for the replacement of water damaged carpet in homeowner's basement. CP 50-51. Attorney Samantha Arango attempted to negotiate settlement with NORDIC Services June 20, 2015 regarding the unfiled complaint. A disagreement ensued regarding performance and personal injury claim that NORDIC failed to meet their contractual obligations. NORDIC filed a complaint July 20, 2015 in King County Superior Court, Judge Catherine Shaffer, presiding. CP 1 – 11. Defendant retained Ray Brooks, personal injury attorney, to respond to the complaint. He raised issues of NORDIC's Services contract breach; improperly installed CAT5E cabling, CP 315 and failure bring sufficient personnel to move the furniture because the homeowner could not assist due to an impaired shoulder CP 35 – 37. The homeowner raised the issue about the impaired shoulder to NORDIC Services and their subcontractor VAN WILD Furnishings CP 337, 278. On several occasions the subcontractor Rob Tooley requested John Rossnagle, NORDIC Services project manager confirm his schedule for moving the furniture CP 355. When

John requested a copy of the signed contract before moving forward with the carpet repair and replacement, the homeowner Glenn reiterated to NORDIC project Manager NORDIC should show-up onsite one day before the scheduled carpet installation to move the furniture. CP 362. NORDIC Services and VAN WILD Furnishings conspired to deny and block the homeowner of this critical discovery by their flagrant disregard of the arbitrator's subpoena, and order to compel discovery. CP 577-579, 580-581. CP 129.

D. PROCEDURAL BACKGROUND

When NORDIC Services filed their complaint on July 20, 2015, Attorney Samantha Arango and Attorney Ray Brooks represented Mr. Glenn, respectively in the settlements negotiations, and responding to the complaint CP 35 – 37.

After Attorney Ray Brooks answered the complaint, and filed a counterclaim, NORDIC Services filed a motion to compel arbitration which included a request to the court for the selection of the following arbitrators of Hon. Charles Burdell, Hon. George Finle or Hon. Steve Scott of Judicial Dispute Resolution. CP 42 -44.

The agreement for construction services required the parties to arbitrate the dispute, and agree on a single arbitrator to be selected among

Judicial Arbitration and Mediation Service (JAMS), Judicial Dispute Resolution (JDR) or Washington Arbitration and Mediation Service (WAMS). If the parties cannot agree upon an arbitrator, either party may apply to King County Superior Court for the appointment of a qualified arbitrator. CP 42 -50.

Mr. Glenn objected to NORDIC Services preselection of arbitrators CP 66 – 68. He raised this objection again which included his request for relief to dismiss the Plaintiff’s claim for non-compliance of statutory requirements to initiate arbitration *RCW 7.04A.090 referencing Westcott Homes LLC v. Chamness, 146 Wn. App. 728, 192 P.3d 394 (2008)*. The Court of Appeals agreed that Mr. Glenn did not waive this error but it fails on the merits because he did not respond to NORDIC’s Attorney Steve Hansen’s attempt to reach an agreement on selection of arbitrator, in his January 21, 2016 letter to avoid the February 19, 2016 hearing CP 110. *Nordic Servs., Inc. v. Glenn, No. 76501-9-1, 2018 WL 1907560, at *1 (Wash. Ct. App. Apr. 23, 2018) (pg 5)*.

When NORDIC filed its motion to compel arbitration on October 7, 2016, Attorney Steve Hansen did not send a similar letter (i.e. January 21, 2016) requesting the selection of an arbitrator to defendant’s attorney Samantha Arango or Ray Brooks CP 42 – 48.

In *Westcott Homes v. Chamness* the case was dismissed because the Westcott did not follow statutory requirements for initiating arbitration. The Court wrongly interpreted and enforced the procedural requirements for RCW 7.04A.090. In *Verbeek Properties LLC V. Green co*, the Court said *Chamness* is not a precedent for doing so in other cases where issue of the court's lack of authority to do so is squarely raised. *Verbeek Properties, LLC v. GreenCo Env'tl., Inc.*, 159 Wash. App. 82, 87–88, 246 P.3d 205, 208 (2010). Whether compliance with RCW 7.04A.090 is for the court or for the arbitrator is an issue squarely presented. The Court determined that's an issue for the arbitrator.

Based on the arbitration clause *NORDIC v. Glenn*, if the parties cannot agree then either party may apply to King County Superior Court for appointment of arbitrator. *NORDIC Services* failed to comply with RCW 7.04A.090. According to *Verbeek Properties LLC v. Green Co* the Court said there is no requirement that formal initiation of arbitration must precede filing a lawsuit to avoid waiving a contractual right to arbitration. In this case Attorney Steve Hansen's non-compliance with RCW 7.04A.090 should have a determinative effect on the Court ruling whether or not defendant Glenn should be entitled to participate in the section of arbitrator. The procedure outlined in RCW 7.04A.090 guarantees the opposing party receives effective notice by certified or registered mail,

return receipt requested and obtained or by service as authorized for the initiation of a civil action. NORDIC's January 21, 2016 notice requesting arbitration was ineffective because it failed to comply with the statutory provision. Defendant Glenn did not waive that right by his unresponsiveness to NORDIC's letter but NORDIC did not comply with the statutory provision. NORDIC waited 100 days to initiate arbitration after filing its motion to compel arbitration pursuant to 7.04A.090. Anytime after the October, 7, 2015 filing of its motion to compel, Attorney Steve Hansen could have initiated the procedures to arbitration by engaging Glenn's Counsel or complying with the statute

March 4, 2016, Judge Catherine Shaffer transferred the case to arbitration, dismissing Glenn's motion to amend the order to allow the parties to mutually agree on the selection of arbitrator. CP 99-101, 102-104. On April 26, 2106 Judge Charles Burdell set the preliminary hearing and case schedule. He stated the following CP 585 – 586.

Pursuant to the parties written agreement, this matter will be **“conducted under the Superior Court Mandatory Rules . . . to the maximum extent possible”**.

On June 14, 2016 arbitrator further outlined the discovery order, allowing Mr. Steve Hansen to inspect the improperly installed carpet, depose Mr. Glenn at his offices in Marysville, authorized Mr. Glenn to

depose Rob Tooley, and John Rossnalge, VAN WILD Carpeting, and Ms. Wendy Kent to disclose expert witness if decides to retain one. CP 315-316.

On October 20, 2016 homeowner filed a motion for “Emergency Relief” in Superior Court. CP 307 – 308. Arbitrator originally scheduled the hearing September 28, 2018 but Ms. Kent, NORDIC’s personal injury attorney requested the arbitrator reschedule the hearing October 28, 2016 because several of the providers have been slow to assimilate and produce the medical records needed to be reviewed. He gladly accommodated her request but failed to extend the same courtesy to Mr. Glenn when NORDIC’s subcontractor VAN WILD Furnishings failed to honor the subpoena and court order to compel discovery. CP 332-3334. Ms. Kent never disclosed her expert witness, nor did the arbitrator require her to disclose it regardless of the homeowners request for Attorney Ms. Wendy Kent to disclose the witness CP 609.

