

Judicial Branch of Arizona
in Maricopa County

Alternative Dispute Resolution (ADR)



Probate Settlement Conference Training Manual

Alternative Dispute Resolution
Downtown Justice Center
620 W. Jackson St., Suite 2049
Phoenix AZ 85003
602-506-7884
FAX: 602-506-5836

E-mail: adroffice1@jbazmc.maricopa.gov

Website: <https://superiorcourt.maricopa.gov/court-resources/services/adr/>

(THIS TRAINING MANUAL IS NOT ALL INCLUSIVE OF INSTRUCTIONS
NECESSARY TO PERFORM YOUR DUTIES AS AN ADR PB JUDGE *PRO*
TEMPORE)

CURRENT AS OF: APRIL 8, 2024

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TO ACCESS THE FORMS AND TRAINING, CLICK ON [View Training and Resources for Professionals](#).

**ALTERNATIVE DISPUTE RESOLUTION (ADR)
PROBATE SETTLEMENT CONFERENCE
ADMINISTRATIVE PROCEDURES FOR JUDGES *PRO TEMPORE* (JPTs)**

1. Cases are referred to ADR by minute entry or scheduling order: Upon receipt of referrals, cases are sorted and tickled for assignment to JPTs 90 calendar days prior to the deadlines set by minute entries or scheduling orders. If the deadline is less than 90 calendar days, ADR will request the judicial officer's division to extend the deadline to meet the minimum 90-day requirement.

2. Appointment of JPTs
 - a. Random appointment by using a database with JPTs sorted by date of appointment. ADR does not use a "conflict check" program. Conflict checks are accomplished by manually comparing JPT's address with attorneys of record on the case being assigned to the JPT.
 - b. JPT with the earliest date of appointment gets appointed first. A minute entry will be issued by the Clerk of Court and a copy distributed, via e-mail, to counsel and via US mail to self-represented parties. When the deadline for conducting the settlement conference is extended, ADR will send you a copy of the minute entry/order extending the deadline and a reappointment minute entry will be issued to direct counsel/parties to contact you to schedule or reschedule the settlement conference.
 - (1) Rotation varies, depending on the number of pending cases at ADR. Rotation is approximately every 45 days, but when pending cases start increasing in volume, appointment is between 30-35 days.
 - (2) Recusals: We ask that you perform a conflict check immediately upon receipt of your notice of appointment. **IN THE INTEREST OF TIME, PLEASE NOTIFY ADR IMMEDIATELY BY USING ONE OF THE FOLLOWING METHODS BELOW.** Please note that delaying notification of your recusal will result in a shorter deadline to conduct the settlement conference. When the deadline turns into less than 90 days (minimum deadline to assign/reassign cases to JPTs) ADR must get an extension from the judicial officer assigned to the case.
 - Notice of Recusal
 - Letter of Recusal
 - Recusal E-mail. Please send to adroffice1@jbazmc.maricopa.gov

Please ensure ADR is copied on the method you decide to use. Upon recusal, the case will be reassigned to a new JPT, and a new case will be assigned to the recused JPT. Please notify parties/counsel of your recusal. If the recusal will result in extension of the deadline to conduct the settlement conference, ADR will send a request to extend the deadline to the assigned judicial officer.

- c. **ON HOLD STATUS:** Please e-mail adroffice1@jbazmc.maricopa.gov if you need to be put "ON HOLD STATUS". JPTs on HOLD status (i.e., medical leave, schedule conflict) are skipped and are activated on the list when they become available. When your "ON HOLD STATUS" has expired, ADR will start assigning you to cases upon activation.

- 3. **Documents for the Settlement Conference:** Upon receipt of the appointment notice, please download the following forms from the ADR website: <https://superiorcourt.maricopa.gov/court-resources/services/adr/>. Click on [View Training and Resources for Professionals](#).

ADR is a paperless department. Please send your notices and completed settlement conference documents via e-mail to adroffice1@jbazmc.maricopa.gov or fax at 602-506-5836 (our fax machine can receive the incoming fax and convert it to an e-mail).

