Civil
Settlement Conference
Training Manual

ELECTRONIC COPY AVAILABLE ON
https://superiorcourt.maricopa.gov/adr/
Click on ADR resources for Judges Pro Tem

Alternative Dispute Resolution
Downtown Justice Center
620 W. Jackson St., Suite 2049
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602-506-7884
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adroffice1@jbazmc.maricopa.gov

(PREPARED & COMPILED BY MEL DAILEY, ADR PROGRAM COORDINATOR)

CURRENT AS OF MAY 5, 2020

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***THESE FORMS MAY BE DOWNLOADED FROM THE ADR WEBSITE. Click on** ADR resources for Judges Pro Tem **to access the forms.**

https://superiorcourt.maricopa.gov/adr/

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

- **Cases are referred to ADR by minute entry or scheduling order**
    1. Upon receipt of referrals, cases are sorted and tickled for assignment to JPTs 90 days prior to the deadlines set by minute entries or scheduling orders. If the deadline is less than 90 days, ADR will request the Judge's division to extend the deadline to meet the minimum 90-day requirement.
    2. There are approximately between 100 and 150 cases tickled for each rotation.
- **Appointment of JPTs**
    1. Random appointment by using a database with JPTs sorted by date of appointment. The ADR Program Coordinator does not use a "conflict check" program. Conflict checks are accomplished manually by comparing JPT's address with attorneys' on the case being assigned to the JPT.
    2. JPT with the earliest date of appointment gets appointed first.
    3. Rotation varies, depending on the number of pending cases @ ADR.
        - Rotation is approximately every 45 days, but when pending cases start increasing in volume, appointment is between 30-35 days.
    4. Recusals: **IN THE INTEREST OF TIME, PLEASE NOTIFY ADR IMMEDIATELY BY USING ONE OF THE FOLLOWING:**
        - Notice of Recusal
        - Letter of Recusal
        - Recusal E-mail (e-mail the ADR Program Coordinator or adroffice1@jbazmc.maricopa.gov)

    Please ensure ADR is copied on the document you decide to use. Upon recusal, case will be reassigned to a new JPT and a new case will be assigned to the recused JPT. Please also ensure you notify parties/counsel of your recusal. If the recusal will result to extension of the deadline to conduct the settlement conference, the JPT is requested to instruct counsel to file a motion to extend the deadline with the assigned judge.

    5. JPTs on **HOLD** status (i.e., medical leave, trials) are skipped and are activated on the list when they become available*
        - *NOTE: Please call or e-mail the ADR Program Coordinator if & when you need to be put "ON HOLD STATUS". When "ON HOLD STATUS" has expired, the ADR Program Coordinator will start assigning you to ADR cases upon activation.
- **Upon receipt of the appointment notice, please download the following forms from the ADR website:** https://superiorcourt.maricopa.gov/adr/
    1. Certificate of Pro Tem Hours: Judge *Pro Tempore* fills out and sends to ADR, along with the Civil Settlement Conference Report (please send via fax, e-mail, or U.S. Mail).
    2. Civil Settlement Conference Report (please send completed form via fax, e-mail (adroffice1@jbazmc.maricopa.gov), runner service, or U.S. Mail).
        - To be filled out by the JPT
            - Upon conclusion of the settlement conference: When parties reach a FULL, PARTIAL, or NO SETTLEMENT
            - When parties settle prior, when parties decide to go to a private mediator, when parties fail to contact the Judge *Pro Tempore* within 10 days of receipt of the notice of appointment of the JPT, or when JPT is notified by parties that case has been dismissed and a settlement conference is no longer necessary
    3. Agreement Between the Parties Pursuant to A.R.Civ.P. Rule 80(a) (as needed): Please fill in the appropriate information and have parties/counsel sign the form and send original to ADR for filing or your office may e-file the

original and a copy forwarded to ADR, along with the settlement conference report. JPT is requested to provide copies to counsel/parties.

4. Notice of Civil Settlement Conference (as needed): Please fill in the appropriate information, sign and date the bottom, e-file original, **and forward a copy to ADR** via e-mail (adroffice1@jbazmc.maricopa.gov), fax (602-506-5836), runner service, or U.S. mail. Please mail/e-mail copies to parties/counsel. If you choose to use your own form or letter, please courtesy copy ADR by e-mail, fax, or U.S. mail. Note: If you need unrepresented parties' addresses, please e-mail adroffice1@jbazmc.maricopa.gov.
5. Order Regarding Failure to Contact Judge *Pro Tempore* to Schedule Settlement Conference (as needed): Please fill in the appropriate information, sign and date the bottom, e-file original, **and forward a copy to ADR** via e-mail (adroffice1@jbazmc.maricopa.gov), fax (602-506-5836), or U.S. mail. Please mail/e-mail copies to parties/counsel. If you choose to use your own form or letter, please courtesy copy ADR by e-mail, fax, runner service, or U.S. mail. Note: If you need self-represented parties' contact information, please e-mail adroffice1@jbazmc.maricopa.gov
6. **Scheduling the Settlement Conference (NOTE: PLEASE KEEP ADR INFORMED ON THE STATUS OF YOUR CASES; ALTHOUGH ADR IS PART OF THE JUDICIAL BRANCH, ADR IS NOT ALWAYS COPIED ON MOTIONS, NOTICES OF SETTLEMENT, ETC., FILED BY PARTIES/ATTORNEYS.)**
   - 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 #5 above). The settlement conference must be conducted per deadline set on the notice of appointment.
   - If and when deadline needs to be extended due to counsel's/parties' schedule conflict, JPT should instruct counsel to file a motion to extend the deadline with the judge assigned to the case. **NOTE: The JPT does not have the authority to extend the deadline to conduct the settlement conference. The motion to extend the deadline to conduct the settlement conference should go to the judge assigned to the case.**
   - 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 judge assigned to the case. As soon as an extension is granted by the judge assigned to the case, a minute entry will be generated by the judge's division.
   - Once the settlement conference is scheduled, please make sure to send a copy of the notice to ADR. ADR will then enter the date/time of the settlement conference on ADR's database and Integrated Court Information System (iCIS**). NOTE: For cases that require an interpreter (examples: Spanish, Mandarin, Arabic, etc.), please email 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.**

