

NO. 94320-6

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

JAMES D. BEARDEN,

Petitioner,

vs.

DOLPHUS A. McGILL,

Respondent.

APPEAL FROM SNOHOMISH COUNTY SUPERIOR COURT
Honorable George F. B. Appel, Judge

RESPONDENT'S ANSWER TO AMICUS CURIAE WSAJF BRIEF

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I. INTRODUCTION

Respondent Dolphus McGill (“Mr. McGill”) offers this answer to Brief of Amicus Curiae Washington State Association for Justice Foundation (hereafter “Amicus”).

II. SUMMARY OF ARGUMENT

Amicus suggests that interpreting RCW 7.06.060(1) and MAR 7.3 under the “plain meaning” rule, trial courts should compare the final arbitration award including costs and fees with the judgment after trial de novo including fees and costs in determining whether a party improved his position. Amicus’s proposal ignores the Legislature’s directives and established rules of statutory construction and conflicts with the policies and purpose of Washington’s mandatory arbitration system.

Amicus offers no reason to depart from the *Bearden II* “ordinary person” analysis. Under *Bearden II*, an ordinary person would understand that a defendant’s pretrial position is the arbitrator’s compensatory award and the party’s posttrial position is the jury verdict. In other words, the arbitrator’s compensatory award on the merits should be compared to the jury’s compensatory award on the merits. Costs are not considered in determining whether a defendant requesting trial de novo improved his or her position at the trial for MAR 7.3 purposes. This comports with the Legislature’s directives when it said a party who fails to improve his or her

position on trial de novo, according to fundamental rules of statutory interpretation. RCW 7.06.060(1). It is also consistent with the purpose of the mandatory arbitration rules.

III. ARGUMENT

A. AMICUS'S PROPOSAL IGNORES THE STATUTORY LANGUAGE, FUNDAMENTAL RULES OF STATUTORY CONSTRUCTION, AND THE LEGISLATIVE INTENT.

Amicus advocates a “plain meaning” analysis to interpret RCW 7.06.060(1) and MAR 7.3 and erroneously argues that under this approach, courts must compare the final arbitration award including costs and fees with the trial de novo judgment including costs and fees in assessing whether a party improved its position under MAR 7.3. Amicus baldly argues that RCW 7.60.060(1) and MAR 7.3 utilize “broad language” and therefore the plain meaning of the language supports a comparison of the final arbitration award with the trial de novo judgment, including fees and costs. (Amicus Brief at 8) Amicus is misguided.

If this Court employs the plain meaning analysis, it will conclude that statutory costs and fees are excluded from the MAR 7.3 comparison. When interpreting a statute, the fundamental objective is to ascertain and give effect to the Legislature's intent. *Hama Hama Co. v. Shorelines Hr'gs Bd.*, 85 Wn.2d 441, 445, 536 P.2d 157 (1975). When possible, courts derive legislative intent from the plain language enacted by the Legislature,

considering the text of the provision in question, the context of the statute in which the provision is found, related provisions, amendments to the provision, and the statutory scheme as a whole. *Columbia Riverkeeper v. Port of Vancouver USA*, 188 Wn.2d 421, 432, 395 P.3d 1031, 1037 (2017) citing *State, Dep't of Ecology v. Campbell & Gwinn, LLC*, 146 Wn.2d 1, 10-11, 43 P.3d 4 (2002). If the meaning of the statute is plain on its face, then the court must give effect to that meaning as an expression of legislative intent. *Id.* If, after this inquiry, the statute remains ambiguous or unclear, it is appropriate to resort to canons of construction and legislative history. *Id.* at 12.

Here, the meaning of the phrase “improve the party's position on the trial de novo” is at issue. This language is anything but plain on its face, as evidenced by the various interpretations offered by the parties, Amicus, and appellate courts. Therefore, this Court should look to amendments to the statute and related statutory provisions to discern legislative intent. *Id.* at 10-11. If this Court determines that the language “improve the party's position on the trial de novo” still remains ambiguous or unclear, it is appropriate to resort to canons of construction and legislative history.

