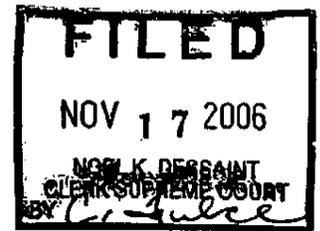


IN THE SUPERIOR COURT
OF THE STATE OF ARIZONA,
COCHISE COUNTY



ORDER AMENDING RULES 10, 11, 12, AND 14,
AND PROMULGATING RULES 12.1 TO 12.7,
LOCAL RULES OF PRACTICE,
COCHISE COUNTY SUPERIOR COURT

A majority of the judges of the Cochise County Superior Court having approved, pursuant to Rule 83, Ariz. R. Civ. Proc., the proposed amendment to the Cochise County local court rules,

IT IS ORDERED amending Rules 10, 11, 12, and 14, and promulgating Rules 12.1 to 12.7, Local Rules of Practice for the Cochise County Superior Court, in accordance with the attachment hereto,* effective January 1, 2007.

DATED in the City of Bisbee, Arizona, this 14th day of Nov., 2006.

A handwritten signature in cursive script, reading "Thomas E. Collins".

Thomas E. Collins, Presiding Judge
Cochise County Superior Court

APPROVED this 17th day of November, 2006.

A handwritten signature in cursive script, reading "Ruth V. McGregor".

Ruth V. McGregor, Chief Justice
Arizona Supreme Court

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

R-06-0039
attachments
filed 11/2/06

COCHISE COUNTY LOCAL RULES
CURRENT COMMITTEE DRAFT

NOVEMBER 1, 2006

COCHISE COUNTY LOCAL RULE COMMITTEE MEMBERS:

Honorable Wallace Hoggatt,
Associate Presiding Judge of the Superior Court in Cochise County
Honorable Michael Herbolich,
Presiding Justice of the Peace, Cochise County
Honorable James Riley,
Superior Court Judge - Retired
Karen Ferrara,
Administrator of the Superior Court in Cochise County
Jana Flagler, President, Sierra Vista Bar Association
Pamela Housh, Superior Court ADR Program Director
Jay Raschke, Superior Court ADR Program Neutral

11/01/2006 COCHISE COUNTY LOCAL RULES COMMITTEE
PROPOSED RULE CHANGES PERTAINING TO ALTERNATIVE DISPUTE RESOLUTION

Rule 10. Family Conciliation Court ~~and Mediation Services~~

- (a) **Establishment.** A Family Conciliation Court with mediation services is hereby established by authority of A.R.S. § 25-381.01, et seq., to provide a means for the reconciliation of spouses, the amicable settlement of domestic and family controversies, and to protect the rights of children.
- (b) **Assignment of Judge.** The presiding judge shall assign a superior court judge to act as judge of the Family Conciliation Court pursuant to A.R.S. § 25-381.04.
- (c) **Jurisdiction.** The controversies and issues described in A.R.S. §§ 25-381.08, 25-381.09, 25-381.20, and 25-381.22 are subject to conciliation and mediation.
- 1) *Automatically* by filing of any action for annulment, dissolution of marriage or legal separation when there is a child of either spouse whose welfare may be effected by said action, or

(2) *By Petition* filed in Family Conciliation Court by either or both spouses prior to or after filing any action for annulment, dissolution of marriage or legal separation where there is a controversy between them and jurisdiction is not automatic.

(d) **Mandatory Hearing or Conference.** Where Family Conciliation Court jurisdiction is invoked the parties are required to attend at least one hearing or conference as set by the family conciliation court judge, and may be ordered by the conciliation court judge to attend further hearings or conferences. Exemption from mandatory hearings or conferences may be granted by the conciliation court judge if to do otherwise could cause undue hardship.

(e) **Procedure.** When jurisdiction is invoked, the clerk of the court shall cause a minute entry to be made and filed in the case file in such form approved by the family conciliation court judge, recording the fact and date of the filing of the petition and transferring the matter to the Family Conciliation Court. The clerk shall thereafter deliver the case file to the conciliation court judge for further proceedings pursuant to A.R.S. § 25-381.14.

