COMMENTS TO TEDRA TECHNICAL CORRECTIONS
2001 Legislative Session

RCW 11.96A.100.

Historically there was no standardized form of notice for probate proceedings. With the enactment of TEDRA the summons became the standard form of notice. The use of a summons is appropriate when a party is first made aware of a specific judicial proceeding. Once a judicial proceeding is commenced and a summons has been issued future notice should not have to be in the form of a summons. The test should be whether or not the party has been adequately informed of the nature of the issue being presented to the court and the time at which it will be presented. A subsequent hearing should not be found to be invalid merely because the form of notice to the relevant parties was not in the form of a summons. Accordingly RCW 11.96A.100 is amended to provide that after a proceeding is commenced future notice of matters in an existing judicial proceeding that relate to the same trust, estate or nonprobate asset need not be in the form of a summons.

The first sentence of this statute is also modified to recognize that if other sections of Title 11 provide for specific notice procedures, those procedures may be used; however RCW 11.96A.100 will still trump any inconsistent court rule since it relates to special proceedings under Title 11. See RCW 11.96A.090.

RCW 11.96A.230

The language of the first paragraph of this statute has been modified to ensure a clear understanding of its operation. Once a nonjudicial binding agreement has been entered into any party may file it with the court; however, if a special representative was a participant to the agreement no filing may occur within the first thirty days after the agreement is executed without the special representative's consent. This is to ensure that the special representative has full opportunity to commence a proceeding under RCW 11.96A.240 seeking approval of the agreement. If the special representative does file a petition seeking approval of the agreement, the agreement may not be filed unless and until the court determines that the special representative has adequately represented and protected the interests of the parties represented.

This statute was also modified to remove the requirement that notice of the filing of the agreement or of a memorandum of its terms be given to the parties. This provision related to a prior statutory provision that allowed parties to the agreement to object to the agreement within thirty days after it was filed. The ability to object was eliminated by TEDRA since all parties had already entered into the agreement and they should be estopped from objecting to it at that time. However, as an oversight the TEDRA revision did not remove the language requiring that the parties be notified of the filing of the agreement. That language has now been removed since it is no longer relevant.

RCW 11.96A.250

Both the Trust Act of 1984 and TEDRA established the legal basis for the appointment of a special representative to represent any "person interested in the estate or trust" who is a minor,

incompetent, or disabled, or who is yet unborn or unascertained. As noted in the drafting committee's comments to § 401 of TEDRA (enacted as RCW 11.96A.210), the purpose of these enactments was to provide "an alternative to the appointment of a guardian ad litem and formal court proceedings to bind future interests." The drafting committee's comments to § 405 of TEDRA (RCW 11.96A.250) provide that "the trustee or executor may request that a specific individual having the required skills be appointed. The court appointment of this individual is the only time a judge is required to be involved. The court is involved to ensure that an impartial and qualified person will serve as special representative."

It was specifically contemplated that the personal representative or trustee could nominate a specific person as special representative to ensure that a person with an appropriate skill level, knowledge base and competency level would act on the represented parties' behalf. It is important that the court have an opportunity to consider the requested appointment; however it was anticipated that so long as the nominated person was qualified to serve under the statute and there were no known facts that would lead the court or the nominating fiduciary to reasonably believe that the nominated person would not act with impartiality or prudence, then the nominated person would be appointed. The fact that a person has been nominated or is willing to serve should not be sufficient evidence of itself to disqualify a person from serving as special representative.

The addition of new subsection (1)(b) clarifies and codifies this original intent. The form of petition has also been changed to require that a specific recitation of the nominated special representative's qualifications be included. It is also suggested that additional information be included that specifies the particular skills of the nominated party that relate to the matter in issue.

The statute has been modified to require that the petition for appointment of a special representative be verified. With the verification, one or more persons (each with knowledge of the facts which that person is certifying) would certify that the facts (including the qualifications of special representative) stated in the petition are true. It is contemplated that the verification could be signed by the nominating fiduciary, by the nominated special representative, and/or by any other person having knowledge of the facts presented in the petition. Different people could certify different facts.

The statute has also been modified to require that an appointed special representative declare under penalty of perjury under the laws of the state of Washington that the special representative meets all of the prerequisites for serving as a special representative. The appointed special representative must file that declaration with the court.

RCW 11.96A.300

An erroneous cross reference in subsection (7) has been corrected from RCW 11.96A.090 to 11.96A.220.

RCW 11.96A.310

An erroneous reference to "mediators" was corrected to "arbitrators" in the form of the Notice of Arbitration.

In subsection (9) the period within which an appeal from the arbitrator's decision is set at thirty days after the decision is served on the parties. This change is necessary to resolve the ambiguity between the appeal periods provided by the present statute. Subsection (7) of the present statute allows appeals to be filed within thirty days after the written arbitration decision is issued. Subsection (8) of the present statute allows appeals to be filed within twenty days after the arbitration decision is filed with the court.