An analysis of the relevant statutory language, legislative history and statutory construction principles reveals that statutory costs and fees are excluded from the MAR 7.3 attorney fees analysis.

The Legislature specifically excluded “interest and costs” from determining whether a case is subject to mandatory arbitration. RCW 7.06.020, which defines the cases subject to mandatory arbitration, explains that non-maintenance or child support cases are only subject to mandatory arbitration if: (1) the sole relief is a monetary judgment and (2) the monetary judgment, “exclusive of interest and costs,” is less than \$50,000. RCW 7.06.020(1). Because RCW 7.06.060(1) and MAR 7.3 are silent as to inclusion or exclusion of fees and costs, the same test from RCW 7.06.020—excluding “interest and costs”—should apply when determining whether a defendant improves his position on trial de novo.

Further, when the Legislature amended RCW 7.06.060 in 2002, it added subsection (3), which allows the “prevailing party” to recover the statutory costs for both the arbitration and the trial. *See* SB 5373 in Appendix. The statute treats a “prevailing party” entitled to RCW ch. 4.84 costs as a separate and distinct concept from a requesting party improving his or her position on the trial de novo. *State v. Tracer*, 173 Wn.2d 708, 718, 272 P.3d 199 (2012) (basic rule of statutory construction that Legislature intends different terms used in same statute to have different meanings). Based on the clear language of the statute, the Legislature intended the entities to be distinct.

MAR 6.1 and 6.4 discuss the arbitration “award” and “costs” separately. MAR 6.1 describes the form and content of the arbitration award as follows:

The award shall be in writing and signed by the arbitrator. The arbitrator shall determine all issues raised by the pleadings, including a determination of any damages. Findings of fact and conclusions of law are not required.

MAR 6.1 (emphasis added). By the rule’s language, the arbitration award focuses on the issues of the case as resolved by the damages determination. Costs are not contemplated in MAR 6.1’s discussion of the award.

Costs are separately addressed in MAR 6.4, which sets forth the manner in which statutory costs and attorney fees are addressed by the arbitrator. MAR 6.4 was amended in 2011 to clarify “the authority of the arbitrator to award costs and attorney fees.”¹ 4A Teglund, WASH. PRAC. *Rules Practice* at 14-15 (7th ed. Supp. 2014-15). Notably, MAR 7.3, which allows a court to award attorney fees against a party who “fails to improve [his] position on the trial de novo,” was not amended in 2011. If statutory costs and fees are to be included in the comparison calculations, MAR 7.3 could have been amended also. It was not.

¹ Purpose statement to proposed amendment to MAR 3.2(a), Wash. St. Reg. 11-01-023 (Dec. 2, 2010).

Because the statute and rules treat the status of prevailing party entirely separate from the issue of whether a party improved his position for purposes of MAR 7.3 attorney fees, it follows that courts also treat the related issue of statutory costs awarded to the prevailing party as distinct from the determination of whether the appealing party improved his position. Statutory costs are an entirely separate subject from improving one's position on the trial de novo.

B. AMICUS ASKS THIS COURT TO REWRITE RCW 7.06.060 AND MAR 7.3 CONTRARY TO LEGISLATIVE DIRECTIVES.

This Court has the duty to effectuate the Legislature's intent in enacting the statute and rule. The Court applies the language as the Legislature wrote it, not amend the statute by judicial construction. *Salts v. Estes*, 133 Wn.2d 160, 170, 943 P.2d 275 (1997). "We cannot add words or clauses to an unambiguous statute when the legislature has chosen not to include that language. We assume the legislature 'means exactly what it says.'" *State v. Delgado*, 148 Wn.2d 723, 727-28, 63 P.3d 792 (2003). "Courts do not amend statutes by judicial construction, nor rewrite statutes 'to avoid difficulties in construing and applying them.'" *Millay v. Cam*, 135 Wn.2d 193, 203, 955 P.2d 791 (1998) (citation omitted). The Court uses the same interpretation approach when interpreting rules. *Miller v. Arctic Alaska Fisheries Corp.*, 133 Wn.2d 250, 258, 944 P.2d 1005 (1997).

