

# MANDATORY SUPERIOR COURT CIVIL ARBITRATION RULES – PCLMARPCLSCCAR-PCLSCCAR

## PCLSCCAR 1 -- SCOPE AND PURPOSE OF RULES

### 1.1 Application of Rules - Purpose and Definitions

(a) **Purpose.** The purpose of ~~mandatory~~ arbitration of civil actions under [RCW 7.06](#), as implemented by the ~~Mandatory Superior Court Civil~~ Arbitration Rules, is to provide a simplified and economical procedure for obtaining the prompt and equitable resolution of disputes involving claims of \$100,000.00 or less. The ~~Mandatory Superior Court Civil~~ Arbitration Rules, as supplemented by these local rules, are not designed to address every question which may arise during the arbitration process, and the rules give considerable discretion to the arbitrator. The arbitrator should not hesitate to exercise that discretion. Arbitration hearings should be informal and expeditious, consistent with the purpose of the statutes and rules.

(b) **"Director" Defined.** In these rules, "Director" means the Clerk of the Pierce County Superior Court.

Comment

[1] The increase to \$100,000.00 in Rule 1.1 and the additional discovery in Rules 4.2(b)(6), 4.2(c), and 4.3 will apply to all cases filed on or after September 1, 2018 (the effective date of the legislation) and in which a note for arbitration is filed on or after September 1, 2019 (the effective date of the new local rules).

[Amended effective September 1, ~~2019~~2020]

**1.2 Matters Subject to Arbitration.** The limit for claims subject to ~~mandatory~~ arbitration is \$100,000.00. For the purpose of this rule, a "claim" is defined to be the net value of the claim, after all reductions for comparative negligence or set-offs; e.g. if the plaintiff's damages are \$140,000.00 and the plaintiff is 50% comparatively negligent, the plaintiff's claim is for \$70,000.00.

[Amended effective September 1, 20~~20~~49]

### 1.3 Relationship to Superior Court Jurisdiction And Other Rules – Motions

(a) **Motions.** All motions before the court relating to ~~mandatory~~ arbitration shall be noted on the civil motions calendar in accordance with [PCLR 7](#), except as otherwise provided in these arbitration rules.

(b) **Assignment to Arbitrator.** A case is deemed assigned to an arbitrator upon the filing of a Statement of Arbitrability, as set forth in [PCLMARPCLSCCAR 2.1\(e\)](#).

[Amended effective September 1, 2020Adopted effective June 1, 1990]

## PCLSCCAR 2 -- TRANSFER TO ARBITRATION AND ASSIGNMENT OF ARBITRATOR

### 2.1 Transfer to Arbitration

(a) **Statement of Arbitrability.** A party may file a Statement of Arbitrability [\[Form S\]](#) requesting arbitration at any time after all requirements set forth in the certificate of readiness on the Statement of Arbitrability have been met and no later than the discovery cutoff date. After the discovery deadline has passed, the Statement of Arbitrability may be filed only by leave of the court for good cause shown.

**(b) Response to Statement of Arbitrability.** Any person disagreeing with the Statement of Arbitrability shall serve and file a response to the Statement of Arbitrability on the forms prescribed by the court within 20 days of service of the summons and complaint, or 7 days after the receipt of the Statement of Arbitrability, whichever time is greater.

**(c) Failure to File - Amendments.** A person failing to serve and file an original response within the times prescribed may later do so only upon leave of the court. A party may amend a Statement of Arbitrability or response at any time before assignment of an arbitrator or assignment of a trial date, and thereafter only upon leave of the court for good cause shown.

**(d) By Stipulation.** A case in which all parties file a stipulation to arbitrate under [MARSCCAR 8.1](#) will be placed on the arbitration calendar regardless of the nature of the case or amount in controversy.

**(e) When Transfer to Arbitration Occurs for Purpose of Application of Local Rules.** The case is transferred to arbitration upon the filing of a Statement of Arbitrability indicating that the case is subject to arbitration, unless an objection to arbitration of the case is received within the time limits found in [PCLMARPCCLSCCAR 2.1\(b\)](#). This transfer shall also trigger the restriction on discovery contained in [MARSCCAR 4.2](#) and [PCLMARPCCLSCCAR 4.2](#).

**(f) Trial Date.** Once the Statement of Arbitrability has been filed, the trial date and Case Schedule shall be cancelled. A Mandatory Court Review Hearing shall be set 6 months from the filing of the Statement of Arbitrability.