VAN WILD ignored the subpoena duces tecum to compel production of documents by August 25, 2016, and disregarded arbitrator’s motion to compel discovery of documents by September 26, 2018. VAN WILD failed to comply with either order CP 325-326, 329-330. Steve Hansen, Attorney for NORDIC Services obtained this discovery on the 14th day before the scheduled hearing, the same date arbitrator required

prehearing statements due. This delay deprived the homeowner of the opportunity to depose his key witnesses John Rossnagle, and Rob Tooley as specified in the arbitrators discovery order CP 315-316. Rob Tooley's testimony was required first to impeach testimony of John Rossnagle about the Glenn's advising NORDIC Services about the impaired shoulder. Rob and John's testimony supported Mr. Glenn's claims for the personal injury which the arbitrator dismissed in his award CP 520, and failed to honor discovery in his June 14, 2016 order.

Pursuant to MAR Rule 5.2 at least 14 days prior to the date of the arbitration hearing each party shall file with the arbitrator and serve upon all other parties prehearing statements CP 315. Superior Court MAR 5.2 (*Appx 15*)

Although the arbitrator extended the prehearing statements until October 17, 2016, homeowner had less than 2 days to prepare this information considering he just received the discovery on October 14, 2016 that VAN WILD should have produced in by August 25, 2016.

The hearing occurred on October 28, 2016 hearing but Mr. Glenn was ill recovering from surgery; therefore unable to attend the CP 597. Since Margaret provided him with home health care for his out-patient recovery, she could not attend the hearing either. Mr. Glenn fully

participated in the court and arbitration proceedings. He complied with the arbitrator's request from allowing an in-home inspection of the improperly laid CAT5E cables, attending deposition in Marysville Washington, i.e. 40 miles outside of Seattle, answering, and responding to interrogatories. He was just unable to attend the hearing due to health issues.

NORDIC Services Attorney Steve Hansen, and their subcontractor VAN WILD Furnishing presented obstacles to deny the defendant discovery essential to supporting his claim. Superior Court MAR 5.3 d (e) Opposing Party May Subpoena Author or Maker as Witness. Regardless of Mr. Glenn's efforts to confirm if NORDIC Services plans to present an expert witness, neither they nor the arbitrator responded. He therefore could not cross examine the author of the expert report pursuant to Superior Court MAR 5.3 b(e). CP 609. (*Appx 16*)

Mr. Glenn pursued a trial de novo request but the court denied it without a hearing to show good cause for his absence at the hearing due to health issues. Judge Shaffer just confirmed the arbitration award CP 550-551. Judge Shaffer denied the defendant homeowner a hearing on Trial de Novo, and opportunity to show good cause for his absence CP 596-597. In *Barr v. Young*, 187 Wash. App. 105, 111–12, 347 P.3d 947, 951 (2015), the Washington Div III appellate court said given the circumstances

surrounding the Barrs' health and finances, the Barrs' might have showed good cause, and been afforded an opportunity to be heard at a later date. Similarly, the Barr's could have followed up with the request for a trial de novo.

V. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED

- A. Homeowner was deprived of due process, U.S. Constitutional Amend XIV, and Washington State Constitution Article 1, Section 3 in the arbitrator selection process, and execution of arbitrator's discovery order. This is an issue of Substantial Public Importance that the Supreme Court should review
- B. Washington State Court of Appeals Division 1 opinion contradicts Court of Appeals Division III opinion on implementing a party's stipulation to follow Mandatory Arbitration rules in Voluntary Arbitration proceeding. RCW 7.04, v. 7.06

VI. ARGUMENT

A. DUE PROCESS

Section 1 of the *U.S. Constitution Amend. XIV* provides no State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to

any person within its jurisdiction the equal protection of the law. The due process clause of the Fourteenth Amendment confers both procedural and substantive protections. (*Appx 10*) Article I, section 3 of the Washington Constitution requires that provides no person shall be deprived of life, liberty or property without due process of law. (*Appx 12*). Mr. Glenn was deprived of his property without due process. CP 545 – 549.

In the context of judicial proceedings while denial of due process is alleged, a reviewing court must consider. “The precise nature of the interest adversely affected, the manner in which this was done, the reason for doing it, the available procedure that was followed, the protection implicit in the office whose conduct is challenged, and the balance of hurt complained of and good accomplished. *LK Operating, LLC v. Collection Grp., LLC, 181 Wash. 2d 48, 331 P.3d 1147 (2014)*

NORDIC Services and their subcontractor, VAN WILD Furnishing violated Washington State public policy, RCW 7.04A.090, Superior Court MAR, MAR 4.3 and MAR 5.2. Thereby denying the homeowner due process, i.e. selection of arbitrator, and evidence outlined in the June 14, 2016 discovery order established by the arbitrator. CP 315-316. The arbitrator’s award dismissed Glenn’s personal injury claim. CP 519 – 520. The arbitrator denied him opportunity to depose key

witness Rob Tooley, and John Rossnagle identified to support the personal injury claim. Based on the limited discovery he received, the e-mail correspondence of Rob Tooley to John Rossnagle unquestionably illustrates the homeowner's contention that NORDIC Services was aware of the injury and took no action to bring sufficient personnel to move the furniture in spite of the homeowner's specific request for them to move the furniture. CP 35 – 37, CP 337, 355. CP 278 (Appellate Brief for Reconsideration, pg. 8-11) Thereby, NORDIC's action was a direct and proximate cause of exasperating an existing injury.

Attorney Steve Hansen non-compliance with the statutory requirements for initiating arbitration denied the homeowner the right to participate in the selection of an arbitrator. Court of Appeals in their decision said Mr. Glenn waived his right when he failed to respond to Attorney Steve Hansen's January 21, 2016 letter to select arbitrator. *Nordic Servs., Inc. v. Glenn, No. 76501-9-1, 2018 WL 1907560, at *1 (Wash. Ct. App. Apr. 23, 2018) (pg 5)* However, Steve Hansen notice was ineffective because it failed to follow the procedures outlined in RCW 7.04A.090 which requires notice must be sent by certified or registered mail, return receipt requested and obtained or by service authorized by initiation of a civil action. (*Appx 13*). The notice must describe the nature of controversy and remedy sought.

June 14, 2016 discovery order by the arbitrator identified discovery each party needed to present evidence material to the controversy, and cross examine witnesses *RCW 7.04A.150 (4)*. CP 316. (Appx 23) VAN WILD Furnishings ignored arbitrator's subpoena MAR 4.3, to produce evidence by August 25, 2016 CP 330, and order granting motion to compel arbitration by September 26, 2016 CP 325 – 326. Attorney Steve Hansen obtained this discovery only 14 days before the October 28, hearing, prejudicing the homeowner's right to fair impartial trial. The arbitrator extended the Superior Court MAR 5.2 Prehearing Statements from October 14, 2016 to October 17, 2016. CP 315. So, the defendant only had three days for prepare for a hearing he just received discovery, substantially prejudicing his rights.