Amicus's position requires that this Court read words into the statute and rule. But RCW 7.06.060(1) does not say a party fails to improve his or her position on trial de novo when the arbitrator's award plus prevailing party costs is less than the jury verdict plus prevailing party costs. Amicus essentially asks this Court to rewrite RCW 7.06.060(1) and MAR 7.3. The Legislature has not done so. This Court has not done so in its rulemaking authority. This Court should not, under the semblance of interpreting the statute and rule, rewrite them.

As it stands, there is nothing about the language of the relevant rule and statutes or the legislative history to suggest the Legislature intended that statutory costs and fees be added to the compensatory damages awards for purposes of determining the propriety of MAR 7.3 attorney fees.

C. EXCLUDING STATUTORY COSTS FROM THE PRETRIAL AND POSTTRIAL COMPARISON IS CONSISTENT WITH FUNDAMENTAL RULES OF STATUTORY CONSTRUCTION, LEGISLATIVE INTENT, AND PUBLIC POLICY.

Amicus proposes that this Court apply a statutory plain language analysis in determining whether a defendant requesting trial de novo improved his or her position at the trial. Amicus argues against *Bearden II's* application of the "ordinary person" test. Amicus, however, does not offer any persuasive reason not to apply the ordinary person analysis. The *only* reason Amicus cites is that this Court has not utilized the ordinary

person standard outside the context of determining the amount of an offer of compromise under RCW 7.06.050(1)(b). (Amicus Brief at 5-7) See *Nelson v. Erickson*, 186 Wn.2d 385, 377 P.3d 196 (2016), *Niccum v. Enquist*, 175 Wn.2d 441, 452, 286 P.3d 966 (2012).

The fact that this Court has not applied the ordinary person standard in this exact context is irrelevant. This Court has simply never decided the issue of including statutory costs in the MAR 7.3 analysis after an arbitration award.

Amicus correctly points out that this Court has only analyzed whether a party improved its position at trial pursuant to RCW 7.06.060(1) and MAR 7.3 in three cases: *Nelson v. Erickson*, 186 Wn.2d 385 (2016), *Niccum v. Enquist*, 175 Wn.2d 441 (2012), and *Haley v. Highland*, 142 Wn.2d 135, 12 P.3d 119 (2000). Two of those cases, *Nelson* and *Niccum*, involved fee awards at trial de novo following offers of compromise under RCW 7.06.050(1)(b). In both cases, this Court applied the ordinary person test in determining whether the appealing party improved his position at trial. Applying this test, the *Niccum* and *Nelson* opinions compared only the compromise offer amount to the jury trial award. Costs were excluded in the comparison. Amicus offers no persuasive reason to distinguish this case from *Nelson* or *Niccum*, where this Court looked only to the jury verdict for MAR 7.3 comparison purposes.

Similarly, Amicus offers no compelling reason to distinguish between a compromise offer and the arbitrator's award in determining whether the de novoing party has failed to improve his position at trial. In fact, the mandatory arbitration statutes treat compromise offers and the arbitrator's award interchangeably. RCW 7.06.050(1)(b) directs courts to "replace" the arbitrator's award with the "amount of the offer of compromise" for determining whether the appealing party has failed to improve that party's position at trial.² Courts should not treat them differently when the statute does not.

