SUPERIOR COURT
MANDATORY ARBITRATION RULES (MAR)

TABLE OF RULES

RULE 1.1
APPLICATION OF RULES

These arbitration rules apply to mandatory arbitration of civil actions under RCW 7.06. These rules do not apply to arbitration by private agreement or to arbitration under other statutes, except by stipulation under rule 8.1.

RULE 1.2
MATTERS SUBJECT TO ARBITRATION

A civil action, other than an appeal from a court of limited

jurisdiction, is subject to arbitration under these rules if the action is at issue in a superior court in a county which has authorized mandatory arbitration under RCW 7.06, if (1) the action is subject to mandatory arbitration as provided in RCW 7.06, (2) all parties, for purposes of arbitration only, waive claims in excess of the amount authorized by RCW 7.06, exclusive of attorney fees, interest and costs, or (3) the parties have stipulated to arbitration pursuant to rule 8.1.

RULE 1.3
RELATIONSHIP TO SUPERIOR COURT JURISDICTION AND OTHER RULES

(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.

RULE 2.1
TRANSFER TO ARBITRATION

The point at which a case is transferred to arbitration and the procedures for accomplishing the transfer to an arbitration calendar shall be established by local rule adopted in accordance with rule 8.2.

RULE 2.2
COURT MAY DETERMINE ARBITRABILITY

(a) Generally. The court may, on its own motion or on motion of a party, determine whether a case is actually subject to arbitration under RCW 7.06.020 and rule 1.2 and may accordingly order a case transferred to or from the arbitration calendar. Only in extraordinary circumstances after a case has been assigned to an arbitrator under rule 2.3 will the court order a case returned from the arbitration calendar to the trial calendar.

(b) Effect on Right To Appeal. If a party asserts a claim which disqualifies a case for arbitration but the court nevertheless orders a transfer to arbitration under section (a), any party is deemed aggrieved under rule 7.1 if the arbitrator awards less than the party's original claim.

RULE 2.3
ASSIGNMENT TO ARBITRATOR

(a) Generally. The parties may select an arbitrator by stipulation. If an arbitrator is not chosen by stipulation within 14 days after a case has been placed on the arbitration calendar, the court shall promptly select an arbitrator and notify the arbitrator and the parties of the assignment. The case is deemed assigned for purposes of rule 1.3 upon the final selection of the arbitrator under this rule.

(b) Communication With Potential Arbitrator Restricted. The restrictions on communication defined by rule 4.1 apply to communication with a person under consideration as a possible arbitrator in a case.

MAR 3.1
QUALIFICATIONS

Unless otherwise ordered or stipulated, an arbitrator must be a member in good standing of the Washington State Bar Association who has been admitted to the Bar for a minimum of 5 years, or who is a retired judge. The parties may stipulate to a nonlawyer arbitrator.

To qualify as an arbitrator, a person must sign and file an oath of office, either to serve in a particular case, or as a member of a panel of arbitrators. The court is authorized to remove an individual from a list of qualified arbitrators for good cause.

[Adopted effective July 1, 1980; amended effective September 1, 2008.]

RULE MAR 3.2
AUTHORITY OF ARBITRATORS

(a) Authority of Arbitrator. An arbitrator has the authority to:

(1) Decide procedural issues arising before or during the arbitration hearing, except issues relating to the qualifications of an arbitrator;

(2) Invite, with reasonable notice, the parties to submit trial briefs;

(3) Examine any site or object relevant to the case;

(4) Issue a subpoena under rule 4.3;

(5) Administer oaths or affirmations to witnesses;

(6) Rule on the admissibility of evidence under rule 5.3;

(7) Determine the facts, decide the law, and make an award;

(8) Award costs and attorney fees as authorized by law; and

(9) Perform other acts as authorized by these rules or local rules adopted and filed under rule 8.2.

(b) Authority of the Court. The court shall decide:

(1) Motions for involuntary dismissal, motions to change or add parties to the case, and motions for summary judgment, and

(2) Issues relating to costs and attorney fees if those issues cannot otherwise be decided by the arbitrator.

[Amended effective September 1, 1989; September 1, 1994; September 1, 2011.]

RULE MAR 4.1
RESTRICTIONS ON COMMUNICATION BETWEEN ARBITRATOR AND PARTIES

No disclosure of any offers of settlement made by any party shall be made to the arbitrator prior to the announcement of the award. Neither counsel nor a party may communicate with the arbitrator regarding the merits of the case except in the presence of, or on reasonable notice to, all other parties.

[Effective July 1, 1980; amended effective September 1, 2001.]

RULE MAR 4.2
DISCOVERY

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.

[Effective July 1, 1980; Amended September 1, 2009]

RULE 4.3
SUBPOENA

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.

RULE 5.1
NOTICE OF HEARING

The arbitrator shall set the time, date, and place of the hearing and shall give reasonable notice of the hearing date to the parties. Except by stipulation or for good cause shown, the hearing shall be scheduled to take place not sooner than 21 days, nor later than 63 days, from the date of the assignment of the case to the arbitrator. The hearing shall take place in appropriate facilities provided or authorized by the court.

