Robert B. Van Wyck
Bar No. 007800
Chief Bar Counsel
STATE BAR OF ARIZONA
4201 N. 24th St.
Suite 200
Phoenix, AZ 85016-6288
602-340-7241

IN THE SUPREME COURT
STATE OF ARIZONA

PETITION TO AMEND THE RULES OF CIVIL PROCEDURE, SECTION IX, COMPULSORY ARBITRATION RULES 72-76.	Supreme Court No. R-06-0021 **Comments of the State Bar of Arizona Regarding Petition to Amend the Arizona Rules of Civil Procedure for Compulsory Arbitration**

The State Bar of Arizona commends the Committee on Compulsory Arbitration in the Superior Court in Arizona (the "Committee") for its work to improve the fairness, effectiveness and efficiency of Arizona's compulsory arbitration system. The State Bar, however, has serious misgivings about several of the Committee's proposed amendments, which it believes will end up frustrating those very purposes by creating additional delays in resolving cases, diminishing the quality of justice in arbitration proceedings, and increasing the burden on the judiciary and court administration in handling cases subject to mandatory arbitration.

As an alternative to the Committee's recommendations, the State Bar recommends retaining several key provisions of the existing rules that the Committee proposes to amend, supplemented in some instances by more modest revisions than those proposed by the Committee.

Attached as Exhibit A are the State Bar's proposed modifications to the Committee's proposed amendments. Each modification is addressed in turn below. Also attached as Exhibit B is a table comparing the current Rules, the Committee's proposed amendments, and the State Bar's proposed changes.

1. <u>Rulings on Dispositive Motions</u>

a. The Committee's Proposed Rule.

Under the current Rule 74(a), an arbitrator is required to make rulings on all motions with the exceptions of 1) motions to continue on the inactive calendar (or to otherwise extend the timeframes set forth in Rule 38.1); and 2) motions to consolidate cases under Rule 42.

The Committee proposes further limiting an arbitrator's authority by divesting arbitrators of the power to rule on motions to dismiss and motions for summary judgment "that, if granted, would dispose of the entire case." [Petition, App. A at 18 (proposed Rule 74(c))] In an earlier report, the Committee justified the change on the ground that "removing such motions would limit the burden on the arbitrators serving in cases outside their normal expertise, and avoid having to argue the motion a second time on appeal by the adverse party." *See* Final Report of the Committee on Compulsory Arbitration in the Superior Court in Arizona, June 2006, p. 6.

The State Bar has several concerns about the Committee's proposal and, subject to a few modifications discussed below, recommends that the Rule 74(a) stay as it is – most notably that all dispositive motions continue to be heard by the arbitrator, not the assigned judge.

First, the Committee's proposed amendment seems destined to frustrate the primary purpose of arbitration – alleviating the burden on the judicial system by removing smaller cases to an arbitration system – with little apparent corresponding benefit. Under both the current Rule 74(d) and the Committee's proposed Rule 74(a), "[t]he arbitrator shall have the power…to decide the law and facts of the case submitted." [Petition, App. A at 16] In the State Bar's view, ruling on a dispositive motion is no different and requires no more expertise than deciding the legal merits of a case. It would be inconsistent to have a rule saying that an arbitrator is presumptively unqualified to render a decision if an issue is presented in a summary judgment motion, and yet have another rule requiring an arbitrator to decide the same issue if it has been reserved for decision at the arbitration hearing.

Second, the Committee's proposed amendment would seem to both invite additional delay and create an additional administrative burden for the courts. Conceivably, a case could: (i) move from an arbitrator to a judge for a motion to dismiss, only to return to the arbitrator after the motion is denied, and then (ii) move back to the judge for a summary judgment motion, only to return back to the arbitrator if that motion is denied. The State Bar believes that this jurisdictional tag-team between the arbitrator and the court would necessarily delay the arbitration process. Moreover, it would create additional burdens on court administrators, who would be required to keep track of who has the case (the arbitrator or the judge) to ensure that the case continues to make progress toward final disposition.

b. The State Bar's Suggested Alternative.

In the State Bar's view, the current rule is better than what the Committee has proposed: arbitrators should retain the power to decide all dispositive motions. Consistent with the structure and renumbering of the proposed amendments recommended by the Committee, the State Bar proposes deleting the second paragraph of

the Committee's proposed Rule 74(b) and the first paragraph of the Committee's proposed Rule 74(c) and replacing them with a new paragraph that incorporates most of what is now in current Rule 74(a). [*See* Ex. A at 8-9 (State Bar's proposed Rule 74(c)] The State Bar recommends making only the following modifications in the substance of the existing rule:

First, based on the Committee's findings, the State Bar understands that certain counties may prefer that judges, rather than arbitrators, rule on dispositive motions. For that reason, the State Bar's proposed amendment allows for the Superior Court of any given county to adopt a local rule by which the assigned judge may be vested with the authority to rule on dispositive motions in cases assigned to mandatory arbitration. [Ex. A at 9]

Second, because some judges and practitioners have misunderstood the current Rule 74(a) to require judges to rule on motions to dismiss and summary judgment motions, the State Bar recommends a departure from the language of the current rule: 1) to expressly authorize arbitrators to decide all dispositive motions, including motions to dismiss and summary judgment motions; and 2) to delete the phrase "nor may an arbitrator enter a judgment of dismissal," which has led some to conclude that arbitrators lack the authority to decide motions to dismiss and summary judgment motions. [Ex. A at 8-9]

Third, in addition to motions to continue on the inactive calendar and motions to consolidate, the Rule should be clarified to state that only courts should decide motions for change of venue and motions to withdraw as counsel of record. [Ex. A at 8]

Fourth, the State Bar agrees with the provision endorsed by the Committee (and earlier proposed by one of the State Bar's committees) that parties be given a limited right to bring an interlocutory appeal to the assigned trial judge if an arbitrator orders a party to disclose privileged or otherwise protected materials. [Ex. A at 10] Because of

the importance of preserving the confidentiality of such information and because a later post-hearing appeal would come too late to afford meaningful relief, a party should have the means of challenging an arbitrator's order on an interlocutory basis if such order would deprive the party of the protection that the law affords to the attorney-client privilege and similar evidentiary privileges and immunities.

c. Clarification if the Committee's Position is Adopted.

