

Proposed Amendments to Cochise County Local Rules

**A. ORGANIZATION**

**Rule 1. Divisions of Court and Case Assignments**

**(a) Divisions of Court.** The court shall be divided into as many judicial divisions as there are judges. Each division shall bear an official numerical designation. ~~in the Roman numeral style, but other styles may also be employed.~~

**(b) Initial Assignments** of all cases ~~except those under special assignment~~ shall be pursuant to a plan approved by the presiding judge.

**(c) Special Assignments** may be made ~~to divisions by types of cases such as civil, criminal, domestic relations, juvenile, or for default hearings, criminal initial appearances, arraignments, and other short matters,~~ **by the presiding judge** regardless of the initial assignments. ~~pursuant to a plan.~~

**(d) Notice of Assignments.** The plan for initial assignments, and special assignments made, shall be by administrative order of the presiding judge. ~~and shall be posted at each location of the office of the clerk and in the lobbies of all superior court facilities in the county.~~

**Rule 2. Law and Motion Day**

(a) ~~Monday of each week, except when it is a legal holiday, then Tuesday, shall be law and motion day, unless otherwise directed.~~ **Each division may set a regular law and motion day for each week.**

(b) The law and motion calendar ~~in~~ **for** each division shall be posted in the office of the court clerk **and on the court's website.**

(c) Motions shall be set for hearing **by the assigned division** on or after the tenth day of filing unless ~~specifically directed otherwise~~ **ordered** by the court. ~~After the requisite review and determination by the Court Administrator pursuant to Rule 93(b). Rules of the Supreme Court, the~~ **The** clerk **of the court** shall give notice in writing to all parties of the date and time of the hearing, the division ~~of court~~ in which the motion will be heard, and whether **the court will permit** oral argument. ~~will be had~~

(d) Requests for oral argument may be made in the following words and fashion: (Oral Argument Requested), placed beneath the title of the motion, answering memorandum or memorandum in reply, or by separate document filed with the clerk. If oral argument is not requested, **or oral argument is denied**, the court shall decide the matter without it being called on the calendar.

(e) No change.

### **Rule 3. Criminal Calendar**

~~—Criminal matters except as specifically assigned shall be heard on the law and motion criminal calendar at such time as the judge of each division shall designate in writing, which shall be posted in writing, which shall be posted in the office of the clerk. Oral argument shall be had on all motions and petitions except as provided by rule or law or deemed unnecessary by the court.~~

### **Rule 3. Use of Court Reporting Services**

**(a) Record.** Unless the use of a court reporter is required by law or court rule, the official record of a court proceeding will be made in a manner within the discretion of the assigned judge. Official records of court proceedings are available for a fee through the court reporter or the court's electronic recording services unless otherwise ordered by the assigned judge.

**(b) Request.** Any party to an action in superior court may request that any proceeding in that action be reported by a court reporter. The court shall grant the request if the request is made in writing at least ten (10) judicial days in advance of the proceeding. A separate request must be made within the prescribed time period for each proceeding unless otherwise ordered by the court.

### **Rule 4. Temporary Sessions of Superior Court Outside County Seat** *(caption only amendment)*

### **Rule 5. Visiting Judges**

No change

### **Rule 6. Law Library**

**(a) Administration.** No change.

~~**(b) Library Committee.** A law library committee shall be appointed by the presiding judge who shall designate one of the members as chairman. The committee shall make recommendations to the presiding judge concerning policy, rules and regulations, budgetary matters and the operation of the library.~~

**(c) (b) Policies, Rules and Regulations.** The presiding judge shall adopt, publish and disseminate policies, rules and regulations governing the operation of the library.

## Rule 7. Interpreters

The presiding judge shall appoint qualified persons to serve as interpreters in court proceedings who shall be under the supervision of the court administrator. It is the responsibility of counsel or a party in need of services of an interpreter to notify the court administrator at least ~~twenty-four hours~~ **five (5) judicial days** in advance of the hearing or court proceeding. Failure to provide timely notice may result in delay and the imposition of sanctions. A division of the court may request the court administrator assign an interpreter as needed.

## B. SPECIAL COURT PROCEEDINGS AND PROCEDURES

### Rule 8. Order to Show Cause Hearing and Procedure

(a) An order to show cause hearing on the law and motion calendar shall be limited to fifteen minutes, to be shared equally by the ~~opposing~~ parties. If a party anticipates the hearing will ~~require more than the~~ **exceed** the allotted time, he **that party** shall inform the court or clerk so that the matter may be scheduled for hearing at another time.