   - Civil Court Settlement Conference On Line Survey Form: **The link to the CV Settlement Conference On Line Survey is: https://superiorcourt.maricopa.gov/ADRCV**
     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.

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 or fax the document to the Clerk's Office at 602-372-8751. In the email or fax 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.

AZTurboCourt for Special Masters* and Arbitrators:

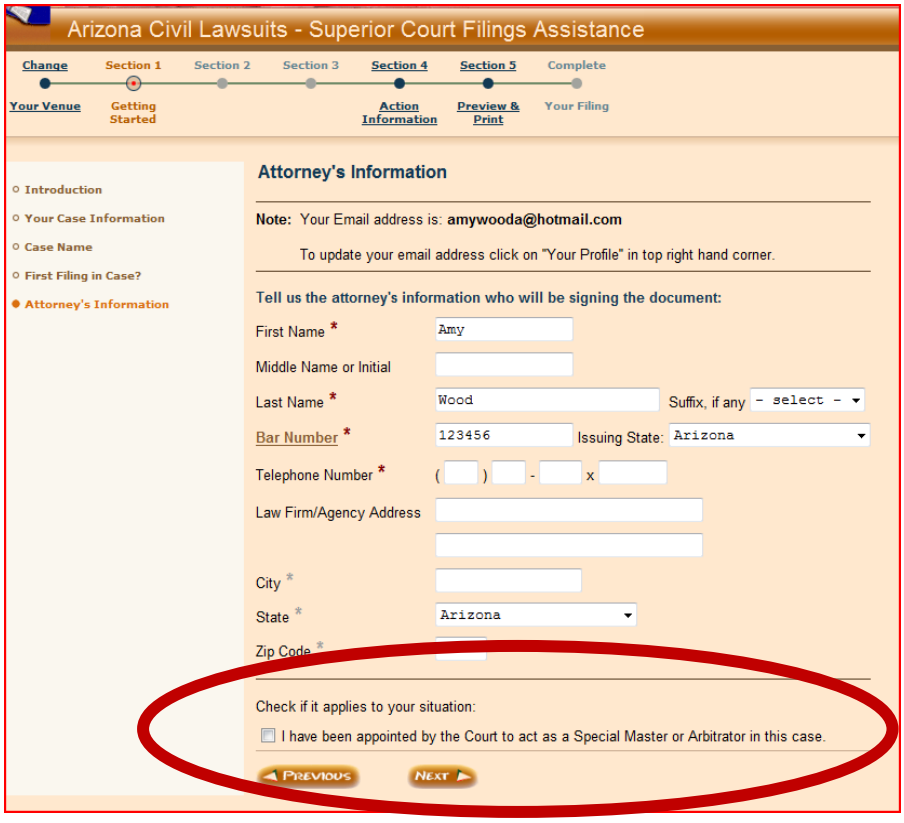
Effective September 1, 2011, the Arizona Supreme Court Administrative Order 2011-87 directs the Clerk's Office not to accept paper filings from attorneys in civil cases. Civil cases must still be initiated on paper; however, subsequent documents must be eFiled through AZTurboCourt unless an exception defined in the Administrative Order applies.

Special Masters* and Arbitrators have been filing submissions over-the-counter due to a system constraint which charged them the application fee. The problem has been remedied and beginning August 12, 2011 Special Masters and Arbitrators are able to file their documents via AZTurboCourt without being charged the application fee.

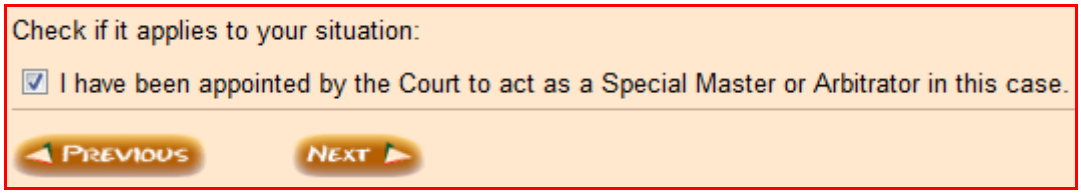
*Although the instructions say "SPECIAL MASTERS OR ARBITRATORS", below instructions also apply to JPTs.