In the event that this Court ultimately disagrees with the State Bar and decides that judges (and not arbitrators) should decide dispositive motions, the State Bar recommends that the Court at least consider clarifying an ambiguity that currently exists in the Committee's proposed Rule 74(c). The Committee's proposed amendment directs courts to decide motions for summary judgment only when the motion, if granted, would "dispose of the entire case." [Petition, App. A at 18] It is unclear how to apply this standard in a multi-party case. If a summary judgment motion would dispose of all of the claims against one defendant but not another, would such a motion "dispose of the entire case"? Similarly, where one of two defendants has defaulted, the Committee's proposed Rule 76(e) (and current Rule 74(h)) provides that all further proceedings against the defaulted defendant are to be before the court, with the arbitrator to proceed to a hearing on the claims against the answering defendant. If the answering defendant were to bring a summary judgment motion that would dispose of all the claims against that defendant but the claims against the defaulted defendant would remain unresolved, the question again arises as to whether such a motion would "dispose of the entire case."

In limiting a court's jurisdiction to summary judgment motions that would "dispose of the entire case," the Committee's intent may have been to allow courts to consider a summary judgment motion only if it would resolve all of the claims against a defendant, leaving an arbitrator to decide motions for partial summary judgment when less than all of a plaintiff's claims against a defendant would be at issue. If that was the

intent, the ambiguity in the proposed rule could be resolved by modifying it to permit a summary judgment motion to be decided by a court only if it would "dispose of the entire case *as to any party*." With that change, any party in a multi-party case would be allowed to file a summary judgment motion with the assigned trial judge if it would resolve all the claims with respect to that party.

2. <u>Accelerated and Mandated Disclosure and Discovery</u>

In hopes of expediting arbitration cases, the Committee proposes creating an accelerated discovery and disclosure schedule that would be applicable solely to cases designated for mandatory arbitration. The Committee's proposed Rule 75(a) would require a plaintiff, within ten days of service of an answer, to provide the defendant with plaintiff's Rule 26.1 disclosure statement, answers to "applicable uniform interrogatories," and, in personal injury cases, certain medical records, releases and disclosure of medical providers. [Petition, App. A at 20-21] Likewise, under proposed Rule 75(b), the defendant would be required to submit its Rule 26.1 disclosure statement, answers to "applicable uniform interrogatories," and its non-party at fault statement within thirty days of the filing of an answer. [*Id.* at 21]

Although expediting discovery is a laudable objective, the State Bar is concerned the proposed Rule would have the opposite effect because it would require parties to provide interrogatory answers and medical release forms that may never be needed or requested in a case. The proposed Rule also is ambiguous: while it tells parties to answer those interrogatories that are "applicable," it offers no guidance to a practitioner as to which uniform interrogatories should be used. In essence, it requires the party charged with responding to discovery to anticipate what its adversary will deem to be the "applicable" uniform interrogatories. This inversion of the parties' traditional roles in discovery will inevitably lead to disagreements over which uniform interrogatories are, indeed, "applicable" in any given case.

In addition, the time savings intended by the Committee may never be realized because the proposed accelerated uniform interrogatories likely will not supplant non-uniform interrogatories and other written discovery, which will continue to be governed by the standard response times set forth in Rules 31, 33, 34 and 36.

The State Bar does not believe that a new set of disclosure and discovery rules are necessary or appropriate for arbitration cases, or that such procedures will yield a significant corresponding benefit in the disposition of cases set for arbitration. To the contrary, the creation of a parallel set of disclosure and discovery rules will likely confuse arbitrators and litigants alike, as well as sow fertile new ground for discovery disputes without making a significant difference in expediting arbitration cases. For that reason, the State Bar recommends against adopting proposed Rule 75. [*See* Ex. A at 11]

3. <u>Deadline for Conducting Arbitration Hearing</u>

Arbitration hearings frequently do not take place within 120 days after an arbitrator is appointed, as required under current Rule 74(b). One recent study of this issue revealed that compliance with this deadline occurred in less than half the cases assigned to mandatory arbitration in both Maricopa and Pima Counties (43% and 45%, respectively). *See* Roselle L. Wissler & Bob Dauber, *A Study of Court-Connected Arbitration in the Superior Courts of Arizona*, Lodestar Dispute Resolution Program, Arizona State University College of Law, July 13, 2005, at III.D-7. This study further concluded that these figures probably overestimate the number of hearings that took place within the 120-day deadline because arbitrators did not routinely file an amended notice of hearing when a hearing was rescheduled. *Id.* This study suggests that Rule 74(b)'s current 120-day deadline for completing an arbitration hearing is unrealistic in the majority of cases submitted for mandatory arbitration. The practice of routinely requesting continuances that are routinely granted has the undesirable side-effect of spawning additional paperwork for practitioners and the courts.