(b) No change.

~~(c) In domestic relations or child custody or support matters, affidavits of the spouses or parents, on forms approved by the court and provided by the clerk, in support or opposition to spousal maintenance, child support or attorney's fees, shall be verified upon oath of the party and not counsel and shall be filed with the clerk and served on the opposing counsel or party at least one working day prior to the hearing. The parties are encouraged to rest upon the financial information contained in their respective affidavits subject to the opposing party's cross-examination, and redirect examination, if necessary.~~

~~(d)~~ (c) If the hearing is not completed within the time allotted, the court may continue it to a date and time certain, and may make such temporary orders as are deemed just under the circumstances until completion of the hearing as continued.

### Rule 9. Expedited Hearings for Child Support, Spousal Maintenance, ~~Custody or Visitation~~ **Legal Decision-Making and Parenting Time**

Expedited hearings shall be provided to **establish and** ~~enforce court orders for~~ child support, spousal maintenance, ~~custody or visitation~~ legal decision-making and parenting time pursuant to a plan required by Laws 1987, Ch. 211, Section 11, as set forth in the Historical Note to A.R.S. §25-326. Forms and **with** instructions and the plans containing the rules and procedures shall be provided by the clerk of the court upon request **available in English and Spanish through the Cochise County Superior Court Self-Help Center.**

## Rule 10. Family Conciliation Court.

(a) **Establishment.** No change.

(b) **Assignment of Judge.** No change.

(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/or mediation:

(1) *Automatically* by filing of **a response in** any action for annulment, dissolution of marriage or legal separation dissolution of marriage, or **legal separation, annulment or paternity/maternity** when if there is a child of either spouse **common to the parties** whose welfare may be effected **affected** by said action, or

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

(d) **Mandatory Hearing or Conference.** Where Family Conciliation Court jurisdiction is **automatically** 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 **notice** 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 Legal or Parenting Time.** Where it appears from a pleading or other paper filed with the clerk of the court that custody or parenting time of a child or children is an issue in a dissolution, legal separation or annulment, or 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)~~ (f) **Appointment of Mediator.** The family conciliation court judge may appoint a mediator from the conciliation court system or an outside mediator **to conduct the hearing/conference set forth in A.R.S. §25-381.16**. The parties may contract with an outside mediator for his services in which event they shall be directly responsible for his **any** 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) (g) Notice of Conciliation and Mediation Services.** Upon the filing of an action for dissolution of marriage, legal separation, or annulment or paternity/maternity, 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) (h) 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 legal decision-making or parenting time.

### **Rule 10.1. Parent Education Program.**

(a) Pursuant to A.R.S. §25-352(A), every party appearing in an action for dissolution of marriage, legal separation or annulment that involves a natural or an adopted minor, unemancipated child who is common to the parties and every party appearing in a paternity/maternity proceeding who has requested that the court determine legal decision-making or parenting time shall complete the Parent Education Program unless excused by the court.

(b) A party in a paternity/maternity proceeding who makes no request regarding legal decision-making or parenting time is excused from completing the Parent Education Program.

(c) A party must complete the Parent Education Program before that party participates in any conciliation and/or mediation in Family Conciliation Court.

(d) Upon the appearance of a party in the actions set forth in paragraph (a) of this Rule, the clerk of the court shall cause a notice to be made and filed, in such form approved by the family conciliation judge, directing the party to participate in the Parent Education Program.

## **Rule 11. Compulsory Arbitration.**

(a) Pursuant to the provisions of A.R.S. § 12-133 and Rules 72 through 76, **77**, Arizona Rules of Civil Procedure, arbitration is required in all cases filed in 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.~~ **sixty-five thousand dollars (\$65,000.00).**

(b) No change.

(c) Each arbitrator shall receive a fee in the maximum amount allowed by law under A.R.S. Section 12-133, as amended; ~~of seventy-five dollars per day for each day necessarily expended in the hearing and determination of the case;~~ **however, an active member of the bar who serves as an arbitrator is eligible for two hours of continuing legal education activity credit in lieu of financial compensation otherwise available under that statute. See, Rule 45(a)4, Rules of Supreme Court.**

(d) ~~The office of the Court Administrator~~ **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 ~~Court Administrator~~ **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 **civil** 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.~~ **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 **H.**

(c) The referring court may impose sanctions pursuant to ~~Rule 16(f),~~ **Rule 16(h),** 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~~ **court administrator** under Cochise County Local Rule 12, the ~~Court Administrator~~ **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. No change.
  2. No change.
  3. Other programs as directed by the ~~Presiding Judge~~ **presiding judge** of the Superior Court.
- B. No change.