Instructions for new functionality:

- Log-in to AZTurboCourt using your normal log-in and password.
- When you arrive at the Attorney Information screen shown below, you will notice a checkbox that can be selected indicating that "I have been appointed by the Court to act as a Special Master or Arbitrator in this case."

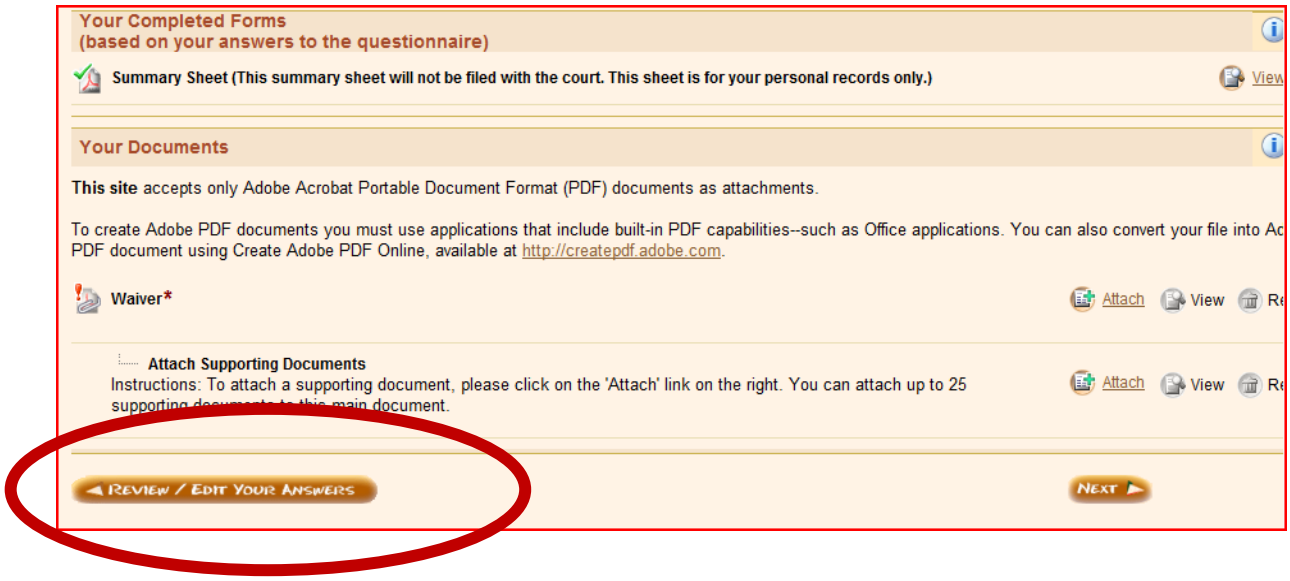


- Check the box shown below and click on “next”:



- When you arrive at the screen where you can attach your forms, you will see that no filing fees are required and that the $6.50 user fee has been suppressed.

- If a user or filing fee has been assessed, click on the "Review/Edit Your Answers" button to return to the start of the application where you will be able to check your answers and verify that the Special Master/Arbitrator button has been checked.



The point of contact for Administrative Office of the Courts (AOC) is:
E-Filing Production Support Coordinator
Court Services Division
Administrative Office of the Courts
1501 W. Washington
Phoenix, AZ 85007
602.452.3630
Fax: 602.452.3480

- **Upon conclusion of the settlement conference**, the Judge *Pro Tempore* must ensure that the settlement conference report and certificate of pro tem hours form are e-mailed, faxed, mailed, or delivered to ADR via runner service.

- **Processing of settlement conference reports**
    1. Upon receipt of completed report from JPT:
        - Via US mail or runner service: ADR scans report, updates iCIS and ADR's records, and e-mails copy to the assigned judge.
        - Via e-mail: ADR forwards report to the assigned judge and updates iCIS and ADR's records.
    2. The reports are also used to generate ADR's statistics.
    3. 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 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.**

- **Statistics:**
    1. 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.
    2. At the end of each fiscal year, ADR issues a statistical report to each JPT. The report includes a statistical breakdown of the settlement agreement rate and evaluation comments.
    3. The fiscal year statistical report is sent to each Civil Court Superior Court Judge, Civil 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: 602-505-5836

Office Distribution
ADR Administration

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

FILED
04/10/2020
by Superior Court Admin
on behalf of Clerk of the
Superior Court
Emelda C. Dailey
Deputy

ALTERNATIVE DISPUTE RESOLUTION OFFICE
Notice of Civil Settlement Conference

04/10/2020

CV2019-003338

PLAINTIFF
MARK SHUMATE — 023411 JOHN M POWERS

V.

DEFENDANT
RICHARD DAVIS, et. al. — 029032 CRAIG W BROADBENT

005501 DAVID LEE SANDWEISS
Judge Pro Tempore
(602) 340-7250
david.sandweiss@staff.azbar.org

Judge Pro Tempore **DAVID LEE SANDWEISS** is appointed to conduct a Settlement Conference and to enter stipulated orders in this matter, pursuant to Rule 16.1, A.R.C.P.