- (f) **Mediation of Child Custody or ~~Visitation~~ Parenting Time.** When it appears from a pleading or other paper filed with the clerk of the court that custody or ~~visitation~~ parenting time of a child or children is an issue in a dissolution, legal separation or annulment action; the case shall be transferred to the Family Conciliation Court for mediation of the issues, and at the request of either parent in the case shall be transferred to the Family Conciliation Court. A parent may file an objection to mediation and on hearing the objection the court may waive mediation.
- (g) **Appointment of Mediator.** The family conciliation court judge may appoint a mediator from the conciliation court system or an outside mediator. The parties may contract with an outside mediator for his services in which event they shall be directly responsible for his fee. Where the parties desire to employ an outside mediator but cannot agree on the selection, each party shall submit the names of two qualified persons and the court shall make the appointment.
- (h) **Notice of Conciliation and Mediation Services.** Upon the filing of an action for dissolution of marriage, legal separation, or annulment, the clerk of the court shall deliver or mail to each of the parties printed information of conciliation and mediation services provided by the court. The printed

information shall inform the parties of the availability of blank petition forms provided at the expense of the county and assistance in their preparation by employees of the Family Conciliation Court or a social service agency employed to provide conciliation and mediation services. Public notice may be given in such form, frequency and manner as approved or directed by the conciliation court judge, of the availability of conciliation and mediation services in any such action and also prior to or without the filing of any action where there is a controversy between spouses which may result in the disruption of a household and there is a minor child whose welfare may be affected thereby.

(i) Coordination with Alternative Dispute Resolution (ADR) Program. The Director of the Conciliation Court is authorized to cooperate with the Director of the ADR Program, as appointed pursuant to Cochise County Local Rule 12.1, in order to facilitate the resolution of disputes other than those dealing with custody or parenting time.

Rule 11. Compulsory Arbitration

(a) Pursuant to the provisions of A.R.S. § 12-133 and Rules 72 through 76, Arizona Rules of Civil Procedure, arbitration is required in all cases filed in ~~this court~~ the Superior Court which qualify pursuant to Rule 72(b), Arizona

Rules of Civil Procedure, and in which the court finds or the parties agree that the amount in controversy does not exceed fifty thousand dollars.

- (b) A case subject to arbitration shall be assigned for hearing to a single arbitrator.
- (c) Each arbitrator shall receive a fee of seventy-five dollars per day for each day necessarily expended in the hearing and determination of the case.
- (d) The office of the Court Administrator shall maintain an Arbitration Calendar, keep a list and make appointments of arbitrators, and provide the required notices. The list of arbitrators kept by the office of the Court Administrator shall include all persons who fall within Rule 73(b), Arizona Rules of Civil Procedure.

Rule 12. Alternative Methods for Resolving Civil Disputes

- (a) Programs of alternative procedures to resolve disputes, including but not limited to those of arbitration, mediation, negotiation, settlement conference, mini-trial and summary jury trial, are approved and authorized and shall be administered by the Court Administrator. The specific program shall be

noticed by an order on a form approved by the presiding judge with a section thereof for special directions of the court.

(b) Except for lower court appeals or cases subject to arbitration, after the case has been placed on the active calendar and at least thirty (30) days prior to trial, the court on its own motion or that of any party, after consultation with the parties, may order a civil case referred to a specific alternative dispute resolution program. These programs shall be available to the justice courts pursuant to A.R.S. § 22-201G.

~~(c) The specific program shall be noticed by an order on a form approved by administrative order with a section thereof for special directions of the court, and shall direct:~~

~~(1) The usual techniques for a selected procedure as generally accepted and practiced shall be employed where deemed appropriate by the person conducting the proceedings.~~

~~(2) Civil procedure and evidence rules shall not apply in mini trials and summary jury trials except to the extent deemed necessary by the court or hearing officer.~~

~~(3) Use of these procedures may be mandated by the court or by written agreement of the parties but the acceptance of any result shall be3 voluntary and by written settlement agreement prepared as directed by the court.~~

~~(4) Following completion of a mini trial or summary jury trial, the court may refer the case to mediation or negotiation if the court deems it appropriate and only upon a showing on the record of good cause.~~

~~(5) On final resolution of disputes, the parties shall file with the court a stipulation for dismissal of the action.~~

(c) The referring court may impose sanctions pursuant to Rule 16(f), Arizona Rules of Civil Procedure, where parties or counsel fail to appear, do not participate in good faith or are not substantially prepared fully to do so, or fail to obey a pretrial order.