## **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 court shall refer a case to the ADR Director with thirty (30) days following the filing of an answer in any civil matter for the purpose of setting the case for arbitration.** 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~~ **this Rule 12.2** during its pendency with the ADR Program. The order shall also advise the parties that they may elect ~~a another~~ dispute resolution process other than arbitration if all parties agree and submit a stipulation to that effect with the court within ten (10) **judicial** days of the date of the referral.
2. No change.
3. No change.

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 court. Within ten (10) **judicial** 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) **judicial** 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 **ADR** hearing if one has been set and notify the ADR Program Director and set the motion for hearing in accordance with the Arizona **Justice Court** Rules of Civil Procedure. **The case shall be referred back to the ADR Program if the court's ruling on the motion does not dispose of the case.**

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 **Justice Court** 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 **Justice Court** Rules of Civil Procedure and these Rules.

G. ADR hearings shall be conducted as follows:

1. No change.
2. No change.
3. The Clerk **clerk** of the assigning 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) **judicial** 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~~ **submit** their request in writing to the ADR Director with a copy to all other parties; **the request must be received** no later than ten (10) **judicial** days before the scheduled ADR hearing.
  - b. No change.
  - c. No change.
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~~ **made**:
  - a. No change.
  - b. No change.
  - c. No change.
  - d. No change.
  - e. No change.
  - f. No change.
  - g. No change.
  - 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) **judicial** 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 firsthand 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~~

~~— 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.”~~

**"Records of a Regularly Conducted Activity. A record of an act, event, condition, opinion, or diagnosis if:**

**(A) the record was made at or near the time by -- or from information transmitted by -- someone with knowledge;**

**(B) the record was kept in the course of a regularly conducted activity of a business, organization, occupation, or calling, whether or not for profit;**

**(C) making the record was a regular practice of that activity;**

**(D) all these conditions are shown by the testimony of the custodian or another qualified witness, or by a certification that complies with Rule 902(11) or (12) or with a statute permitting certification; and**

**(E) the opponent does not show that the source of information or the method or circumstances of preparation indicate a lack of trustworthiness.”**

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

7. No change.

H. All requests for continuances of an ADR Program hearing must be made **submitted** in writing to the ADR Director and ~~post marked~~ **received** not less than ten (10) **judicial** 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 **Justice Court** 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) **judicial** days of the completion of the ADR hearing and submit the Notice of Decision to the ADR Program Director.

B. No change.

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

A. Within ~~ten (10)~~ **twenty (20)** 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~~ **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)~~ **ten (10) judicial** days of receipt of the application by the objecting party.

C. No change.

### **Rule 12.5. Failure to Appear or Participate in Good Faith**

No change.

## Rule 12.6. Right of Appeal

A. All Appeals **appeals** from an ADR arbitration hearing **decision** 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 **Rule** 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, **the** court shall enter judgment and award court costs.

## ~~Rule 13. Short Cause Preference and Disposition~~

~~—The clerk shall maintain a short cause civil calendar of cases for each division that can be heard in three (3) hours or less. Notice to the clerk that a case is a short cause shall be by a statement to the effect on the motion to set and certificate of readiness. Short causes shall be preferred for trial to all other cases of similar issue and character and are not subject to alternative dispute resolution procedures. If the trial is not completed in three hours, the judge shall make an appropriate order, continuing the matter or placing it on the regular trial calendar without preference.~~

## Rule 14 **13**. 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 and with prior approval of the court, provided all conversations are audible. **audible and the parties are in compliance with other provisions as outlined in these Rules.** 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.

## Rule 15 **14**. Audio, Video, and other Sound Reproduction Exhibits

~~(a) In the interest of a complete and accurate record in the event of an appeal,~~ **When** audiotapes, videotapes, or other exhibits that reproduce sound are intended to be offered in evidence to demonstrate the substance of conversation, a transcription

of that portion intended to be played for the trier of fact shall may be made and concurrently offered in evidence marked as the court's exhibit, and shall be made if ordered by the court in a specific case. If a party wishes to use a transcript or if one is ordered by the court, the ~~The~~ proponent of the exhibit shall cause that portion to be transcribed and shall present it to opposing counsel for comparison against the audio exhibit sufficiently in advance of trial or hearing so that a good faith stipulation may be entered into by counsel as to its accuracy. The proponent may nevertheless establish the accuracy of the transcription sufficiently for its admission into evidence by appropriate testimony. When the recording is played for the trier of fact, the transcription shall be incorporated in the record of the trial by the court reporter's reference to its exhibit number.