The Committee's proposed Rule 75 attempts to address this issue by substantially expanding parties' disclosure obligations at the beginning of a case. For the reasons given earlier (at §2, above), while the State Bar recognizes and appreciates the Committee's intent, it disagrees with the Committee's approach. Additionally, the State Bar does not see the advantage in perpetuating timeframes that experience has shown to be impractical in more than half of all cases. In deference to reality and to avoid needless paperwork associated with filing requests for continuances that are routinely granted, the State Bar recommends that the deadline for holding an arbitration hearing be modestly extended from the current 60 to 120 day timeframe to a 90 to 150 day timeframe. [Ex. A at 8 (State Bar's proposed Rule 74(b)] The State Bar's proposal does not contemplate, nor does it require, any amendment to Rule 38.1.

4. <u>Application of the Rules of Evidence in Arbitrations</u>

Currently, Rule 74(f) provides that "[t]he Arizona Rules of Evidence shall apply to arbitration hearings," subject to certain exceptions set forth in Rule 74(g). The Committee's proposed amendments would substantially change this rule, directing in proposed Rule 76(c) that the Rules of Evidence are only a "guide" that may be disregarded so long as the proffered evidence is relevant and does not run afoul of Arizona Rule of Evidence 403. [Petition, App. A at 22]

The State Bar believes that this proposed rule change is both unnecessary and unwise. As practical matter, the Rules of Evidence are seldom as strictly applied in an arbitration hearing as they would be in a court proceeding. But adopting a rule that makes relevance and Rule 403 the only benchmarks for admissibility would be an open invitation to practitioners to use the rule to have arbitrators consider hearsay and other evidence that would otherwise be inadmissible. Not only would this threaten the quality of justice afforded in arbitration, it would likely increase the number of appeals to

Superior Court where an arbitrator has relied on evidence that would be plainly inadmissible in court.

On balance, the State Bar believes that the rule should stay as it is now written in Rule 74(f): the Arizona Rules of Evidence should apply in arbitration hearings except as provided in Rule 74(g)(pertaining to the admission of certain documentary evidence). Consistent with that view, the State Bar proposes deleting the Committee's proposed Rule 76(c) and replacing the language in that section with the language now found in Rule 74(f). [Ex. A at 12 (State Bar's proposed Rule 75(c)]

5. <u>Admission of Medical Reports at Arbitration</u>

The Committee proposes revising current Rule 74(g)(8) regarding the admissibility of doctors' medical reports in personal injury actions. Under the Committee's proposed Rule 76(d)(8), a medical report would be received into evidence provided that it was disclosed at least twenty days before the hearing, eliminating the requirements currently in Rule 74(g)(8) that such reports be "filed" and that any objections be "filed" and served within ten days of the hearing. [Petition, App. A at 24] The State Bar agrees with these changes, but recommends one modification. Under the Committee's proposal, the failure to disclose a medical report within twenty days of the hearing will, *without exception*, result in its exclusion. The State Bar recommends that the rule include an exception that would allow for the admission of medical reports disclosed after the deadline if good cause is shown. The State Bar's suggested text is set forth in its proposed Rule 75(d)(8). [Ex. A at 13]

6. <u>Referral of Case to Judge Where No Award is Filed</u>

Under current Rule 75(b), if an arbitrator does not file an award with the Clerk of the Superior Court within 145 days after the arbitrator's appointment, the Superior Court Clerk or Court Administrator is required to refer the case back to the assigned trial judge for appropriate action. The Committee's proposed amendments eliminate this rule on the

ground that Rule 38.1 is sufficient "to motivate the litigants to act timely." [Petition at 4; *see also* Petition, App. A at 27 (deleting provision)]

The State Bar respectfully disagrees: although Rule 38.1 motivates litigants to secure an extension on the inactive calendar, it does not necessarily focus a court's attention on whether the arbitrator is taking the appropriate steps to get an arbitration hearing scheduled and held. Rule 75(b) acts as a "fail-safe" to make sure that the assigned trial judge receives notice that a case assigned to mandatory arbitration has not been resolved within time period required by the Rules. As such, the State Bar recommends that this provision be retained and has included it as Rule 76(e) in its set of proposed rules in Exhibit A. [Ex. A at 16] The rule proposed by the State Bar calls for the assigned judge to be notified 175 days after appointment rather than 145 days, reflecting the State Bar's proposed change in Rule 74(b) to extend the deadline for holding an arbitration hearing by thirty days.

7. <u>Treating a Notice of Decision as an "Award" and Appeal Notices</u>

Under current Rule 75(a), an arbitrator decides a case by serving (but not filing) a copy of the decision on the parties, followed by the filing of an "award or other final disposition" with the Superior Court. If no appeal is taken within twenty days of the award's filing, current Rule 75(c) provides that the "award or other final disposition" becomes "binding as a judgment." The current rules, however, do not resolve whether a prevailing party has a "binding judgment" if the arbitrator serves his or her decision on the parties, but later fails to file an "award or other final disposition" with the court. Also unresolved is when an appeal notice would be due because Rule 76(a) currently provides that the time for filing an appeal starts to run only upon the "filing of the award or other final disposition."

The Committee's proposed rule amendments attempt to remedy the first problem by: (i) requiring the arbitrator to file his or her decision with the court in the form of a

"notice of decision" [proposed Rule 77(a)(5) (Petition, App. A at 26)]; (ii) providing that the notice of decision would be treated as the arbitrator's "award" thirty days after the filing of the notice if no other formal award is filed with the Court within that time [proposed Rule 77(b) (*id.* at 27)]; and (iii) an award would become a "judgment" only after the time for appeal has expired and a party has filed "to have judgment entered on the award" [proposed Rule 77(c) (*id.* at 28)]. Thus, if an arbitrator fails to file an "award" within thirty days after a notice of decision is filed, the notice of decision is treated as an "award," and the prevailing party can file to have judgment entered on that "award" once the time for appeal has expired. That presumably would be twenty days later because the Committee's proposed Rule 77(b) is entitled "Other Final Disposition" and because its proposed Rule 78(a) (like the current Rule 76(a)) provides that an appeal notice is due twenty days after the filing of an award "or other final disposition."

