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IN THE SUPREME COURT OF THE STATE OF ARIZONA

PETITION TO AMEND THE
RULES OF CIVIL PROCEDURE,
SECTION IX. COMPULSORY
ARBITRATION
RULES 72 - 76

Supreme Court No. R-06 _____

Pursuant to Rule 28 of the Rules of the Arizona Supreme Court, the Committee on Compulsory Arbitration in the Superior Court, through the undersigned, petitions the Supreme Court to amend the Arizona Rules of Civil Procedure, Section IX Compulsory Arbitration, as set forth in [Appendix A](#). The petition is the result of the work of the ad hoc Committee on Compulsory Arbitration in the Superior Court appointed by Chief Justice McGregor in November 2005. The proposed amendments are designed to reorganize the rules, improve efficiency in civil case management, accelerate disclosure in arbitration cases, and provide uniformity and clarity regarding motions ruled on by the arbitrator.

The report and recommendations issued by the Committee may be found at:
[www.supreme.state.az.us/ajc/MeetingMaterials/06Oct/Committee_on_Compulsory
_Arbitration_Final_Report.pdf](http://www.supreme.state.az.us/ajc/MeetingMaterials/06Oct/Committee_on_Compulsory_Arbitration_Final_Report.pdf).

I. REORGANIZATION OF THE RULES

The rules have been substantially reordered to conform to the actual flow of cases assigned to arbitration in the superior court, as set forth in the correlation table in [Appendix B](#).

II. TECHNICAL CHANGES

Rule 72 is unchanged except for the renumbering of references to reordered sections. Rule 73 section C has titles added to the subsections and the former section D is merged into section C (3). Rule 78 is amended to reflect the renumbering of references to reordered sections.

III. DESCRIPTION OF PROPOSED AMENDMENTS

Rule 73(c)(2) provides for the assignment of the arbitrator as soon as possible, but in no event later than 120 days after the answer is filed. The time for appointment of the arbitrator varies by county and in some instances occurs only when a motion to set and certificate of readiness is filed with the trial court. The new section would shorten the time for appointment of the arbitrator.

Rule 74 (b) and (c) add language that expands the types of motions on which the arbitrator may not rule. Specifically, motions for summary judgment are required to be filed with the trial judge a minimum of 20 days prior to the arbitration hearing. The Committee on Compulsory Arbitration believes that a ruling by the trial court will dispose of cases in a more timely manner, be less costly for litigants and result in fewer appeals. The proposed rule also adopts a recommendation by the State Bar committee to create an appeal to the trial judge from a ruling by the arbitrator on discovery motions when a party believes the information sought to be discovered is privileged or otherwise protected by law. The addition would require the court to impose sanctions if it finds the appeal was frivolous or made for delay or harassment. The time for conducting the arbitration would be tolled pending a ruling on the appeal by the court.

Rule 74(e) adds a new section requiring parties who settle a case assigned to arbitration to file an appropriate stipulation and order with the trial court. The arbitration would terminate upon entry of the order.

Rule 75 is new and is added to establish the minimum discovery and disclosure requirements in arbitration cases. The purpose of these additional requirements is to accelerate the exchange of information and the releases that allow access to pertinent medical information in keeping with the stated purpose of compulsory arbitration to provide for the efficient and inexpensive handling of claims.

Specifically, the plaintiff has ten days from the date of service to provide a disclosure statement and answers to applicable uniform interrogatories. In personal injury cases the plaintiff is also required to provide medical records for the injury or medical condition at issue and the identity of any health care provider who treated the plaintiff within five years preceding the filing of the complaint, as well as HIPPA releases. Releases may be withheld if the plaintiff believes the records are not discoverable, but the plaintiff must provide a specific reason for the objection.

The respondent has thirty days from filing an answer to satisfy similar disclosure requirements, including providing a disclosure statement, a non-party at fault statement and answers to applicable uniform interrogatories.

Rule 76 is amended to relax the evidentiary requirements. Strict compliance with the Rules of Evidence will no longer be required; rather, the rules will guide the arbitrator when determining what is relevant to the case. The change mirrors the recently approved Rules of Family Law Procedure.

Rule 77 is amended to eliminate the mailing of the award or order of the arbitrator to the court administrator and substitutes a requirement that the notice of decision be filed with the court. The revision also eliminates the referral to the judge by the clerk or court administrator after 145 days from the assignment of an arbitrator when no award has been filed. The committee relies on the requirements of Rule 38.1 to motivate the litigants to act timely.