(b) No change.

### C. MISCELLANY

#### Rule 16 15. Disposition of Exhibits

No change.

#### Rule 17 16. Minute Entries of Courtroom Clerk

A courtroom clerk shall be present at all court proceedings and shall make minute entry notes of all events such as motions, stipulations of counsel, rulings and orders, names of witnesses and jurors, the date and time of the start of proceedings, the time of recesses and adjournment, directions of the court, future dates for hearings, and other significant in-court matters, but shall not include the substance of testimony, discussions between the court and counsel and arguments of counsel, unless otherwise directed by the court. The clerk's notes shall be transcribed and mailed or delivered no later than ~~two~~ three (3) judicial days following the proceeding recorded therein.

#### Rule 18 17. Papers and Documents to be Provided to Judge

(a) **On Filing Motions.** Courtesy copies of motions, ~~oppositions~~ responses/oppositions, and replies, together with supporting memoranda, ~~only if exceeding five (5) pages,~~ shall be provided to the assigned judge unless otherwise directed ordered by the court that judge. This provision does not apply to e-filed documents.

(b) **Post Trial Brief and Memoranda.** On filing the original post trial briefs or memoranda, copies thereof shall be delivered or mailed to the assigned judge ~~considering the matter~~ unless otherwise directed by the court that judge. This provision does not apply to e-filed documents.

**(c) Notice of Lodging.** On filing a Notice of Lodging, a copy thereof together with the lodged document shall be delivered or mailed to the assigned judge unless otherwise directed by that judge.

**(d) E-filed documents requesting court action.** E-filings requesting/requiring any type of court action shall require the responsible filing individual/firm to also inform the court's judicial assistant, by e-mail or regular mail, that a filing has been made that requires court action. This requirement is intended to provide the court with notice that a party requests a ruling/decision so as to avoid undue delay in addressing the requested relief.

### **Rule 19 18. Preliminary Orders and Writs**

No change.

### **Rule 20 19. Consolidation of Cases.**

A. No change.

B. Motions for consolidation shall be heard by the judge to whom the lowest case number is assigned unless otherwise ordered by the presiding judge court. In determining to which judge the case or cases will be assigned, the following factors may be considered: (1) whether substantive matters have been considered in a case; (2) which judge has the most familiarity with the issues involved in the case; (3) whether a case is reasonably viewed as the lead or principal case; or (4) any other factor serving the interest of judicial economy.

C. No change.

### **Rule 21 20. Depositions and Discovery Papers Not to be Filed Use of Discovery or Disclosure Documents.**

~~(a) Unless otherwise directed by the court, depositions, interrogatories and answers thereto, and other discovery requests and answers and admissions thereto shall not be filed with the clerk. A single page "Notice of Service" of the foregoing papers on opposing counsel or party shall be filed with the clerk for insertion in the case file. Filing the notice of taking deposition required by Rule 30(b)(1), Rules of Civil Procedure, will satisfy this requirement with respect to depositions.~~

~~(b) Original depositions, answers to interrogatories, and answers and responses to other discovery requests shall be retained by the party requesting and receiving same.~~

~~(c) When discovery or disclosure documents is are read into evidence, counsel proffering same shall submit to the court the original or a photocopy of the portion read,~~

which shall be marked and admitted ~~in evidence~~ as the court's exhibit for the purpose of having a complete and accurate record on appeal. The court's exhibit shall not be used by the jury during deliberations or any other time except upon stipulation of counsel or ~~upon motion of any party~~ **order of the court** where otherwise permitted by law or the rules of evidence.

## **Rule 22. Civil Pretrial Statements**

~~— Pretrial statements shall be filed at least ten (10) working days before the trial date except as otherwise directed or permitted by the judge. No pretrial statement shall be required in domestic relations or child custody matters unless otherwise directed by the court.~~

## **Rule 23 21. Examination of Witnesses**

No change.

## **Rule 24 22. Instructions and Interrogatories to Jury**

Proposed jury instructions and interrogatories shall be presented to the court not later than the morning of the first day of trial unless sooner requested or later permitted by the court, and shall be numbered and cite the authorities, if any, relied on in support thereof. An extra copy of the text only of each requested instruction or interrogatory, ~~on plain 8.5 by 11 inch paper~~, unnumbered and without indication of the party or attorney submitting the same **instruction**, shall be provided **to** the court ~~for use by the jury during its deliberations~~ **in a digital form**.