Counsel (or parties if not represented) shall initiate a joint telephonic conference with *Judge Pro Tempore* **DAVID LEE SANDWEISS** **within ten (10) calendar days** of receipt of this notice to arrange the time and location for this settlement conference. All parties and counsel (if parties are represented), **shall appear in person at the settlement conference**. All settlement conference participants should expect to attend this conference for at least two (2) hours and docket their calendars accordingly.

Pursuant to Maricopa County Local Rule 3.11, each party shall furnish *Judge Pro Tempore* **DAVID LEE SANDWEISS** with a separate Settlement Conference Memorandum at least seven (7) calendar days prior to the scheduled Settlement Conference. This memorandum **SHALL NOT** be filed with the Clerk of Court. Parties shall exchange the memoranda with each other, or with the consent of all parties, furnish the memoranda sealed to the *Judge Pro Tempore*.

Office Distribution
ADR Administration

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

FILED
04/10/2020
by Superior Court Admin
on behalf of Clerk of the
Superior Court
Emelda C. Dailey
Deputy

ALTERNATIVE DISPUTE RESOLUTION OFFICE
Notice of Civil Settlement Conference

04/10/2020

CV2019-003338

The Settlement Conference memorandum shall include the following information:

1. A general description of the issues in the lawsuit, and each party's position with respect to each issue;
2. A description of the evidence each party intends to present, with respect to each issue stated in item 1;
3. A summary all settlement negotiations that have previously occurred;
4. An assessment by each party of the anticipated result if the matter did proceed to trial; and
5. Any other information the party believes would be helpful to the settlement process.

All motions to continue the scheduled Settlement Conference shall be brought before the assigned *Judge Pro Tempore* **DAVID LEE SANDWEISS**, with a copy of the motion to be provided to the Alternative Dispute Resolution (ADR). If a continuance is granted, the requesting party shall provide a signed copy of the Order to ADR. Any other pre-trial motions shall be brought before the judge permanently assigned to the case.

By this appointment, the *Judge Pro Tempore* becomes an extension of the court and therefore is entrusted with certain powers and duties. Any agreement the parties enter into, which is memorialized by the *Judge Pro Tempore*, shall be considered a binding agreement, in accordance with Rule 80 (a), A.R.C.P.

Failure to comply with this Court Order may result in the imposition of court sanctions, pursuant to Rule 16(h), A.R.C.P.

Office Distribution
ADR Administration

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

FILED
04/10/2020
by Superior Court Admin
on behalf of Clerk of the
Superior Court
Emelda C. Dailey
Deputy

ALTERNATIVE DISPUTE RESOLUTION OFFICE
Notice of Civil Settlement Conference

04/10/2020

CV2019-003338

JPT IS REQUESTED TO CONDUCT SC BY: 07/08/2020

Superior Court of Maricopa County - integrated Court Information System

Endorsee Party Listing

Case Number: CV2019-003338

Party Name	Attorney Name	
David Lee Sandweiss	Judge Pro Tempore	Bar ID: 005501
Mark Shumate	John M Powers	Bar ID: 023411
Richard Davis	Craig W Broadbent	Bar ID: 029032
One Marquis L L C	Craig W Broadbent	Bar ID: 029032
Rad Ventures L L C	Craig W Broadbent	Bar ID: 029032
Page Morris Rad Ventures L L C	Pro Per	

ALTERNATIVE DISPUTE RESOLUTION (ADR)
SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY
602-506-7884

CIVIL SETTLEMENT CONFERENCE SURVEY

This survey will only take 5 minutes of your time. Your feedback is important to us. This information will be used to inform the court system and the judge *pro tempore* about your experience with the settlement conference. In accordance with ADR Superior Court policy, this information is confidential. Below is the link to the online survey.

https://superiorcourt.maricopa.gov/ADRCV

Judicial Branch of Arizona in Maricopa County
Alternative Dispute Resolution
Downtown Justice Center
620 W. Jackson St., Suite 2049
Phoenix, AZ 85003
Office (602) 506-7884 Fax (602) 506-5836

CIVIL SETTLEMENT CONFERENCE REPORT

Please complete this report, along with the certificate of pro tem hours, and return forms to ADR **upon conclusion of the settlement conference.** Please address correspondence to ADR, using the above address and/or fax number or e-mail to: adroffice1@jbazmc.maricopa.gov.

Judge *Pro Tempore*:_____

Assigned Judge: _____

Case#: _____

Caption: _____ v _____

Date of Settlement Conference: _____

Please check the appropriate box below:

☐ **FULL SETTLEMENT** ☐ **PARTIAL SETTLEMENT** ☐ **CASE NOT SETTLED**

OTHER:
- ☐ **SETTLED PRIOR**
- ☐ **FAILED TO APPEAR**
- ☐ **VACATED**
- ☐ **VACATED (TO BE RESET @ A LATER DATE)**
- ☐ **TENTATIVE AGREEMENT**
- ☐ **PRIVATE MEDIATION**
- ☐ **PRIVATE ARBITRATION**
- ☐ **TERMINATED**
- ☐ **FAILED TO CONTACT JPT**
- ☐ **CONTINUING TO SUBSEQUENT SESSION**
- ☐ **SEE REMARKS BELOW**

PARTIES PARTICIPATED IN GOOD FAITH: ☐ **YES** ☐ **NO**

PARTIES IN ATTENDANCE HAD AUTHORITY TO SETTLE:
☐ **YES** ☐ **NO** ☐ **N/A**

REMARKS:

DATE: _____

_____
JUDGE *PRO TEMPORE*

JUDICIAL BRANCH OF ARIZONA
IN MARICOPA COUNTY
ALTERNATIVE DISPUTE RESOLUTION

_____ **Case Number:**_____
PLAINTIFF

Agreement Between the Parties
Pursuant to A.R.Civ.P. Rule 80(a)

vs

_____ ☐ **FULL SETTLEMENT**
DEFENDANT ☐ **PARTIAL SETTLEMENT**

This is the time set for the Settlement Conference held _____
before Judge *Pro Tempore* _____**.**

The assigned Judge on this case is _____

Attending this conference are:

☐ Plaintiff ☐ Plaintiff's Counsel ☐ Defendant ☐ Defendant's Counsel ☐ Interpreter
☐ Other_____

The parties in this matter have completed the settlement conference and have reached the following agreement and shall be considered a binding agreement pursuant to Rule 80(a) of the Arizona Rules of Civil Procedure:

_____

_____

_____

_____

_____

_____

_____

_____

_____

PLAINTIFF(S):

Plaintiff Print Name	Plaintiff's Signature
Plaintiff Print Name	Plaintiff's Signature
Plaintiff Print Name	Plaintiff's Signature
Plaintiff Print Name	Plaintiff's Signature
Counsel for Plaintiff Print Name	Counsel for Plaintiff's Signature
Counsel for Plaintiff Print Name	Counsel for Plaintiff's Signature
Counsel for Plaintiff Print Name	Counsel for Plaintiff's Signature
Counsel for Plaintiff Print Name	Counsel for Plaintiff's Signature

DEFENDANT(S):

Defendant Print Name	Defendant's Signature
Defendant Print Name	Defendant's Signature
Defendant Print Name	Defendant's Signature

Defendant Print Name	Defendant's Signature
Counsel for Defendant Print Name	Counsel for Defendant's Signature
Counsel for Defendant Print Name	Counsel for Defendant's Signature
Counsel for Defendant Print Name	Counsel for Defendant's Signature
Counsel for Defendant Print Name	Counsel for Defendant's Signature

Judge *Pro Tempore*:
_____, State Bar No. _____
_____
_____
Phone: _____

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

_____, Plaintiff, vs. _____, Defendant	**Case No.: _____** **NOTICE OF SETTLEMENT CONFERENCE**

This case having been assigned to the undersigned for the purpose of holding a settlement conference,

IT IS HEREBY ORDERED that the settlement conference in the above-referenced matter is scheduled on _____,20___at _____.The hearing is to be held at the following location:

_____

_____

_____

The Judge Pro Tempore shall receive settlement Conference Memoranda that comply with Rule 16.1(c), A.R.C.P., from each party no later than _____, 20____.

Dated this ___day of ____20 _____.

_____
Judge *Pro Tempore*,

ORIGINAL of the foregoing filed and COPY of the foregoing mailed

This __day of ___, 20_____

_____
Attorney for Plaintiff(s)

_____
Attorney for Defendant(s)

Alternative Dispute Resolution
Downtown Justice Center
620 W. Jackson St., Suite 2049
Phoenix AZ 85003

Honorable _____

Judge *Pro Tempore*:
_____, State Bar No. _____
_____
_____
Phone: _____

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

_____, Plaintiff, vs. _____, Defendant	Case No.: CV_____ **ORDER REGARDING FAILURE TO CONTACT JUDGE *PRO TEMPORE* TO SCHEDULE SETTLEMENT CONFERENCE**

Pursuant to Court's Alternative Dispute Resolution Notice of Civil Settlement Conference dated _____20____, the parties were instructed to contact the assigned Judge *Pro Tempore* within ten (10) days of receipt of the notice for the purposes of scheduling the settlement conference in the above-referenced matter. As of _____20____, the parties have failed to contact the undersigned in order to schedule the court-ordered settlement conference.

IT IS ORDERED that the parties in the above-referenced matter must contact the assigned Judge *Pro Tempore* within seven (7) days of the filing of this order. If the parties fail to contact the assigned Judge *Pro Tempore* within seven (7) days, sanctions may be imposed and/or above-referenced matter will be sent back to assigned judge for further action(s).

Dated this _____day of _____,20____.

_____
Judge *Pro Tempore*,

ORIGINAL of the foregoing filed and COPY of the foregoing mailed

This __day of ___, 20_____

_____
Attorney for Plaintiff(s)

_____
Attorney for Defendant(s)

Alternative Dispute Resolution
Downtown Justice Center
620 W. Jackson St., Suite 2049
Phoenix AZ 85003

Honorable _____

Settlement Conference Guide

- What is a settlement. An agreement between parties that resolves some or all of the issues in litigation.
  - Settlement can
    - Be "full" or "partial"
    - Streamline issues that proceed to litigation
    - Allow stipulation of agreed upon facts

- The effective settlement negotiator must know how to discount litigation's risks and rewards:
  - Know the facts, not necessarily completion of discovery
  - Know the applicable law
  - Communicate the range of probable outcomes
  - Rely on communication skills

- Remember: All cases settle at some point. If not in conference, there may be a good reason for proceeding to trial

- Why try to settle at a conference
  - Expense of litigation costs
  - Financial/emotional drain for parties
  - Time/difficulty collecting fees
  - Toll on the court system and taxpayer

- Settlement: Generally, most satisfying outcome
  - Based on what's fair, not what parties are asking for
  - Parties have "day in court"
  - Attorneys can avoid complete loss for client
  - Judge gets satisfaction of helping parties reach agreement

- Justice is served
  - Settlements avoid extreme results
  - Provide positive satisfaction with court system

- Effective Settlement Conference Techniques
  - Use basic mediation techniques (Getting to Yes by Fisher & Ury)
  - Personalities impeding case resolution? Identify hidden emotional agendas
  - Use effective listening: Watch what is being communicated, not just what's being said
  - Focus on "interest" not "positions": What do parties really need to move on?