Rule 77 also prescribes a new process whereby the notice of decision is converted to a final award, and if no appeal is filed the award may be converted to a judgment. The amendment also requires dismissal of the case after 120 days of the filing of the notice of decision if no application is made to enter judgment and no appeal has been filed.

Rule 38.1 is amended to prevent the dismissal of a case assigned to arbitration once a notice of decision has been filed with the clerk of the court.

DATED this 20th day of October, 2006.

Committee on Compulsory Arbitration

A handwritten signature in cursive script that reads "Mike Baumstark". The signature is written in black ink and is positioned above a horizontal line.

Mike Baumstark
Committee Chair

APPENDIX A

APPENDIX A: Proposed Revisions to the Compulsory Arbitration Rules

COMPULSORY ARBITRATION

**Rule 72. Compulsory Arbitration; Arbitration by Reference;
Alternative Dispute Resolution; Determination of Suitability for Arbitration**

(a) Decision to Provide for Compulsory Arbitration. Rules 72 through ~~76~~ 78 of these Rules shall apply when the Superior Court in a county, by a majority vote of the judges thereof, decides to provide for arbitration of claims and establishes jurisdictional limits by rule of court pursuant to A.R.S. § 12- 133. Such decision to provide for arbitration shall be incorporated into a Superior Court order, which shall be filed with the Clerk of the Supreme Court, and a copy thereof shall be filed with the Clerk of the Superior Court of the applicable county. All other provisions of the Arizona Rules of Civil Procedure that are not inconsistent with Rules 72 through ~~76~~ 78 shall be applicable to all cases in arbitration.

(b) Compulsory Arbitration. Civil cases which meet both of the following conditions, except appeals from municipal or justice courts, shall be submitted to arbitration in accordance with the provisions of A.R.S. § 12-133:

(1) No party seeks affirmative relief other than a money judgment; and

(2) No party seeks an award in excess of the jurisdictional limit for arbitration set by applicable local rule of the Superior Court.

For purposes of this provision, "award" and "affirmative relief" include punitive damages, but do not include interest, attorneys' fees or costs.

(c) Arbitration by Agreement of Reference. Any claim may at any time, whether or not suit has been filed, be referred to arbitration by Agreement of Reference signed by all parties or their counsel. If suit has not been filed, the Agreement of Reference shall define the issues involved for determination in the arbitration proceedings and may contain stipulations with respect to agreed facts, issues or defenses. In such cases, the Agreement of Reference shall take the place of the pleadings in the case and shall be filed and assigned a civil case number. Filing an Agreement of Reference shall not relieve any party from paying the required filing fee. Filing of an Agreement of Reference shall have the same effect on the running of the statute of limitations as the filing of a civil complaint.

(d) Alternative Dispute Resolution.

(1) Compulsory arbitration under A.R.S. § 12-133 and these rules is not binding. Any party may appeal and all appeals are *de novo* on the law and facts. Therefore, before a hearing in accordance with Rule ~~74~~ 76 of these Rules is held, counsel for the parties, or the parties if not represented by counsel, shall confer

regarding the feasibility of resolving their dispute through another form of alternative dispute resolution, including but not limited to private mediation or binding arbitration with a mediator or arbitrator agreed to by the parties.

(2) The court shall waive the arbitration requirement if the parties file a written stipulation to participate in good faith in an alternative dispute resolution proceeding, and the court approves the method selected by the parties. The stipulation shall identify the specific alternative dispute resolution method selected. The court may waive the arbitration requirement for other good cause upon stipulation of all parties. If the alternative dispute resolution method selected under this Rule fails, the case shall be set for trial in accordance with Rule 38.1 of these Rules and shall not be subject to the rules governing compulsory arbitration.

(e) Procedure for Determining Suitability for Arbitration Cases.

(1) At the time of filing the complaint, the plaintiff shall also file a separate certificate on compulsory arbitration with the Clerk of the Superior Court in the following form:

"The undersigned certifies that he or she knows the dollar limits and any other limitations set forth by the local rules of practice for the applicable superior court,

and further certifies that this case (is) (is not) subject to compulsory arbitration, as provided by Rules 72 through ~~76~~ 78 of the Arizona Rules of Civil Procedure."

(i) The certificate on compulsory arbitration must be served upon the defendant at the time of service of the complaint. It, and any controverting certificate of a party represented by an attorney, shall be signed by at least one attorney of record in the attorney's individual name. A party who is not represented by an attorney shall sign the party's certificate on compulsory arbitration or controverting certificate.