## **Rule 25 23. Dismissal for Failure to Prosecute**

(a) Any civil action may be dismissed for failure to prosecute upon written motion and notice to opposing counsel, at the discretion of the court, ~~or upon the court's own motion and notice to counsel or to parties acting in pro se~~ **or in accordance with Rule 38.1(d), Arizona Rules of Civil Procedure or Rule 46(b)(2), Arizona Rules of Family Law Procedure.**

(b) No change.

(c) After a case has been set for trial and the parties have announced settlement without presenting a final judgment to the court, the case shall be placed on the **inactive dismissal** calendar and ~~counsel~~ **the parties** notified that the case will be dismissed without further notice sixty **(60)** days thereafter unless in the meantime a final judgment has been filed and entered of record or unless the court ~~shall~~, on motion of any party, **resets** the case for trial. The dismissal shall be automatic without further action of the court.

## **Rule 26 24. Award of Attorney's Fees in Civil Matters**

(a) **Consistent with Rule 54(g)(1), Arizona Rules of Civil Procedure,** ~~Where~~ **where** attorney's fees are permitted by contract or law, a claim for said fees shall be made in the pleadings **or in a Rule 12 motion filed before the movant's responsive pleading,** ~~in the joint pretrial statement, or by written notice filed and served prior to or at submission of the cause for determination.~~

(b) **Subject to the requirement of Rule 54(g),** ~~When~~ **when** a decision on the merits of a cause has been made with an award of attorney's fees, counsel to whom attorney's fees are awarded shall file his affidavit in support thereof within ten **twenty (20)** days following the date of the minute entry of the decision. Opposing counsel shall have ten **(10)** days thereafter to file his objections to the appropriateness of fees or amount as set forth in the affidavit, and may also request a hearing. If no hearing is requested, the court shall determine the appropriateness and amount of fees based on the affidavit and opposition.

## **Rule 27 25. Failure to Pay Filing Fee on Civil Appeal From Justice Court**

When an appeal is taken in a civil case from the justice or municipal court to this court and the appellee fails to pay the clerk of the superior court the fee fixed by law within the time set forth in A.R.S. § 22-283 and Rule **10(b)**~~12(d)~~, Superior Court Rules of Appellate Procedure--Civil, the court upon the application of the appellant or on its own motion, if deemed just and appropriate, may:

- (1) Direct entry of default against appellee;
- (2) Affirm the decision in the lower court;
- (3) Remand to the lower for further proceedings;
- (4) Make ancillary orders pursuant to Rule **12**~~8~~(a), Superior Court Rules of Appellate Procedure--Civil, and
- (5) Award costs to appellant.

## **Rule 28 26. Civil Cases Forwarded From Justice Court on Basis of Counterclaim**

In cases forwarded to this court from the justice court by reason of a counterclaim, cross claim or third party complaint stating a claim in an amount in excess of the jurisdictional limit for said court pursuant to A.R.S. § 22-201**C**~~F~~, upon docketing the case the clerk of this court shall give notice in writing to the defendant **party** filing said pleading that he **the party** shall have twenty days from the date of docketing said case in the superior court to pay the ~~required~~ filing fee **required** of a defendant in the superior court

and failure to do so will result in a dismissal of the counterclaim, cross claim or third party complaint and a remand of the case to the justice court. In such case the court may order the defendant **party** to pay costs, and where appropriate, attorney's fees pursuant to A.R.S. § 12-349.

### **Rule 29. — Criminal Appeals From Non-Record Courts**

~~— (a) The clerk will docket all appeals from non-record courts and notify the parties of the date of filing. The appeal will be dismissed and the judgment of the lower court affirmed if the appellant does not move to have the case set for trial with twenty-five days of the date of the filing of the notice of appeal.~~

~~— (b) If no motion to set is received by the clerk within said twenty-five days, the appeal will be automatically dismissed.~~

### **Rule 30. Abrogated effective Feb. 13, 2009**

### **Rule ~~31~~ **27**. Attire for Court Appearances**

No change.

### **Rule ~~32~~ **28**. Filing Requirements**

No change.

### **Rule ~~32-1~~ **29**. Proposed Orders**

No change.

### **Rule ~~33~~ **30**. Suspension of Rules**

~~The operation of any of these rules may be suspended when it appears to the court in the interest of justice **by the presiding judge through an administrative order setting forth the good cause and substantial reason for such suspension.**~~

### **Rule 34. Effective Date**

~~These rules are promulgated by authority of Rule 83, Rules of Civil Procedure, and shall take effect and be in full force on and after the date first above appearing, on which date all prior rules adopted by this court are hereby repealed.~~