

DAVID L. MACKEY  
PRESIDING JUDGE  
DIVISION 1



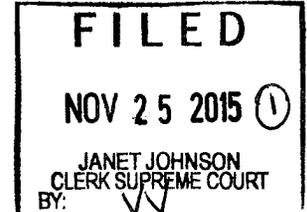
TELEPHONE  
(928) 771-3580  
FAX (928) 771-3582

**RECEIVED**

NOV 25 2015

**Arizona Superior Court**  
YAVAPAI COUNTY COURTHOUSE  
120 SOUTH CORTEZ STREET, #300  
PRESCOTT, ARIZONA 86303

R- 15-0039



CLERK SUPREME COURT

November 20, 2015

Scott Bales, Chief Justice  
Arizona Supreme Court  
c/o Ellen Crowley  
Supreme Court Staff Attorney's Office  
Arizona State Courts Building  
1501 West Washington  
Phoenix, AZ 85007

Re: Amendments to Rule 10.1 and Rule 10.2, Local Rules of Practice and  
Procedure for the Superior Court in Yavapai County

Dear Chief Justice Bales:

Attached please find Yavapai County Superior Court's Order Amending Rule 10.1 and  
Rule 10.2, Local Rules of Practice for your consideration and approval.

The Judges of the Yavapai County Superior Court are proposing the amendments to  
eliminate duplication between Yavapai County's Local Rule 10 relating to Conciliation  
Counseling and Mediation of legal decision making/parenting time involving children and Rule  
68 of the Ariz. Rules of Family Law Procedures.

The changes substantially reduce the provisions in Local Rule 10 and allow parties to  
follow ARFLP Rule 68 which covers the same subject matter.

The strike through versions of the changes are attached to the Order Amending as is the  
proposed final versions of the amendment. Please let me know if you have any questions or  
concerns.

Thank you for your attention to this matter.

Very truly yours,

Hon. David L. Mackey

cc: Supreme Court Clerk

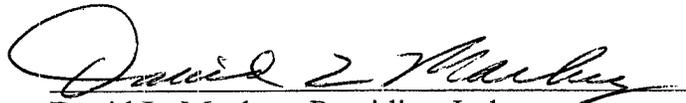
**IN THE SUPERIOR COURT  
OF THE STATE OF ARIZONA,  
YAVAPAI COUNTY**

**ORDER AMENDING RULE 10.1 and 10.2  
LOCAL RULES OF PRACTICE,  
SUPERIOR COURT IN YAVAPAI COUNTY**

A majority of the judges of the Superior Court in Yavapai County having approved, pursuant to Rule 83, Ariz. R. Civ. Proc., the proposed amendment to the Superior Court local rules of practice and procedure,

IT IS ORDERED amending Rule 10.1 and 10.2 Local Rules of Practice and Procedure for the Superior Court in Yavapai County in accordance with the attachment hereto,\* effective January 1, 2016.

DATED in Yavapai County, Arizona, this 20<sup>th</sup> day of November, 2015.

  
David L. Mackey, Presiding Judge  
Superior Court in Yavapai County

APPROVED this \_\_\_\_ day of \_\_\_\_\_, 2015.

---

Scott Bales, Chief Justice  
Arizona Supreme Court

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

---

## Rule 10. Conciliation and Mediation

### Rule 10.1 – Conciliation Court

A. **Establishment.** A Conciliation Court is hereby established.

B. **Clerk's Procedure.** Petitions for Conciliation shall be filed with the Clerk of the Court. Upon the filing of any action for dissolution of marriage or legal separation, the Clerk shall cause to be mailed to each of the parties written information concerning the availability of the Conciliation Court, in such form as a Conciliation Court Judge may determine. Upon the filing of a conciliation petition, the Clerk shall file the Petition in the Court file and make the following minute entry in such action:

“A Petition for Conciliation petition having been filed this date, this case is assigned to the Presiding Conciliation Court Judge for consideration of the Petition. ~~transferred to the Conciliation Division for all further proceedings during the pendency of said petition.~~”

C. **Hearing.** ~~After the filing of a conciliation petition, or after the transfer of a pending domestic relations case by order of the Court as provided in A.R.S. § 25-381.19, the Conciliation Court Judge shall set a time and place for hearing and a citation shall be issued to both of the parties directing them to be present at the hearing. Such citation shall be in such form as may be determined by the Conciliation Court Judge, so as to give notice of the time, place and nature of such hearing. The citation shall be signed by the Conciliation Court Judge, or other Judge or Court Commissioner delegated to do so by the Conciliation Court Judge. Such citation should be mailed not less than five (5) days prior to the hearing and failure to respond to same without adequate excuse may be deemed a contempt of court. Hearing shall be conducted before a Conciliation Court counselor or the Conciliation Court Judge, as specified in the citation at the discretion of the Conciliation Court Judge. Within five (5) days of completion of the conciliation hearings, a brief letter report on the results of the hearing shall be filed with the court by the counselor~~

### Rule 10.2 – Mediation

A. **Matters Subject to Mediation.** All family law cases domestic relations actions which involve a controversy over legal decision making or parenting time of minor children shall be subject to mediation in accordance with Rule 68(B) of the Ariz. Rules of Family Law Procedures regarding such issues.