(ii) The signature of an attorney or party constitutes a certification by the signer that the signer has considered the applicability of both the local rules of practice for the appropriate superior court and Rules 72 through ~~76~~ 78; that the signer has read the certificate on compulsory arbitration or controverting certificate; that to the best of the signer's knowledge, information and belief, formed after reasonable inquiry, it is warranted; and that the allegation as to arbitrability is not set forth for any improper purpose. The provisions of Rule 11(a) of these Rules apply to every certificate on compulsory arbitration and controverting certificate filed under this Rule.

(iii) The certificate on compulsory arbitration shall not be admissible at any hearing on the merits.

(2) If the defendant disagrees with the plaintiff's assertion as to arbitrability, the defendant shall file a controverting certificate that specifies the particular reason for the defendant's disagreement with plaintiff's certificate. The defendant's certificate shall be filed with the answer and a copy or copies shall be served upon the plaintiff.

(3) If conflicting certificates are filed, the matter shall be referred to the judge to whom the case has been assigned for determination of the issues raised thereby. If the judge determines that the case is subject to compulsory arbitration, it shall proceed to arbitration as provided in these rules.

(4) A party or attorney is under a duty to seasonably amend a prior certificate on compulsory arbitration if the party or attorney obtains information upon the basis of which (a) the party or attorney knows the certificate was incorrect when filed or (b) the party or attorney knows that the certificate, though correct when filed, is no longer true.

(5) The court may, on its own motion, or upon the motion of either party at any time after the close of pleadings, determine that the case is subject to

compulsory arbitration, and in that event, the court may order that the case proceed to arbitration as provided in these rules.

(6) At such time as the arbitrator renders a decision, should the arbitrator find that the appropriate award exceeds the limit for compulsory arbitration set by local rule or statute, the arbitrator shall enter an award for the full amount.

(7) If the court finds that an attorney or party has made an allegation as to arbitrability which was not made in good faith or failed to amend seasonably as required, the court, upon motion or upon its own initiative, shall make such orders with regard to such conduct as are just, including, among others, any action authorized under Rule 11(a) of these Rules.

Rule 73. Appointment of Arbitrators

(a) Lawyer or Non-lawyer Arbitrators. The parties, by written stipulation and by written consent of the proposed arbitrator filed with the Clerk of the Superior Court with conformed copies to the Superior Court Administrator, may agree that the case be assigned to a single lawyer or non-lawyer arbitrator named in the stipulation. All other cases subject to arbitration shall be heard by an arbitrator selected as provided below.

(b) **List of Arbitrators.** Except as the parties may stipulate under the provisions of subdivision (a) of this Rule, the arbitrator shall be appointed by the Court Administrator or Superior Court Clerk from a list, as provided by local rule, of persons which ~~may~~ shall include the following:

(1) All residents of the county in which the court is located who, for at least four years, have been active members of the State Bar of Arizona.

(2) Other active and inactive members of the State Bar of Arizona residing anywhere in Arizona, and members of any other federal court or state bar, who have agreed to serve as arbitrators in the county where the action is pending.

(c) **Appointment of Arbitrators ~~From List~~; Timing of Assignment; Notice of Appointment; Right to Peremptory Strike**

(1) Appointment of Arbitrator from List. The Superior Court Administrator or Superior Court Clerk, under the supervision of the Presiding Judge or that judge's designee, shall prepare a list of arbitrators who may be designated as to the area of concentration, specialty or expertise. By means of a method of selecting names at random from the list of arbitrators, the Superior

Court Administrator or Superior Court Clerk shall select and assign to each case one name from the list of arbitrators.

(2) Timing of Assignment. Assignment to arbitration shall take place as soon as is feasible after the answer and controverting certificate are filed and in any event no later than 120 days thereafter.

(3) Notice of Appointment of Arbitrator. The Superior Court Administrator or Superior Court Clerk shall promptly notify the parties who have appeared in the action of the names so selected by mailing written notice thereof. **The notice from the superior court administrator or superior court clerk shall advise the parties that the time periods specified for placing a case on the inactive calendar in rule 38.1(d) of these rules shall apply.**

(4) Right to Peremptory Strike. Within ten days after the mailing of such notice, or within ten days after the appearance of a party, if the arbitrator was appointed before that party appeared, either side may peremptorily strike the assigned arbitrator and request that a new arbitrator be appointed. Each side shall have the right to only one peremptory strike in any one case. A motion for recusal or motion to strike for cause shall toll the time to exercise a peremptory strike.