Under Amicus's rationale, courts will apply the ordinary person standard when determining whether a party failed to improve his position for compromise offers under MAR 7.3, but apply the different "plain meaning" standard when making the same determination for arbitration awards under MAR 7.3. This is incongruous. Applying the uniform ordinary person analysis, which this Court has already adopted and applied repeatedly when analyzing MAR 7.3 attorney fee awards, to both compromise offers and arbitration awards under MAR 7.3 promotes

² 7.06.050(1)(b) provides, "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."

consistency for the courts and predictability for litigants. *See Nelson v. Erickson*, 186 Wn.2d 385 (2016), *Niccum v. Enquist*, 175 Wn.2d at 452, (2012).

As Amicus points out, the third case in which this Court has analyzed whether a party improved its position at trial pursuant to RCW 7.06.060(1) and MAR 7.3 is *Haley v. Highland*. (Amicus Brief at 6) *Haley* involved a trial de novo after an arbitration award without a compromise offer. In an attempt to convince this Court to apply the plain language analysis over the ordinary person test, Amicus argues that the Court in *Haley* made no reference to the ordinary person test. While true, the lack of a reference does not mean this Court rejected the ordinary person test on a trial de novo from an arbitration award. In *Haley*, this Court did even not reach the issue of whether attorney fee awards should be considered in determining whether a party improved his position at trial. The record did not establish whether the party seeking to include attorney fees in the comparison had requested attorney fees at arbitration. *Haley v. Highland*, 142 Wn.2d at 154.

While this Court explained that it need not decide whether an attorney fee award should be considered in making the MAR 7.3 determination, this Court noted it generally agreed with the view that comparing the jury verdict for compensatory damages with an arbitrator's

combined award of compensatory damages, attorney fees, and costs is inequitable (“We generally agree with the Court of Appeals' view that only comparables are to be compared....”) *Haley*, 142 Wn.2d at 154 citing *Wilkerson v. United Inv., Inc.*, 62 Wn. App. 712, 717, 815 P.2d 293 (1991), *rev. denied*, 118 Wn.2d 1013 (1992). An ordinary person test should be applied and *Bearden II* should be affirmed.

D. APPLYING THE ORDINARY PERSON TEST, COMPENSATORY DAMAGES AT ARBITRATION SHOULD BE COMPARED WITH COMPENSATORY DAMAGES AT TRIAL DE NOVO, EXCLUSIVE OF STATUTORY COSTS AWARDED AT EITHER PROCEEDING.

Despite disclaiming application of the ordinary person test, Amicus argues an ordinary person would compare the judgment entered following a trial, including any award of statutory fees and costs, with the award following arbitration, including any award of statutory fees and costs, in determining whether a party improved its position. Amicus cites no authority to support this argument. Without legal authority for the argument, this Court should disregard it. RAP 10.3(a)(6); *McKee v. Am. Home Prods. Corp.*, 113 Wn.2d 701, 705, 782 P.2d 1045 (1989).

Assuming this Court applies the ordinary person standard as the Court of Appeals did in *Bearden II*, an ordinary person would in fact understand that the arbitrator’s compensatory award on the merits should be compared to the jury’s compensatory award on the merits in determining

whether a defendant improved his or her position for MAR 7.3 purposes. Logically, compensatory damage awards and costs should not be lumped together for purposes of determining whether a party improved his position at trial. The arbitration and jury awards represent the factual assessment of the merits of the case. The post-arbitration and post-trial award of costs are legal determinations based on statute – not the merits of the case – so an ordinary person would not include them.

An ordinary person would view a defendant's pre-trial position under MAR 7.3 as the arbitration award excluding statutory costs. Including statutory costs in the pretrial position is inappropriate because once the de novo request is asserted, the prevailing party who sought costs at arbitration is not entitled to those statutory costs. *Bearden v. McGill*, 197 Wn. App. 852, 860, 391 P.3d 577 (2017), *rev. granted*, 188 Wn.2d 1015, 396 P.3d 343 (2017).