B. **Jurisdiction.** A family law domestic relations case filed in the Superior Court remains under the jurisdiction of this Court in all phases of the proceedings, including mediation conducted pursuant to this rule. Any agreement of the parties reached as a result of mediation ~~of the legal decision making or parenting time controversy~~ must be presented to the Court, and the Court shall retain final authority to accept, modify, or reject the agreement. In order to preserve and promote the integrity of mediation as a dispute-

resolution technique, the Court will endeavor to include all reasonable agreements reached by the parties in formulating its order in the case.

### **~~C. Commencement~~**

- ~~1. *Mediation by the Court.* Where it appears from a pleading that either legal decision making or parenting time of a child is contested, the Court shall refer the matter to Conciliation Court for mediation of the legal decision making or parenting time dispute prior to or concurrently with the setting of the matter for hearing or trial. A mediator shall be appointed by the Conciliation Court.~~
- ~~2. *Mediation by Request of Parent.* If there is a disagreement between the parents concerning legal decision making or parenting time either parent or both parents may file with the Court and serve upon the other parent, or counsel, a Request for Mediation. The parents will then be referred by the Superior Court for mediation in accordance with these rules, or the parents may agree and stipulate to a private mediator pursuant to Rule 10.2(D).~~
- ~~3. *Scheduling.* When a matter has been referred for mediation by either the Court or by order of the Court at the request of one or both parents, the Conciliation Court will schedule a mediation conference or conferences which both parties must attend. Mediation of the legal decision making and parenting time dispute must take place before the trial or hearing on legal decision making or parenting time.~~
- ~~4. *Mediation Conference.* The mediator will conduct a mediation conference or conferences in an effort to carry out the purpose of this rule. Counsel for the parties shall be provided an opportunity to confer with the mediator prior to the mediation conference and shall be excluded thereafter, where, in the discretion of the mediator, exclusion of counsel is deemed by the mediator to be appropriate or necessary. The mediator shall be entitled to interview the child or children and all persons having any relation to the controversy when such interviews are appropriate.~~
- ~~5. *Mediation Report.* If the mediation is successful in resolving any of the legal decision making or parenting time issues then such agreement shall be reduced to writing, signed by each party and counsel, if any, and immediately submitted to the Court for approval. Upon the Court entering a written order the mediation agreement shall be considered binding. If no agreement is reached or the mediation agreement is not signed by both parties and counsel, if any, and approved by the Court, then such agreement is not binding and the mediation shall be considered unsuccessful. The mediator shall immediately notify the Court when the mediation has been concluded.~~
- ~~6. *Failure to Appear.* If one or both parents fail to appear at the mediation conference, the mediator shall report to the Court the identity of each person who failed to appear and the Court shall take whatever action it deems necessary or appropriate under the circumstances, including sanctions for contempt of court.~~

#### **D. Private Mediation**

- ~~1. *Selection.* In lieu of Conciliation Court mediation the parties may select a private mediator. The parties shall directly contract with the private mediator and be responsible for payment of the fee for such mediation. The mediator has a right to withdraw from any case. If the parties cannot agree on the selection of a private mediator, each party shall submit the names of two qualified persons and the Court shall appoint the mediator.~~
- ~~2. *Commencement.* If a private mediator is selected, the parties or counsel, if any, shall sign and file with the Court a written notice that private mediation shall take place. The notice shall set forth the name of the mediator and the date set for the first mediation session. If private mediation is not concluded by the time set for trial or hearing on the legal decision making or parenting time dispute, the parties may be ordered to Conciliation Court for a mediation conference.~~
- ~~3. *Waiver of Conciliation Court Mediation.* Where private mediation has been unsuccessful the Superior Court, in its discretion and when requested by either party or counsel, may waive the requirement of mediation by the Conciliation Court.~~

~~**E. Confidentiality of Mediation Process.** Mediation proceedings shall be held in private, and all communications, verbal or written, made in the proceedings shall be confidential pursuant to A.R.S. § 12-2238.~~

~~**F. Legal Decision Making or Parenting Time Evaluation.** If mediation has been unsuccessful the Judge presiding may order legal decision making or parenting time evaluations. The Conciliation Court counselor or mediator assigned to a legal decision making or parenting time evaluation shall not be the same counselor or mediator who has served as a mediator for the parties unless the parties file a written notice consenting thereto signed by each party and counsel.~~

# YAVAPAI COUNTY SUPERIOR COURT LOCAL RULES

## Rule 10. Conciliation and Mediation

### Rule 10.1 – Conciliation Court

- A. **Establishment.** A Conciliation Court is hereby established.
- B. **Clerk's Procedure.** Petitions for Conciliation shall be filed with the Clerk of the Court. Upon the filing of a conciliation petition, the Clerk shall file the Petition in the Court file and make the following minute entry in such action:

“A Petition for Conciliation having been filed this date, this case is assigned to the Presiding Conciliation Court Judge for consideration of the Petition.”

### Rule 10.2 – Mediation

- A. **Matters Subject to Mediation.** All family law cases which involve a controversy over legal decision making or parenting time of minor children shall be subject to mediation in accordance with Rule 68(B) of the Ariz. Rules of Family Law Procedure.
- B. **Jurisdiction.** A family law case filed in the Superior Court remains under the jurisdiction of this Court in all phases of the proceedings, including mediation conducted pursuant to this rule. Any agreement of the parties reached as a result of mediation must be presented to the Court, and the Court shall retain final authority to accept, modify, or reject the agreement. In order to preserve and promote the integrity of mediation as a dispute-resolution technique, the Court will endeavor to include all reasonable agreements reached by the parties in formulating its order in the case.