~~(d) Notice of Appointment of Arbitrator to Case: Placement on Inactive Calendar. The Superior Court Administrator or Superior Court Clerk shall promptly mail to all parties and to the arbitrator written notice of the assignment of the case. The notice from the Superior Court Administrator or Superior Court Clerk shall advise the parties that the time periods specified for placing a case on the inactive calendar in Rule 38.1(d) of these Rules shall apply.~~

(d)(e) Disqualifications and Excuses.

(1) Upon written motion and a finding of good cause therefor, the Presiding Judge or that judge's designee may excuse a lawyer from the list.

(2) An arbitrator, after selection, may be disqualified from serving in a particular assigned case upon motion of either party to the judge assigned to the case, for an ethical conflict of interest or other good cause shown as defined in A.R.S. §§ 12-409 or 21-211, submitted in accord with the procedure set out in Rule 42(f) (2) of these Rules.

(3) An arbitrator may be excused by the presiding judge or that judge's designee from serving in a particular assigned case upon a showing by the arbitrator that such individual has completed contested hearings and ruled as an

arbitrator pursuant to these Rules in two or more cases assigned during the current calendar year or shall be excused on a detailed showing that such individual has an ethical conflict of interest or other good cause shown as defined in A.R.S. §§ 12-409 or 21-211, submitted in accord with the procedure set out in Rule 42(f)(2) of these Rules.

(4) After an arbitrator has been disqualified or excused under these rules, a new arbitrator shall be appointed in accordance with the procedure set forth in subdivision (c).

Rule 74. Powers of Arbitrator; Scheduling of Arbitration Hearing; Permitted Rulings by Arbitrator; Receipt of Court File

(a)~~(d)~~ Powers of Arbitrator. The arbitrator shall have the power to administer oaths or affirmations to witnesses, to determine the admissibility of evidence, ~~and~~ to decide the law and the facts of the case submitted.

(b) Scheduling of Arbitration Hearing. The arbitrator shall fix a time for hearing, which hearing shall commence not less than sixty (60), nor more than one hundred twenty (120) days after the appointment of the arbitrator. The arbitrator shall, unless waived by the parties, give at least thirty days' notice in writing to the

parties of the time and place of the hearing. Subject to Rule 38.1 of these Rules, the arbitrator may shorten or extend these time periods for good cause. No hearings shall be held on Saturdays, Sundays, legal holidays, or evenings, except upon agreement by counsel for all parties and the arbitrator.

A motion for summary judgment shall be filed with the trial judge no less than 20 days prior to the date for hearing and a copy served upon the arbitrator. If the court finds that the motion is frivolous or was filed for the purpose of delay or harassment, the court shall impose sanctions on the party filing the motion, including an award of reasonable attorneys fees incurred in responding to the motion. The time for conducting an arbitration hearing shall be tolled during the pendency of any such motion.

(c)(a) **Rulings by Arbitrator.** After a case has been assigned to an arbitrator, the arbitrator shall make all legal rulings, including rulings on motions, except:

1. Motions to continue on the inactive calendar or otherwise extend time allowed under rule 38.1 of these rules,
2. Motions to consolidate cases under rule 42 of these rules,
3. Motions to dismiss,

4. Motions to withdraw as attorney of record under rule 5.1 of these rules, or

5. Motions for summary judgment that, if granted, would dispose of the entire case.

~~and the parties shall serve upon the arbitrator copies of documents requiring consideration by the arbitrator. However, an arbitrator shall not decide motions to continue on the inactive calendar or otherwise extend time allowed under Rule 38.1 of these Rules, or motions to consolidate cases under Rule 42 of these Rules. Such motions shall be decided by the assigned trial judge. An arbitrator may not enter a judgment by default, stipulation or otherwise, nor may an arbitrator enter a judgment of dismissal.~~

The parties shall serve upon the arbitrator copies of documents requiring consideration by the arbitrator. In ruling on motions pertaining to discovery, the arbitrator shall consider that the purpose of compulsory arbitration is to provide for the efficient and inexpensive handling of small claims and shall limit discovery whenever appropriate to insure compliance with the purposes of compulsory arbitration. Telephonic motions and testimony are acceptable and appropriate.