Fourteen days prior to the hearing, the homeowner receives the expert report from NORDIC's personal injury Attorney Wendy Kent which violated Arbitrator's June 14, 2016 Discover Order because she failed to disclose her expert witness pursuant to Superior Court MAR 5.3 (e): (Appx 17)

Opposing Party May Subpoena Author or Maker as Witness. Any other party may subpoena the author or maker of a document or videotape admissible under this rule, at that party's expense, and examine the author or maker as if under cross examination.

U.S. Constitution XIV Amendment provides no State shall deprive any person of life, liberty or property, without due process of the law, nor deny to any person within its jurisdiction equal protection of the laws. The Arbitrator rescheduled the hearing September 28, 2016 to October 28, 2016 solely at request of NORDIC's personal injury attorney Wendy Kent because she was waiting on several providers to assimilate and produce records. She requested a brief postponement of the arbitration so that she could obtain the necessary medical information. CP 333-334. The Arbitrator graciously reschedule the hearing until October 28, 2016 but denied the homeowner's request when NORDIC's subcontractor VAN WILD failed to comply with the subpoena and order to compel discovery. CP 129, CP 325 – 327, CP 329 – 331.

Revised Code of Washington Chapter 7 Uniform Arbitration Act. Requires 7.04A.230 Vacating Award (1) (c) An arbitrator refused to postpone the hearing upon showing of sufficient cause for postponement, refused to consider evidence material to the controversy, or otherwise conducted the hearing contrary to RCW 7.04A.150, so as to prejudice substantially the rights of a party to the arbitration proceeding (*Appx 25-26*). NORDIC Services and their subcontractor substantially prejudiced Mr. Glenn's rights and denied him due process violating the U.S. Constitution XIV Amendment. Neither arbitrator nor Superior Court

Judge Catherine Shaffer imposed sanctions of NORDIC's subcontractor for violating the subpoena or order to compel discovery CP 553.

Arbitrator granted NORDIC Services Attorney Steve Hansen, and Attorney Wendy Kent all the discovery outlined in his June 14, 2016 order while denying homeowner opportunity to depose critical witnesses to adequately support the personal injury claim (CP 520, and withholding key discovery information until the same date arbitrator required prehearing statements due October 14, 2016.

Parties are technically deprived of their procedural due process rights under the Fourteenth Amendment and Pennsylvania's constitution when they are not afforded full opportunities to present evidence before a court. U.S.C.A. Const.Amend. 14; Const. Art. 1, § 1. *City of Philadelphia v. Fraternal Order of Police Lodge No. 5 (Breary)*, 604 Pa. 267, 985 A.2d 1259 (2009). NORDIC Services, and their subcontract acted in bad faith, and intentionally withheld this exculpatory evidence. Glenn's key witness Rob Tooley, a former employee of VAN WILD Furnishings, advised the homeowner he will not testify in this litigation NORDIC v. Glenn. CP 310.

Washington State Supreme Court said in *Puget Sound Bridge & Dredging Co. v. Lake Washington Shipyards*, While arbitrators are not required to proceed with the formalities of a court, they must proceed in

such a manner as to give a full hearing to each of the parties, not only upon the several items of the claim presented by himself, but also upon the claim of his adversary, and upon the evidence adduced in support of that claim. *Puget Sound Bridge & Dredging Co. v. Lake Washington Shipyards*, 1 Wash. 2d 401, 408, 96 P.2d 257, 260 (1939). Article I, section 3 of the Washington Constitution requires that provides no person shall be deprived of life, liberty or property without due process of law. Washington well defined public policy supports party right to due process. Mr. Glenn was denied due process CP 311.

B. COURT OF APPEALS DIV 1 OPION CONFLICTS WITH DIV 2 ON INVOKING MAR 7.06 IN RCW 7.04.

Does invoking Superior Court MAR rules 7.06 in voluntary binding arbitration 7.04 through stipulation MAR 8.1(b) require the selective implementation of RCW 7.06 mandatory rules or full implementation of its rules without further explicit stipulation?

The arbitration Clause in NORDIC's Agreement for Construction Services required the arbitration procedures to be conducted under Superior Court Mandatory Arbitration Rules (MAR) in effect at the time to the maximum extent possible. CP 51. The arbitrator's April 26, 2016 preliminary hearing and scheduling order provided: Pursuant to the parties

written agreement, this matter will be “conducted under the Superior Court Mandatory Rules . . . to the maximum extent possible”. CP 585. Nothing in the contract or any stipulation by the parties limited application of rules under Superior Court Mandatory Arbitration Rules (MAR).

Washington Court of Appeals Div 1 ruled that the parties stipulation to follow RCW 7.06 Mandatory Arbitration Rules did not apply to MAR 7.1 Trial – de- Novo. Referencing *Dahl v. Parquet Dahl v. Parquet Colonial Hardwood Floor Co.* 108 Wn. App. 403, 412, 30 P.3d 537 (2001), the court said any ambiguity with respect to whether parties invoked mandatory arbitration is resolved in favor of voluntary arbitration. Superior Court Mandatory Arbitration Rules MAR 8.1(b) a case transferred to arbitration by stipulation is subject to the arbitration rules in their entirety, except as others agreed under section (a). Arbitration is a statutory proceeding. Both rights of the parties and power of the court are governed entirely by statute.

Washington Court of Appeals Div 1 opinion conflicts with Div III opinion on invoking Superior Court MAR in voluntary arbitration.

In re *Smith-Bartlett*, 95 Wash. App. 633, 637, 976 P.2d 173, 176–77 (1999) Court of Appeals Div 2 stated:

In arbitrations not subject to the MAR, the parties can subject themselves to the MAR by stipulation. MAR 8.1(b). Here, the parties did stipulate to the MAR. **Mr. Bartlett argues this meant only certain parts.**

But the MAR precludes this interpretation by its own terms. A stipulation to the MAR invokes the rules in their entirety, unless otherwise expressly stipulated. MAR 8.1(b). An agreement to adopt the MAR piecemeal must either be established in the arbitration itself or put in writing and signed by the parties or their lawyers. MAR 8.1(a), (b). Here, the “agreement” to adopt the MAR was ordered by the court. By adopting the mandatory arbitration rules, the parties agreed to court review on demand.

The arbitrator’s April 23, 2016 scheduling order did not adopt MAR rules piecemeal or exclude MAR 7.1 Trial-de-Novo, he clearly stated this matter will be “conducted under the Superior Court Mandatory Rules . . . to the maximum extent possible. NORDIC Services construction agreement can limit appeals to only those available under voluntary binding arbitration RCW 7.04. Since arbitration procedures are governed by statute, the rights and responsibilities of the parties are governed entirely by statutes. Therefore without a signed stipulation by the parties or their lawyers in writing limiting the application of Superior Court MAR 7.06, then they are invoked in its entirety. Superior Court cannot mix and match arbitration rules from different statutes because its jurisdiction to mandate arbitration is statutory. *Banchero*, 63 Wash.2d at 249, 386 P.2d 625.

The Supreme Court of Washington should clarify how invoking MAR rules in private arbitration impacts the arbitration proceedings. Court of Appeals Div 1 opinion resolves any ambiguity to whether parties

invoked mandatory arbitration in favor of binding arbitration. Therefore the Court only invokes the rules piecemeal not in its entirety which directly contradicts the opinion of Court of Appeals Div III.