While the State Bar agrees with these changes in principle, it recommends two modifications:

First, the time period after which a notice of decision is treated as an "award" should be extended from thirty days to fifty days to give the parties and the arbitrator the time permitted under the Rules to prepare and file an award. Under current Rule 75(a) (and the Committee's proposed Rule 77(a)), the prevailing party has ten days after a decision is rendered in which to submit a proposed award, the opposing party has five days thereafter in which to file objections to the proposed award, and the arbitrator has ten days in which to rule on those objections and file an award. When these deadlines are coupled with the extension of time provisions in Rules 6(a) and 6(e), it can take up to forty to fifty days for an award to be filed after an arbitrator's decision is rendered if the parties and the arbitrator take the maximum amount of time permitted under the Rule.

If a notice of decision were treated as an "award" only thirty days after it is filed, it would supersede this process and render any award that is filed after that date

superfluous, even if the award was filed within the deadlines contemplated by the Rules. It also would encourage a prevailing party to circumvent the arbitrator altogether by not submitting a proposed award and to rely instead on the notice of decision as the basis for later seeking a judgment. One obvious advantage in doing so is that because a notice of decision would automatically become an award after thirty days, the prevailing party would be able to seek to reduce that award to judgment sooner and with less expense than if it waited until the arbitrator considered an adversary's objections to a proposed arbitration award and filed the award.

To remedy this, the State Bar's proposed modification to the Committee's proposed Rule 77(b) would provide that a notice of decision would not be treated as an "award" until fifty days (rather than thirty days) after a notice of decision is filed. [Ex. A at 16 (State Bar's proposed Rule 76(b)] If that modification were made, the Committee's proposed Rule 77(b)'s "fail-safe" provision would come into play only when the parties and the arbitrator have failed to meet the deadlines for preparing and filing an award. That would be consistent with the apparent intent of the proposed Rule, and would also eliminate any incentive for the prevailing party to circumvent the process for settling on a final award.

Second, additional clarification is required to specify when the time for appeal begins to run if an arbitrator fails to file an award or does so only after the applicable deadlines have expired. Like current Rule 76(a), the Committee's proposed Rule 78(a) provides that a party has twenty days to file an appeal "after the filing of the award or other final disposition." [Petition, App. A at 29] Because the Committee's proposed Rule 77(b) provides that a notice of decision would automatically become an award and a "final disposition" thirty days after it is filed, the Committee's proposed Rule 78(a) leaves unresolved when an appeal notice is due if an award is ultimately filed: would it be twenty days after the filing of the award (potentially seventy days after the filing of the

notice of decision if all the deadlines are met under the Committee's proposed Rule 77(a)) or twenty days after the notice of decision is automatically treated as "award" (fifty days after the filing of the notice of decision under the Committee's proposed Rule 77(b)). To remedy this ambiguity, the State Bar proposes modifying the Committee's proposed Rule 78(a) to clarify that a Notice of Appeal must be filed within twenty days after the filing of an award or within twenty days after the date upon which the notice of decision becomes an "award" if no award has been filed, *whichever occurs first*. [Ex. A at 17 (State Bar's proposed Rule 77(a)]

Coupled with the State Bar's suggested change to the Committee's proposed Rule 77(b) extending the time period from thirty to fifty days before a notice of decision is treated as an "award" [Ex. A at 16 (State Bar's proposed Rule 76(b)], this proposed change would provide certainty in determining the date for filing an appeal while allowing the parties and arbitrator the opportunity to timely complete the process for preparing and filing an award. Thus, if an arbitrator ultimately fails to file an award, the deadline for appealing to the Superior Court would occur seventy days after the notice of decision is filed, which is consistent with when an appeal notice would have been due had the parties and the arbitrator timely completed the steps for preparing and filing an award under the applicable time limitations.

8. <u>Notice of Appointment of Arbitrator</u>

Under the Committee's proposed Rule 73(c)(3), the Superior Court Clerk is required to notify the parties when an arbitrator is named. [Petition, App. A at 14] As proposed, however, the amended rule eliminated (apparently inadvertently) the requirement in current Rule 73(d) that the Clerk also notify the arbitrator of his or her appointment. [Petition, App. A at 15 (deleting current Rule 73(d))] The State Bar recommends a modification to the Committee's proposed Rule 73(c)(3) that would

require the Clerk notify both the parties and the arbitrator of the arbitrator's appointment and identity. [Ex. A at 6 (revising proposed Rule 73(c)(3)]

CONCLUSION

The State Bar of Arizona respectfully requests that the Court adopt Petitioner's Proposed Rule Changes with the modifications suggested in this comment and shown in Exhibit A.

RESPECTFULLY SUBMITTED this 21st day of _____, 2007.

Robert B. Van Wyck
Chief Bar Counsel
STATE BAR OF ARIZONA

1549581

EXHIBIT A

State Bar's Suggested Modifications to Petitioner's Proposed Amendments to Rules 72- 76.

Petitioners' proposed additions shown by bolded underscoring (e.g. **stored**) and deletions shown by strike-through (e.g., ~~stored~~).

State Bar's proposed additions shown in bolded italics (e.g., ***stored***) and deletions in petitioner's proposals shown by bolded strike-through of petitioner's underscored additions (e.g., ~~**stored**~~) and deletions of text left unchanged (or not underscored) by petitioner shown by bolded strike-through and italics (e.g., ~~***stored***~~).

Rule 72. Compulsory Arbitration; Arbitration by Reference; Applicability of Rules of Civil Procedure

(a) **Decision to Provide for Compulsory Arbitration.** Rules 72 through ~~76~~ ~~78~~ ***77*** 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**~~ ***77*** 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**~~ ***75*** 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~~ *77* 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~~ *77*; 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 *one-hundred and twenty (120)* ~~*120*~~ days thereafter.