If an arbitrator makes a discovery ruling requiring the disclosure of matters that a party claims are privileged or otherwise protected from disclosure under applicable law, the party may appeal the ruling by filing a motion with the assigned trial judge within ten days after the arbitrator transmits the ruling to the parties. No party shall be required to respond to the motion unless ordered to do so by the court. No such motion, however, shall be granted without the court first providing an opportunity for response. The arbitrator's ruling shall be subject to de novo review by the court. If the court finds that the motion is frivolous or was filed for the purpose of delay or harassment, the court shall impose sanctions on the party filing the motion, including an award of reasonable attorneys fees incurred in responding to the motion. The time for conducting an arbitration hearing set forth in rule 74(b) shall be tolled during the pendency of any such motion¹.

(d)(4) Receipt of Court File. If the arbitrator believes that the file contains materials needed to conduct the arbitration hearing, the arbitrator shall, within four days prior to the date of the hearing, sign for and receive from the Superior Court Clerk the original superior court file. Alternatively, the arbitrator may order the parties to provide the arbitrator with those pleadings and other documents the

¹ The Committee voted to incorporate a remedy proposed by an Arizona State Bar Rules Subcommittee concerning rulings on disclosure of privileged information.

arbitrator deems necessary to complete the arbitration hearing.

(e) Settlement of Cases Assigned to Arbitration. If the parties to a case assigned to arbitration settle, they shall file with the court an appropriate stipulation and order for dismissal with a copy to the arbitrator. Upon entry of the order the arbitration is terminated.

Rule 75. Disclosure Deadlines

(a) Plaintiff. Within ten days of service of an answer the plaintiff shall provide to the answering defendant(s):

1. A disclosure statement in accordance with rule 26.1,
2. Answers to applicable uniform interrogatories, and
3. In personal injury cases, medical records for any treatment of the injury or medical condition at issue. In addition, the plaintiff shall disclose the identity of any health care provider that treated the plaintiff within the five-year period preceding the filing of complaint, with a general description of the treatment provided, and provide an executed HIPPA-compliant medical release for each such provider. If plaintiff believes such records are not

discoverable, HIPPA releases may be withheld if plaintiff serves instead a specific reason for the objection.

(b) Respondent. Within 30 days of filing an answer the answering defendants(s) shall provide to the plaintiff:

1. A disclosure statement in accordance with rule 26.1,

2. Non-party at fault statement in accordance with rule 26(b) (5), and

3. Answers to applicable uniform interrogatories.

Rule 76. Hearing Procedures

(a) Issuance of Subpoenas. The Clerk of the Superior Court shall issue subpoenas in matters assigned to an arbitrator, and the subpoenas shall be served and enforceable as provided by law.

(b) Pre-hearing Statement. Not less than ten days before the date set for hearing, counsel who will present the case at the arbitration hearing shall, after conferring, prepare and submit to the arbitrator a joint written pre-hearing statement which shall contain a brief statement of the nature of the claim or defense, a list of witnesses and exhibits, a brief description of the subject matter of the testimony of each witness who will be called to testify, and an estimate as to

the length of time that will be required for the arbitration hearing. In preparing the pre-hearing statement required by this Rule, counsel shall consider that the purpose of compulsory arbitration is to provide for the efficient and inexpensive handling of claims. Agreement on facts and issues is encouraged. No witness or exhibit shall be used at the hearing other than those listed and exchanged, except for good cause shown or upon written agreement of the parties.

~~Motions potentially dispositive of the case shall be set for a hearing, and lawyers shall notify their respective clients of the time and place of hearing, encouraging them to attend.~~

(c) **Evidence.** The Arizona Rules of Evidence shall ~~apply to arbitration~~ guide the arbitrator in determining what is admissible at the hearings, but the arbitrator shall have discretion to admit all relevant evidence. However, the arbitrator shall exclude evidence if its probative value is outweighed by the danger of unfair prejudice, confusion of the issues, or by considerations of undue delay, waste of time, needless presentation of cumulative evidence, lack of reliability or failure to adequately and timely disclose same.

(d) **Documentary Evidence.** The arbitrator shall admit into evidence

without further proof the following documents, if relevant, and if listed in the pre-hearing statement, unless it is shown that any such document is not what it appears to be and the objection is set forth in the pre-hearing statement.

(1) Hospital bills on the official letterhead or billhead of the hospital, when dated and itemized.

(2) Bills of doctors and dentists, when dated and containing a statement showing the date of each visit and the charge therefor.