An ordinary person would also conclude that a defendant's post-trial position is the jury's award of compensatory damages, exclusive of statutory costs. By the very nature of the proceedings, recoverable statutory costs and fees are higher at trial than at arbitration. Washington's Legislature adopted a truncated mandatory arbitration system for simpler, smaller-value cases to reduce congestion and delays in the courts. *Nevers v. Fireside, Inc.*, 133 Wn.2d 804, 815, 947 P.2d 721 (1997). Discovery is

limited during the streamlined arbitration process, while discovery for the trial de novo is not restricted in the same manner. For example, only the depositions of parties can be conducted without a determination by the arbitrator that it is “reasonably necessary” in mandatory arbitration. MAR 4.2. Depositions in preparation for the trial de novo are not similarly limited. CR 30.

Although higher costs at trial de novo are expected, it is unfair to use those higher costs to determine whether a party improves its position at trial de novo. An ordinary person would not conclude that a party improved his position when that party did so only by running up a higher attorney fee or statutory cost bill at trial do novo.

This case presents the perfect example of how statutory costs, if included, can unfairly skew whether a defendant improved his or her position under MAR 7.3. Petitioner Bearden was not a more successful litigant at trial do novo simply because he was awarded more statutory costs than after arbitration. Rather, Bearden was less successful at trial than at arbitration in convincing the trier of fact of the merits of his claims – evidenced by the comparative compensatory damages awarded by the respective fact finders (the arbitrator awarded \$44,000.00 in compensatory damages while the jury awarded only \$42,500.00 for compensatory damages). (CP 109, 290-93) In other words, the jury found Bearden’s

claims to be less meritorious – from a monetary standpoint – than the arbitrator did. However, the statutory costs associated with the arbitration were considerably less than the costs petitioner Bearden claimed after trial (\$1,187.00 at arbitration versus \$3,296.39 following trial). (CP 88-89, 290-91)

Amicus spends several pages analyzing Washington appellate cases comparing a party's position after arbitration to its position after trial de novo. (Amicus Brief at 11-15). Washington courts have consistently ruled on this issue in a manner which excludes statutory costs from the equation. Instead, Washington courts have focused on comparing compensatory damages awarded at MAR with compensatory damages awarded at trial de novo. *See i.e., Tran v. Yu*, 118 Wn. App. 607, 75 P.3d 970 (2003) (the court compared the compensatory damages awarded by the arbitrator and the compensatory damages awarded at the trial de novo, excluding the statutory costs and CR 37 sanctions, so defendant did not owe attorney fees); *Wilkerson v. United Inv., Inc.*, 62 Wn. App. 712, 815 P.2d 293 (1991) (the court only compared the jury's compensatory damages award to the arbitrator's award of compensatory damages – not the attorney fees awarded at arbitration – to determine that defendant did not improve its position), *rev. denied*, 118 Wn.2d 1013 (1992); *Sultani v. Leuthy*, 86 Wn. App. 753, 943 P.2d 1122 (1997) (although the trial de novo resulted in a higher amount

of total damages from reallocation of fault, two defendants owed less at trial because they were severally liable only and were not required to pay attorney fees), *rev. denied*, 134 Wn.2d 1001 (1997).

A straight comparison of the compensatory damages awarded by the arbitrator with the compensatory damages awarded in the trial is not only the fairest approach, it is also the most uncomplicated and promotes simplicity – a main purpose of the mandatory arbitration system.

E. ADOPTING AMICUS’S WRONG APPROACH TO MAR 7.3 WILL FRUSTRATE THE POLICY AND PURPOSE BEHIND OUR MANDATORY ARBITRATION SYSTEM.

