



# Supreme Court

STATE OF ARIZONA

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CLERK OF THE COURT

402 ARIZONA STATE COURTS BUILDING  
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KATHLEEN E. KEMPLEY  
CHIEF DEPUTY CLERK

September 6, 2007

**RE: ARIZ.R.CIV.P., SECTION IX RULES 72-76**  
Arizona Supreme Court No. R-06-0021

GREETINGS:

The following action was taken by the Supreme Court of the State of Arizona on August 27, 2007, in regard to the above-referenced cause:

**ORDERED: [Petition to Amend the Rules of Civil Procedure, Section IX. Compulsory Arbitration Rules 72-76] = ADOPTED as modified, effective January 1, 2008.**

Rachelle M Resnick, Clerk

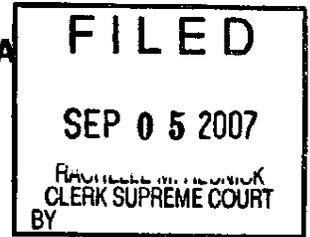
TO:

Michael Baumstark, Chairperson, Committee on Compulsory Arbitration  
Anthony J Palumbo, Palumbo Wolfe Sahlman & Palumbo PC  
James R Farley, James R Farley & Associates  
Amy G Langerman, Amy Langerman PC  
Steven A Cohen, Levenbaum & Cohen  
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Steve H Patience, Skousen Skousen Gulbrandsen & Patience PC  
Robert N Edwards, Wilcox Legal Group PC  
Christopher W Jensen, Jensen Law Firm PC  
Anthony J Wiggins, Wiggins Law Offices  
Juanita Mann, President, Arizona Association of Superior Court Clerks  
Clifford L Heiney, Clifford L Heiney  
Jana E Flagler, Cardinal & Stachel PC  
Anne E Findling, Robbins & Curtin PLLC  
Sidney T Marable, Law Offices of Sidney T Marable PLC  
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Robert B Van Wyck, Chief Counsel, State Bar of Arizona  
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William C Bacon, Goldberg & Osborne  
J Scott Wickland, J Scott Wickland Attorney at Law  
Frederick Curtis Berry Jr, Law Offices of Frederick C Berry Jr  
William J Risner, Risner & Graham  
Final Rule Distribution List  
cf

IN THE SUPREME COURT OF THE STATE OF ARIZONA

Supreme Court No. R-06-0021



ORDER AMENDING  
RULES 38.1 and 72 to 77, ARIZONA RULES OF CIVIL PROCEDURE

IT IS ORDERED that Rules 38.1 and 72 to 77, Arizona Rules of Civil Procedure, be amended in accordance with the attachment hereto,\* effective as of January 1, 2008.

DATED in the City of Phoenix, Arizona at the Arizona Courts Building, this 5<sup>th</sup> day of September, 2007.

For the Court:

  
RUTH V. MCGREGOR  
Chief Justice

\* Changes or additions in text are indicated by underscoring and deletions from text are indicated by ~~strikeouts~~.

# ARIZONA RULES OF CIVIL PROCEDURE

\* \* \*

## 38.1 Setting of Civil Cases for Trial; Postponements

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

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

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

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

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

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

\* \* \*

## IX. COMPULSORY ARBITRATION

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

(a) **Decision to Provide for Compulsory Arbitration.** Rules 72 through ~~76~~ 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~~ 77 shall be applicable to all cases in arbitration.

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

**(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~~ 75 of these ~~R~~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) [No change in text.]

**(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~~ 77 of the Arizona Rules of Civil Procedure.”

(i) [No change in text.]

(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~~ 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 ~~R~~rules apply to every certificate on compulsory arbitration and controverting certificate filed under this ~~R~~rule.

(iii) [No change in text.]

(2)-(7) [No change in text.]

### **2007 Amendments**

The 2007 amendments are the result of the work of the Committee on Compulsory Arbitration in the Superior Court appointed by Chief Justice Ruth V. McGregor in November 2005. The amendments seek to clarify, reorganize, and improve the rules to avoid unnecessary delay and expense in arbitrated matters.

### **Rule 73. Appointment of Arbitrators**

(a) [No change in text.]

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

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

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

(1) Appointment of Arbitrator from List. [No change in remaining text.]

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

(3) Notice of Appointment of Arbitrator. The Superior Court Administrator or Superior Court Clerk shall promptly notify the parties ~~who have appeared in~~

~~the action of the names so selected of the arbitrator~~ 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 periods specified for placing a case on the inactive calendar in Rule 38.1(d) of these rules shall apply.