(3) Bills of registered nurses, licensed practical nurses, or physical therapists, when dated and containing an itemized statement of the days and hours of service and the charges therefor.

(4) Bills for medicine, eyeglasses, prosthetic devices, medical belts or similar items, when dated and itemized.

(5) Property repair bills or estimates, when dated and itemized, setting forth the charges for labor and material. In the case of an estimate, the party intending to offer the estimate shall serve upon the adverse party a copy of the estimate, a statement indicating whether or not the property was repaired, and, if so, whether the estimated repairs were made in full or in part and the cost thereof.

(6) Testimony of any witness given in a deposition taken pursuant to these Rules, whether or not such witness is available to appear in person.

(7) A sworn written statement by an expert, other than a doctor's medical report, whether or not such expert is available to appear in person, provided that such statement is signed by the expert and contains a summary of the expert's qualifications. If any such statement contains the expert's opinions, it shall also state the grounds for each such opinion, including a summary of the facts upon which each opinion is based.

(8) In actions involving personal injury, doctors' medical reports may be offered and received in evidence without further proof, and may be given the weight to which the arbitrator deems them entitled, provided that a copy of said report has been previously disclosed at least twenty days prior to the date of the hearing. ~~filed and served upon the adverse party at least twenty days prior to the date of the hearing. The adverse party may not object to the admissibility of the report unless the adverse party files and serves written objection thereto within ten days from the receipt of said copy stating the objections, and the grounds therefor, that will be made if the report is offered at the time of the hearing.~~

(9) Records of regularly conducted business activity as contemplated by Rule 803(6) of the Arizona Rules of Evidence.

(10) A sworn statement of any witness, other than an expert witness, who is listed in the pre-hearing statement, whether or not such witness is available to

appear in person.

(e) Assessment of Damages Against Defaulted Parties. In cases involving more than one defendant, where a default has been entered against one or more, but less than all, of the defendants prior to the arbitration hearing, the arbitrator shall refer all further proceedings involving the defaulted defendant(s) to the trial court. The arbitrator shall continue to serve and shall proceed with the arbitration for the remaining parties.

(f) Record of Proceedings. The arbitrator shall not be required to make a record of the proceedings. If any party desires the presence of a reporter, such party shall pay for and provide the reporter. The charges of the reporter shall not be considered costs in the case.

(g) Failure to Appear or Participate in Good Faith at Hearing. Failure to appear at a hearing or to participate in good faith at a hearing which has been set in accordance with ~~subparagraph (b) of this~~ Rule [74\(b\)](#) shall constitute a waiver of the right to appeal absent a showing of good cause. If the judge finds that further proceedings before the arbitrator are appropriate, the case shall be remanded to the assigned arbitrator.

**Rule 77. Notice of Decision, Award or Other Final Disposition;
Judgment; Failure to File Timely Award; Compensation of Arbitrators**

(a) Notice of Decision and Filing of Award or Other Final Disposition.

Within ten days after completion of the hearing, the arbitrator shall:

- (1) render a decision,
- (2) return the original superior court file by messenger or certified mail to the Superior Court Clerk,
- (3) notify the parties that their exhibits are available for retrieval,
- (4) notify the parties of the decision in writing (a letter to the parties or their counsel shall suffice), and

(5) file the notice of decision with the court.

Within ten days of the notice of decision, either party may submit to the arbitrator a proposed form of award or other final disposition, including any form of award for attorneys' fees and costs whether arising out of an offer of judgment, sanctions or otherwise, an affidavit in support of attorneys' fees if such fees are recoverable, and a verified statement of costs. Within five days of receipt of the foregoing, the opposing party may file objections. Within ten days of receipt of the objections, the

arbitrator shall pass upon the objections and file one signed original award or other final disposition with the Clerk of the Superior Court and on the same day shall mail or deliver copies thereof to all parties or their counsel. ~~A copy of the award or any order made by the arbitrator on stipulation or otherwise which has the effect of terminating the arbitration phase of the proceeding shall be mailed to the Court Administrator.~~

~~(b) Referral of Case to Judge. If the arbitrator does not file an award or other final disposition with the Clerk of the Superior Court within one hundred forty five (145) days after the first appointment of an arbitrator, the Superior Court Clerk or the Court Administrator shall refer the case to the judge to whom the case has been assigned for appropriate action.~~

~~(c) Legal Effect of Award or Other Final Disposition. Upon expiration of the time for appeal and if no appeal has been taken, the arbitrator's award or other final disposition shall become binding as a judgment of the Superior Court and shall be entered in the judgment docket.~~

(b) Other Final Disposition. Unless a formal award or stipulation for entry of another form of relief is filed with the court within 30 days from the date of filing the notice of decision, the notice of decision shall constitute the award of the arbitrator.