VII. CONCLUSION

Mr. Glenn was denied his U.S. Constitutional, and State rights to due process. The State deprived him of life, liberty, or property without due process of law. Superior Court held no hearing before summarily confirming award, and dismissing trial-de-novo request. Respectfully request the Supreme Court of Washington Grant Review pursuant to RAP 13.4(b) (4) (2)

RESPECTFULLY SUBMITTED the 6th day of July 2018.

Appellant Endre Glenn, Pro Se

A handwritten signature in black ink, appearing to read "Endre Glenn", written over a horizontal line.

Endre Glenn, Pro Se

VIII. CERTIFICATE OF SERVICE

I certify that on Friday, July 6, 2018, I mailed a copy of the foregoing Appellant's "Petition for Review" by the methods indicated below:

USPS First Class Mail:

Steven Hanson
Hansen McConnel & Pelligrini
1636 Third Street
Marysville, WA 98270
Attorney for Plaintiff

e-mail:
steve@thirdstreetlaw.com

Wendy M. Kent, WSBA No. 21708
BODYFELT MOUNT LLP
Attorneys at Law
319 SW Washington Street, Suite 1200
Portland OR 97204
Attorney for Plaintiff

e-mail:
kent@bodyfeltmount.com


Andre Glenn, Petitioner

IX. APPENDIX

Order Denying Motion For Reconsideration	Appx 1
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Superior Court MAR RULE 5.2 Prehearing Statement	Appx 15
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Superior Court MAR RULE 4.3 SUBPOENA	Appx 20
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7.06.020 Actions Subject Mandatory Arbitration	Appx 22
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7.04A.150. Arbitration process	Appx 25

IN THE COURT OF APPEALS FOR THE STATE OF WASHINGTON
DIVISION ONE

NORDIC SERVICES, INC.,)	
)	No. 76501-9-1
Respondent,)	
)	ORDER DENYING MOTION
v.)	FOR RECONSIDERATION
)	
ENDRE D. GLENN and JANE DOE)	
GLENN, a married couple, and)	
MARGARET A. GLENN and JOHN)	
DOE GLENN, a married couple,)	
)	
Appellant.)	

The appellant, Endre D. Glenn, has filed a motion for reconsideration. The court has taken the matter under consideration. A majority of the panel has determined that the motion should be denied.

Now, therefore, it is hereby

ORDERED that the motion for reconsideration is denied.

FOR THE COURT:

Trickey, J

IN THE COURT OF APPEALS FOR THE STATE OF WASHINGTON

NORDIC SERVICES, INC.,)
)
 Respondent,)
)
 v.)
)
 ENDRE D. GLENN and JANE DOE)
 GLENN, a married couple, and)
 MARGARET A. GLENN and JOHN)
 DOE GLENN, a married couple,)
)
 Appellant.)

No. 76501-9-1
DIVISION ONE
UNPUBLISHED OPINION

FILED: April 23, 2018

FILED
COURT OF APPEALS DIV 1
STATE OF WASHINGTON
2018 APR 23 AM 9:07

TRICKEY, J. — In a lien foreclosure dispute, Nordic Services, Inc. successfully moved to compel arbitration over Endre Glenn's objection. After prevailing at arbitration, Nordic moved the trial court to confirm the arbitration award and enter judgment. Glenn requested a trial de novo.

The trial court entered a judgment and order confirming the arbitration award, and struck Glenn's request for a trial de novo. Glenn appeals that order, arguing that the trial court erred by compelling arbitration, denying a continuance of the arbitration schedule, and denying his request for a trial de novo. We affirm.

FACTS

Nordic Services, Inc. sued Endre Glenn for \$5,995.60, the unpaid balance for Nordic's construction services repairing water damage at Glenn's home. Nordic sought to foreclose on a construction lien, obtain a personal judgment against Glenn, and compel arbitration of its claims pursuant to their agreement for

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services. Glenn answered and counterclaimed for breach of contract and negligence. In his response to Nordic's motion to compel arbitration, Glenn objected to Nordic's proposed arbitrators.

The trial court heard and granted Nordic's motion to compel arbitration on March 4, 2016. Glenn then filed several motions, including a motion to amend the order compelling arbitration,¹ motion to dismiss complaint and vacate order compelling arbitration, and an objection to the order compelling arbitration. The trial court denied or struck Glenn's motions and objection.

Disputes continued throughout the arbitration proceedings. On October 19, 2016, Glenn filed a motion for emergency relief requesting that the trial court extend the arbitration schedule to permit him to complete discovery, and remove the arbitrator for bias. The trial court denied the motion.

Glenn did not appear at the October 28, 2016 arbitration hearing. The arbitrator awarded Nordic \$49,109.75. On December 12, 2016, Glenn requested a trial de novo of the arbitration award under Mandatory Arbitration Rule (MAR) 7.1. Nordic objected to the request, arguing that a trial de novo was not available for a private arbitration such as theirs. Nordic asked the trial court to confirm the arbitration award, enter judgment, and strike Glenn's request for a trial de novo.

The trial court entered a judgment and confirmed the arbitration award. It also struck Glenn's request for a trial de novo. The court denied Glenn's additional requests for relief in an order denying reconsideration of court ordered sanctions;

¹ This motion was apparently considered as a motion for reconsideration by the court, and denied as such.

No. 76501-9-1 / 3

an order denying motion to vacate arbitration award, sanctions, and judgment; and an order denying reconsideration of the motion to vacate.

Glenn filed a notice of appeal of only one trial court order: the judgment and order confirming arbitration award.

ANALYSIS

Glenn makes three assignments of error on appeal. First, he argues that the trial court erred in compelling arbitration before the selected arbitrator. Second, he maintains that the trial court erred by denying his request for a continuance of the arbitration hearing. Third, he claims that the trial court erred by denying him a trial de novo. These arguments arise out of the order compelling arbitration, the denial of the motion for emergency relief to extend the arbitration schedule, and the judgment and order confirming arbitration award, respectively. Nordic argues that we should not review Glenn's first two arguments because they relate to orders not designated in the notice of appeal.

In general, "[t]he appellate court will, at the instance of the appellant, review the decision or parts of the decision designated in the notice of appeal." RAP 2.4(a). However, "[t]he appellate court will review a trial court order or ruling not designated in the notice, including an appealable order, if (1) the order or ruling prejudicially affects the decision designated in the notice, and (2) the order is entered, or the ruling is made, before the appellate court accepts review." RAP 2.4(b). To determine whether an order has prejudicial effect on the appealed order, we inquire whether the order designated in the notice of appeal would have occurred absent the other order. Adkins v. Aluminum Co. of Am., 110 Wn.2d 128,

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134, 750 P.2d 1257, 756 P.2d 142 (1988); Right-Price Recreation, LLC v. Connells Prairie Cmty. Council, 146 Wn.2d 370, 380, 46 P.3d 789 (2002).

Glenn maintains that we review each of his assignments of error. He argues that the orders not designated in his notice of appeal did prejudicially affect the appealed judgment and order confirming the arbitration award. We agree with Glenn that the order compelling arbitration prejudicially affects the judgment and order confirming the arbitration award. If arbitration had not been compelled, there would be no arbitration award to confirm. We therefore review Glenn's first argument related to the order compelling arbitration.