- a. **Certificate of Pro Tem Hours:** Attach to PB Settlement Conference Report.
- b. **Probate Settlement Conference Report:** Please fill out this form:
 - a. Upon conclusion of the settlement conference when parties reach a FULL, PARTIAL, or NO SETTLEMENT.
 - b. When parties settle prior to the date of scheduled settlement conference or prior to scheduling the settlement conference; opt private mediation/private arbitration; fail to contact the JPT within 10 calendar days of receipt of the notice of appointment of the JPT or when JPT is notified by parties that case has been dismissed/judgment entered/motion for summary judgment granted and a settlement conference is no longer necessary.
- c. **Agreement Between the Parties Pursuant to Ariz. R. Civ. P. 80(a) (as needed):** Please fill in the appropriate information and obtain parties'/attorneys' signatures. Depending on parties' and attorneys' preference, you may send an electronic copy to ADR for filing, or your office may file the original and an electronic copy forwarded to ADR, along with the settlement conference report. If the agreement does not need to be filed and for ADR's information only, please

attach a copy of the agreement to the settlement conference report. NOTE: If the agreement is CONFIDENTIAL, you may send the rule 80(a) to ADR for filing under seal. Upon receipt, ADR will forward the document to the Clerk of Court for filing under seal. Please make sure to mark the agreement as "CONFIDENTIAL".

- d. Notice of Probate Settlement Conference (as needed): Please fill in the appropriate information, sign, and date the bottom, file original, and forward a copy to ADR via e-mail. Please mail/e-mail a copy to parties/counsel. If you choose to use your own form or letter, please courtesy copy ADR by e-mail. You may also use e-mail to set your settlement conferences; please courtesy copy ADR on your e-mail setting the settlement conference.
- e. Order Regarding Failure to Contact Judge *Pro Tempore* to Schedule Settlement Conference (as needed): Use this form when parties fail to contact you to schedule the settlement conference within the time frame specified by the JPT appointment minute entry. Please fill in the appropriate information, sign, and date the bottom, file original, and forward a copy to ADR via e-mail or fax at 602-506-5836. Please mail/e-mail a copy to parties/counsel. If you choose to use your own form or letter, please courtesy copy ADR by e-mail. If parties/counsel fail to contact you within the time frame specified on your order, please issue another order remanding the case to the judicial officer assigned to the case.

Note: If you need parties' and attorneys' contact information, please e-mail adroffice1@jbazmc.maricopa.gov.

- 4. Scheduling the Settlement Conference: PLEASE KEEP ADR INFORMED ON THE STATUS OF YOUR CASES; ALTHOUGH ADR IS PART OF THE JUDICIAL BRANCH, ADR IS NOT ALWAYS ENDORSED ON MOTIONS, NOTICES OF SETTLEMENT, ETC., FILED BY PARTIES/ATTORNEYS.

- a. You may conduct your settlement conference in-person or virtually. The settlement conference will be set at the discretion of the assigned JPT based on staffing and technology. Please see Administrative Order 2022-113 (In the Matter of Presumptive Standards for Remote and In-Person Hearings): <https://www.superiorcourt.maricopa.gov/SuperiorCourt/AdministrativeOrders/AdminOrders/AO%202022-113.pdf>

(1) In Person Settlement Conference: May be conducted in the JPT's office; ADR (Downtown Justice Center); Northeast Court Facility; Southeast Court Facility; or at a location agreed to by JPT and counsel (i.e., one of the attorneys' offices).

(2) Virtual settlement conference: You may use a virtual platform: ZOOM, MS TEAMS, WEBEX, GoTo Meeting, etc. It is the responsibility of the JPT to send the virtual link to counsel and parties. NOTE: If you do not have access to a virtual settlement conference platform, you may request GoTo access from ADR by e-mail: adroffice1@jbazmc.maricopa.gov or by calling 602-506-7884. Access is available on a first-come, first-served basis.

- b. Counsel/parties have 10 calendar days, upon receipt of the notice, to contact the JPT to schedule the settlement conference. If counsel/parties fail to contact the JPT within the days specified above, JPT should prepare the Order Regarding Failure to Contact Judge *Pro Tempore* to Schedule Settlement Conference (see instructions on paragraph 3e. above). The settlement conference must be conducted on or before the deadline set on the notice of appointment.
- c. If the deadline needs to be extended, due to counsel's/parties' schedule conflict or more time is needed to conduct the settlement conference, JPT should instruct counsel to file a motion to extend the deadline with the judicial officer assigned to the case.