    - Help parties find creative (non-monetary) alternatives: What can one party do for the other party more easily than that party can do for themselves?
    - Maintain a rational, problem-solving focus for negotiations

- Judicial settlement conference techniques
    - Establish your authority/expertise
    - Set conference Ground Rules
    - Start with initial group meeting
    - Parties can consult with counsel
    - Explain caucusing
    - Set conference tone and style in introductory remarks. Project an image of experience, knowledge, fairness, and friendship
        - Relaxed, informal atmosphere
        - Set aside adversarial attitude/posturing
        - Invite parties to reason together to resolve differences
    - Be prepared: Read the file in advance
    - Allow brief statement by attorneys and/or parties
        - Identify the issues
        - Give case history on negotiations
        - State positions/why attorneys believe they're reasonable
    - Judicial analysis
        - Conduct candid discussion of strengths/weaknesses of each party's positions (in caucus)
        - Watch for clues in speech/body language
        - Use "active listening" skills
            - Parroting
            - Paraphrasing
            - Reflective listening
            - Brainstorm potential solutions
        - If caucus
            - Use reality testing
            - Avoid appearance of bias
            - Demonstrate an unreasonable position with role reversal
        - Negotiation. Try to move parties off positions and closer to common ground
            - Exert reciprocal pressure to settle--avoid coercion
            - Split the difference only when parties are close in terms; no reasonable distinction in positions
            - Offer additional conference time if needed

- 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 family's 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. Complete unfinished discovery. If a party has not cooperated with discovery requests or not carried out pre-trial orders, issue orders to timely gain the information and include sanctions for non-compliance.

12. Keep control of the proceedings. Proceed methodically. Don't accept a statement that no settlement is possible. Your job is to explore.
13. Address topics one at a time. When possible, nail down agreements before going on to the next topic.
14. Start with easy things first, such as personal property, debts, who gets what car, etc. This helps gets people in the mood to settle.
15. Be a facilitator, not a bully. People are more satisfied when they think they have voluntarily come to their own decisions.
16. 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.
17. 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.
18. Take charge when settlement is imminent on an issue. Do not let it slip away before you get both parties to commit.
19. In reaching settlement, you want to terminate all ties that you can, so that parties do not have to worry about ongoing contact (except with regard to children).
20. 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.
21. Inform unreasonable people quickly if they will not be successful in court on a point.
22. Start by identifying areas of agreement. This is a good tactic to encourage further agreement. Help avoid distraction by areas of disagreement.
23. Think of contingencies for the future, such as parties moving out of state, visitation when children get older, etc.
24. 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. State which lawyer will prepare the decree, that any judge can sign the decree, and that objections to the form of decree, if any, will be heard by you.
    - Prepare a clear, detailed and complete settlement order
        - When dictating settlement terms, be specific to ensure that the agreement is clear and understandable.
        - If easier, dictate settlement terms as they are reached on each issue (although this may be difficult of parties revise terms).
25. 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 disputants by encouraging disputants to use communication skills, by teaching disputants 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 disputants 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.

ARIZONA RULES OF CIVIL PROCEDURE
RULE 16.1. SETTLEMENT CONFERENCES: OBJECTIVES

(a) Mandatory Settlement Conferences. Except as to lower court appeals, medical malpractice cases, and cases subject to compulsory arbitration under A.R.S. § 12-133, in any action in which a motion to set and certificate of readiness is filed, the court, at the request of any party, shall, except for good cause shown, direct the parties, the attorneys for the parties and, if appropriate, representatives of the parties having authority to settle, to participate either in person or, with leave of court, by telephone, in a conference or conferences before trial for the purpose of facilitating settlement. Unless otherwise ordered by the court, all requests for settlement conferences shall be made not later than 60 days prior to trial. The court may also schedule a settlement conference upon its own motion.

In medical malpractice cases, the court shall conduct a mandatory settlement conference no earlier than four (4) months after the conduct of the comprehensive pretrial conference and no later than thirty (30) days before trial.

(b) Scheduling and Planning. The court shall enter an order that sets the date for the settlement conference, a deadline for furnishing settlement conference memoranda, and other matters appropriate in the circumstances of the case. An order setting a settlement conference shall not be modified except by leave of court upon a showing of good cause.