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

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

**(d)(e) Disqualifications and Excuses.**

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

**State Bar Committee Note  
2000 Promulgation and Amendment**

\* \* \*

**[Rule 73(d)] [renumbered as 73(c)(3) in the 2007 amendments]** The provisions of former Rule 2(d) of the Uniform Rules of Procedure for Arbitration (now new Rule 73(d)) **[renumbered in 2007 as 73(c)(3)]** were amended in 2000 to conform with the holding of *Martinez v. Binsfield*, 296 Ariz. 466, 999 P.2d 810 (2000), and to make clear that the time periods set forth in Rule 38.1 of these Rules apply in every civil case including those subject to compulsory arbitration.

**[Rule 73(e)] [renumbered as 73(d) in the 2007 amendments]** the provisions of former Rule 2(e)(3) of the Uniform Rules of Procedure for Arbitration (now new Rule 73(e)(3) **[renumbered in 2007 as 73(d)(3)]**) were edited in 2000 to render them gender neutral.

**Rule 74. Powers of Arbitrator; Scheduling of Arbitration Hearing; Permitted Rulings by Arbitrator; Hearing; Evidence and Procedure Time for Filing Summary Judgment Motion; Receipt of Court File; Settlement of Cases.**

**(a) Rulings by 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. ~~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.~~

**(b) Scheduling of Arbitration Hearing.** The arbitrator shall fix a time for hearing, which hearing shall commence not ~~less~~ fewer 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~~ 30 days' notice in writing to the parties of the time and place of the hearing. Subject to Rule 38.1 of these ~~R~~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.

**(c) Rulings by Arbitrator.**

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

(A) motions to continue on the inactive calendar or otherwise extend time allowed under Rule 38.1 of these rules;

(B) motions to consolidate cases under Rule 42 of these rules;

(C) motions to dismiss;

(D) motions to withdraw as attorney of record under Rule 5.1 of these rules; or

(E) motions for summary judgment that, if granted, would dispose of the entire case as to any party.

(2) Procedure. The parties shall serve upon the arbitrator copies of documents requiring the arbitrator's consideration. Telephonic motions and testimony are acceptable and appropriate.

(3) Discovery Motions. 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.

(4) Interlocutory Appeal of Discovery Ruling. 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) Time for Filing Summary Judgment Motion. If a motion for summary judgment is filed, the original shall be filed no fewer than 20 days prior to the date for hearing. A copy of the motion shall be served upon the arbitrator and trial judge. 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 shall be tolled during the pendency of any such motion.

(e) Receipt of Court File. If the arbitrator believes that the file contains materials needed to conduct the arbitration hearing, the arbitrator shall, within four days prior to the date of the hearing, sign for and receive from the Superior Court Clerk the original superior court file. If the clerk maintains an electronic court record, the arbitrator shall have access to the original if available, or to a certified copy of the file either by print-outs of said documents or on alternative media. The clerk may deliver the documents electronically to any arbitrator who files a consent, either traditionally or electronically. 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.

(f) 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 and shall mail a copy to the arbitrator. Upon entry of the order the arbitration is terminated.

~~(e) 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.

~~(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.

~~(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.

~~(f) Evidence. The Arizona Rules of Evidence shall apply to arbitration hearings.~~

~~(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.~~

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

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

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

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

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

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

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

~~(8) In actions involving personal injury, doctors' medical reports may be offered and received in evidence without further proof, and may be given the weight to which the arbitrator deems them entitled, provided that a copy of~~

~~said report has been filed and served upon the adverse party at least twenty days prior to the date of the hearing. The adverse party may not object to the admissibility of the report unless the adverse party files and serves written objection thereto within ten days from the receipt of said copy stating the objections, and the grounds therefor, that will be made if the report is offered at the time of the hearing.~~

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

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

~~**(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.~~

~~**(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.~~

~~**(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.~~

~~**(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.~~

State Bar Committee Note

## 2000 Promulgation and Amendment

\* \* \*

New Rule 74(a) [renumbered in 2007 as Rule 74(c)], with some revisions, contains most of the provisions formerly contained in Rule 3 of the Uniform Rules of Procedure for Arbitration. The provision in former Rule 3 concerning the continuing applicability of the Arizona Rules of Civil Procedure was incorporated into new Rule 72(a). The provision of former Rule 3 concerning the legal status of rulings made by the arbitrator in cases where an appeal is taken from the arbitration award was incorporated into new Rule 76(c) [renumbered in 2007 as Rule 77(c)]. Similarly, the provision of former Rule 3 concerning the legal status of discovery conducted while the case was assigned to arbitration was incorporated into new Rule 76(c) [renumbered in 2007 as Rule 77(c)].

Rules 74(b) through 74(k) contain the provisions of former Rules 4(a) through (j), respectively, of the Uniform Rules of Procedure for Arbitration. [Rule 74(d) was renumbered in 2007 as Rule 74(a), and Rule 74(i) was renumbered as Rule 74(e). Rules 74(c), (e) through (h), (j), and (k) were moved and renumbered as Rules 75 (a) and (c) through (g).]

