

IN THE SUPREME COURT OF THE STATE OF ARIZONA

In the Matter of:)	
)	
AUTHORIZING AN EXPANDED)	Administrative Order
ALTERNATIVE DISPUTE RESOLUTION)	No. 2020 - <u>157</u>
PILOT PROGRAM IN THE SUPERIOR)	
COURT IN YAVAPAI COUNTY)	
_____)	

To address a significant backlog in civil trials resulting from changes in court operations required by the COVID 19 pandemic, the Superior Court in Yavapai County has proposed an expanded alternative dispute resolution program for civil cases in which the parties have a right to a jury trial. The program will provide an adversarial process to resolve those cases and mitigate the delay of waiting for a jury trial. The program preserves the parties' rights to a jury trial and an appeal as provided by law.

A.R.S. § 12-133(L) authorizes the supreme court to approve alternative dispute resolution programs that exceed the jurisdictional limits of § 12-133(A)(1).

Therefore, pursuant to Article VI, section 3 of the Arizona Constitution,

IT IS ORDERED that the Yavapai County Expanded Alternative Dispute Resolution Program (YEADR) is approved as a pilot program, and that Attachment A is approved as rules for the pilot program.

IT IS FURTHER ORDERED that the presiding judge in Yavapai County is authorized to enter orders as necessary to implement the program and to make modifications to the rules in Attachment A as needed to facilitate the program's objectives.

IT IS FURTHER ORDERED that the pilot project will remain in effect until terminated by order of this Court.

IT IS FURTHER ORDERED that 6 months after implementation of the pilot program, the presiding judge will submit a report to the supreme court on the effectiveness of the pilot program. Staff of the Administrative Office of the Courts shall consult with the presiding judge to identify measures of the program's effectiveness.

Dated this 7th day of October, 2020.

ROBERT BRUTINEL
Chief Justice

Attachment A

Yavapai County Expanded Alternative Dispute Resolution Program

Preamble. Health and safety concerns caused by COVID 19 significantly impacted the operations of the Superior Court of Arizona in Yavapai County. As a result, there were no civil or criminal jury trials in the Yavapai County Superior Court from March 2020 to August 2020. Although criminal trials resumed on a limited basis in August 2020, the Yavapai County Superior Court currently has a significant backlog of both criminal and civil trials, and by Arizona Supreme Court administrative order, criminal trials have priority over civil trials. Due the size of the Yavapai County bench and the number of criminal and civil cases awaiting trial, this backlog has severely restricted the ability of civil litigants to have a meaningful opportunity to litigate their claims to resolution in the superior court.

Therefore, pursuant to A.R.S. § 12-133(L) and Yavapai County Local Rule 19, the Superior Court in Yavapai County, with the approval of the Arizona Supreme Court, hereby adopts the Yavapai County Expanded Alternative Dispute Resolution Program (hereinafter “YEADR”).

YEADR is a process for alternative dispute resolution of those civil cases in which the parties have a right to a jury trial. The purpose of YEADR is to provide a mechanism for civil litigants to utilize an adversarial process to resolve their claims in the superior court and avoid the delay of waiting for a jury trial. At the same time, YEADR preserves the parties’ rights to a trial by jury and an appeal as provided by law.

(a) Generally.

- (1)** Participation in YEADR is mandatory for litigants in eligible, non-exempt cases, as specified in sections (b) and (e) below. However, parties to a YEADR proceeding may modify the provisions of sections (d)(2), (f), (g), and (h) by mutual agreement and with court approval which, depending on the context, means the approval of the presiding, assigned, or fact finder judge.
- (2)** These provisions contemplate that each case will have two sides. If a case has more than two sides, the presiding, assigned, or fact finder judge may modify provisions of these rules as may be necessary and in the interests of justice to accommodate more than two sides.
- (3)** References to the “presiding judge” include the presiding judge’s designee.
- (4)** References to a “Civil Rule” means a rule in the Arizona Rules of Civil Procedure. Except as modified by YEADR, the Civil Rules apply before, during, and after the conclusion of the YEADR process.

