

In the Matter of the Amendment
of the
Hawaii Arbitration Rules

ORDER AMENDING RULES 8 AND 20 OF
THE HAWAII ARBITRATION RULES

(By: Moon, C.J.; Levinson, Nakayama, Acoba, and Duffy, JJ.)

IT IS HEREBY ORDERED that Rules 8 and 20 of the Hawaii Arbitration Rules are amended, and new Commentary is added to Rule 20, effective January 1, 2005, as follows (deleted material is bracketed and stricken, and new material is underlined):

1. Rule 8 is amended as follows:

Rule 8. DETERMINATION OF ARBITRABILITY.

(A) The court shall view all tort cases as arbitration eligible and automatically in the Program unless plaintiff certifies that his or her case has a value in excess of the \$150,000 jurisdictional amount of the Program [~~which is \$150,000~~]. Plaintiff shall file a request for exemption at the time the complaint is filed [~~of filing~~] and such a request shall include a summary of facts [~~which~~] that support plaintiff's contentions.

(B) Where exemptions from arbitration have been requested, the Arbitration Administrator shall review the contentions [~~, facts~~] and evidence available and determine eligibility. The Arbitration Administrator may [~~upon request~~] require [~~that~~] a party to submit additional [~~facts~~] evidence [~~which~~] to support the party's contentions. The Arbitration Administrator shall render a decision on the request for exemption, which may be appealed to the Arbitration Judge. Any [~~objection(s) to his~~

~~decision must be filed with]~~ appeal to the Arbitration Judge from the decision of the Arbitration Administrator shall be filed with the Arbitration Judge and served on all parties within ten (10) days from the date the decision is served[~~, with service to opposing counsel~~]. Any issue or information presented to the Arbitration Judge on appeal that was not presented to the Arbitration Administrator, will not be considered by the Arbitration Judge on appeal unless such issue or information could not have been presented to the Arbitration Administrator before the Arbitration Administrator rendered the decision. The Arbitration Judge's decision on appeal is non-reviewable.

(C) Subsequent to the filing of the complaint, any party who believes a case should be removed from, admitted or readmitted to the Program, shall file a request to remove, admit or readmit, with the Arbitration Judge. The [Such a] request shall include a summary of the facts [which] that support the party's [their] contentions, and shall be served on all parties [with service to opposing party]. The Arbitration Judge's decision on the request is non-reviewable.

(D) The Arbitration Judge shall make all final determinations regarding the arbitrability of a case when that issue is disputed by any party, and may hold a conference on the issue of arbitrability at [his] the judge's discretion.

(E) The Arbitration Judge may, at [his] the judge's discretion, impose sanctions of reasonable costs and attorney's fees against any party who without good cause or justification attempts to remove a case from the Program.

2. Rule 20 is amended as follows:

Rule 20. FILING OF AWARD.

(A) Within seven (7) days after the conclusion of the arbitration hearing, or thirty (30) days after the receipt of the final authorized memoranda of counsel, the arbitrator shall file the award with the Arbitration Administrator, who shall then

serve copies of said award upon all parties.
~~[to the attorneys of record.]~~ Application by
the arbitrator to the Arbitration
Administrator must be made for an extension
of these time periods.

(B) Within the seven day period for
filing an award, the [The] arbitrator may
file with the Arbitration Administrator an
amended award to correct an obvious error in
the award [if done within the seven day
period for filing an award]. Subsequent to
this time, the arbitrator must obtain the
approval of [application must be made to] the
Arbitration Administrator to file an amended
award. The arbitrator s written request to
the Arbitration Administrator shall state the
reason(s) for the request, include the
proposed amended award, and be served on all
parties. [Any amended award shall be served
upon the attorneys of record by the
Arbitration Administrator.] Except as
provided under section (C) of this rule, the
arbitrator may not file an amended award that
changes the arbitrator s decision on the
merits. An amended award filed pursuant to
this section (B) may modify an award only to
correct an inadvertent miscalculation or
description, or to adjust the award in a
matter of form rather than substance.

(C) [This rule does not authorize the
use of an amended award to change the
arbitrator's decision on the merits. An
amended award may only modify an award in
order to correct an inadvertent
miscalculation or description, or to adjust
the award in a matter of form rather than
substance.] To file an amended award that
includes any [Any] modification of substance,
the arbitrator must obtain the approval of
the Arbitration Judge. The arbitrator s
written request to the Arbitration Judge
shall state the reason(s) for the request,
include the proposed amended award, and shall
be served on the Arbitration Administrator
and all parties. [can only be made upon
application to the Arbitration Judge.]

(D) The Arbitration Administrator shall
serve any amended award upon all parties.

3. New Commentary is added to Rule 20 as follows:

Commentary

The December 21, 2004 amendment clarifies that Rule 20 authorizes the arbitrator to request and obtain leave of the Arbitration Administrator or Arbitration Judge to file an amended award. The rule is not intended to authorize parties to request modification of an arbitration award by the Arbitration Administrator or Arbitration Judge.

DATED: Honolulu, Hawaii, December 21, 2004.