

FORM OF ORDER AND TRANSMITTAL BY AGENCY HAVING SINGLE HEAD

State of Washington

Washington State Attorney General's Office

(Agency name)

Administrative Order No. 87-5

(1) I, Kenneth O. Eikenberry, Attorney General

directrix

do promulgate and adopt at Olympia, Washington (place)

the annexed rules relating to: Chapter 19.118 RCW
New Section 44-10-010 Definitions
New Section 44-10-030 Arbitration Requests
New Section 44-10-100 Subpoenas
New Section 44-10-120 Withdrawal
New Section 44-10-140 Representation by Counsel
New Section 44-10-150 Pre-Decision Settlement of Dispute
New Section 44-10-170 Powers and Duties of Arbitrators

(2) ALTERNATIVE A. Use only for Adoption of Permanent Rules.

This action is taken pursuant to Notice No. filed with the code reviser on These rules shall take effect:
[] thirty days after they are filed with the code reviser pursuant to RCW 34.04.040(2).
[] at a later date, such date being

(2) ALTERNATIVE B. Use only for Adoption of Emergency Rules.

I, Kenneth O. Eikenberry, find that an emergency exists and that this order is necessary for the preservation of the public health, safety, or general welfare and that observance of the requirements of notice and opportunity to present views on the proposed action would be contrary to public interest. A statement of the facts constituting the emergency is: Chapter 19.118 RCW commonly known as the Lemon Law, becomes effective on January 1, 1988 and mandates the administration of arbitration hearings. Rules are necessary for the uniform conduct of the arbitration hearings.

These rules are therefore adopted as emergency rules to take effect upon filing with the code reviser.

(3) Pursuant to the requirements of RCW 34.04.026 that "every agency shall incorporate the most specific, but in no case omit all, of the following language alternatives when adopting or amending rules" fill in statement (a), (b), or (c) as appropriate:

(a) This rule is promulgated pursuant to RCW and is intended to administratively implement that statute.

[X] (b) This rule is promulgated pursuant to RCW 19.118.080(2) and (7) which directs that the

Attorney General's Office (agency)

has authority to implement the provisions of Chapter 19.118 RCW (name of act or RCW citation)

[] (c) This rule is promulgated under the general rule-making authority of the (agency)

as authorized in RCW

(4) The undersigned hereby declares that the agency has complied with the provisions of the Open Public Meetings Act (chapter 42.30 RCW), the Administrative Procedure Act (chapter 34.04 RCW) and the State Register Act (chapter 34.08 RCW) in the adoption of these rules.

(5) This order, after being first recorded in the order register of this agency, is herewith transmitted to the Code Reviser for filing pursuant to chapter 34.04 RCW and chapter 1-12 WAC.

APPROVED AND ADOPTED STATE OF WASHINGTON FILED

December 29 1987

By Kenneth O. Eikenberry Washington State Attorney General Title

DEC 29 1987

CODE REVISER'S OFFICE WSR 88-02-014

[Form CR-7: Rev. 7/23/82]

NEW SECTION

WAC 44-10-010 DEFINITIONS. Terms, when used in this chapter, shall have the same meaning as terms used in chapter 19.118 RCW. The following definitions shall supplement or aid in the interpretation of the definitions set forth in chapter 19.118 RCW.

(1) The phrase "Arbitration Service" means the agency, firm, board, organization, individual or other entity selected by the Attorney General through a Request For Proposal to conduct the arbitrations provided under chapter 19.118 RCW.

(2) The phrase "Arbitration Special Master" means the individual or group of individuals selected by the Arbitration Service to hear and decide special issues brought before the Arbitration Service by the parties.

(3) The terms "Attorney General" or "Attorney General's Office" means the person duly elected to serve as Attorney General of the State of Washington and delegates authorized to act on his or her behalf.

(4) The term "person" includes every natural person, firm, partnership, corporation, association, or organization.

NEW SECTION

WAC 44-10-030 ARBITRATION REQUESTS. A consumer must submit a completed Request For Arbitration form with copies of supporting documentation to the Attorney General's Office, Lemon Law Administration in Seattle, in order to apply for the new motor vehicle arbitration process. The Request For Arbitration form will be supplied, upon request, by the Attorney General's Office.

NEW SECTION

WAC 44-10-100 SUBPOENAS. (1) A subpoena issued by the Attorney General, pursuant to chapter 19.118 RCW, shall identify the party causing the issuance of the subpoena, designate that the subpoena is issued by the Attorney General pursuant to RCW 19.118.080, state the purpose of the proceeding and shall command the person to whom it is directed to produce designated books, documents, or things under his or her control at the time and place set in the subpoena.

(2) A subpoena may be served by any suitable person over 18 years of age, by exhibiting and reading it to the person, or by giving a copy of the subpoena, or by leaving such copy at the place of his or her abode. When service is made by any other person than an office authorized to serve process, proof of service shall be made by affidavit.

(3) A person to whom a subpoena is directed may move to quash the subpoena. The motion to quash must be accompanied by a short memorandum or statement setting forth the foundation for the motion. Upon motion made promptly, and in any event at or before the time specified in the subpoena for compliance, by the person to whom the subpoena is directed (and upon notice to the party by whom the subpoena was issued) the Arbitration Special Master may quash or modify the subpoena if it is unreasonable or requires evidence not relevant to any matter at issue.