- (b) **Eligibility.** A case is eligible for YEADR, regardless of the value of the claims and including a case in which a party requests non-monetary relief, if the case
- (1) is not subject to arbitration pursuant to A.R.S. § 12-133(A);
 - (2) is in Tier 2 or 3 under Civil Rule 26.2; and
 - (3) is one where a jury trial is required by law and has not been waived.
- (c) **The Parties' Joint Certification.** After the final discovery deadline has passed or after the court has ruled on all timely dispositive motions, whichever is later, the parties must file and submit to the presiding judge and the assigned civil division their joint certification of the following:
- (1) the case is a Tier 2 or Tier 3 case and it is not subject to arbitration under A.R.S. § 12-133(A);
 - (2) a jury trial has been requested and has not been waived; and
 - (3) the deadlines for completing discovery and for filing dispositive motions have passed, and the court has ruled on every timely-filed dispositive motion.
- (d) **Fact Finders.**
- (1) **Fact Finder Judge.** After the presiding judge has reviewed the parties' joint certification, and if deemed appropriate, the presiding judge will designate a superior court judge as a fact finder judge. The fact finder judge can be a current superior court judge, or a permanent or a seasonal superior court judge pro tempore. The parties may agree that the presiding judge designate a specific retired superior court judge as the fact finder judge. The fact finder judge will rule on motions and determine legal issues in the case as necessary or appropriate.
 - (2) **Fact Finder Panel.** The parties by agreement may request a panel of three fact finders. The fact finder judge designated by the presiding judge under section (d)(1) will serve as one member of the panel. The court may provide the parties with a list of other potential panelists, but the parties may select panelists who are not on the court's list. By agreement, the parties can:
 - (A) each select one of the panelists;
 - (B) jointly select the other two panelists; or
 - (C) choose an alternative method for selecting panelists, such as requesting the court to provide a list of five potential panelists from which each party can select one.The two other panelists may be judges (including retired judges, municipal court judges, or justices of the peace), attorneys, or members of the public, or any combination of

these individuals, subject to their availability. A panel member selected by a party who cannot fairly decide the case may be disqualified for bias.

- (3) ***Absence of Agreement.*** If the parties request a panel but are unable to agree on the other two panelists or a method for selecting them, then the presiding judge may designate them. If the parties are unable to agree on whether to proceed with a fact finder judge or a panel of fact finders, then the matter will proceed to trial with solely a fact finder judge.
- (4) ***Assigned Judge; No Peremptory Challenges.*** Notwithstanding the presiding judge's designation of a fact finder judge under subpart (d)(1), a case remains assigned to the judge of the civil division to which it was assigned at the time the parties filed a joint certification under section (c). For purposes of Rule 42.1, the case has not been reassigned to a new judge by virtue of a designation under subpart (d)(1).
- (e) ***Exempt Cases.*** On a party's request or at the presiding judge's own initiative, the presiding judge may exempt an otherwise eligible case from YEADR. In determining whether to exempt a case, the presiding judge may consider the length of trial, the cost of trial, the position of the non-requesting party, logistical issues, the extent of the trial backlog, and other relevant factors. The presiding judge may but need not confer with the parties on whether to exempt a case from YEADR.
- (f) ***Pretrial Conferences.*** The fact finder judge will solely preside over pretrial conferences.
 - (1) ***Trial Setting Conference.*** Upon the fact finder judge's designation by the presiding judge, and if a trial date has not previously been set, the fact finder judge may set a Civil Rule 16(e) trial setting conference for the purpose of setting a trial date under Civil Rule 16(e)(1).
 - (2) ***Trial Management Conference.*** The fact finder judge must set a trial management conference under Civil Rule 16(f)(7). At the conclusion of the conference, the fact finder judge must enter a pretrial order under Civil Rule 16(g). The fact finder judge may impose sanctions as provided by Civil Rule 16(h).
 - (3) ***Duties of the Parties.*** Not more than 10 day before the trial management conference, the parties must meet, confer, jointly prepare, and file a joint pretrial statement as provided by Civil Rule 16(f)(1) and (2). The joint pretrial statement must contain any requests by a party to conduct all or part of the trial, including the testimony of witnesses, virtually. The parties must also comply with the requirements of Civil Rule 16(f), subparts (3) and (6).
 - (4) ***Virtual Proceedings.*** Based on discussions at the trial management conference, the fact finder judge may permit or require the parties to conduct all or part of the trial virtually. If a party will introduce documents during a witness's testimony, the fact finder judge may direct the parties to follow the procedures in Rule 8(e) of the Rules of Family Law