(3) Notice of Appointment from List. The Superior Court Administrator or Superior Court Clerk shall promptly notify the parties ~~*who have appeared in the action*~~ of the name ***of the arbitrator*** ~~***so selected***~~ by mailing written notice ***to the parties and the arbitrator*** ~~**thereof**~~. **The notice from the Superior Court Administrator or Superior Court Clerk shall advise the parties that the time period 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 therefore, 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) of this Rule.

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~~ ***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)***~~ ***ninety (90),*** nor more than ~~***one hundred and twenty (120)***~~ ***one hundred fifty (150)*** days after the appointment of the arbitrator. The arbitrator shall, unless waived by the parties, give at least thirty (30) 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 then 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***~~ ***dispositive and non-dispositive motions. However, an arbitrator shall not decide motions to continue on the inactive calendar, motions to consolidate cases, motions for change of venue, or motions to withdraw as attorney of record. Such motions shall be decided by the assigned trial judge.***

Additionally, the superior court in each county may require that dispositive motions be heard by the assigned trial judge by adopting a local rule under Rule 83. An arbitrator may not enter a judgment by default, stipulation or otherwise.

~~**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 the 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 my 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 motion.

(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. 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.

(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 defendant(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*~~ *75.* 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 hearings.*** ~~**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 consideration 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 therefore.

(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 therefore.

(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, *except for good cause shown.*** ~~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 therefore, 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~~*76*. Notice of Decision, Award or Other Final Disposition~~:~~; Judgment; Failure to File Timely Award; Compensation of Arbitrators

(a) **Notice of Decision and Filling 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~~,; and~~

(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 of 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 if 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 other 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 appropriation action.~~

~~(c) **Legal Effect of Award or Other Final Disposition.** Upon expiration of 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 ***fifty (50)*** ~~**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 ***one hundred and twenty (120)*** ~~**120**~~ **days from the date of the filing of the notice of decision, and no appeal is pending, the case shall be dismissed.**

(e) 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 and seventy-five (175) 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.

(*f*)~~**(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**~~ ***77*** 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(d)~~ ~~**77(d)**~~ ***76(f),*** "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.

(g) **(f)** ~~(e)~~ **Payment of Compensation.** The arbitrator shall not be entitled to receive the compensation prescribed in subparagraph ***~~(d)~~ (f)*** 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~~ 77*. 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 ***(20)*** days after the filing of the award or ***~~other final disposition~~ twenty (20) days after the date upon which the notice of decision becomes an award under Rule 76(b), whichever occurs first.*** 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 proceedings.

(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)**~~ ***75(b)*** 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 ~~75~~ **~~76(e)~~** ***75(b)*** 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.

EXHIBIT B

Comparison Between Current Compulsory Arbitration Rules and Proposed Changes		
Current Rule	Committee Proposal	State Bar's Proposed Modifications
Rule 72(a): Decision to Provide for Compulsory Arbitration. Rules 72 through 76 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 shall be applicable to all cases in arbitration.	*Rule 72(a): Changes* "Rules 72 through 76" *to* "Rules 72 through 78"*; no other changes.*	*Rule 72(a): Changes* "Rules 72 through 76" to "Rules 72 through 77"*; no other changes*.
Rule 72(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.	*Rule 72(b): No change.*	*Rule 72(b): No change.*
Rule 72(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.	*Rule 72(c): No change.*	*Rule 72(c): No change.*
Rule 72 (d)(1) 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 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.	*Rule 72(d)1): Changes* "Rule 74" *to* "Rule 76"; *no other changes*.	*Rule 72(d)(1): Changes "*hearing in accordance with Rule 74" *to "*hearing in accordance with Rule 75"*; no other changes.*

Comparison Between Current Compulsory Arbitration Rules and Proposed Changes		
Current Rule	Committee Proposal	State Bar's Proposed Modifications
Rule 72 (d)(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.	*Rule 72(d)(2): No change.*	*Rule 72(d)(2): No change.*
Rule 72(e)(1)(i) Procedure for Determining 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 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.	*Rule 72(e)(1)(i): Changes title as follows:* "Procedure for Determining Suitability for Arbitration ~~Cases~~"; changes "Rules 72 through 76" to "Rules 72 through 78':*no other changes.*	*Rule 72(e)(1)(i): Agrees with change of title but changes* "Rules 72 through 76" *to* "Rules 72 through 77."
Rule 72(e)(1)(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 of the Arizona Rules of Civil Procedure; 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.	*Rule 72(e)(1)(ii): Changes* "Rules 72 through 76 of the Arizona Rules of Civil Procedure" *to* "Rules 72 through 78"*; no other changes.*	*Rule 72(e)(1)(ii): Changes* "Rules 72 through 76 of the Arizona Rules of Civil Procedure" *to* "Rules 72 through 77"*; no other changes.*
Rule 72(e)(1)(iii): The certificate on compulsory arbitration shall not be admissible at any hearing on the merits.	*Rule 72(e)(1)(iii): No change*.	*Rule 72(e)(iii): No change*.