**[Rule 74(a)] [renumbered in 2007 as Rule 74(c)]** Former Rule 3 of the Uniform Rules of Procedure for Arbitration (now new Rule 74(a) [renumbered in 2007 as Rule 74(c)]) was amended in 2000 to make clear that, after a case has been assigned to an arbitrator, the arbitrator hears and rules on all motions except those described in the Rule. Under Rule 74(a) [renumbered in 2007 as Rule 74(c)], an arbitrator has the authority to enter an award or other final disposition which becomes binding if not timely appealed. Rule 74(a) [renumbered in 2007 as Rule 74(c)] provides further, however, that an arbitrator is not authorized to enter a judgment including a default judgment, a stipulated judgment, or a judgment of dismissal.

**[Rule 74(b)]** [No changes in text.]

**[Rule 74(h)] [renumbered in 2007 as Rule 75(f)]** Former Rule 4(g) of the Uniform Rules of Procedure for Arbitration (now new Rule 74(h) [renumbered in 2007 as Rule 75(f)]) was amended in 2000 to require that the arbitrator refer all proceedings involving any defaulted defendant(s) to the trial court. The amendment alters former Rule 4(g), which had permitted an arbitrator to assess, as part of the award, damages against any defaulted defendant(s).

**[Rule 74(i)] [renumbered in 2007 as Rule 74(e)]** Former Rule 4(h) of the Uniform Rules of Procedure for Arbitration (now new Rules 74(i)) **[renumbered in 2007 as Rule 74(e)]** was amended in 2000 to provide the arbitrator with the option of reviewing the original court file or directing the parties to provide the arbitrator with those pleadings and other documents the arbitrator deems necessary to the arbitration hearing. As a result of this amendment the arbitrator is no longer required to obtain the original court file from the court.

### **2007 Amendments**

**[Rule 74(c)]** Rule 74(c)(1) (formerly Rule 74(a)) expands the types of motions on which the arbitrator may not rule to include motions to dismiss, motions to withdraw as attorney of record, and dispositive motions for summary judgment. New Rule 74(c)(4) creates an appeal to the trial judge from a ruling by the arbitrator on discovery motions when a party believes the information sought to be discovered is privileged or otherwise protected by the law.

**[Rule 74(e)]** Rule 74(e) (formerly Rule 74(i)) was amended to allow the clerk of the court to deliver the record to the arbitrator in an electronic format, with consent of the arbitrator, or to allow the arbitrator access to an original electronic court record either by print-outs of the documents or on alternative media.

### **Rule 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) Initial Disclosure.** Within 30 days of service of an answer, the plaintiff and answering defendant shall make the initial disclosure required by Rule 26.1.

**(c) Pre-hearing Statement.** Not fewer 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.

(d) Evidence. The Arizona Rules of Evidence shall apply to arbitration hearings.

(e) Documentary Evidence. The arbitrator shall admit into evidence without further proof the following documents, if relevant, and if listed in the pre-hearing statement, unless it is shown that any such document is not what it appears to be and the objection is set forth in the pre-hearing statement:

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

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

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

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

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

(6) testimony of any witness given in a deposition taken pursuant to these rules, whether or not such witness is available to appear in person;

(7) a sworn written statement by an expert, other than a doctor's medical report, whether or not such expert is available to appear in person, provided that such statement is signed by the expert and contains a summary of the expert's qualifications (if any such statement contains the expert's opinions, it

shall also state the grounds for each such opinion, including a summary of the facts upon which each opinion is based);

(8) in actions involving personal injury, doctors' medical reports, which shall be given the weight to which the arbitrator deems them entitled, provided that a copy of said report has been previously disclosed at least 20 days prior to the date of the hearing, except for good cause shown;

(9) records of regularly conducted business activity as contemplated by Rule 803(6) of the Arizona Rules of Evidence; and

(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.

**(f) Assessment of Damages Against Defaulted Parties.** In cases involving more than one defendant, where a default has been entered against one or more, but fewer 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.

**(g) 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.

**(h) 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 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.

### **2007 Amendments**

**[Rule 75]** New Rule 75 represents a reorganization of the rules and includes provisions contained in former Rule 74, paragraphs (c), (e) through (h), (j), and (k).