Procedure, or the fact finder judge may modify those procedures. The fact finder judge must assure that at any virtual proceeding, each person will be audible and visible to every other person participating in the proceeding, including the fact finders and the court reporter or electronic recording system.

(5) ***Jury Instructions.*** Although a YEADR trial will not involve a jury, the following provisions apply to YEADR.

(A) ***Stipulated.*** Not more than 10 days before the trial management conference, the parties must prepare and file stipulated jury instructions concerning the matters at issue. The stipulated instructions may exclude standard instructions that govern trial jurors.

(B) ***Requested.*** No more than 10 days before the trial management conference, a party must file requested jury instructions on which there is no stipulation. The filing must include the legal basis for each requested instruction.

(C) ***Copies.*** The parties must email a copy of stipulated and requested jury instructions in Word format to the fact finder judge's judicial assistant.

(g) **Trial.**

(1) ***Applicable Rules.*** The trial procedures in Civil Rule 40 as applicable govern YEADR trial procedures. The Arizona Rules of Evidence apply at the trial.

(2) ***Time Limits.*** Each party will be allowed no longer than 15 minutes for an opening statement and 25 minutes for closing argument.

(3) ***Record of Proceedings.*** A court clerk must attend the trial, keep the minutes, and perform other duties required by law. The court will make and maintain an official verbatim record of the proceedings by using either a court reporter or FTR GOLD, which will serve as the record of proceedings under Rule 30 of the Rules of the Supreme Court and Rule 11(b) of the Arizona Rules of Civil Appellate Procedure ("ARCAP").

(4) ***Deliberations and General Verdict.***

(A) ***Instructions.*** The fact finders will be bound by the fact finder judge's approved jury instructions.

(B) ***General Verdict.***

(i) A judge who is the sole fact finder is required to promptly enter a written and signed verdict.

(ii) A fact finder panel must deliberate immediately after the conclusion of the trial and continue its deliberations until reaching a verdict. A panel majority is

required to render a verdict. The panel's verdict must be entered in writing. If a panel's verdict is unanimous, it must be signed by the fact finder judge. If it is not unanimous, it must also be signed by a concurring panel member.