(c) Settlement Conference Memoranda. At least five (5) days prior to the settlement conference, each party shall furnish the court with a separate memorandum. In non-medical malpractice cases, the memorandum shall not be filed with the clerk of the court, and the parties shall furnish the memoranda sealed to the division assigned to the case. In medical malpractice cases, the settlement conference memoranda shall be filed and exchanged. Each memorandum shall address the following:

(1) a general description of the issues in the lawsuit, and the positions of each party with respect to each issue;

(2) a general description of the evidence that will be presented by each side with respect to each issue;

(3) a summary of the settlement negotiations that have previously occurred;

(4) an assessment by each party of the anticipated result if the matter did proceed to trial; and

(5) any other information each party believes will be helpful to the settlement process.

No part of any settlement conference memorandum shall be admissible at trial.

(d) Attendance: Settlement conferences shall be attended by all of the parties to the litigation and their counsel unless specifically excused for good cause by the court. In addition, the defendants shall have a representative present with actual authority to enter into a binding settlement agreement. All participants shall appear in person except pursuant to stipulation of the parties or order of the court.

(e) Confidentiality. The court shall order that discussions in settlement conferences shall be confidential among the parties, their counsel, and the court.

(f) Discretion to Transfer. The court, upon its own motion, or upon the motion of a party, may transfer the settlement conference to another division of the court, willing to conduct the settlement conference.

(g) *Ex Parte* Communications. At any settlement conference conducted pursuant to this Rule, the court, with the consent of all those participating in the conference, may engage in *ex parte* communications if the court determines that will facilitate the settlement of the case.

(h) Sanctions. The provisions of Rule 16(f) of these Rules concerning sanctions shall apply to a conference provided for by this rule.

Added Oct. 10, 2000, effective Dec. 1, 2000.

State Bar Committee Note
2000 Amendment

As part of the effort to consolidate formerly separate sets of procedural rules into either the Arizona Rules of Civil Procedure or the Rules of the Arizona Supreme Court, certain provisions of the former Uniform Rules of Practice of the Superior Court and of the former Uniform Rules of Practice for Medical Malpractice Cases which dealt with the subject of settlement conferences were combined into a new Rule 16.1 dealing with that subject generally. The provisions of subparts (a), (b), (c), (f), and (h) of this new Rule are taken largely from former Rule VI(e) of the Uniform Rules of Practice of the Superior Court; the provisions of subparts (d), (e), and (g) are taken from former Rule 2 of the Uniform Rules of Practice for Medical Malpractice Cases.

The provision making the conduct of a settlement conference mandatory in all medical malpractice cases are retained; in all other cases, a settlement conference may be set either at the request of any party or by the court, on its own motion. The new Rule also preserves the differing practice concerning the exchange of settlement conference memoranda. In medical malpractice cases, such memoranda are to be filed and exchanged; in other cases, they are not filed but are furnished under seal to the division to which the case is assigned.

In a Comment to the original Uniform Rules of Practice for Medical Malpractice Cases, which was effective January 1, 1990 and was amended effective July 1, 1992, the special Committee stated the following concerning the provisions of rule 2 [now part of Rule 16.1]:

"The committee recognizes that certain professional liability insurance policies require the consent of the insured before an insurer can settle a claim. All parties are encouraged to set forth in detail, orally or in writing, the basis of their positions with respect to their willingness to compromise disputed claims. A party who refuses to settle because that party insists on the right to trial cannot be found to have failed to comply with the provisions of this rule."

AMENDED RULE 16(g), ARIZONA RULES OF CIVIL PROCEDURE
EFFECTIVE DECEMBER 1, 2001
(APPLICABLE TO ALL CASES FILED AFTER DECEMBER 1, 2001)
(Changes or additions in text are indicated by underlining)

RULE 16(g), RULES OF CIVIL PROCEDURE

Rule 16(g) Alternative Dispute Resolution

(1) Upon motion of any party, or upon its own initiative after consultation with the parties, the court may direct the parties in any action to submit the dispute which is the subject matter of the action to an alternative dispute resolution program created or authorized by appropriate local court rules.

(2) The Parties' Duty to Consider ADR, and to Confer and Report.

(A) No later than 90 days following the first appearance of a defendant, the parties shall confer, either in person or by telephone, about:

(1) the possibilities for a prompt settlement or resolution of the case; and

(2) whether they might benefit from participating in some alternative dispute resolution ("ADR") process that would be most appropriate in their case, the selection of an ADR service provider and the scheduling of the proceedings:

(B) The attorneys of record and all unrepresented parties who have appeared in the case are jointly responsible for attempting in good faith to settle the case or agree on an ADR process and for reporting the outcome of their conference to the court. Within 30 days after their conference, the parties shall inform the court by means of a text prescribed in an official form promulgated pursuant to Rule 84 of the following:

(1) if the parties have agreed to use a specific ADR process, the type of ADR process to be used, the name and address of the ADR service provider they will use and the date by which the ADR proceedings will be completed;

(2) if the parties have not agreed to use a specific ADR process, the position of each party as the type of ADR process that is appropriate for their circumstances or, in the alternative, why ADR is not appropriate; and

(3) whether any party requests that the court conduct a conference to consider ADR.

(C) Unless the parties have agreed to use a specific ADR process, the court may direct the parties, the attorneys for the parties and, if appropriate, representatives of the parties having authority to settle, to discuss with a court-appointed ADR specialist, either in person or by telephone, whether ADR is appropriate and the types of ADR processes that might benefit their cases.