The JPT does not have authority to extend the deadline to conduct the settlement conference. The motion to extend the deadline to conduct the settlement conference MUST go to the judicial officer assigned to the case.

The JPT can only grant the motion to continue the SCHEDULED settlement conference NOT the DEADLINE TO CONDUCT THE SETTLEMENT CONFERENCE.

- d. If the JPT is unable to meet the deadline, the JPT may request ADR to either reassign the case to a new JPT or ask ADR to request an extension of the deadline from the judicial officer assigned to the case. As soon as an extension is granted by the judicial officer assigned to the case, a minute entry will be generated by the judicial officer's division.
- e. Once the settlement conference is scheduled, please make sure to send a copy of the notice to ADR via e-mail. ADR will then enter the date/time of the settlement conference on ADR's database and integrated Court Information System (iCIS). NOTE: For cases requiring a language interpreter (example: Spanish, Mandarin, Arabic, etc.) or an ASL interpreter, please e-mail adroffice1@jbazmc.maricopa.gov to request an interpreter. ADR will then send the request to Court Interpretation and Translation

Services (CITS) to send the interpreter to the location determined by the JPT or if the settlement conference is to be conducted virtually, please send the virtual link to CITS Scheduling (citsscheduling@jbazmc.maricopa.gov). You will be copied by ADR when the request for the interpreter is sent to CITS Scheduling.

5. Probate Settlement Conference OnLine Survey Form: **The link to the PB Settlement Conference On Line Survey is:**
<https://superiorcourt.maricopa.gov/ADRPB>

PLEASE PROVIDE THIS LINK TO LITIGANTS AND COUNSEL.

All party information remains confidential. The comments are shared with the individual JPT at the end of the fiscal year.

6. Court Files: To view records remotely, the JPT needs to first register with the Electronic Court Record Online (ECR Online) at <https://ecr.clerkofcourt.maricopa.gov/login.aspx>. Email a copy of the order naming the attorney as JPT to the customer support email address: efilesupport@cosc.maricopa.gov. In the email to the Clerk's Office, include the case number and JPT's name as well as preferred contact information in case Clerk staff needs to follow-up. Office staff will manually add the case number to the JPT's list of viewable cases within ECR Online and will email confirmation when the case is added, typically by the next business day. This customer service enhancement improves access for customers and allows the Clerk of the Court's Office to better manage its limited resources.

For Assistance with ECR Online contact:

Phone: (602)37-CLERK, or (602)372-5375

Email: efilesupport@cosc.maricopa.gov

7. Upon conclusion of the settlement conference, the JPT must ensure that the settlement conference report (Rule 80a agreement attached, if applicable) and certificate of pro tem hours form are e-mailed or faxed to ADR.
8. Processing of settlement conference reports
 - a. Upon receipt of completed report from JPT: ADR forwards report to the assigned judicial officer and updates iCIS and ADR's records.
 - b. The reports are also used to generate ADR's statistics.
 - c. ADR is required to submit monthly SC statistics to Court Administration. JPTs are requested to submit their SC reports to ADR immediately after the settlement conference. If a settlement conference is not held, please fill out the report form and mark the appropriate result. Please write a brief note of what happened in the comment section. It is imperative that each JPT return the

report even if the settlement conference does not take place. This assures that our records and statistics are as accurate as possible.

9. Statistics:

- a. One week after the end of each month, ADR prepares a statistical report for submission to Court Administration. It is imperative that each JPT submits their settlement conference reports for the previous month. This will ensure timely submission of the monthly statistical report to Court Administration.
- b. At the end of each fiscal year, ADR distributes, via e-mail, an electronic statistical report (overall and individual statistics, which includes a statistical breakdown of the settlement agreement), along with the individual survey comments (if any) to each JPT.
- c. The fiscal year statistical report is sent to Probate Court Presiding Judge, each Probate Superior Court Judicial Officer, Probate Court Administrator, and Court Administration.