[Amended effective September 1, 2016~~20~~]

## **2.2 Reserved**

### **2.3 Assignment to Arbitrator**

**(a) Generally; Stipulations.** When a case is set for arbitration, a list of 5 proposed arbitrators will be furnished to the parties. A master list of arbitrators will be made available on request. The parties are encouraged to stipulate to an arbitrator. In the absence of a stipulation, the arbitrator will be chosen from among the five proposed arbitrators in the manner defined by this rule.

**(b) Response by Parties.** Each party may, within 14 days after a list of proposed arbitrators is furnished to the parties, nominate 1 or 2 arbitrators and strike 2 arbitrators from the list. If both parties respond, an arbitrator nominated by both parties will be appointed. If no arbitrator has been nominated by both parties, the presiding Judge or designee will randomly appoint an arbitrator from among those not stricken by either party.

**(c) Response by Only One (1) Party.** If only one party responds within 14 days, the presiding Judge or designee will appoint an arbitrator nominated by that party.

**(d) No Response.** If neither party responds within 14 days, the presiding Judge or designee will randomly appoint 1 of the 5 proposed arbitrators.

**(e) Additional Arbitrators for Additional Parties.** If there are more than 2 adverse parties, all represented by different counsel, 2 additional proposed arbitrators shall be added to the list for each additional party so represented, with the above principles of selection to be applied. The number of adverse parties shall be determined by the presiding Judge or designee.

[Adopted effective June 1, 1990]

## **PCLSCCAR 3 – ARBITRATORS**

### **3.1 Qualifications**

**(a) Arbitration Panel.** There shall be a panel of arbitrators in such numbers as the administrative committee may from time to time determine. A person desiring to serve as an arbitrator shall complete an

information sheet on a form prescribed by the court. A copy of said completed sheet is available upon request by any party and will be mailed to a requesting party at the party's own expense. The oath of office on the form prescribed by the court must be completed and filed prior to an applicant being placed on the panel. An arbitrator must be a member of the Washington State Bar Association and have been admitted to the bar for a minimum of 5 years and provide an affidavit or declaration certifying completion of a minimum of three credits of Washington State Bar Association approved continuing legal education credits on the professional and ethical consideration for serving as an arbitrator or an affidavit or declaration certifying that they have acted as an arbitrator five or more times previously. Pierce County Superior Court shall waive the three continuing legal education credits for arbitrators who have acted as an arbitrator five or more times previously.

**(b) Refusal; Disqualification.** The appointment of an arbitrator is subject to the right of that person to refuse to serve. An arbitrator must notify the presiding Judge or designee immediately if refusing to serve or if any cause exists for the arbitrator's disqualification from the case upon any of the grounds of interest, relationship, bias, or prejudice set forth in [CJC Canon 3\(D\)](#), governing the disqualification of Judges. If disqualified, the arbitrator must immediately return all materials in a case to the presiding Judge or designee.

**3.2 Authority of Arbitrators.** An arbitrator has the authority to:

**(a) Payment of Expense/Attorney Fees.** Require a party or attorney, advising such party, or both, to pay the reasonable expenses, including attorney fees, caused by the failure of such party or attorney, or both, to obey an order of the arbitrator unless the arbitrator finds that the failure was substantially justified or that other circumstances make an award of expenses unjust. The arbitrator shall make a special award for such expenses and shall file such award with the clerk of the superior court, with proof of service of a party on each party. The aggrieved party shall have 10 days thereafter to appeal the award of such expense in accordance with the procedures described in [RCW 2.24.050](#). If, within 10 days after the award is filed, no party appeals, a judgment shall be entered in a manner described generally under [MARSCCAR 6.3](#);

**(b) Basis of Attorney Fee Award.** Award attorney fees, as authorized by these rules, by a contract or by law.

[Amended effective September 1, 20~~20~~18]

## **PCLSCCAR 4 -- PROCEDURES AFTER ASSIGNMENT**

### **4.1 Reserved**

### **4.2 Discovery**

**(a) Additional Discovery.** In determining when additional discovery beyond that directly authorized by [MARSCCAR 4.2](#) and these local rules is reasonably necessary, the arbitrator shall balance the benefits of discovery against the burdens and expenses. The arbitrator shall consider the nature and complexity of the case, the amount in controversy, values at stake, the discovery that has already occurred, the burdens on the party from whom discovery is sought, and the possibility of unfair surprise which may result if discovery is restricted. Authorized discovery shall be conducted in accordance with the civil rules, except that motions concerning discovery shall be determined by the arbitrator.