Comment to 2001 Amendment to Rule 16(g)

Parties are cautioned that the 2001 amendment to Rule 16(g) must be read in light of *Martinez v Binsfield, 196 Ariz. 466 (2000),* which held that Uniform Rule V(e) [now Rule 38.1(d)] applies to cases assigned to mandatory arbitration, and repeated continuances by the arbitrator in connection with mandatory arbitration did not provide good cause for continuing the case on the Inactive Calendar.

Name:
Address:
City:
State:
Phone:

FORM 3

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF _____

_____)
Plaintiff vs)
_____)
Defendant

Case No.:
Joint Alternative Dispute Resolution Statement to the Court

Pursuant to the Arizona Rules of Civil Procedure, I hereby state the following, under penalty of perjury:

1. The parties have conferred as required by Rule16(g)(2). ☐ Yes ☐ No

2 Is this case subject to compulsory arbitration under Rule 72(b)? ☐ Yes ☐ No
[Note: Pursuant to Rule 72(d) , the court shall waive the compulsory arbitration requirement if the parties agree to participate in a different ADR process approved by the court.]

3. If the case is subject to compulsory arbitration have the parties agreed to participate in an ADR process other than compulsory arbitration? ☐ Yes ☐ No

4. If the case is <u>not</u> subject to compulsory arbitration have the parties agreed to participate in an ADR process?☐ Yes ☐ No

5. If the answer to three or four is yes, the parties agree to participate in the following ADR process:
   A. ☐ mediation ☐ binding arbitration ☐ early neutral evaluation
      ☐ short trial ☐ summary jury trial ☐ judge pro tem
      ☐ other _____
   B. ☐ The parties will use a private provider
      ☐ The parties request a program provided through the court [Note: not all programs are available through the court.]
   C. If known, the name and address of the person or company providing the ADR service is:
   D. The parties expect to complete the ADR process by: ____/ /____

6. The parties have been unable to agree on an ADR process. The ☐ plaintiff / ☐ defendant believes that the following ADR process would be appropriate:_____
_____
_____

7. The ☐ plaintiff / ☐ defendant requests a conference to discuss ADR.

8. The ☐ plaintiff / ☐ defendant believes that an ADR process would not be appropriate for the following reason: _____
_____
_____

_____ _____
Date Plaintiff

_____ _____
Date Defendant

SUPREME COURT OF ARIZONA

In the Matter of PETITION TO AMEND RULES 16, 16.1, 26, 37, 38, 38.1, 72, 73, 74 AND 77, ARIZONA RULES OF CIVIL PROCEDURE	)	Arizona Supreme Court No. R-13-0017 **FILED 11/27/2013**

AMENDED ORDER REGARDING APPLICABILITY PROVISION

On August 28, 2013, the Court adopted amendments to the above rules and promulgated new Forms under Rule 84, Arizona Rules of Civil Procedure, Appendix of Forms (collectively, "the Amendments"). On September 9, 2013, the Court amended its August 28, 2013 Order to include in the Attachment thereto subsections (K) and (L) of Rule 16(b)(2), Arizona Rules of Civil Procedure.

The Court's August 28, 2013 Order also provided that the Amendments would be "effective on April 15, 2014 as to all cases filed on or after that date." On November 14, 2013, the Court entered an Order amending that provision. To clarify that the Amendments do not affect administrative dismissals from the Inactive Calendar until the effective date of April 15, 2014, this Order hereby supersedes that Order. The Amendments shall be effective as follows:

> (1) The Amendments shall apply to all actions filed on or after April 15, 2014.
>
> (2) Beginning on April 15, 2014, the Amendments also shall apply to any action filed prior to April 15, 2014 (a "pending action"), unless one of the following

events has occurred before that date:

(a) A party has filed a Motion to Set and Certificate of Readiness,

(b) The parties have filed a Proposed Scheduling Order, or

(c) The court has entered a Scheduling Order.

(3) If, in a pending action, one of the preceding events has not occurred before April 15, 2014, the parties shall file a Joint Report and a Proposed Scheduling Order in accordance with the Amendments by June 30, 2014, or within 270 days after the commencement of the action, whichever date is later. Otherwise, the court will place the action on the Dismissal Calendar in accordance with the Amendments.

(4) A trial court, in its discretion, may apply any of the Amendments to a case pending before April 15, 2014, even if the Amendments would not otherwise apply under paragraph (2) above. For example, if a party filed a Motion to Set and Certificate of Readiness before April 15, 2014, the trial judge may set the matter for a trial setting conference under amended Rule 16(f), rather than placing the case on the active calendar under pre-Amendment Rule 38.1(c).

(5) Civil actions pending on the Inactive Calendar on April 15, 2014 shall be dismissed without prejudice on June 14, 2014, unless one of the actions set forth in subparts (1)-(4) of amended Rule 38.1(f) occurs before June 14, 2014.

DATED this _____ day of November, 2013.

_____
REBECCA WHITE BERCH
Chief Justice

TO:
Rule 28 Distribution
John A Furlong
Charles V Harrington

Sarah R Simmons
Carmine Cornelio
Mark C Faull
Laurie Beaver San Angelo
Andrew J Petersen
Mark C Faull
Marcus Reinkensmeyer