**Rule 75-76. Notice of Decision, Award or Other Final Disposition; Failure of Arbitrator to File Award; Judgment; Dismissal; Compensation of Arbitrators**

**(a) Notice of Decision and Filing of Award or Other Final Disposition.** Within ten days after completion of the hearing, the arbitrator shall:

(1) render a decision;

(2) return the original superior court file by messenger or certified mail to the Superior Court Clerk;

(3) notify the parties that their exhibits are available for retrieval; 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 for attorneys' fees and costs whether arising out of an offer of judgment, sanctions or otherwise, an affidavit in support of attorneys' fees if such fees are recoverable, and a verified statement of costs. Within five days of receipt of the foregoing, the opposing party may file objections. Within ten days of receipt of the objections, the arbitrator shall pass upon the objections and file one signed original award or other final disposition with the Clerk of the Superior Court and on the same day shall mail or deliver copies thereof to all parties or their counsel. ~~A copy of the award or any order made by the arbitrator on stipulation or otherwise which has the effect of terminating the arbitration phase of the proceeding shall be mailed to the Court Administrator.~~

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

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

shall be entered in the judgment docket.

**(b) Failure of Arbitrator to File Award.** Unless a formal award or stipulation for entry of another form of relief is filed with the court within 50 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) Dismissal upon Failure to Apply for Entry of Judgment.** If no application for entry of judgment has been filed within 120 days from the date of the filing of the notice of decision, and no appeal is pending, the case shall be dismissed.

**(e) 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 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.

**(f)(d) Amount of Compensation for Arbitrators.** An arbitrator assigned to serve in a case subject to the provisions of Rules 72 through ~~76~~ 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)~~ 76(f), "hearing" means any fact-finding proceeding, or oral argument ~~on a case dispositive motion, which that~~ 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)(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.

**State Bar Committee Note  
2000 Promulgation and Amendment**

\* \* \*

New Rules 75(a) through (c) [Rule 75(a) was renumbered in 2007 as Rule 76(a); Rules 75 (b) and (c) were abrogated] contain the provisions formerly contained in Rule 5(a) through (c) of the Uniform Rules of Procedure for Arbitration. Former Rule 5(d) was simply eliminated as duplicative and unnecessary.

New Rules 75(d) and (e) [renumbered in 2007 as Rules 76(f) and (g)] contain, as amended, the provision formerly contained in Rules 6(a) and (b) of the Uniform Rules of Procedure for Arbitration.

**[Rule 75(a)] [renumbered in 2007 as Rule 76(a)]** Former Rule 5(a), now new Rule 75(a) [renumbered in 2007 as Rule 76(a)], was amended and restructured in 2000 to more clearly state the arbitrator's duties and responsibilities following the arbitration hearing.

**[Rule 75(d)] [renumbered in 2007 as Rule 76(f)]** Former Rule 6(a), now new Rule 75(d) [renumbered in 2007 as Rule 76(f)], was amended in 2000 to make clear that assigned arbitrators are entitled to the compensation provided for in A.R.S. § 12-133(g) when their work results in an award or other final disposition, or a settlement, without a traditional "hearing" or fact-finding proceeding.

**Rule ~~76-77~~. 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 20 days after the date upon which the notice of decision becomes an award under Rule 76(b), whichever occurs first ~~other final disposition~~. The notice of appeal shall be entitled "Appeal from Arbitration and Motion to Set for Trial" and shall request that the case be set for trial in the Superior Court and state whether a jury trial is requested and the estimated length

of trial. The Appeal from Arbitration and Motion to Set for Trial shall serve in place of a Motion to Set and Certificate of Readiness under Rule 38.1(a) of these Rules.

(b)-(e) [No change in text.]

**(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 ~~three~~ percent (25~~23~~%) 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 ~~three~~ percent (25~~23~~%) 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) ~~R~~reasonable expert witness fees incurred by the appellee in connection with the appeal.

Upon final disposition of the case and lacking an order from the court for the disposition of the deposit provided for in paragraph (b) of this rule, the clerk of court shall refund the deposit to the party making the deposit.

**(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)~~75(c) of these ~~R~~rules.

(2) Within ~~twenty~~20 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 ~~R~~rules. If the appellee fails or elects not to file such a list of witnesses and exhibits, then the witnesses and exhibits intended to be used at trial by appellee shall be deemed to be those set forth in any such list previously filed in the action or in the pre-hearing statement submitted pursuant to Rule ~~74~~76(e) of these ~~R~~rules.

(3) The parties shall have ~~eighty~~80 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 ~~R~~rules.

(4) [No change in text.]

**State Bar Committee Note  
2000 Promulgation and Amendment**

\* \* \*

New Rules 76(a) through (g) [renumbered in 2007 as Rules 77(a) through (g)] contain the provisions formerly contained in Rule 7(a) through (g) of the Uniform Rules of Procedure for Arbitration, with modifications to reflect their new placement. The sentence from former Rule 3 of the Uniform Rules of Procedure for Arbitration which dealt with the precedential effect of ruling by the arbitrator, and the use of discovery taken while a case was assigned to arbitration, was placed in new Rule 76(c) [renumbered in 2007 as Rule 77(c)].

**X. GENERAL PROVISIONS**

Rule

~~77.~~ Abrogated.

[No change in remaining text.]

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