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IN THE ARIZONA SUPREME COURT

In the matter of)	Supreme Court R- 06-0021
)	
PETITION TO AMEND THE RULES)	COMMENT TO PROPOSED RULE
OF CIVIL PROCEDURE, SECTION IX)	RELATED TO COMPULSORY
COMPULSORY ARBITRATION)	ARBITRATION RULES
RULES 72-76)	
_____)	

The Arizona Association of Superior Court Clerks (AASCC) submits the following comments on the petition to amend the rules of civil procedure regarding compulsory arbitration:

The AASCC supports the effort to improve efficiency in civil case management. The proposed changes do pose apparent conflicts within the rules and carrying out the new rules would require clarification allowing the clerks to track and process arbitration cases.

Throughout the rules, references are made to filing with the court or with the trial judge. For consistency in practice and to allow the creation of a complete court record, it is recommended that all references to filing be changed to reflect filing with the clerk, unless filing directly with the trial judge is specifically intended or preferred in individual sections of the rules.

Proposed rule 74(b) appears to require filing a Motion for Summary Judgment with the trial judge. Mandatory filings would increase the volume for Clerk's offices and filing directly with the trial judge will create problems for clerks tracking the case for appeal purposes. To clarify, the AASCC recommends language indicating the optional, not mandatory, ability to file a Motion for Summary Judgment and that the Motion be

filed with the Clerk, not filed directly with the trial judge. A suggested change is recommended in Appendix A below.

Current rule 74(i) (proposed rule 74(d)) states that the arbitrator shall sign for and receive the original Superior Court file within four days prior to the date of the arbitration hearing. Proposed Rule 74(d), Receipt of Court File, would continue to require Clerks of the Superior Court to provide the original court record. As cases are increasingly being filed and maintained electronically, parts of, or entire original court files, may be in electronic format only. As it pertains to Maricopa County in particular, the Clerk of the Superior Court may no longer be able to comply with the letter of the rule as written, but could easily provide the entire court record on alternative media, such as Compact Disc or on certified paper copies of the electronic original. Providing arbitrators direct remote access to the electronic original will also be a possibility in the near future in Maricopa County when security, access, and other technological requirements are met. All Clerks of the Superior Court can certainly comply with the spirit of the rule; however, the evolving court record requires some flexibility in providing accurate records to arbitrators and all other court customers. As written, the rule allows the arbitrator to order the parties to provide the pleadings deemed necessary for the arbitration hearing. However, if the arbitrator chooses to exercise the option of receiving the original file from the clerk, a clarification of the format of electronic records for delivery should be included in the rule. A suggested change is recommended in Appendix B below.

Under the current rules, the notice of decision is ordinarily filed with the clerk by the arbitrator, requiring a party to submit the award of arbitration. The filing of the arbitration award begins the timeframe under which an appeal may be filed. Under current practice, if no appeal is filed after 20 days, the arbitration award automatically becomes a final award. If an appeal is filed within the 20 day timeframe the appealed award is forwarded to the trial judge for determination. Several problems arise under the proposed changes to this process.

The proposed rules minimize the importance of the arbitration award and give priority to the notice of decision. This apparent inconsistency leaves the clerk unable to determine when the clock begins for an appeal, as the arbitrator must file a notice of decision, may file an arbitration award, or may file both at different times. For example,

APPENDIX A

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

(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 MAY ~~shall~~ be filed with the CLERK ~~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.

APPENDIX B

Rule 74. Rulings by Arbitrator; Hearing; Evidence and Procedure

(d)(i) 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. IF THE ORIGINAL FILE IS AN ELECTRONIC COURT RECORD, THE ARBITRATOR SHALL HAVE ACCESS TO THE ORIGINAL IF AVAILABLE OR RECEIVE FROM THE CLERK A CERTIFIED COPY OF THE ORIGINAL FILE ON ALTERNATIVE MEDIA. Alternatively, the arbitrator may order the parties to provide the arbitrator with those pleadings and other documents the arbitrator deems necessary to complete the arbitration hearing.

APPENDIX C

Rule 78. Right of Appeal

(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; AND
- (4) UPON FINAL DISPOSITION OF THE CASE AND LACKING AN ORDER FROM THE COURT FOR THE DISPOSITION OF THE DEPOSIT PROVIDED FOR IN SUBPARAGRAPH (B) OF THIS RULE, THE CLERK OF COURT SHALL REFUND THE DEPOSIT TO THE PARTY MAKING THE DEPOSIT.