ADR'S ADDRESS:

ALTERNATIVE DISPUTE RESOLUTION
DOWNTOWN JUSTICE CENTER
620 W. JACKSON ST., SUITE 2049
PHOENIX AZ 85003

E-MAIL ADDRESS: adroffice1@jbazmc.maricopa.gov

PHONE NUMBER: 602-506-7884

FAX NUMBER: 602-506-5836

Judicial Settlement Conference Outline

- I. Introduction of Settlement Conference Judge
- II. Explain How Settlement Conference Will Proceed
 - A. Settlement Conference Judge's Initial Comments
 1. Purpose & Benefits of Settlement Conference
 2. Role of Settlement Conference Judge
 3. Settlement Conference Rules
 - B. General Session with All Parties
 1. If you don't want to say something in the general session, just say you would prefer to discuss the matter in caucus
 - C. Caucuses
 1. Obtain permission for *ex parte* caucuses
 2. Parties should not infer anything from length of caucus sessions
- III. Settlement Conference Judge's Initial Comments
 - A. Purpose & Benefits of Settlement Conference
 1. Parties should feel they are here voluntarily
 2. Opportunity to resolve case amicably
 3. Control outcome of the case
 4. Eliminate risk and make outcome certain
 5. Reduce/eliminate costs:
 - a. Attorney fees & costs
 - b. Time off of work
 - c. Travel expenses
 6. Make most efficient use of time and energy
 7. Minimize/eliminate emotional drain
 8. Opportunity for parties themselves to talk directly to one another and to a neutral
 9. Only opportunity for parties to freely express themselves

10. Opportunity to craft resolutions/outcomes that the Court, absent agreement, cannot order.

IV. Role of Settlement Conference Judge

- A. Neutral
- B. Facilitate discussion and resolution of case
- C. Find common ground
- D. Find solution/resolution that is mutually acceptable to the parties
- E. Not determine who is right or wrong
- F. Not decide the case
- G. But may offer candid evaluation as to the merits of the parties'

positions

V. Settlement Conference Rules

- A. Confidentiality
 1. Nothing can be used in court
 2. Preservation of notes
 3. Settlement conference judge will not disclose comments to other side without consent
 4. Settlement conference judge cannot be called as a witness
- B. No disparaging comments
- C. Parties to negotiate in good faith
- D. Parties are free to leave at any time if they do not believe process is productive
- E. If a break is needed, just ask
- F. Assume the settlement conference judge will share with the other side what you have said in caucus unless you expressly ask the settlement conference judge to keep the information confidential.

V. Initial Thoughts/Comments/Questions

- A. Comments
 1. Good lawyers on both sides
- B. Questions

What to do when parties settle: Always get agreements on the record with attorneys/parties present and their affirmation of settlement terms

Top Tips for Conducting Settlement Conferences

1. The Judge should be proactive in trying to resolve the issues in the case.
2. Create an environment conducive to settlement. Set the tone to encourage compromise and conciliation.
3. Make an introductory statement:
Explain the purpose of the conference:
 - To organize and clarify the issues for trial, settling issues that can be settled; issue any orders necessary to that end.
 - Let parties know that you understand the seriousness of the matter and the emotional issues they are facing.
 - Let parties know they don't have to settle; however, if they can work out their differences, it will save everyone significant time, frustration, and expense.
 - Let parties know they have a right to trial, but sometimes the Judge makes a decision that no one likes. By working on a settlement, they can reach an agreement that meets their needs.
 - Encourage parties to be open about compromise. You are not the trial judge. Therefore, efforts at compromise will not be used against them at trial.
4. Be aware of the attorneys' need to preserve their relationship with their client. Some nice words about the lawyers in the presence of their clients will tend to reduce obstruction from counsel.
5. Recognize the attorneys' roles. Allow each attorney to make a brief "opening statement" regarding issues not yet resolved. Keep these statements to a minimum. Save the bulk of time for finding solutions.
6. Act as a sounding board for the issues. Parties and attorneys may be looking for feedback from the Judge. Be proactive and address the issues, making appropriate comment on the law as applied to these facts.
7. When parties begin by stating no agreement is possible, explore easy issues first to see if you can limit disagreements.
8. Think creatively. Create options or suggest alternatives that the attorneys may not have foreseen or could not suggest themselves.
9. Be a good listener. Identify and deal with emotional issues that may be impeding settlement.
10. Remain neutral even if you are inclined to side with one party.
 - Avoid caucus or it could be construed as siding with one party.
 - Avoid any appearance of favoring one side or one attorney. If you call one attorney by a first name, address the other attorney in the same manner.
 - Acknowledge aloud that each party's feelings are genuine about their positions, but your hope is to discover what they really need to move on and put this litigation behind them.
11. Keep control of the proceedings. Proceed methodically. Don't accept a statement that no settlement is possible. Your job is to explore.

