

Mike Baumstark, Chair
Committee on Compulsory Arbitration
1501 W. Washington, Suite 410
Phoenix, Arizona 85007
Telephone (602) 452-3001

IN THE SUPREME COURT OF THE STATE OF ARIZONA

PETITION TO AMEND THE
RULES OF THE SUPREME
COURT, SECTION V.
REGULATION OF THE PRACTICE
OF LAW, RULE 45

Supreme Court No. R-07-

Pursuant to Rule 28 of the Rules of the Arizona Supreme Court, the Committee on Compulsory Arbitration in the Superior Court, through the undersigned, petitions the Supreme Court to amend the Rules of the Arizona Supreme Court, Section V. Regulation of the Practice of Law, Rule 45, as set forth in Appendix A. The petition is the result of the work of the ad hoc Committee on Compulsory Arbitration in the Superior Court appointed by Chief Justice McGregor in 2005. The proposed amendment is designed to recognize the legal educational value to State Bar members of serving as an arbitrator in Superior Court compulsory arbitration cases.

I. INTRODUCTION

The Committee on Compulsory Arbitration in the Superior Court issued its report and recommendations in 2006. The Committee made a number of recommendations that addressed proposed changes to rules of procedure in arbitration cases, increasing the statutory limit on cases subject to arbitration, increasing arbitrator compensation, and providing training opportunities and CLE credit for lawyers serving as arbitrators in compulsory arbitration cases.

A Rule 28 petition was filed previously with the Supreme Court proposing amendments to the Rules on Compulsory Arbitration. The Supreme Court approved a revised set of rules in September 2007, effective January 1, 2008. The Arizona legislature approved and the Governor signed into law increases to the statutory limit on cases assigned to arbitration and arbitrator compensation.

The recommendation that lawyers who provide service as arbitrators in compulsory arbitration cases be given continuing legal education (CLE) credit for some portion of the time spent on preparing for and conducting the arbitration hearing is addressed by this petition and proposed rule change.

2. THE ISSUE

The majority of attorneys surveyed by Roselle L. Wissler & Bob Dauber for their “Study of Court-Connected Arbitration in the Superior Courts of Arizona “

(Study) favored a non-monetary benefit such as credit toward Continuing Legal Education (CLE) for members of the State Bar that serve as arbitrators in Superior Court compulsory arbitration cases.¹ Statewide, almost two-thirds of all lawyers responding to the survey reported they were only “somewhat” or “not at all” familiar with the area of law of the arbitration cases assigned. The Study shows that 72%² of the respondents expend two or more hours preparing for a hearing. Additionally, for those arbitrators that hold hearings, 92%³ spend a minimum of an additional two hours in the hearing. Arbitrators who were unfamiliar with arbitration procedures or the area of law or who felt they did not have sufficient information to decide the case spent an average of three to five hours on cases.⁴ The Committee recognizes that the hours spent by arbitrators preparing, serving, and ruling on the case, especially outside their field of expertise, requires study beyond the normal duties as an attorney.

The following statement made by an attorney who had served as an arbitrator and whose response was reported in the Study is illustrative of the “educational value” derived from serving as an arbitrator:

¹ A Study of Court-Connected Arbitration in the Superior Courts of Arizona, p. IV.D – 29, By Roselle L. Wissler & Bob Dauber Lodestar Dispute Resolution Program Arizona State University College of Law

² Ibid, p. IV.C - 21

³ Ibid, p. IV.C - 22

⁴ Ibid, p. IV.E - 3

“As a transactional attorney, rules and procedures relating to arbitration are unfamiliar to me. I spend much more time preparing for the proceeding than my litigation colleagues.”

The Committee concluded the Study provides sufficient statistical and anecdotal evidence to support its recommendation that CLE credit be given to lawyers who are assigned and serve as arbitrators. The Committee further recommended that the CLE credit allowed for arbitrator service each year be limited to a portion of the annual CLE hours required by rule and be granted in lieu of compensation. This Rule petition recommends that no more than two credit hours annually be authorized and only for arbitrators whose services are otherwise eligible for compensation pursuant to law.

3. DESCRIPTION OF PROPOSED AMENDMENTS

Rule 45, Rules of the Supreme Court, provides in part that every active member of the State Bar complete a minimum of fifteen hours of continuing legal education (CLE) activity in each educational year. Section (b) of the rule allows for exceptions to the mandatory minimum according to the attorneys' membership classification. The Committee proposes an amendment to Section (b) which would allow active members who have been appointed as arbitrators and who are eligible for compensation under Rule 76, Rules of Civil Procedure, to receive CLE credit in lieu of financial compensation.

DATED this 8th day of January, 2008.

Committee on Compulsory Arbitration

A handwritten signature in black ink, appearing to read "Mike Baumstark", written in a cursive style. The signature is positioned above a horizontal line.

Mike Baumstark
Committee Chair

APPENDIX A

Rules of the Supreme Court of Arizona
RULE 45. Mandatory Continuing Legal Education

(a) [No change in text.]

(b) Exemptions.

(1)-(5) [No change in text.]

6. Active Members Subject to Appointment as Arbitrators. An active member appointed to serve as an arbitrator under Rule 73, Rules of Civil Procedure is eligible for two hours of continuing legal education activity credit each educational year. Credit for continuing legal education activity is available only to members entitled to receive the financial compensation provided for by A.R.S. § 12-133(g) or by local rule for services as an arbitrator and is in lieu of statutory financial compensation.

6 7. Other Exemptions. Upon application and showing of undue hardship, the MCLE Committee may exempt an active member from the requirements of section (a) or extend the deadline for compliance for a period of not more than one year. Any consideration for additional time past one year based on a continuing hardship, would require a new application.

(c)-(k) [No change in text.]