Glenn argues that his emergency motion to extend the arbitration schedule did prejudicially affect the judgment and order confirming the arbitration award. Glenn based his motion on his inability to complete discovery, but he ultimately did not appear at the arbitration hearing. He does not argue, and the record does not support, that the arbitration award would not have occurred but for his receipt of additional discovery. We decline to review Glenn's second argument related to the denial of the emergency motion to extend the arbitration schedule, because he does not demonstrate that the denial of the motion to extend the arbitration schedule prejudicially affected the order confirming the arbitration award.

We turn now to Glenn's contention that the trial court erred in compelling arbitration before the selected arbitrator. Nordic argues that Glenn waived this argument because he did not timely object to the selection of arbitrators at the trial court. But the record supports that Glenn did timely object to the proposed arbitrators. In Glenn's October 22, 2015 response to Nordic's motion to compel

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arbitration, he argued that “[h]e did not have the option to select the arbitration agency, JAMS, WAMS, JDR or review a list of potential arbitrators. He disagrees with opposing counsel[’s] selection of arbitrators.”² Glenn filed this response before the hearing to compel arbitration, and reiterated his objection to the selection of a JDR arbitrator in his motion to amend the order compelling arbitration. Glenn did not waive this assignment of error.

Glenn’s argument, however, fails on the merits. The arbitration provision of the agreement between Glenn and Nordic states, in pertinent part:

If any dispute or disagreement arises out of, or with respect to work performed under this Agreement, the same shall be arbitrated in accordance with the following terms and procedures:

(a) Arbitration shall be by a single arbitrator to be selected upon agreement of the parties under the auspices of Judicial Arbitration and Mediations Service (JAMS), Judicial Dispute Resolution (JDR) or Washington Arbitration and Mediation Service (WAMS). If the parties cannot agree upon an arbitrator, either party may apply to King County Superior Court for the appointment of a qualified arbitrator from the above services or, if those services no longer exist, from the [American Arbitration Association] roster.^{3]}

After filing its motion to compel arbitration, Nordic attempted to reach an agreement with Glenn on the selection of arbitrators by sending a letter to Glenn noting his objection to the three proposed arbitrators and requesting an alternative. Apparently unable to agree, Nordic continued with its request that the court appoint an arbitrator. This process complies with the terms of the arbitration provision.⁴

² Clerk’s Papers (CP) at 67 (Judicial Arbitration and Mediations Service (JAMS); Washington Arbitration and Mediation Service (WAMS); and Judicial Dispute Resolution (JDR)).

³ CP at 51.

⁴ Glenn also argues that this arbitrator selection provision is substantively unconscionable. “Substantive unconscionability involves those cases where a clause or term in the

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The trial court did not err in entering the order to compel arbitration before the selected arbitrator.

Next, Glenn argues that the trial court erred in denying his request for a trial de novo. He contends that he was entitled to a trial de novo under the mandatory arbitration rules. Nordic argues that Glenn waived his right to challenge the judgment and order confirming arbitration award by not presenting his arguments to the trial court. On the merits, Nordic argues that theirs was a private arbitration, so a trial de novo does not apply.

We disagree that Glenn waived his argument. Glenn requested a trial de novo pursuant to MAR 7.1 and LMAR 7.1. The trial court denied a trial de novo in its order confirming the arbitration award. Glenn appeals that order, arguing that the trial court erred in striking his request for a trial de novo. He preserved the error.

Nevertheless, Glenn's argument fails on the merits. The arbitration agreement with Nordic calls for appeals of an arbitration award under chapter 7.04A RCW, which applies to voluntary arbitration.⁵ This chapter does not apply to mandatory arbitrations. RCW 7.04A.030(3) (citing chapter 7.06 RCW). The

contract is alleged to be one-sided or overly harsh." Zuver v. Airtouch Commc'ns, Inc., 153 Wn.2d 293, 303, 103 P.3d 753 (2004) (quoting Schroeder v. Fageol Motors, Inc., 86 Wn.2d 256, 260, 544 P.2d 20 (1975)). We disagree that this provision is substantively unconscionable. It allows for either party to request that the superior court appoint a particular arbitrator if agreement between the parties fail. Thus, it is neither one-sided nor overly harsh.

⁵ The arbitration agreement actually refers to former chapter 7.04 RCW, which was repealed in 2005 and effective January 1, 2006. See former RCW 7.04.010 through .220 (2005), repealed by LAWS OF 2005, ch. 433, §§ 1-32. The trial court interpreted this contract provision to refer to chapter 7.04A RCW, a finding that is not challenged on appeal.

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mandatory arbitration rules under which Glenn requests a trial de novo apply only to chapter 7.06 RCW. MAR 1.1. Thus, the rules by which Glenn made his trial de novo request do not apply to the parties' arbitration.

Glenn argues that the parties stipulated to mandatory arbitration rules by agreement. Parties may stipulate to enter into arbitration under mandatory arbitration rules in civil matters that are not otherwise subject to mandatory arbitration. MAR 8.1. Any ambiguity with respect to whether the parties invoked mandatory arbitration is resolved in favor of voluntary binding arbitration. Dahl v. Parquet & Colonial Hardwood Floor Co., 108 Wn. App. 403, 412, 30 P.3d 537 (2001). Glenn and Nordic did not invoke mandatory arbitration and the accompanying rules in their agreement for services. They agreed to conduct their arbitration under the mandatory arbitration rules "to the maximum extent possible."⁶ This is not sufficient to stipulate to arbitration under mandatory arbitration rules. The trial court did not err by striking the request for a trial de novo under MAR 7.1.

Attorney Fees

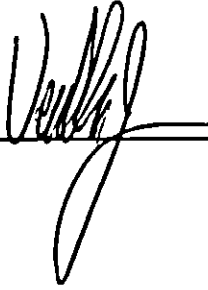
Nordic requests an award of attorney fees on appeal. Under RCW 60.04.181(3), the prevailing party in a lien foreclosure action may be awarded reasonable attorney fees and costs on appeal. We award Nordic reasonable attorney fees and costs on appeal, subject to compliance with RAP 18.1.

⁶ CP at 51.

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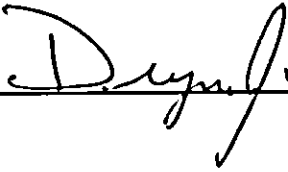
Affirmed.

WE CONCUR:



A handwritten signature in cursive script, appearing to be 'V. Kelly', written over a horizontal line.

Trickey, J



A handwritten signature in cursive script, appearing to be 'D. Dwyer', written over a horizontal line.