(4) Any objection to the production of evidence shall be treated as a motion to quash to be decided by the Arbitration Special Master.

(5) If a person fails to obey a subpoena, upheld by the Arbitration Special Master, the Attorney General may petition the superior court of the county where the hearing is being conducted for enforcement of the subpoena. The petition shall be accompanied by a copy of the subpoena and proof of service, and shall set forth in what specific manner the subpoena has not been complied with, and shall ask for an order of the court to compel the production of relevant evidence for the arbitration hearing. The court upon such petition shall enter an order directing the person to appear before the court at a time and place to be fixed in such order and then and there to show cause why the person has not responded to the subpoena or has refused to comply. A copy of the order shall be served upon the person. If it appears to the court that the subpoena was properly issued and upheld by the Arbitration Special Master, the court shall enter an order that the person appear at the time and place fixed in the order and produce the required evidence, and on failing to obey said order the person shall be dealt with as for contempt of court.

(6) The Arbitration Service shall have three business days from the receipt of the Manufacturer's Statement to determine whether to submit a request from itself or the parties, to the Attorney General to issue a subpoena for the production of evidence. The person subject to the subpoena must comply or submit a motion to quash before the Arbitration Special Master within five business days of receipt of the subpoena. The Arbitration Special Master shall have five business days to hear and rule on a motion to quash. If the Arbitration Special Master upholds a subpoena the person shall have five business days to comply with the subpoena. If the person does not comply the Attorney General may bring a show cause motion in superior court.

NEW SECTION

WAC 44-10-120 WITHDRAWAL. (1) A consumer may withdraw a request for arbitration at any time;

(a) A withdrawal requested at least three business days prior to the scheduled hearing shall be granted without prejudice, although upon withdrawal, the thirty month statute of limitations shall resume running. A consumer who has withdrawn may resubmit the claim for arbitration. However, if the consumer withdraws the second request, the withdrawal shall be considered a withdrawal with prejudice, with the same effect as a withdrawal under WAC 44-10-120(1)(b).

(b) A withdrawal requested less than three business days prior to the scheduled hearing shall be granted with prejudice and the consumer shall not be allowed to resubmit the claim for arbitration.

NEW SECTION

WAC 44-10-140 REPRESENTATION BY COUNSEL.

(1) Any party to the arbitration hearing may be represented by counsel. If either party opts to be so represented, said party shall immediately notify the Arbitration Service and the other party of the name and address of the attorney.

(2) The consumer may be represented by himself or herself or by legal counsel, but may not be represented by a non-attorney. However, a person, acting as an interpreter, may assist a party in the presentation of the case if such assistance is necessary because of a mental or physical handicap or language barrier which would preclude the party from adequately representing

himself or herself pro se.

(3) A manufacturer may be represented by legal counsel or an appointed representative or agent of the manufacturer.

NEW SECTION

WAC 44-10-150 PRE-DECISION SETTLEMENT OF DISPUTE. (1) One or both of the parties shall notify the Arbitration Service and Attorney General if the dispute is settled at any time after the Request For Arbitration is received and before the decision is rendered. The Attorney General shall verify the terms of the settlement to which the parties have agreed. The disclosure of terms is for statutorily required record keeping only. The settlement is not subject to approval by the Arbitration Service or the Attorney General.

(2) Notice of settlement shall be treated procedurally as if the consumer had withdrawn from the arbitration process, as set forth in WAC 44-10-120.

NEW SECTION

WAC 44-10-170 POWERS AND DUTIES OF ARBITRATORS. (1) Arbitrators shall have the duty to conduct fair and impartial hearings, to take all necessary actions to avoid delay in the disposition of proceedings, to maintain order, and to meet the sixty day time frame required by RCW 19.118.090 for the rendering of a decision. They shall have all powers necessary to meet these ends including, but not limited to, the power:

(a) To consider any and all evidence offered by the parties which the arbitrator deems necessary to an understanding and determination of the dispute;

(b) to request the Attorney General to issue subpoenas to compel the production of documents, records, and things relevant to the dispute;

(c) to regulate the course of the hearings and the conduct of the parties, their representatives and witnesses;

(d) to schedule vehicle inspection by the technical experts, if deemed necessary, at such time and place as the arbitrator determines;

(e) to continue the arbitration hearing to a subsequent date if, at the initial hearing, the arbitrator determines that additional information is necessary in order for said arbitrator to render a fair and accurate decision. Such continuance shall be held within ten calendar days of the initial hearing.

(2) Arbitrators shall maintain their impartiality throughout the course of the arbitration proceedings.

(a) An arbitrator shall sign a written oath prior to the commencement of each arbitration hearing to which he or she has been assigned, attesting to his or her impartiality in that case.

(b) There shall be no direct communication between the parties and the arbitrators other than at the arbitration hearing. Any other oral or written communications between the parties and the arbitrators shall be channeled through the Arbitration Service for transmittal to the appropriate arbitrator. Any such prohibited contact shall be reported by the arbitrators to the Arbitration Service and noted in the case record.