12. Address topics one at a time. When possible, nail down agreements before going on to the next topic.
13. Start with easy things first, such as personal property, debts, who gets what car, etc. This helps get people in the mood to settle.
14. Be a facilitator, not a bully. People are more satisfied when they think they have voluntarily come to their own decisions.
15. In most cases, one or two issues are important to each party. They are not always the same issues. Find them. They will negotiate everything else.
16. Compliment attorneys on the work they have done, but let parties know that even though these attorneys will work hard for them, by settling this case they will save significant attorneys' fees. Remind people of the benefits of settlement, in terms of money, time, and trauma.
17. Take charge when settlement is imminent on an issue. Do not let it slip away before you get both parties to commit.
18. In reaching settlement, you want to terminate all ties that you can, so that parties do not have to worry about ongoing contact.
19. When telling a party that the court will not sustain their position, watch for their lawyer's reaction. If it is quiet and passive, it's probably reinforcing what the lawyer has already told the client.
20. Inform unreasonable people quickly if they will not be successful in court on a point.
21. Start by identifying areas of agreement. This is a good tactic to encourage further agreement. Help avoid distraction by areas of disagreement.
22. Think of contingencies for the future, if applicable, such as parties moving out of state, visitation when children get older, etc.
23. If the case settles, swear both parties in, have both parties say that they understand and approve of the settlement terms and consider the terms fair and equitable.
24. Even if no settlement, encourage parties/attorneys to continue to negotiate. Seeds of settlement can be planted at the conference that result in subsequent agreements.

COMMUNICATION TECHNIQUES FOR SUCCESSFUL NEGOTIATIONS

1. Restatement – The settlement judge listens to what has been said and repeats the content to the party in the party's own words.
2. Paraphrase – The settlement judge listens to what has been said and restates the content to the party using different words that have the same meaning as the original statement. This is often called *translation*.
3. Active Listening – The settlement judge decodes a spoken message and then feeds back to the speaker. This is commonly used in conciliation.
4. Summarization – The settlement judge condenses the message of a speaker.
5. Expansion – The settlement judge receives a message, expands, and elaborates on it, states it back to the listener, and then checks to verify accurate perception.
6. Ordering – The settlement judge helps a speaker organize ideas into a sequence (historical, size, importance, amount, and so forth).
7. Grouping – The settlement judge helps a speaker identify common ideas or issues and combine them into logical units.
8. Structuring – The settlement judge assists a speaker to organize and arrange his or her thoughts and speech into a coherent message.
9. Separation or Fractionating – The settlement judge divides general points or principles in a speaker's component parts.
10. Generalization – The settlement judge identifies general points or principles in a speaker's presentation.
11. Probing Questions – The settlement judge asks questions to encourage a speaker to elaborate on an idea.
12. Questions of Clarification – The settlement judge asks questions to encourage the speaker to give further information about a point in question.

The settlement judge can enhance communication between participants by encouraging participants to use communication skills, by teaching participants how to use them, and by reinforcing their use by commending parties who utilize them.

ESTABLISHING A POSITIVE EMOTIONAL CLIMATE

In addition to facilitating communication, the settlement judge often must create an emotional climate conducive to clear communication and joint problem solving. Interventions related to promoting a positive emotional climate include:

- Preventing interruptions or verbal attacks.
- Encouraging parties to focus on the problem and not each other.
- Translating judgmental language of participants into less emotionally charged terms.
- Affirming clear descriptions or statements, procedural suggestions, or gestures of good faith while not taking sides on substantive issues.
- Accepting the expression of feelings and being empathetic while not taking sides.
- Reminding parties about behavioral guidelines that they have established.
- Intervening to prevent conflict escalation.