Comparison Between Current Compulsory Arbitration Rules and Proposed Changes		
Current Rule	Committee Proposal	State Bar's Proposed Modifications
Rule 72(e)(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.	*Rule 72(e)(2): No change.*	*Rule 72(e)(2): No change.*
Rule 72(e)(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.	*Rule 72(e)(3): No change.*	*Rule 72(e)(3): No change.*
Rule 72(e)(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.	*Rule 72(e)(4): No change.*	*Rule 72(e)(4): No change.*
Rule 72(e)(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.	*Rule 72(e)(5): No change.*	*Rule 72(e)(5): No change.*
Rule 72(e)(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.	*Rule 72(e)(6): No change.*	*Rule 72(e)(6): No change.*
Rule 72(e)(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 72(e)(7): No change.*	*Rule 72(e)(7): No change.*

Comparison Between Current Compulsory Arbitration Rules and Proposed Changes		
Current Rule	Committee Proposal	State Bar's Proposed Modifications
Rule 73(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.	*Rule 73(a): No change.*	*Rule 73(a): No change.*
Rule 73(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 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.	*Rule 73(b): Changes "*may include*" to "*shall include*" with respect to the list of potential arbitrators; no other changes.*	*Rule 73(b): Does not oppose proposed change; no other changes.*
Rule 73(c) Appointment of Arbitrator From List. (1) 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.	*Rule 73(c)(1): Changes title as follows:* "Appointment of Arbitrators ~~From List~~; Timing of Assignment; Notice of Appointment; Right to Peremptory Strike"; adds a new subdivision (1) entitled "Appointment of Arbitrator from List"; *no other changes.*	*Rule 73(c)(1): Does not oppose proposed change*.
(No equivalent)	*Rule 73(c)(2): Added a new subdivision:* "(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."	*Rule 73(c)(2): Does not oppose proposed change, but suggests replacing "120" days with "one-hundred and twenty (120)" days to conform with the format elsewhere.*

Comparison Between Current Compulsory Arbitration Rules and Proposed Changes		
Current Rule	Committee Proposal	State Bar's Proposed Modifications
Rule 73(c) (2) 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. 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.	*Rules 73(c)(3)-(c)(4): Breaks up current section into two sections, renumbered as (3) (just the first sentence) and (4) (the other three sentences). Also adds, at the end of the new section (3), the last sentence of what is currently Rule 73(d), but changing "time periods" to "time period," namely:"* The notice from the Superior Court Administrator or Superior Court Clerk shall advise the parties that the time period specified for placing a case on the inactive calendar in Rule 38.1(d) of these Rules shall apply."	*Rules 73(c)(3)-(c)(4): Change the first sentence of proposed Rule 73(c)(3) to incorporate a part currently in Rule 73(d):* "The Superior Court Administrator or Superior Court Clerk shall promptly notify the parties ~~who have appeared in the action~~ of the name of the arbitrator ~~so selected~~ by mailing written notice to the parties and the arbitrator ~~thereof.~~" *Does not oppose the other proposed changes.*
Rule 73(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.	*No equivalent: The second sentence was renumbered as part of proposed Rule 73(c)(3). The first sentence was deleted.*	*No equivalent: The requirement to notify the arbitrator of his or her appointment is proposed as a modification to proposed Rule 73(c)(3.)*
Rule 73(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.	*Rule 73(d)(1): Renumbered without any other changes.*	*Rule 73(d)(1): No proposed modifications.*
Rule 73(e) (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.	*Rule 73(d)(2): Renumbered without any other changes).*	*Rule 73(d)(2): No proposed modifications.*

Comparison Between Current Compulsory Arbitration Rules and Proposed Changes		
Current Rule	Committee Proposal	State Bar's Proposed Modifications
Rule 73(e) (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.	*Rule 73(d)(3): Renumbered without any other changes.*	*Rule 73(d)(3): No proposed modifications.*
Rule 73(e) (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) of this Rule.	*Rule 73(d)(4): Renumbered without any other changes.*	*Rule 73(d)(4): No proposed modifications.*

Comparison Between Current Compulsory Arbitration Rules and Proposed Changes		
Current Rule	Committee Proposal	State Bar's Proposed Modifications
Rule 74(a) Rulings by Arbitrator. After a case has been assigned to an arbitrator, the arbitrator shall make all legal rulings, including rulings on motions, 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. 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.	*Rule 74(c): Renumbered as Rule 74(c), with extensive changes. First, added the following to the list of motions that must be decided by the trial judge, not the arbitrator: (a) Motions to withdraw as attorney of record under Rule 5.1; and (b) Motions for summary judgment that, if granted, would dispose of the entire case.* *Second, added:* "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 motion."	*Rule 74(c): Opposes proposed change set forth in the first paragraph and proposes a modified version of what is currently in Rule 74(a). Changes first paragraph to:* "After a case has been assigned to an arbitrator, the arbitrator shall make all legal rulings, including rulings on dispositive and non-dispositive motions. However, an arbitrator shall not decide motions to continue on the inactive calendar, motions to consolidate cases, motions for change of venue, or motions to withdraw as attorney of record. Such motions shall be decided by the assigned trial judge. Additionally, the superior court in each county may require that dispositive motions be heard by the assigned trial judge by adopting a local rule under Rule 83. An arbitrator may not enter a judgment by default, stipulation or otherwise." *Agrees with adding the second paragraph in the proposed Rule 74(c).*

Comparison Between Current Compulsory Arbitration Rules and Proposed Changes		
Current Rule	Committee Proposal	State Bar's Proposed Modifications
Rule 74(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.	*Rule 74(b): Retains the language of the current Rule but adds the following to the end of this section:* "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."	*Rule 74(b): Opposes the addition of the proposed paragraph and proposes changing the time to set an arbitration hearing to between 90 and 150 days after the appointment of the arbitrator; no other changes.*
Rule 74(c) 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.	*Rule 76(a): Renumbered without any other changes.*	*Rule 75(a): No proposed modifications but renumbered as part of Rule 75 (rather than Rule 76) because the State Bar opposes the Committee's proposed Rule 75..*
Rule 74(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.	*Rule 74(a): Renumbered; deleted "and" in the phrase* "evidence, ~~and~~ to decide the law and the facts"	*Rule 74(a): Opposes the proposed deletion because otherwise the sentence would be grammatically incorrect.*
Rule 74(e) 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.	*Rule 76(b): Renumbered and deleted the last sentence.*	*Rule 75(b): No proposed modifications but renumbered as part of Rule 75 (rather than Rule 76) because the State Bar opposes the Committee's proposed Rule 75..*