The purpose of the mandatory arbitration is to reduce congestion and delays in the courts. *Nevers v. Fireside, Inc.*, 133 Wn.2d 804, 815, 947 P.2d 721 (1997). “A supplemental goal of the mandatory arbitration statute is to discourage meritless appeals.” *Wiley v. Rehak*, 143 Wn.2d 339, 348, 20 P.3d 404 (2001); *Perkins Coie v. Williams*, 84 Wn. App. 733, 737, 929 P.2d 1215, *rev. denied*, 132 Wn.2d 1013 (1997). Justice Talmadge explained the purpose behind MAR 7.3 as follows:

[T]he possibility of MAR 7.3 fees] should compel parties to assess the arbitrator’s award and the likely outcome of a trial de novo with frankness and prudence; meritless trials de novo must be deterred.

Haley v. Highland, 142 Wn.2d at 159 (Talmadge, J. concurring).

Including statutory costs and fees in the MAR 7.3 comparison runs counter to the goal of allowing informed decisions and certainty in

determining whether an appeal is meritorious. It undermines the requesting party's ability to assess whether to pursue trial de novo because the amount of costs is unknown at the time of the appeal. Although an attorney is generally in a good position to assess the merits of the case and potential damages (based on open discovery and mechanisms such as the RCW 4.28.360 request for statement of damages), he or she is not able to fairly predict what costs opposing counsel may seek after trial do novo. By injecting an unknown amount of potential statutory costs into the equation, the de novoing party will be unable to fairly and accurately determine whether the appeal has merit. Such uncertainty thwarts the statute's purpose of discouraging only meritless appeals. *See Niccum*, 175 Wn.2d at 452. The parties are unable to assess the arbitrator's award and the likely outcome at trial with the "frankness and prudence" contemplated by Justice Talmadge. *Haley*, 142 Wn.2d at 159 (Talmadge, J. concurring).

While the Legislature intended mandatory arbitration to relieve court congestion and provide a speedy and inexpensive resolution for smaller-value claims, an interpretation of MAR 7.3 that discourages meritorious appeals would also frustrate the purpose of the mandatory arbitration system. *See Niccum*, 175 Wn. 2d at 452. *Nevers v. Fireside, Inc.*, 133 Wn.2d 804, 815, 947 P.2d 721 (1997). Amicus argues that its approach makes recovery of attorney fees under MAR 7.3 easier and disincentivizes

seeking trial de novo for the majority of litigants. (Amicus Brief at 19) But discouraging meritorious appeals is not what was contemplated by Washington's mandatory arbitration system. If it was, the Legislature could have drafted the rules to further discourage appeals, as other states have. For example, Hawaii's arbitration rules require that an appealing party in a trial de novo improve upon the arbitration award by 30% or more. *See* Hawaii Arbitration Rules, Rule 25. Similarly, Arizona requires that appealing party pay costs and fees if the judgment on the trial de novo is not more favorable by at least 23% than the arbitration award. A.R.S. § 12-133. By not requiring a certain amount of "improvement" as other states have, Washington's mandatory arbitration scheme indicates that the Legislature did not intend to discourage appeals in general – just non-meritorious appeals. The approach proposed by Amicus runs counter to the important purpose of the mandatory arbitration rules in obtaining fair and just results for litigants in smaller-value cases.

Including statutory costs also encourages manipulation of cost bills to qualify for attorney fees after trial de novo. Parties will have extra incentive to trump up their cost bills to "beat" the arbitrator's award and costs. This is not within the purpose or spirit of the rules. The subsequent effect of such cost bill manipulation would be to increase litigation due to more post-trial motions and appeals. *See Niccum*, 175 Wn.2d at 452.

Litigants will benefit by the simple rule contemplated by MAR 7.3 and utilized to date by Washington courts – attorney fees can be assessed against a party who requests a trial de novo, and does not receive a more favorable compensatory damages award from the jury than he did from the arbitrator on the merits of his claims.