Rule 12.1. Establishment of the ADR Program

A. Pursuant to the authority granted the Court Administrator under Cochise County Local Rule 12, the Court Administrator shall establish and maintain an Alternative Dispute Resolution Program (“ADR Program”), and appoint

an ADR Director to administer the program. The ADR Director shall be responsible for administering:

1. A program of non-binding arbitration as required by the Courts of Limited Jurisdiction pursuant to A.R.S. §22-201;

2. A program of mediation for all courts other than those under the jurisdiction of Cochise County Local Rule 10, Family Conciliation Court, or any others excluded by statute; and

3. Other programs as directed by the Presiding Judge of the Superior Court.

B. Pursuant to the authority granted within these Rules, the ADR Director is authorized to coordinate and cooperate with the Director of the Family Conciliation Court to provide additional mediation services as may be needed in connection with the Family Conciliation Court as outlined in Cochise County Local Rule 10 and the Arizona Rules of Family Law Procedure.

C. The ADR Director shall maintain a list of qualified neutrals, including arbitrators, mediators and other persons who are trained by the ADR Program and authorized and certified by the presiding judge of the Superior Court. The current list of qualified neutrals, together with a description of each neutral's qualifications and experience, shall be maintained by the ADR Program and shall be available at all times and upon request. The ADR Director has the authority to assign individuals in any category. Qualified neutrals shall serve without pay and are defined as those persons who have met the following criteria:

1. Have successfully completed and maintained the minimum required standard training in arbitration, mediation or facilitation skills.
2. Have successfully completed the Cochise Superior Court Human Resources background investigation.
3. Are of good moral character and a resident of Cochise County, Arizona.

Rule 12.2. Rules of Procedure for Arbitration Services in the Courts of

Limited Jurisdiction

A. Referral to the ADR Program of all cases subject to court-ordered, non-binding arbitration under ARS §22-201, shall occur in the Courts of Limited Jurisdiction as follows:

1. Within not less than thirty (30) days, nor more than one hundred and twenty (120) days following the filing of an answer in any civil matter, the court's referral to the ADR Program for the purpose of setting the case for arbitration shall be transmitted to the ADR Program Director. The order referring the case shall be copied to all parties to the litigation and shall clearly state that the case will be subject to these Rules of Procedure during its pendency with the ADR Program. The order shall also advise the parties that they may elect another dispute resolution process other than arbitration if all parties agree and submit a stipulation to that effect with the court within ten (10) days of the date of the referral.

2. The referring judge, upon good cause shown, shall lengthen the time limits for referral to the ADR Program for a reasonable time if there are on-going or unresolved legitimate discovery disputes between the

parties, pending dispositive motions awaiting ruling, or other motions pending before the court.

3. The time limits for referral to the ADR Program may be lengthened by the court upon motion by any party showing good cause for the court to retain jurisdiction over the matter for additional time.

B. Hearings scheduled under the ADR Program shall occur not less than twenty-one (21) nor more than ninety (90) days after the case is referred to the ADR Program, unless the time limit is lengthened by order of the referring court. Within ten (10) days from the date a case is received in the ADR office, the ADR Director shall set the date, time, and location of the hearing and shall mail a Notice of Hearing to all parties and the assigned neutral.

C. The ADR Director shall have exclusive authority to make individual assignments of neutrals, and shall identify the assigned neutral in the Notice of Hearing. If any party has an objection to the assignment of a particular neutral, they must file a written objection to the assignment with the ADR Director within ten (10) days from the date of the Notice of Hearing. The

ADR Director, in his or her discretion, may reassign a neutral following a timely filed objection.

D. Dispositive motions (motions which may have the effect of ending litigation, such as motions to dismiss or motions for summary judgment) shall not be heard by the ADR Program neutrals. Dispositive motions after a case has been referred to ADR, shall be filed with the referring court, with a copy to the ADR Director. If a dispositive motion is filed after a case has been referred to ADR, the court shall vacate the hearing if one has been set and notify the ADR Program Director and set the motion for hearing in accordance with the Arizona Rules of Civil Procedure.

