

Arizona Supreme Court No. R-13-0043

Page **2** of **6**

TO:

Rule 28 Distribution

David L Mackey, Presiding Judge, Yavapai County Superior Court

Attachment*

YAVAPAI SUPERIOR COURT LOCAL RULES OF PRACTICE

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Rule 10. Conciliation and Mediation

10.1 Conciliation Court

[No change in text.]

10.2. Mediation

A. Matters Subject to Mediation. All domestic relations actions which involve a controversy over ~~custody~~ legal decision making or ~~visitation~~ parenting time of minor children shall be subject to mediation regarding such issues.

B. Jurisdiction. A 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 ~~custody~~ legal decision making or ~~visitation~~ 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 ~~custody~~ legal decision making or ~~visitation~~ parenting time of a child is contested, the Court shall refer the matter to Conciliation Court for mediation of the ~~child-custody~~ legal decision making or ~~visitation~~ parenting time dispute prior to or concurrently with the setting of the matter for hearing or trial. A mediator shall be appointed by the ~~Presiding Conciliation Court Judge.~~

2. *Mediation by Request of Parent.* If there is a disagreement between the parents concerning ~~custody~~ legal decision making or ~~visitation~~ 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).

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

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 ~~e custody~~ legal decision making and ~~visitation~~ parenting time dispute must take place before the trial or hearing on ~~e custody~~ legal decision making or ~~visitation~~ parenting time.

4. *Mediation Conference.* [No change in text.]

5. *Mediation Report.* If the mediation is successful in resolving any of the ~~e custody~~ legal decision making or ~~visitation~~ 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.* [No change in text.]

D. Private Mediation

1. *Selection.* [No change in text.]

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 ~~child e custody~~ legal decision making or ~~visitation~~ parenting time dispute, the parties may be ordered to Conciliation Court for a mediation conference.

3. *Waiver of Conciliation Court Mediation.* [No change in text.]

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 ~~and shall not be disclosed even upon waiver of the privilege by either or both parties except as provided in Rule 10.2(F) and except that the mediator is required to report any information which falls within the scope of A.R.S. § 13-3620 pursuant to A.R.S. § 12-2238.~~

F. Custody-Legal Decision Making or Visitation Parenting Time Evaluation. If mediation has been unsuccessful the Judge presiding may order ~~e custody~~ legal decision making or ~~visitation~~ parenting time evaluations. The Conciliation Court counselor or mediator assigned to a ~~e custody~~ legal decision making or ~~visitation~~ 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.

10.3 Arbitration

[No change in text.]

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Rule 19. Alternative Dispute Resolution

A. This Rule authorizes, approves and establishes a program for the use of alternative procedures to resolve disputes (ADR) in Yavapai County. The ADR Program is an alternative to litigation. Alternative processes available include, but are not limited to, arbitration, mediation, independent case evaluation, negotiation, mini-trial, summary jury trial, summary bench trial, and summary arbitration in all civil cases except for administrative appeals and lower court appeals which are not tried de novo. Domestic relations legal decision making and parenting time cases shall be processed through conciliation court.

B. [No change in text.]

C. The Yavapai County ADR program shall be administered by an ADR ~~Coordinator~~ Program Manager appointed by the Presiding Judge.

D. [No change in text.]

~~E. No later than 90 days following the first appearance of a defendant, the parties shall confer to discuss ADR. After conferring, the parties shall file, jointly or separately, the form required under ARCP Rule 16(g) with the Clerk of the Superior Court. The Clerk shall submit the form to the ADR Coordinator.~~

~~E. F. The ADR Coordinator shall review the form submitted in each case and make an appropriate recommendation to the Court. The Court shall order the case submitted to a specific ADR process, unless the Court makes an affirmative finding, on the record, that the case is inappropriate for an available ADR proceeding. All proceedings, with the exception of summary judgment motions made pursuant to ARCP 56, motions to dismiss pursuant to ARCP 12(b)(1), orders to show cause and motions made pursuant to these rules are stayed pending the conclusion of the ADR proceedings ordered by the Court. The Court may make whatever other orders may be appropriate to facilitate resolution of any case.~~

~~F. G.~~ The ADR Provider shall be determined and compensated as follows:

1.-3. [No change in text.]

4. If a case is ordered to ADR under subsection ~~F(3) G(3)~~, the fees charged by the ADR Provider shall be determined according to a fee schedule established by the Court, unless deferred or waived in the discretion of the Court. The Court shall not regulate, control, or determine the fees of any ADR Provider who is not appointed pursuant to subsection ~~F(3) G(3)~~.

5.-7. [No change in text.]

~~**G. H.**~~ The ADR Provider shall have powers reasonably necessary to fulfill his/her responsibilities, including but not limited to the power to administer oaths or affirmations to the parties and witnesses

~~**H. I.**~~ The Clerk of the Superior Court shall issue subpoenas in matters assigned to ADR, and the subpoenas shall be served and enforceable as provided by law.

~~**I. J.**~~ Within ten days of the conclusion of ADR proceedings, the ADR provider shall give notice of the result of the ADR proceeding to the Court and all parties and submit an affidavit of fees and costs.

~~**J. K.**~~ The Court shall enter the result of the ADR proceeding(s) on the record. If ADR has resulted in final or partial resolution of the case, the Court may make whatever orders as may be appropriate, including an order dismissing all or part of a claim or claims.

~~**K. L.**~~ The Court may, from time to time, appoint ADR Commissioners, to conduct the ADR case management conferences described in paragraph D. The term “the Court,” in this Rule, includes Commissioners.

Parties are cautioned that Rule 19 must be read in light of *Martinez v. Binsfield*, 196 Ariz. 466 (2000), which held that Uniform Rule V(e) [now A.R.C.P. Rule 38.1(d)] applies to cases assigned to mandatory arbitration, and repeated continuances granted by the Arbitrator did not provide good cause for continuing the case on the Inactive Calendar.