(c) Judgment. Upon expiration of the time for appeal, if no appeal has been filed, any party may file to have judgment entered on the award.

(d) Failure to File Timely Award. if no application for entry of judgment has been filed within 120 days from the date of the filing of the notice of decision, and no appeal is pending, the case shall be dismissed.

(e)(d) Amount of Compensation for Arbitrators. An arbitrator assigned to serve in a case subject to the provisions of Rules 72 through ~~76~~ 78 of these Rules shall receive as compensation for services in each case a fee not to exceed the amount allowed by A.R.S. § 12-133(G) per day for each day, or part thereof, necessarily expended in the hearing of the case. For purposes of this Rule ~~75~~ 77(d), "hearing" means any fact-finding proceeding, or oral argument ~~on a case dispositive motion~~, which results in the filing of an award or other final disposition, or at which the parties agree to settle and stipulate to dismiss the case. The fee to be paid in each county shall be decided by a majority vote of the judges thereof and the amount that is decided upon shall be incorporated into a superior court order which shall be filed with the Clerk of the Supreme Court, and a copy thereof shall be filed with the Clerk of the Superior Court of the applicable county. When more than one case arising out of the same transaction is heard at the same hearing or hearings, it shall be considered as one case insofar as compensation of the arbitrator is concerned.

(f)(e) Payment of Compensation. The arbitrator shall not be entitled to receive the compensation prescribed in subparagraph (d) of this Rule until after an award or other final disposition is filed with the Clerk of the Superior Court; or, if the parties agree to settle and stipulate to dismiss the case at a proceeding before the arbitrator, until after the case has been dismissed.

Rule 78. Right of Appeal

(a) Notice of Appeal. Any party who appears and participates in the arbitration proceedings may appeal from the award or other final disposition by filing a notice of appeal with the Clerk of the Superior Court within twenty days after the filing of the award or other final disposition. The notice of appeal shall be entitled "Appeal from Arbitration and Motion to Set for Trial" and shall request that the case be set for trial in the Superior Court and state whether a jury trial is requested and the estimated length of trial. The Appeal from Arbitration and Motion to Set for Trial shall serve in place of a Motion to Set and Certificate of Readiness under Rule 38.1(a) of these Rules.

(b) Deposit on Appeal. At the time of filing the notice of appeal, and as a condition of filing, the appellant shall deposit with the Clerk of the Superior Court a sum equal to one hearing day's compensation of the arbitrator, but not exceeding ten percent of the amount in controversy. If the court finds that the appellant is

unable to make such deposit by reason of lack of funds, the court shall allow the filing of the appeal without deposit.

(c) Appeals *De Novo*. All appeals shall be *de novo* on law and facts. Any legal rulings and factual findings made by the arbitrator shall not be binding on the court or the parties, and any discovery had while the case was assigned to arbitration may be used in the superior court proceeding.

(d) Change of Judge. Upon filing a notice of appeal, all rights to change of judge are renewed and no event prior thereto shall constitute a waiver.

(e) Waiver of Right to Appeal. At any time prior to the entry of an award or other final disposition by the arbitrator, the parties may stipulate in writing that the award or other final disposition so entered shall be binding upon the parties. No appeal or collateral attack upon the award or other final disposition may be thereafter taken except as allowed by A.R.S. § 12-1501, *et seq.*

(f) Costs and Fees on Appeal. The deposit provided for in subparagraph (b) of this Rule shall be refunded to the appellant if the judgment on the trial *de novo* is at least twenty-five percent (25%) more favorable than the monetary relief or more favorable than the other type of relief, granted by the arbitration award or other final disposition. If the judgment on the trial *de novo* is not more favorable by at least twenty-five percent (25%) than the monetary relief, or more favorable

than the other relief, granted by the arbitration award or other final disposition, the court shall order the deposit to be used to pay, or that the appellant pay if the deposit is insufficient, the following costs and fees unless the court finds on motion that the imposition of the costs and fees would create such a substantial economic hardship as not to be in the interests of justice;

- (1) To the county, the compensation actually paid to the arbitrator;
- (2) To the appellee, those costs taxable in civil actions together with reasonable attorneys' fees as determined by the trial judge for services necessitated by the appeal; and
- (3) Reasonable expert witness fees incurred by the appellee in connection with the appeal.