Finally, Amicus’s proposal of including costs and fees in the MAR 7.3 comparison would also be virtually unworkable in cases involving multiple defendants. *See Yoon v. Keeling*, 91 Wn. App. 302, 956 P.2d 1116 (1998) (a defendant owed attorney fees to a co-defendant where his percentage of fault increased at the trial de novo.); *Hutson v. Rehrig International, Inc.*, 119 Wn. App. 332, 80 P.3d 615 (2003) (a defendant did not owe attorney fees to a co-defendant where it owed less damages to the plaintiff per the jury award as opposed to arbitration.). After trial de novo, a plaintiff could attempt to allocate certain costs to a particular defendant in order to recover his or her fees. This encourages manipulation and abuse, while reducing predictability for litigants – all contrary to the purpose and spirit of the mandatory arbitration system.

IV. CONCLUSION

The Court of Appeals correctly reversed the trial court’s award of MAR 7.3 attorney fees and costs to Mr. Bearden because Mr. McGill improved his position at trial. This Court should affirm.

DATED this 29th day of September, 2017.

REED McCLURE

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SESSION LAWS

OF THE

STATE OF WASHINGTON

REGULAR SESSION
FIFTY-SEVENTH LEGISLATURE
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APPENDIX

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CHAPTER 339

[Senate Bill 5373]

ARBITRATION—OFFER OF COMPROMISE

AN ACT Relating to mandatory arbitration of civil actions; amending RCW 7.06.050 and 7.06.060; and adding a new section to chapter 7.06 RCW.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 7.06.050 and 1982 c 188 s 2 are each amended to read as follows:

(1) Following a hearing as prescribed by court rule, the arbitrator shall file his 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. 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. 2. RCW 7.06.060 and 1979 c 103 s 6 are each amended to read as follows:

(1) The ((supreme)) superior court ((may by rule provide for)) shall assess costs and reasonable attorney's fees ((that may be assessed)) against a party ((appealing from)) who appeals the award ((who)) and fails to improve his or her position on the trial de novo. The court may assess costs and reasonable attorneys' fees against a party who voluntarily withdraws a request for a trial de novo if the

withdrawal is not requested in conjunction with the acceptance of an offer of compromise.

(2) For the purposes of this section, "costs and reasonable attorneys' fees" means those provided for by statute or court rule, or both, as well as all expenses related to expert witness testimony, that the court finds were reasonably necessary after the request for trial de novo has been filed.

(3) If the prevailing party in the arbitration also prevails at the trial de novo, even though at the trial de novo the appealing party may have improved his or her position from the arbitration, this section does not preclude the prevailing party from recovering those costs and disbursements otherwise allowed under chapter 4.84 RCW, for both actions.

NEW SECTION. Sec. 3. A new section is added to chapter 7.06 RCW to read as follows:

RCW 7.06.050 and 7.06.060 apply to all requests for a trial de novo filed pursuant to and in appeal of an arbitrator's decision and filed on or after the effective date of this act.

Passed the Senate February 11, 2002.

Passed the House March 7, 2002.

Approved by the Governor April 3, 2002.

Filed in Office of Secretary of State April 3, 2002.

CHAPTER 340

[Engrossed Substitute House Bill 2505]
CIVIL DISORDER TRAINING

AN ACT Relating to instruction in civil disorder; reenacting and amending RCW 9.94A.515; adding a new section to chapter 9A.48 RCW; and prescribing penalties.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. A new section is added to chapter 9A.48 RCW to read as follows:

(1) A person is guilty of civil disorder training if he or she teaches or demonstrates to any other person the use, application, or making of any device or technique capable of causing significant bodily injury or death to persons, knowing, or having reason to know or intending that same will be unlawfully employed for use in, or in furtherance of, a civil disorder.

(2) Civil disorder training is a class B felony.

(3) Nothing in this section makes unlawful any act of any law enforcement officer that is performed in the lawful performance of his or her official duties.

(4) Nothing in this section makes unlawful any act of firearms training, target shooting, or other firearms activity, so long as it is not done for the purpose of furthering a civil disorder.

(5) For the purposes of this section:

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