**(b) Notwithstanding the Foregoing, the Following Interrogatories May Be Submitted to Any Party:**

**(1) General Damages.** State the amount of general damages being claimed;

**(2) Special Damages.** State each item of special damages being claimed and the amount thereof;

**(3) Knowledge of Liability Witness(es).** List the name, address, and phone number of each person having knowledge of any facts regarding liability;

**(4) Knowledge of Damages Witness(es).** List the name, address, and phone number of each person having knowledge of any facts regarding the damages claimed;

**(5) Expert Witness(es).** List the name, address, and phone number of each expert witness you intend to call at the arbitration. For each such expert, state the subject matter on which the expert is expected to testify, state the substance of the facts and opinions to which the expert is expected to testify, and a summary of the grounds for each opinion.

**(6)** Provide the name, address, and phone number of all health care providers, including physicians, chiropractors, dentists, physical therapists, osteopaths, hospitals, and all others who have treated you in the last seven years and the reason for the treatment.

Only these interrogatories, with the exact language as set out above, are permitted. Interrogatory (6) is permitted only in cases alleging personal injury.

**(c) Additional Depositions.** In addition to party depositions allowed by [MARSCCAR 4.2](#), each side (i.e. plaintiff(s) or defendant(s)) may take up to two (2) non-party depositions. These additional depositions are limited to three (3) hours in length each, excluding breaks and questioning by the party defending the deposition.

**(d) Restrictions Upon Discovery.** The restrictions upon discovery set out in [MARSCCAR 4.2](#) and [PCLMARPCCLSCCAR 4.2\(a\)](#) shall take effect upon the filing of a statement of arbitrability as set out in [PCLMARPCCLSCCAR 1.3](#) and [2.1\(e\)](#).

#### 4.3 Subpoena

**(a) CR 45 Subpoenas.** [CR 45](#) subpoenas are permissible as follows: 1) To obtain discoverable medical records identified in Interrogatory Number 6 above; 2) To obtain records via a subpoena duces tecum from a non-party being deposed under this Rule; 3) Each side (i.e. plaintiff(s) or defendant(s)) may also send up to two additional records subpoenas to third-parties. Beyond the subpoenas allowed under this Rule, any additional subpoenas may only be served by agreement of all parties or as allowed by the arbitrator. A copy of each subpoena shall be served on all parties and all documents obtained by subpoena must be provided to all other parties upon request. Any motion to quash a subpoena under this Rule should be directed to the arbitrator.

Comment

[1] The increase to \$100,000.00 in Rule 1.1 and the additional discovery in Rules 4.2(b)(6), 4.2(c), and 4.3 will apply to all cases filed on or after September 1, 2018 (the effective date of the legislation) and in which a note for arbitration is filed on or after September 1, 2019 (the effective date of the new local rules).

[Amended effective September 1, ~~2019~~2020]

## PCLSCCAR 5 -- HEARING

**5.1 Notice of Hearing - Time and Place – Continuance.** An arbitration hearing shall be scheduled to be heard in Pierce County at any reasonable time and place chosen by the arbitrator. The arbitrator may grant a continuance without court order. The parties may stipulate to a continuance only with the permission of the arbitrator. The arbitrator shall give reasonable notice of the hearing date and any continuance to the Director.

[Amended effective February 19, 1991]

**5.2 Prehearing Statement of Proof - Documents Filed with Court.** In addition to the requirements of [MARSCCAR 5.2](#), each party shall also furnish the arbitrator with copies of pleadings and other documents contained in the court file which that party deems relevant. The court file shall remain with the county clerk. The arbitrator shall strictly enforce the provisions of [MARSCCAR 5.2](#) and is encouraged to withhold

permission to present evidence at time of hearing if the parties have failed to comply with this rule.

[Adopted effective June 1, 1990]

## **PCLSCCAR 6 – AWARD**

### **6.1 Form and Content of Award**

**(a) Form.** The award shall be prepared on the form prescribed by the court.

**(b) Exhibits.** All exhibits offered during the hearing shall be returned to the offering parties.

**(c) Attorneys Fees.** Any motion for actual attorney fees, whether pursuant to contract, statute, or recognized ground in equity, must be presented to the arbitrator, as follows:

**(1) Motion.** Any motion for an award of attorney fees must be submitted to the arbitrator and served on opposing counsel within seven calendar days of receipt of the award. There shall be no extension of this time, unless the moving party makes a request for an extension before the seven day period has expired, in writing, served on both the arbitrator and opposing counsel;