[United States Code Annotated](#)

[Constitution of the United States](#)

[Annotated](#)

[Amendment XIV. Citizenship; Privileges and Immunities; Due Process; Equal Protection; Apportionment of Representation; Disqualification of Officers; Public Debt; Enforcement](#)

U.S.C.A. Const. Amend. XIV-Full Text

AMENDMENT XIV. CITIZENSHIP; PRIVILEGES AND IMMUNITIES; DUE
PROCESS; EQUAL PROTECTION; APPOINTMENT OF REPRESENTATION;
DISQUALIFICATION OF OFFICERS; PUBLIC DEBT; ENFORCEMENT

[Currentness](#)

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Section 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Section 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

<Section 1 of this amendment is further displayed in separate documents according to subject matter,>

<see [USCA Const Amend. XIV, § 1-Citizens](#)>

Petition for Review Appx 10

<see [USCA Const Amend. XIV, § 1-Privileges](#)>

<see [USCA Const Amend. XIV, § 1-Due Proc](#)>

<see [USCA Const Amend. XIV, § 1-Equal Protect](#)>

<sections 2 to 5 of this amendment are displayed as separate documents,>

<see [USCA Const Amend. XIV, § 2](#),>

<see [USCA Const Amend. XIV, § 3](#),>

<see [USCA Const Amend. XIV, § 4](#),>

<see [USCA Const Amend. XIV, § 5](#),>

U.S.C.A. Const. Amend. XIV-Full Text, USCA CONST Amend. XIV-Full Text
Current through P.L. 115-193.

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West's Revised Code of Washington Annotated
Constitution of the State of Washington (Refs & Annos)
Article 1. Declaration of Rights (Refs & Annos)

West's RCWA Const. Art. 1, § 3

§ 3. Personal Rights

[Currentness](#)

No person shall be deprived of life, liberty, or property, without due process of law.

Credits

Adopted 1889.

[Notes of Decisions \(2208\)](#)

West's RCWA Const. Art. 1, § 3, WA CONST Art. 1, § 3

Current through amendments approved 11-8-2016.

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West's Revised Code of Washington Annotated
Title 7. Special Proceedings and Actions (Refs & Annos)
Chapter 7.04A. Uniform Arbitration Act (Refs & Annos)

West's RCWA 7.04A.090

7.04A.090. Initiation of arbitration

Effective: July 28, 2013

[Currentness](#)

(1) A person initiates an arbitration proceeding by giving notice in a record to the other parties to the agreement to arbitrate in the agreed manner between the parties or, in the absence of agreement, by mail certified or registered, return receipt requested and obtained, or by service as authorized for the initiation of a civil action. The notice must describe the nature of the controversy and the remedy sought.

(2) Unless a person interposes an objection as to lack or insufficiency of notice under [RCW 7.04A.150\(3\)](#) not later than the commencement of the arbitration hearing, the person's appearance at the hearing waives any objection to lack of or insufficiency of notice.

(3) A claim sought to be arbitrated is subject to the same limitations of time for the commencement of actions as if the claim had been asserted in a court.

Credits

[[2013 c 92 § 1](#), eff. July 28, 2013; [2005 c 433 § 9](#), eff. Jan. 1, 2006.]

[Notes of Decisions \(5\)](#)

West's RCWA 7.04A.090, WA ST 7.04A.090

Current with all effective legislation from the 2018 Regular Session of the Washington Legislature.

West's Revised Code of Washington Annotated
Part IV Rules for Superior Court
Superior Court Mandatory Arbitration Rules (Mar)
VIII. General Provisions

Superior Court Mandatory Arbitration Rules, MAR 8.1

RULE 8.1. STIPULATIONS

Currentness

(a) Generally. No agreement or consent between parties or lawyers relating to the conduct of the arbitration proceedings, the purport of which is disputed, will be regarded by the arbitrator unless the agreement or consent is made at the arbitration hearing, or unless the agreement or consent is in writing and signed by the lawyers or parties denying the same.

(b) To Arbitrate Other Cases. The parties may stipulate to enter into arbitration under these rules in a civil matter that would not otherwise be subject to arbitration under rule 1.2. A case transferred to arbitration by stipulation is subject to the arbitration rules in their entirety, except as otherwise agreed under section (a).

Notes of Decisions (1)

MAR 8.1, WA R SUPER CT ARB MAR 8.1

Annotated Superior Court Criminal Rules, including the Special Proceedings Rules -- Criminal, Criminal Rules for Courts of Limited Jurisdiction, and the Washington Child Support Schedule Appendix are current with amendments received through 3/1/18. Notes of decisions annotating these court rules are current through current cases available on Westlaw. Other state rules are current with amendments received through 3/1/18.

West's Revised Code of Washington Annotated
Part IV Rules for Superior Court
Superior Court Mandatory Arbitration Rules (Mar)
V. Hearing

Superior Court Mandatory Arbitration Rules, MAR 5.2

RULE 5.2. PREHEARING STATEMENT OF PROOF

Currentness

At least 14 days prior to the date of the arbitration hearing, each party shall file with the arbitrator and serve upon all other parties a statement containing a list of witnesses whom the party intends to call at the arbitration hearing and a list of exhibits and documentary evidence, including but not limited to evidence authorized under rule 5.3(d). The statement shall contain a brief description of the matters about which each witness will be called to testify, and whether that testimony is anticipated to be provided in writing, in person, or by telephone. Each party, upon request, shall make the exhibits and other documentary evidence available for inspection by other parties. A party failing to comply with this rule or failing to comply with a discovery order may not present at the hearing the witness, exhibit, or documentary evidence required to be disclosed or made available, except with the permission of the arbitrator.

Credits

[Amended effective September 1, 1994.]

MAR 5.2, WA R SUPER CT ARB MAR 5.2

Annotated Superior Court Criminal Rules, including the Special Proceedings Rules -- Criminal, Criminal Rules for Courts of Limited Jurisdiction, and the Washington Child Support Schedule Appendix are current with amendments received through 3/1/18. Notes of decisions annotating these court rules are current through current cases available on Westlaw. Other state rules are current with amendments received through 3/1/18.

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West's Revised Code of Washington Annotated
 Part IV Rules for Superior Court
 Superior Court Mandatory Arbitration Rules (Mar)
 V. Hearing

Superior Court Mandatory Arbitration Rules, MAR 5.3

RULE 5.3. CONDUCT OF HEARING--WITNESSES--RULES OF EVIDENCE

Currentness

(a) Witnesses. The arbitrator shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to (1) make the interrogation and presentation effective for the ascertainment of the facts, (2) avoid needless consumption of time, and (3) protect witnesses from harassment or undue embarrassment. In the discretion of the arbitrator, a witness may testify by telephone. A witness shall be placed under oath or affirmation by the arbitrator prior to presenting testimony, a violation of which oath shall be deemed a contempt of court in addition to any other penalties that may be provided by law. The arbitrator may question a witness.

(b) Recording. The hearing may be recorded electronically or otherwise by any party or the arbitrator.

(c) Rules of Evidence, Generally. The extent to which the Rules of Evidence will be applied shall be determined in the exercise of discretion of the arbitrator. The Rules of Evidence, to the extent determined by the arbitrator to be applicable, should be liberally construed in order to promote justice. The parties should stipulate to the admission of evidence when there is no genuine issue as to its relevance or authenticity.