E. Discovery disputes shall not be heard by the ADR Program neutrals. After referral of a case to the ADR Program, a party needing the assistance of the court in a discovery dispute shall file its discovery motion with the referring court, with a copy to the ADR Director. Any discovery motion filed with the court after a case is referred to ADR, must identify the nature of the discovery dispute and the perceived importance of the discovery to the pending litigation, and must include in its application the date and time of the scheduled ADR hearing, if set. Upon receipt of a discovery motion filed in compliance with these Rules and for good cause shown, the court shall

vacate the ADR hearing and set the motion for hearing in accordance with the Arizona Rules of Civil Procedure.

F. An ADR Program neutral cannot rule upon motions to amend pleadings, motions to continue the time limits for arbitration beyond the time limits set forth in these Rules or motions to consolidate cases. These motions must be filed with the referring court and the court shall vacate the scheduled ADR hearing and take action upon the motion consistent with the Arizona Rules of Civil Procedure and these Rules.

G. ADR hearings shall be conducted as follows:

1. ADR Program neutrals 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.

2. Once a case has been referred to the ADR Program, the assigned neutral shall make all legal and evidentiary rulings not otherwise precluded by these Rules.

3. The Clerk of the referring court shall issue subpoenas in matters referred to the ADR Program, and the subpoenas shall be served and enforceable as provided by law.

4. The ADR Director will determine the amount of time necessary for a hearing and include that time frame in the Notice of Hearing. If a party believes that the case requires a hearing in excess of the time allowed by the ADR Director, the party must provide written notice of the need and basis for additional time to the ADR Director within ten (10) days from the date of the Notice of Hearing. The party must set forth the reasons why additional time is requested and an estimate of the actual time that will be needed. The ADR Director may consider the request to extend the scheduled time frame based on the merits of the request.

5. Telephonic or video appearances or testimony may be allowed at the discretion of the ADR office, in accordance with Cochise County Local Rule 14 and upon application as follows:

a. Parties requesting telephonic or video appearance or testimony must make their request in writing to the ADR Director with a

copy to all other parties, no later than ten (10) days before the scheduled ADR hearing.

b. Other parties to the case have a right to object to the telephonic or video request.

c. Telephonic or video appearance or testimony may be contingent upon the advance submission of documentary evidence to the ADR Program neutral and timely exchange of documentary evidence between the parties.

6. The ADR Program neutral shall admit into evidence without further proof, the following documents, if relevant, and if timely exchanged between the parties, unless it is shown that any such document is not what it appears to be and a proper objection is made.

a. Hospital bills on the official letterhead or billhead of the hospital, when dated and itemized.

b. Bills of doctors and dentists, when dated and containing a statement showing the date of each visit and the charge therefor.

c. Bills of registered nurses, licensed practical nurses, physical therapists, when dated and containing an itemized statement of the days and hours of service and the charges therefor.

d. Bills for medicine, eyeglasses, prosthetic devices, medical belts or similar items when dated and itemized.

e. Property repair bills or estimates, when dated and itemized, setting forth the charges for labor and material. In the case of the 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.

f. Testimony of a witness given in a deposition, whether or not such witness is available to appear in person.

g. 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.

h. 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 neutral deems them entitled, provided that a copy of said report has been filed and served upon the adverse party at least ten (10) days prior to the date of the hearing.

i. Records of regularly conducted business activity as contemplated by Rule 803(6) of the Arizona Rules of Evidence, which reads as follows:

"Records of regularly conducted activity.

A memorandum, report, record or data compilation, in any form, of acts, events, conditions, opinions or diagnoses, if:

i) Made at or near the time of the underlying event,

ii) by, or from information transmitted by, a person with first hand knowledge acquired in the course of a regularly conducted business activity,

iii) made and kept entirely in the course of that regularly conducted business activity,

iv) pursuant to a regular practice of that business activity; and

v) all of the above are shown by the testimony of the custodian or other qualified witness, or by certification that complies with Rule 902(11).