RULE 5.2
PREHEARING STATEMENT OF PROOF

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.

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

(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.

RULE 5.4
ABSENCE OF PARTY AT HEARING

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.

RULE 6.1
FORM AND CONTENT OF AWARD

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 6.2
FILING OF AWARD

Filing and Service of Award. Within 14 days after the conclusion of the arbitration hearing, the arbitrator shall file the award with the clerk of the superior court, with proof of service upon each party. On the arbitrator's

application in cases of unusual length or complexity, the arbitrator may apply for and the court may allow up to 14 additional days for the filing and service of the award. If the arbitrator fails to timely file and serve the award and proof of service, a party may, after notice to the arbitrator, file a motion with the court for an order directing the arbitrator to do so by a date certain. Late filing shall not invalidate the award. The arbitrator may file with the court and serve upon the parties an amended award to correct an obvious error made in stating the award if done within the time for filing an award or upon application to the superior court to amend.

[Adopted effective July 1, 1980; amended effective September 1, 1993; September 1, 1994; September 1, 2011.]

RULE MAR 6.3
JUDGMENT ON AWARD

Judgment. If within the 20-day period specified in rule 7.1(a) no party has properly sought a trial de novo, the prevailing party on notice as required by CR 54(f) shall present to the court a judgment on the award of arbitration for entry as the final judgment. A judgment so entered is subject to all provisions of law relating to judgments in civil actions, but it is not subject to appellate review and it may not be attacked or set aside except by a motion to vacate under CR 60.

[Amended effective September 1, 1994; September 1, 2011.]

RULE MAR 6.4
COSTS AND ATTORNEY FEES

(a) Request. Any request for costs and attorney fees shall be filed with the arbitrator and served upon all other parties no later than seven days after receipt of the award. Any party failing to timely file and serve such a request is deemed to have waived the right to an award of costs and attorney fees, unless a request for a trial de novo is filed.

(b) Response. Any response to the request for costs and attorney fees shall be filed with the arbitrator and served upon all other parties within seven days after service of the request.

(c) Hearing. The arbitrator has discretion to hold a hearing on the request for costs and attorney fees.

(d) Decision. Within 14 days after the service of the request for costs and attorney fees, the arbitrator shall file an amended award granting the request in whole or in part, or a denial of costs and attorney fees, with the clerk of the superior court, with proof of service upon each party. If the arbitrator fails to timely file and serve the amended award or denial and proof of service, a party may, after notice to the arbitrator, file a motion with the court for an order directing the arbitrator to do so by a date certain. Late filing shall not invalidate the decision.

[Effective July 1, 1980; amended effective September 1, 2011.]

MAR 7.1
REQUEST FOR TRIAL DE NOVO

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

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

SUPERIOR COURT OF WASHINGTON
FOR (_____) COUNTY

_____,	)	No. _____
Plaintiff,	)	
v.	)	REQUEST FOR
_____,	)	TRIAL DE NOVO

Defendant.)

TO: The clerk of the court and all parties:

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

Dated: _____ _____
(Name of attorney
for aggrieved party)

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

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

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

RULE 7.2
PROCEDURE AFTER REQUEST FOR TRIAL DE NOVO

(a) Sealing. The clerk shall seal any award if a trial de novo is requested.

(b) No Reference to Arbitration; Use of Testimony.

(1) The trial de novo shall be conducted as though no arbitration proceeding had occurred. No reference shall be made to the arbitration award, in any pleading, brief, or other written or oral statement to the trial court or jury either before or during the trial, nor, in a jury trial, shall the jury be informed that there has been an arbitration proceeding.

(2) Testimony given during the arbitration proceeding is admissible in subsequent proceedings to the extent allowed by the Rules of Evidence, except that the testimony shall not be identified as having been given in an arbitration proceeding.

(c) Relief Sought. The relief sought at a trial de novo shall not be restricted by RCW 7.06, local arbitration rule, or any prior waiver or stipulation made for purposes of arbitration.

(d) Arbitrator as Witness. The arbitrator shall not be called as a witness at the trial de novo.

RULE 7.3
COSTS AND ATTORNEY FEES

The court shall assess costs and reasonable attorney fees against a party who appeals the award and fails to improve the party's position on the trial de novo. The court may assess costs and reasonable attorney fees against a party who voluntarily withdraws a request for a trial de novo. "Costs" means those costs provided for by statute or court rule. Only those costs and reasonable attorney fees incurred after a request for a trial de novo is filed may be assessed under this rule.

RULE 8.1
STIPULATIONS

(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).

RULE 8.2
LOCAL RULES

The arbitration rules may be supplemented by local superior court rules adopted and filed in accordance with CR 83.

RULE 8.3
EFFECTIVE DATE

These rules shall take effect on July 1, 1980, and shall apply to all cases in which trial has not commenced on the merits by July 1, 1980.

RULE 8.4
TITLE AND CITATION

These rules shall be known and cited as the Superior Court Mandatory Arbitration Rules. MAR is the official abbreviation.

RULE 8.5
STATUS OF COMMENTS

The comments to these rules have not been adopted by the Supreme Court. The comments are solely those of the Judicial Council.