Comparison Between Current Compulsory Arbitration Rules and Proposed Changes		
Current Rule	Committee Proposal	State Bar's Proposed Modifications
Rule 74(f) Evidence. The Arizona Rules of Evidence shall apply to arbitration hearings.	*Rule 76(c): Renumbered, with changes as follows:* "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."	*Rule 75(c): Proposes retaining the language of the rule as it currently is written. Renumbered as part of Rule 75 (rather than Rule 76) because the State Bar opposes the Committee's proposed Rule 75..*
Rule 74(g) 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.	*Rule 76(d): Renumbered without any other changes.*	*Rule 75(d): No proposed modifications but renumbered as part of Rule 75 (rather than Rule 76) because the State Bar opposes the Committee's proposed Rule 75..*
Rule 74(g) (1) Hospital bills on the official letterhead or billhead of the hospital, when dated and itemized.	*Rule 76(d)(1): Renumbered without any other change.*	*Rule 75(d)(1): No proposed modification.*
Rule 74(g) (2) Bills of doctors and dentists, when dated and containing a statement showing the date of each visit and the charge therefor.	*Rule 76(d)(2): Renumbered without any other changes.*	*Rule 75(d)(2): No proposed modifications.*
Rule 74(g) (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.	*Rule 76(d)(3): Renumbered without any other changes.*	*Rule 75(d)(3): No proposed modifications.*
Rule 74(g) (4) Bills for medicine, eyeglasses, prosthetic devices, medical belts or similar items, when dated and itemized.	*Rule 76(d)(4): Renumbered without any other changes.*	*Rule 75(d)(4): No proposed modifications.*
Rule 74(g) (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.	*Rule 76(d)(5): Renumbered without any other changes.*	*Rule 75(d)(5): No proposed modifications.*
Rule 74(g) (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.	*Rule 76(d)(6): Renumbered without any other changes.*	*Rule 75(d)(6): No proposed modifications.*

Comparison Between Current Compulsory Arbitration Rules and Proposed Changes		
Current Rule	Committee Proposal	State Bar's Proposed Modifications
Rule 74(g) (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.	*Rule 76(d)(7): Renumbered without any other changes.*	*Rule 75(d)(7): No proposed modifications.*
Rule 74(g) (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 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.	*Rule 76(d)(8): Renumbered, and rewritten to read:* "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."	*Rule 75(d)(8): Agrees with the proposed change, but adding "*except for good cause shown*" to the end of that proposal.*
Rule 74(g) (9) Records of regularly conducted business activity as contemplated by Rule 803(6) of the Arizona Rules of Evidence.	*Rule 76(d)(9): Renumbered without any other change as Rule 76(d)(9).*	*Rule 75(d)(9): No proposed modifications.*
Rule 74(g) (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	*Rule 76(d)(10): Renumbered without any other change as Rule 76(d)(10).*	*Rule 75(d)(10): No proposed modifications.*
Rule 74(h) 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.	*Rule 76(e): Renumbered without any other change.*	*Rule 75(e): No proposed modifications but renumbered as part of Rule 75 (rather than Rule 76) because the State Bar opposes the Committee's proposed Rule 75.*
Rule 74(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. 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.	*Rule 74(d): Renumbered without any other changes.)*	*Rule 74(d): No proposed modifications.*
Rule 74(j) Record of proceedings. The arbitrator shall not be required to make a record of the proceedings. If any party desires to make a verbatim record of the proceedings, such party shall pay for and provide for the recording. The charges of the recording shall not be considered costs in the case.	*Rule 76(f): Renumbered without any other changes).*	*Rule 75(f): No proposed modifications but renumbered as part of Rule 75 (rather than Rule 76) because the State Bar opposes the Committee's proposed Rule 75.*

Comparison Between Current Compulsory Arbitration Rules and Proposed Changes		
Current Rule	Committee Proposal	State Bar's Proposed Modifications
Rule 74(k) 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 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 76(g): Renumbered as Rule 76(g), with the following change:* "in accordance with ~~subparagraph (b) of this~~ Rule 74(b)"	*Rule 75(g): No proposed modifications but renumbered as part of Rule 75 (rather than Rule 76) because the State Bar opposes the Committee's proposed Rule 75.*
(No equivalent)	*Rule 75(a)(1) & (2). Added:* *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	*No equivalent. The State Bar opposes the Committee's proposed Rule 75 in its entirety.*
(No equivalent)	*Rule 75(a)(3) Added:* (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.	*No equivalent. The State Bar opposes the Committee's proposed Rule 75 in its entirety.*

Comparison Between Current Compulsory Arbitration Rules and Proposed Changes		
Current Rule	Committee Proposal	State Bar's Proposed Modifications
(No equivalent)	*Rule 75(b) Added:* (b) Respondent. Within 30 days of filing an answer the answering defendant(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.	*No equivalent. The State Bar opposes the Committee's proposed Rule 75 in its entirety.*
Rule 75(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; and (4) notify the parties of the decision in writing (a letter to the parties or their counsel shall suffice).	*Rule 77(a): Renumbered, and added new section at the end:* "(5) file the notice of decision with the court."	*Rule 76(a): No proposed modifications but renumbered as part of Rule 76 (rather than Rule 77) because the State Bar opposes the Committee's proposed Rule 75.*
Rule 75(a) [part two] 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.	*Rule 77(a): Renumbered as the second part of Rule 77(a), except that the last sentence is deleted:* ~~"A copy of the award or any other 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."~~	*Rule 76(a): No proposed modifications but renumbered as part of Rule 76 (rather than Rule 77) because the State Bar opposes the Committee's proposed Rule 75.*
Rule 75(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.	*Deleted*.	*Rule 76(e): Retains the language of Rule 75(b), but extends the time period before referral to 175 days to reflect the State Bar's proposal in its proposed Rule 74(b) to extend the deadline for holding an arbitration hearing to 150 days*.