However, such evidence shall not be admissible if the source of information or the method or circumstances of preparation indicate a lack of trustworthiness or to the extent that portions thereof lack an appropriate foundation.

The term "business" as used in this paragraph includes business, institution, association, profession, occupation, and calling of every kind, whether or not conducted for profit."

j. A notarized statement of any witness, other than an expert witness, which is disclosed to the other party(s) at least ten (10) days before the hearing whether or not such witness is available to appear in person.

7. The neutral shall not be required to make a record of the proceedings. If any party desires a verbatim record of the proceedings, such party shall pay for and provide the court reporter or other means of keeping a verbatim record. The charges for the court reporter shall be considered taxable costs in the case.

H. All requests for continuances of an ADR Program hearing must be made in writing to the ADR Director and post marked not less than ten (10) days in advance of the hearing. Continuances will only be granted for good cause shown or upon the stipulation of the parties.

I. All provisions of the Arizona Rules of Civil Procedure, the Arizona Rules of Evidence, the Arizona Rules of Family Law Procedure and Cochise County Local Rules that are not inconsistent with these Rules 12.1-12.7, including the provisions of Rules 72-76, Arizona Rules of Civil Procedure, shall be applicable to all cases heard under the ADR Program.

Rule 12.3. Decisions by ADR Program Neutrals

A. The ADR Program neutral will render a Notice of Decision in writing within five (5) days of the completion of the ADR hearing and submit the Notice of Decision to the ADR Program Director.

B. The Office of the ADR Program shall forward a copy of the Notice of Decision to all parties and the referring court. The notice shall be date stamped by the ADR office, which date shall commence the time period for applying for fees and costs, and shall include information regarding the appeal process as outlined in Rule 12.6 of these Rules.

Rule 12.4. Application for Court Costs and Attorney's Fees

A. Within ten (10) days from the date stamped Notice of Decision, either party may file with the referring court an application for fees and/or costs. If an application for fees and costs is filed, the appeal period does not begin until the referring court issues its order pursuant to section 12.4(C) of this rule. Applications for attorney's fees and/or costs shall not be addressed by the ADR Program neutral and applications for fees and/or costs filed with the ADR Program office shall not constitute a proper filing under this Rule.

B. Objections to a party's application for fees and/or costs must be filed with the referring court within five (5) days of receipt of the application by the objecting party.

C. The referring court will issue its order setting forth the amount awarded under the Notice of Decision together with any award of attorney's fees and/or costs. It is from this order that an appeal under these Rules may occur, and if no appeal is taken, final judgment may be rendered under Rule 12.7 herein.

Rule 12.5. Failure to Appear or Participate in Good Faith

Failure to appear at a hearing or to participate in good faith at a hearing which has been set in accordance with these Rules shall constitute a waiver of the right to appeal absent a showing of good cause. If the judge finds that further proceedings before the neutral are appropriate, the case shall be remanded to the assigned neutral. ADR Program neutrals may recommend the referring court impose appropriate sanctions as applicable in this matter and the court may consider such recommendations in making its final judgment.

Rule 12.6. Right of Appeal

A. All Appeals from an ADR arbitration hearing are *de novo* on the law and facts.

B. If no application for attorney's fees and/or costs is timely filed as provided in Rule 12.4 of these Rules, the parties shall have twenty (20) days from the

ADR date stamp on the Notice of Mailing Decision in which to appeal an ADR Program decision.

C. If a properly filed application for fees and/or costs under Rule 12.4, of these Rules is made, the appeal of an ADR Program decision shall be filed within twenty (20) days from the date of the referring court's order issued pursuant to 12.4(C).

Rule 12.7. Final Judgment

Upon expiration of the time for appeal as provided in these Rules, and if no appeal has been taken, court shall enter judgment and award court costs.

Rule 14. Oral Argument by Telephone or Video Conference Call

Oral argument or the presentation of witness testimony by telephone or video conference call may be had on motion ~~or~~ and with prior approval of the court, provided all conversations are audible. The institution and cost of the video or telephone conference call shall be at the expense of the party requesting it, and at a date and time mutually agreeable to all parties and the court or as directed by the referring court. ~~If a court reporter is requested, the hearing shall be under such conditions as directed by the court.~~