**(2) Response.** Any response to the motion for fees must be submitted to the arbitrator and served on opposing counsel within seven calendar days after receipt of the motion;

**(3) Decision.** The arbitrator shall render a decision on the motion, in writing, within 14 days after the motion is made;

**(4) Amended Award.** If the arbitrator awards fees, the arbitrator shall file an amended award. If fees are denied, the decision shall be filed and served on the parties;

**(5) Discretionary Hearing.** It is within the arbitrator's discretion whether to hold a hearing on the issue of fees;

**(6) Appeal.** The time for appeal of the arbitrator's decision in any case where attorney fees have been timely requested, as set forth above, shall not start to run until the service and filing of the amended award, or the denial thereof.

[Adopted effective June 1, 1990]

**6.2 Filing of Award.** A request by an arbitrator for an extension of time for the filing of an award under [MAR 6.2](#) may be presented to the presiding Judge, ex parte. The arbitrator shall give the parties notice of an extension granted.

[Adopted effective June 1, 1990]

**6.3 Judgment on Award.** Failure to file a judgment within 90 days of filing the arbitration award shall result in the entry of an order of dismissal, provided no request for trial de novo has been timely filed or upon motion good cause is shown to not dismiss the case.

[Amended effective September 1, 2015]

## PCLSCCAR 7 -- TRIAL DE NOVO

### 7.1 Request for Trial de Novo – Calendar

(a) **Form.** A written request for a trial de novo shall be accompanied by a note of issue placing the matter on the assignment calendar. Failure to submit the note for assignment is not grounds for dismissal; however, the court may impose terms in its discretion.

(b) **Attorney Fees – Time for Appeal.** In any case in which a party makes a motion for attorney fees pursuant to ~~PCLMAR~~**PCLSCCAR 6.1(c)**, the 20 day period for appeal shall not commence until the arbitrator has either filed and served the amended award, or the written denial thereof.

(c) **Trial Date.** When a request for a trial de novo is timely filed, an expedited case schedule shall be issued setting the trial date in 6 months.

[Amended effective September 1, 20~~2015~~16]

## PCLSCCAR 8 -- GENERAL PROVISIONS

8.1 **Stipulation - Effect on Relief Granted.** If a case not otherwise subject to ~~mandatory~~ arbitration is transferred to arbitration by stipulation, the arbitrator may grant any relief which could have been granted if the case were determined by a Judge.

[Adopted effective June 1, 1990]

8.3 **Effective Date.** These rules, as amended, become effective on the 1st day of January, 1989, subject to amendment thereafter, pursuant to [GR 7](#).

[Amended effective September 1, 2000]

8.4 **Title and Citation.** These rules are known and cited as the Pierce County Local ~~Mandatory Arbitration Rules~~**Superior Court Civil Arbitration Rules**. ~~PCLMAR~~**PCLSCCAR** is the official abbreviation.

[Adopted effective June 1, 1990]

### 8.5 Compensation of Arbitrator

(a) **Generally.** Arbitrators shall be compensated in the same amount and manner as Judges pro tempore of the superior court; provided, however, that said compensation shall not exceed \$1,000.00 for any case unless prior approval is granted by the presiding Judge. Hearing time and reasonable preparation time are compensable. Arbitrators may be reimbursed a sum not to exceed \$10.00 for costs incurred.

(b) **Form.** When the award is filed, the arbitrator shall submit to the presiding court ex parte a request for payment on a form prescribed by the court. The presiding Judge shall determine the amount of compensation and costs, if any to be paid.

[Amended effective September 1, 2006]

## 8.6 Administration

**(a) Supervision.** The director, under the supervision of the superior court Judges shall supervise arbitration under these rules.

**(b) Committee.** There shall be a standing committee of the Tacoma-Pierce County Bar Association, appointed by the president thereof, to assist the court in the formulation and administration of these rules.

**(c) Powers.** The court, assisted by the director and standing committee of the Tacoma-Pierce County Bar Association, shall have the power and duty to:

(1) Appoint the panel of arbitrators provided in [PCLMARPCLSCCAR 3.1\(a\)](#);

(2) Remove a person from a panel of arbitrators;

(3) Establish procedures for selecting an arbitrator not inconsistent with the ~~mandatory arbitration rules~~ [Superior Court Civil Arbitration Rules](#);

(4) Review the administration and operation of the arbitration program periodically and make recommendations as it deems appropriate to improve the program.

[Adopted effective June 1, 1990]