Comparison Between Current Compulsory Arbitration Rules and Proposed Changes		
Current Rule	Committee Proposal	State Bar's Proposed Modifications
Rule 75(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.	*Rule 77(c): Renumbered, and changed as follows:* "Upon expiration of the time for appeal, if no appeal has been filed, any party may file to have judgment entered on the award." *Additionally, proposed new Rule 77(b) would provide as follows:* "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."	*Rule 76(c): No proposed modifications but renumbered as part of Rule 76 (rather than Rule 77) because the State Bar opposes the Committee's proposed Rule 75.* *Rule 76(b): Agrees with the Committee's proposed Rule 77(b), but changes the time period from 30 days to 50 days; renumbered as part of Rule 76 (rather than Rule 77) because the State Bar opposes the Committee's proposed Rule 75.*
Rule 75(d) Amount of Compensation for Arbitrators. An arbitrator assigned to serve in a case subject to the provisions of Rules 72 through 76 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(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.	*Rule 77(e): Renumbered, with two minor changes. First, changes to conform to renumbering of other rules (e.g.,* Rules 72 through 76 *amended to* Rules 72 through 78). *Second, amended to remove the reference to "case-dispositive motion*."	*Rule 76(f): Changes* "Rules 72 through 76" to "Rules 72 through 77*," changes* "Rule 75(d)" *to* "Rule 76(f)"; *renumbered as part of Rule 76 (rather than Rule 77) because the State Bar opposes the Committee's proposed Rule 75*
Rule 75(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 77(f): Renumbered without any other changes..*	*Rule 76(g): No proposed modifications but renumbered as part of Rule 76 (rather than Rule 77) because the State Bar opposes the Committee's proposed Rule 75*

Comparison Between Current Compulsory Arbitration Rules and Proposed Changes		
Current Rule	Committee Proposal	State Bar's Proposed Modifications
Rule 76(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.	*Rule 78(a): Renumbered without any other changes*.	*Rule 77(a): Adds a phrase to the first sentence as follows:* "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 twenty (20) days after the date upon which the notice of decision becomes final under Rule 76(b), whichever occurs first." *Renumbered as part of Rule 77 (rather than Rule 78) because the State Bar opposes the Committee's proposed Rule 75*
Rule 76(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.	*Rule 78(b): Renumbered without any other changes.*	*Rule 77(b): No proposed modifications but renumbered as part of Rule 77 (rather than Rule 78) because the State Bar opposes the Committee's proposed Rule 75.*
Rule 76(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.	*Rule 78(c): Renumbered without any other changes.*	*Rule 77(c): No proposed modifications but renumbered as part of Rule 77 (rather than Rule 78) because the State Bar opposes the Committee's proposed Rule 75.*
Rule 76(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.	*Rule 78(d): Renumbered without any other changes.*	*Rule 77(d): No proposed modifications but renumbered as part of Rule 77 (rather than Rule 78) because the State Bar opposes the Committee's proposed Rule 75.*
Rule 76(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*.	*Rule 78(e): Renumbered without any other changes.*	*Rule 77(e): No proposed modifications but renumbered as part of Rule 77 (rather than Rule 78) because the State Bar opposes the Committee's proposed Rule 75.*

Comparison Between Current Compulsory Arbitration Rules and Proposed Changes		
Current Rule	Committee Proposal	State Bar's Proposed Modifications
Rule 76(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.	*Rule 78(f): Renumbered without any other changes.*	*Rule 77(f): No proposed modifications but renumbered as part of Rule 77 (rather than Rule 78) because the State Bar opposes the Committee's proposed Rule 75.*
Rule 76(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(e) of these Rules.	*Rule 78(g)(1): Renumbered, with one change:* "submitted pursuant to Rule ~~74(e)~~ 76(b)[1] of these Rules."	*Rule 77(g)(1): Changes reference to Rule 74 to Rule 75(b). Renumbered as part of Rule 77 (rather than Rule 78) because the State Bar opposes the Committee's proposed Rule 75*

[1] Shown as Rule 76(e) in original; should be Rule 76(b).

Comparison Between Current Compulsory Arbitration Rules and Proposed Changes		
Current Rule	Committee Proposal	State Bar's Proposed Modifications
Rule 76(g)(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(e) of these Rules.	*Rule 78(g)(2): Renumbered as Rule 78(g)(1), with one change:* "submitted pursuant to Rule ~~74(e)~~ 76(b)[2] of these Rules."	*Rule 77(g)(2): Changes reference to Rule 74(e) to Rule 75(b). Renumbered as part of Rule 77 (rather than Rule 78) because the State Bar opposes the Committee's proposed Rule 75*
Rule 76(g)(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.	*Rule 78(g)(3): Renumbered without any other changes.*	*Rule 77(g)(3): No proposed modifications but renumbered as part of Rule 77 (rather than Rule 78) because the State Bar opposes the Committee's proposed Rule 75.*
Rule 76(g)(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.	*Rule 78(g)(4): Renumbered without any other changes.*	*Rule 77(g)(4): No proposed modifications but renumbered as part of Rule 77 (rather than Rule 78) because the State Bar opposes the Committee's proposed Rule 75.*

[2] Shown as Rule 76(e) in original; should be Rule 76(b).