(d) Certain Documents Presumed Admissible. The documents listed below, if relevant, are presumed admissible at an arbitration hearing, but only if (1) the party offering the document serves on all parties a notice, accompanied by a copy of the document and the name, address and telephone number of its author or maker, at least 14 days prior to the hearing in accordance with [MAR 5.2](#); and (2) the party offering the document similarly furnishes all other related documents from the same author or maker. This rule does not restrict argument or proof relating to the weight of the evidence admitted, nor does it restrict the arbitrator's authority to determine the weight of the evidence after hearing all of the evidence and the arguments of opposing parties. The documents presumed admissible under this rule are:

(1) A bill, report, chart, or record of a hospital, doctor, dentist, registered nurse, licensed practical nurse, physical therapist, psychologist or other health care provider, on a letterhead or billhead;

(2) A bill for drugs, medical appliances or other related expenses on a letterhead or billhead;

(3) A bill for, or an estimate of, property damage on a letterhead or billhead. In the case of an estimate, the party intending to offer the estimate shall forward with the notice to the adverse party a statement indicating whether or not the property was repaired, and if it was, whether the estimated repairs were made in full or in part, attaching a copy of the receipted bill showing the items of repair and the amount paid;

(4) A police, weather, wage loss, or traffic signal report, or standard United States government life expectancy table to the extent it is admissible under the Rules of Evidence, but without the need for formal proof of authentication or identification;

(5) A photograph, videotape, x-ray, drawing, map, blueprint or similar documentary evidence, to the extent it is admissible under the Rules of Evidence, but without the need for formal proof of authentication or identification;

(6) The written statement of any other witness, including the written report of an expert witness, and including a statement of opinion which the witness would be allowed to express if testifying in person, if it is made by affidavit or by declaration under penalty of perjury;

(7) A document not specifically covered by any of the foregoing provisions but having equivalent circumstantial guaranties of trustworthiness, the admission of which would serve the interests of justice.

(e) Opposing Party May Subpoena Author or Maker as Witness. Any other party may subpoena the author or maker of a document or videotape admissible under this rule, at that party's expense, and examine the author or maker as if under cross examination.

Credits

[Amended effective September 1, 1989; September 1, 1994.]

MAR 5.3, WA R SUPER CT ARB MAR 5.3

Annotated Superior Court Criminal Rules, including the Special Proceedings Rules -- Criminal, Criminal Rules for Courts of Limited Jurisdiction, and the Washington Child Support Schedule Appendix are current with amendments received through 3/1/18. Notes of decisions annotating these court rules are current through current cases available on Westlaw. Other state rules are current with amendments received through 3/1/18.

West's Revised Code of Washington Annotated
Part IV Rules for Superior Court
Superior Court Mandatory Arbitration Rules (Mar)
I. Scope and Purpose of Rules

Superior Court Mandatory Arbitration Rules, MAR 1.3

RULE 1.3. RELATIONSHIP TO SUPERIOR COURT JURISDICTION AND OTHER RULES

Currentness

(a) Superior Court Jurisdiction. A case filed in the superior court remains under the jurisdiction of the superior court in all stages of the proceeding, including arbitration. Except for the authority expressly given to the arbitrator by these rules, all issues shall be determined by the court.

(b) Which Rules Apply.

(1) *Generally.* Until a case is assigned to the arbitrator under rule 2.3, the rules of civil procedure apply. After a case is assigned to the arbitrator, these arbitration rules apply except where an arbitration rule states that a civil rule applies.

(2) *Service.* After a case is assigned to an arbitrator, all pleadings and other papers shall be served in accordance with [CR 5](#) and filed with the arbitrator.

(3) *Time.* Time shall be computed in accordance with [CR 6\(a\) and \(e\)](#).

(4) *Voluntary Dismissal.* The arbitrator shall have the power to dismiss an action, under the same conditions and with the same effect as set forth in [CR 41\(a\)](#), at any time prior to the filing of an award.

Credits

[Amended effective September 1, 1989; September 1, 1991.]

[Notes of Decisions \(5\)](#)

MAR 1.3, WA R SUPER CT ARB MAR 1.3

Annotated Superior Court Criminal Rules, including the Special Proceedings Rules -- Criminal, Criminal Rules for Courts of Limited Jurisdiction, and the Washington Child Support Schedule Appendix are current with amendments received through 3/1/18. Notes of decisions annotating these court rules are current through current cases available on Westlaw. Other state rules are current with amendments received through 3/1/18.

West's Revised Code of Washington Annotated
Part IV Rules for Superior Court
Superior Court Mandatory Arbitration Rules (Mar)
V. Hearing

Superior Court Mandatory Arbitration Rules, MAR 5.4

RULE 5.4. ABSENCE OF PARTY AT HEARING

Currentness

The arbitration hearing may proceed, and an award may be made, in the absence of any party who after due notice fails to participate or to obtain a continuance. If a defendant is absent, the arbitrator shall require the plaintiff to submit the evidence required for the making of an award. In a case involving more than one defendant, the absence of a defendant does not preclude the arbitrator from assessing as part of the award damages against the defendant or defendants who are absent. The arbitrator, for good cause shown, may allow an absent party an opportunity to appear at a subsequent hearing before making an award. A party who fails to participate without good cause waives the right to a trial de novo.

Notes of Decisions (3)

MAR 5.4, WA R SUPER CT ARB MAR 5.4

Annotated Superior Court Criminal Rules, including the Special Proceedings Rules -- Criminal, Criminal Rules for Courts of Limited Jurisdiction, and the Washington Child Support Schedule Appendix are current with amendments received through 3/1/18. Notes of decisions annotating these court rules are current through current cases available on Westlaw. Other state rules are current with amendments received through 3/1/18.

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West's Revised Code of Washington Annotated
Part IV Rules for Superior Court
Superior Court Mandatory Arbitration Rules (Mar)
IV. Procedures After Assignment

Superior Court Mandatory Arbitration Rules, MAR 4.3

RULE 4.3. SUBPOENA

Currentness

In accordance with [CR 45](#), a lawyer of record or the arbitrator may issue a subpoena for the attendance of a witness at the arbitration hearing or for the production of documentary evidence at the hearing. A subpoena for discovery purposes may be issued only with the permission of the arbitrator or by stipulation.

MAR 4.3, WA R SUPER CT ARB MAR 4.3

Annotated Superior Court Criminal Rules, including the Special Proceedings Rules -- Criminal, Criminal Rules for Courts of Limited Jurisdiction, and the Washington Child Support Schedule Appendix are current with amendments received through 3/1/18. Notes of decisions annotating these court rules are current through current cases available on Westlaw. Other state rules are current with amendments received through 3/1/18.

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West's Revised Code of Washington Annotated
Part IV Rules for Superior Court
Superior Court Mandatory Arbitration Rules (Mar)
IV. Procedures After Assignment

Superior Court Mandatory Arbitration Rules, MAR 4.2

RULE 4.2. DISCOVERY

Currentness

After the assignment of a case to the arbitrator, a party may demand a specification of damages under [RCW 4.28.360](#), may request from the arbitrator an examination under [CR 35](#), may request admissions from a party under [CR 36](#), and may take the deposition of another party, unless the arbitrator orders otherwise. No additional discovery shall be allowed, except as the parties may stipulate or as the arbitrator may order. The arbitrator will allow discovery only when reasonably necessary. The conference requirements of [CR 26\(i\)](#) shall not apply to motions to the arbitrator to allow additional discovery under this rule.