- (C) *Return of the Verdict.* A verdict must be returned in open court in the presence of the parties. Upon agreement of the parties, the verdict may be delivered to them by means other than the clerk reading it in open court.
- (5) **General Verdict with Written Questions.** A party may submit to either a sole fact finder judge or a fact finder panel forms of general verdict with questions that the fact finders must answer as provided by Civil Rule 49(b). The verdict and answers must be returned as provided above in subpart (g)(4)(C).
- (6) **Findings and Conclusions.** A fact finder is not required to state specific findings of fact or conclusions of law under Civil Rule 52, even when a party requests findings and conclusions.
- (h) **Compensation of Panel Fact Finders.** The parties will be responsible for the reasonable compensation of panel members who are not currently judicial officers. If the parties agreed under subpart (d)(1) to a retired superior court judge as a fact finder judge, the parties will also be responsible for that person's compensation. In order to mitigate compensation, panel members other than the fact finder judge may appear remotely during the trial and deliberations. The parties may agree on a division of compensation for panel members. If there is no agreement, the parties will share it equally. The presiding judge will decide any dispute about whether compensation is reasonable. Compensation paid to fact finders is not a taxable cost.
- (i) **Form and Entry of YEADR Judgment; Costs and Attorney's Fees.** After a verdict, the fact finder judge must direct the prevailing party to prepare a statement of costs, a request for attorney's fees, if any, and a form of judgment, as provided in Civil Rules 54 and 58. The opposing party may file objections as provided by the Civil Rules. The fact finder judge must rule on any objections and then proceed to enter and file a judgment on the verdict. Notice of entry of the judgment must be given as provided in Civil Rule 58(c). The judgment becomes final as provided in section (m) below.
- (j) **Post-trial Motions.** A party may file post-trial motions as provided in the Civil Rules. The fact finder judge alone must rule on those motions. The filing of a timely motion under Civil Rule 59 extends the time to request a trial de novo under subpart (l)(1), and in that event, the time then begins to run for all parties from the entry by the clerk of a signed written order disposing of the motion.
- (k) **Waiver of Further Rights.** After the court enters a judgment, a party has the right to request a trial de novo in the superior court under section (l) and the right to file a notice of appeal to the Court of Appeals under section (o). A party may exercise one but not both of

those rights. A party who does not timely request a trial de novo or timely file a notice of appeal, as provided by those sections, waives both rights.

(l) Right to Request a Trial De Novo.

- (1)** Any party may file a request for a trial de novo in the superior court within twenty (20) days after the entry of the YEADR judgment, except as extended by section (j). A trial de novo will be to a jury. Upon the filing of a request for a trial de novo, the assigned judge may set one or more conferences under Civil Rule 16.
- (2)** A timely request for a trial de novo serves to automatically vacate a YEADR judgment entered under section (i).
- (3)** The fact finder judge may not serve as the judge on a trial de novo.

(m) Finality of a YEADR Judgment.

- (1) *By Expiration of Time.*** A YEADR judgment becomes final and appealable if no party has filed a request for a trial de novo within the time provided in subpart (l)(1).

- (2) *By Stipulation.***

(A) Before entry of the YEADR judgment, the parties may jointly request the fact finder judge to include Civil Rule 54(c) language in the judgment.

(B) Before the 20-day period provided in subpart (l)(1) has expired, the parties may stipulate to waive a trial de novo, and in that event, the YEADR judgment is final and appealable as of the date of filing the stipulation.

- (n) Sanctions on a Trial De Novo.** If the party who requested a trial de novo is not successful, the court, in addition to other fees and costs awardable by law, must order that party to pay the other party's (1) reasonable attorney's fees for the trial de novo, and (2) reasonable expert witness fees, if any, for the trial de novo. A party is successful in the following situations.

- (1) Successful Party: Monetary Judgement.** A party requesting a trial de novo after a monetary YEADR judgment is the successful party if the judgment after the trial de novo is at least 23 percent more favorable than the YEADR judgment.
- (2) Successful Party: Non-Monetary Judgments.** A party requesting a trial de novo after a non-monetary YEADR judgment is the successful party if the party obtains at the trial de novo a judgment in its favor on a claim or defense that is qualitatively superior to the YEADR judgment.
- (3) Partial Success:** If the party requesting a trial de novo is successful at the trial de novo on some but not all of its claims or defenses, the court must determine the successful party.

- (o) **Right to File a Notice of Appeal.** Any party may file a notice of appeal to the Court of Appeals within thirty (30) days after the YEADR judgment becomes final under section (m). The requirements for filing a notice of appeal and further proceedings on the appeal, including designated the record on appeal, are governed by the ARCAP.
- (p) **Duration.** The YEADR program will remain in effect until terminated by the Arizona Supreme Court.