(g) Discovery and Listing of Witnesses and Exhibits. In all cases in which an appeal is taken from the arbitration award, the parties shall proceed as follows:

- (1) The appellant shall simultaneously with the filing of the Appeal from Arbitration and Motion to Set for Trial referenced above also file a list of witnesses and exhibits intended to be used at trial that complies with the requirements of Rule 26.1 of these Rules. If the appellant fails or elects not to file such a list of witnesses and exhibits together with the Appeal from Arbitration and Motion to Set for Trial, then the witnesses and exhibits intended to be used at trial by

appellant shall be deemed to be those set forth in any such list previously filed in the action or in the pre-hearing statement submitted pursuant to Rule ~~74~~ 76(e) of these Rules.

(2) Within twenty days after service of the Appeal from Arbitration and Motion to Set for Trial, appellee shall serve a list of witnesses and exhibits intended to be used at trial that complies with the requirements of Rule 26.1 of these Rules. If the appellee fails or elects not to file such a list of witnesses and exhibits, then the witnesses and exhibits intended to be used at trial by appellee shall be deemed to be those set forth in any such list previously filed in the action or in the pre-hearing statement submitted pursuant to Rule ~~74~~ 76(e) of these Rules.

(3) The parties shall have eighty days from the filing of the Appeal from Arbitration and Motion to Set for Trial to complete discovery, pursuant to Rules 26 through 37 of these Rules.

(4) For good cause shown the court may extend the time for discovery set forth in subsection (3) above and/or allow a supplemental list of witnesses and exhibits to be filed.

38.1 Setting of Civil Cases for Trial; Postponements

(d) Inactive Calendar. The clerk of the court or court administrator shall place on the Inactive Calendar every case in which a Motion to Set and Certificate of Readiness has not been served within nine months after the commencement thereof, except that in domestic relations cases, by general order of the presiding judge in any county or by local rule, the time within which domestic relations cases shall be placed on the Inactive Calendar may be shortened to not less than 120 days. All cases remaining on the Inactive Calendar for two months shall be dismissed without prejudice for lack of prosecution, and the court shall make an appropriate order as to any bond or other security filed therein, unless prior to the expiration of such two months period;

(1) A proper Motion to Set and Certificate of Readiness is served; ~~or~~

(2) The court, on motion for good cause shown, orders the case to be continued on the Inactive Calendar for a specified period of time without dismissal; ~~or~~

(3) A notice of decision has been filed with the clerk of court in a case assigned to arbitration.

APPENDIX B

APPENDIX B – Compulsory Arbitration Rules – Correlation Table	
Current Rule Section Number	Proposed Section Number
Rule 72(a)	No Change
Rule 72(b)	No Change
Rule 72(c)	No Change
Rule 72(d)	No Change
Rule 72(e)	No Change
Rule 73(a)	No Change
Rule 73(b)	No Change
Rule 73(c)(1)	No Change
	New Rule 73(c)(2)
Rule 73(c)(2) split	Rule 73(c)(3)
	Rule 73(c)(4)
Rule 73(c)(d)	Rule 73(c)(3) added to
Rule 73(e)	Rule 73(d)
Rule 74(a)	Rule 74(c)
Rule 74(b)	No Change
Rule 74(c)	Rule 76(a)
Rule 74(d)	Rule 74(a)
	New Rule 74(e)
	New Rule 75(a)
	New Rule 75(b)
Rule 74(e)	Rule 76(b)
Rule 74(f)	Rule 76(f)
Rule 74(g)	Rule 76(d)
Rule 74(h)	Rule 76(e)
Rule 74(i)	Rule 74(d)
Rule 74(j)	Rule 76(f)
Rule 74(k)	Rule 76(g)
Rule 75(a)	Rule 77(a)
Rule 75(b)	abrogated
Rule 75(c)	abrogated
	New Rule 77(b)
	New Rule 77(c)
	New Rule 77(d)
Rule 75(d)	Rule 77(e)
Rule 75(e)	Rule 77(f)
Rule 76(a)	Rule 78(a)

Rule 76(b)	Rule 78(b)
Rule 76(c)	Rule 78(c)
Rule 76(d)	Rule 78(d)
Rule 76(e)	Rule 78(e)
Rule 76(f)	Rule 78(f)
Rule 76(g)	Rule 78(g)
Rule 76(c)	Rule 78(c)