Credits

[Amended effective September 1, 2009.]

[Notes of Decisions \(3\)](#)

MAR 4.2, WA R SUPER CT ARB MAR 4.2

Annotated Superior Court Criminal Rules, including the Special Proceedings Rules -- Criminal, Criminal Rules for Courts of Limited Jurisdiction, and the Washington Child Support Schedule Appendix are current with amendments received through 3/1/18. Notes of decisions annotating these court rules are current through current cases available on Westlaw. Other state rules are current with amendments received through 3/1/18.

West's Revised Code of Washington Annotated
Title 7. Special Proceedings and Actions (Refs & Annos)
Chapter 7.06. Mandatory Arbitration of Civil Actions (Refs & Annos)

West's RCWA 7.06.020

7.06.020. Actions subject to mandatory arbitration--Court may authorize mandatory arbitration of maintenance and child support (*Effective until September 1, 2018*)

Effective: [See Text Amendments] to August 31, 2018

[Currentness](#)

(1) All civil actions, except for appeals from municipal or district courts, which are at issue in the superior court in counties which have authorized arbitration, where the sole relief sought is a money judgment, and where no party asserts a claim in excess of fifteen thousand dollars, or if approved by the superior court of a county by two-thirds or greater vote of the judges thereof, up to fifty thousand dollars, exclusive of interest and costs, are subject to mandatory arbitration.

(2) If approved by majority vote of the superior court judges of a county which has authorized arbitration, all civil actions which are at issue in the superior court in which the sole relief sought is the establishment, termination or modification of maintenance or child support payments are subject to mandatory arbitration. The arbitrability of any such action shall not be affected by the amount or number of payments involved.

Credits

[2005 c 472 § 2, eff. July 24, 2005. Prior: 1987 c 212 § 101; 1987 c 202 § 127; 1985 c 265 § 3; 1982 c 188 § 1; 1979 c 103 § 2.]

[Notes of Decisions \(33\)](#)

West's RCWA 7.06.020, WA ST 7.06.020

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West's Revised Code of Washington Annotated
Title 7. Special Proceedings and Actions (Refs & Annos)
Chapter 7.04A. Uniform Arbitration Act (Refs & Annos)

West's RCWA 7.04A.150

7.04A.150. Arbitration process

Effective: January 1, 2006

[Currentness](#)

(1) The arbitrator may conduct the arbitration in such manner as the arbitrator considers appropriate so as to aid in the fair and expeditious disposition of the proceeding. The authority conferred upon the arbitrator includes the power to hold conferences with the parties to the arbitration proceeding before the hearing and to determine the admissibility, relevance, materiality, and weight of any evidence.

(2) The arbitrator may decide a request for summary disposition of a claim or particular issue by agreement of all interested parties or upon request of one party to the arbitration proceeding if that party gives notice to all other parties to the arbitration proceeding and the other parties have a reasonable opportunity to respond.

(3) The arbitrator shall set a time and place for a hearing and give notice of the hearing not less than five days before the hearing. Unless a party to the arbitration proceeding interposes an objection to lack of or insufficiency of notice not later than the commencement of the hearing, the party's appearance at the hearing waives the objection. Upon request of a party to the arbitration proceeding and for good cause shown, or upon the arbitrator's own initiative, the arbitrator may adjourn the hearing from time to time as necessary but may not postpone the hearing to a time later than that fixed by the agreement to arbitrate for making the award unless the parties to the arbitration proceeding consent to a later date. The arbitrator may hear and decide the controversy upon the evidence produced although a party who was duly notified of the arbitration proceeding did not appear. The court, on request, may direct the arbitrator to promptly conduct the hearing and render a timely decision.

(4) If an arbitrator orders a hearing under subsection (3) of this section, the parties to the arbitration proceeding are entitled to be heard, to present evidence material to the controversy, and to cross-examine witnesses appearing at the hearing.

(5) If there is more than one arbitrator, all of them shall conduct the hearing under subsection (3) of this section; however, a majority shall decide any issue and make a final award.

(6) If an arbitrator ceases, or is unable, to act during the arbitration proceeding, a replacement arbitrator must be appointed in accordance with [RCW 7.04A.110](#) to continue the hearing and to decide the controversy.

Credits

[[2005 c 433 § 15](#), eff. Jan. 1, 2006.]

[Notes of Decisions \(13\)](#)

West's RCWA 7.04A.150, WA ST 7.04A.150

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West's Revised Code of Washington Annotated
Title 7. Special Proceedings and Actions (Refs & Annos)
Chapter 7.04A. Uniform Arbitration Act (Refs & Annos)

West's RCWA 7.04A.230

7.04A.230. Vacating award

Effective: January 1, 2006

[Currentness](#)

(1) Upon motion of a party to the arbitration proceeding, the court shall vacate an award if:

(a) The award was procured by corruption, fraud, or other undue means;

(b) There was:

(i) Evident partiality by an arbitrator appointed as a neutral;

(ii) Corruption by an arbitrator; or

(iii) Misconduct by an arbitrator prejudicing the rights of a party to the arbitration proceeding;

(c) An arbitrator refused to postpone the hearing upon showing of sufficient cause for postponement, refused to consider evidence material to the controversy, or otherwise conducted the hearing contrary to [RCW 7.04A.150](#), so as to prejudice substantially the rights of a party to the arbitration proceeding;

(d) An arbitrator exceeded the arbitrator's powers;

(e) There was no agreement to arbitrate, unless the person participated in the arbitration proceeding without raising the objection under [RCW 7.04A.150\(3\)](#) not later than the commencement of the arbitration hearing; or

(f) The arbitration was conducted without proper notice of the initiation of an arbitration as required in [RCW 7.04A.090](#) so as to prejudice substantially the rights of a party to the arbitration proceeding.

(2) A motion under this section must be filed within ninety days after the movant receives notice of the award in a record under [RCW 7.04A.190](#) or within ninety days after the movant receives notice of an arbitrator's award in a record on a motion to modify or correct an award under [RCW 7.04A.200](#), unless the motion is predicated upon the ground that the award was procured by corruption, fraud, or other undue means, in which case it must be filed within ninety days after such a ground is known or by the exercise of reasonable care should have been known by the movant.

(3) In vacating an award on a ground other than that set forth in subsection (1)(e) of this section, the court may order a rehearing before a new arbitrator. If the award is vacated on a ground stated in subsection (1)(c), (d), or (f) of this section, the court may order a rehearing before the arbitrator who made the award or the arbitrator's successor. The arbitrator must render the decision in the rehearing within the same time as that provided in [RCW 7.04A.190\(2\)](#) for an award.

(4) If a motion to vacate an award is denied and a motion to modify or correct the award is not pending, the court shall confirm the award.

Credits

[[2005 c 433 § 23](#), eff. Jan. 1, 2006.]

[Notes of Decisions \(129\)](#)

West's RCWA 7.04A.230, WA ST 7.04A.230

Current with all effective legislation from the 2018 Regular Session of the Washington Legislature.

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