

# Compulsory Arbitration in the Superior Court of Yavapai County

*Compulsory Arbitration is governed by Rules 72 through 77 of the Arizona Rules of Civil Procedure. Arbitrators are encouraged to review these Rules upon appointment as arbitrator.*

## ELIGIBILITY

### *Am I eligible to be an arbitrator?*

You are eligible to be appointed as an arbitrator under the following qualifications - ARCP Rule 73(c):

- All county residents who have been active members of the State Bar of Arizona for at least 4 years.
- All other members of the State Bar of Arizona residing in other counties who have agreed to serve as arbitrators in the county where the court is located.
- All members of any other federal court or state bar who have agreed to serve as arbitrators in the county where the court is located.

On written motion showing good cause, the presiding judge or that judge's designee may excuse a lawyer from the list of arbitrators.

REMEMBER: you remain the arbitrator in the case until you receive an Order or Minute Entry from the Superior Court, saying you are excused.

## PROCESS & PROCEDURES

### *I was assigned as an arbitrator. Now what?*

Pursuant to ARCP Rule 74(d)(2), the parties shall serve upon the arbitrator copies of documents requiring the arbitrator's consideration. The arbitrator may request a copy of the court file from the Clerk's office if needed, pursuant to Rule 74(f). After consultation with counsel, schedule a hearing (see further info below on this) **no fewer than 60 and no more than 120 days** after the arbitrator's notice of appointment – ARCP Rule 74(c).

Consultation with counsel regarding scheduling is often best accomplished with a conference call involving all parties/counsel shortly following your appointment. Keep in mind that you must avoid *ex parte* communications, so all communications between you and the parties/counsel must include all parties/counsel. It is recommended that you communicate this fact to the parties/counsel with your initial communication, emphasizing that they must copy one another on all communications with you.

You must file Notice of the Arbitration Hearing with the Clerk of the Superior Court.

### ***Where can I schedule hearings?***

Either at your office or at the Prescott or Verde Courthouse. Contact Alternative Dispute Resolution Services (ADRS) to schedule a room at one of these two locations. 928-777-3067 / 928-777-3066.

You may also conduct hearings via videoconference i.e., Zoom, Microsoft Teams, etc. As arbitrator, you are responsible for setup and coordination of all parties involved. See Arizona AO 2022-46 concerning recommendations for remote and in-person hearings.

### ***What do I do if I receive motions?***

Motions are sent to the arbitrator throughout the pendency of arbitration. Pursuant to ARCP Rule 74 (d)(1), you can and should, rule on them except:

- motions to continue on the Dismissal Calendar or otherwise extend time allowed under Rule 38.1(d);
- motions to consolidate actions under Rule 42;
- motions to dismiss;
- motions to withdraw as attorney of record under Rule 5.3;
- motions for summary judgment that, if granted, would dispose of the entire case as to any party; and
- motions for sanctions under Rule 68(g).

These Motions/Stipulations should be forwarded to the assigned Trial Judge. Your rulings on motions will be final unless the case is appealed.

Pursuant to ARCP Rule 74(d)(2), the parties shall deliver to the arbitrator copies of documents requiring the arbitrator's consideration. The arbitrator may hear motions and testimony by telephone.

**Discovery Motions**-The arbitrator may hear discovery motions. In considering such motions the arbitrator shall consider that the purpose of arbitration is to provide for the efficient and inexpensive handling of small claims and may limit discovery when appropriate to accomplish this purpose.

If an arbitrator makes a ruling requiring disclosure of matters that a party claims is privileged or confidential, a party may appeal the ruling by filing a motion with the judge assigned to the action within **10 days** after the arbitrator transmits the ruling to the parties.

Motions for Summary Judgment must be filed at least **twenty (20) days** before the date for hearing. A copy of the motions must be delivered to the arbitrator and judge assigned to the action.

If the parties settle an action assigned to arbitration, they must file with the court an appropriate stipulation for the entry of final judgment or dismissal order and must mail or otherwise deliver a copy to the arbitrator.

A party to an action subject to arbitration may serve an offer of judgment under Rule 68.

### ***What should I expect to receive before the hearing?***

Under Rule 75(b), the parties are to provide you with a Joint Hearing Statement **no later than ten (10) days** before the hearing. The statement should include:

- a brief statement of the nature of each party's claims or defenses;
- a witness list including the subject matter of witness testimony for each witness who will be called to testify;
- an exhibit list; and
- the estimated time required for the arbitration hearing.

### ***What Rules of Evidence apply?***

Under Rule 75(c) & (d), the Arizona Rules of Evidence apply at an arbitration hearing except "the arbitrator must admit into evidence the following documents without further proof, if relevant, and if listed in the prehearing statement:

1. hospital bills, if on the hospital's official letterhead or billhead, dated, and itemized;
2. bills of doctors and dentists, if dated and stating the date of each visit and the incurred charges;
3. bills of registered nurses, licensed practical nurses, or physical therapists, if dated and stating the date and hours of service, and the incurred charges;
4. bills for medicine, eyeglasses, prosthetic devices, medical belts, or similar items, if dated and itemized;
5. property repair bills or estimates setting forth the costs or estimates for labor and material, if dated, itemized, and stating whether the property was, or is estimated to be, repaired in full or in part;
6. a witness's deposition testimony, whether or not the witness is available to appear in person;
7. an expert's sworn written statement, other than a doctor's medical report, whether or not the expert is available to appear in person, but only if:
  - A. the statement is signed by the expert and summarizes the expert's qualifications; and
  - B. the statement contains the expert's opinions, and the facts on which each opinion is based;
8. in a personal injury action, a doctor's medical report, if a copy of the report was disclosed at least **twenty (20) days** before the hearing, unless the offering party shows good cause for the report's untimely disclosure;
9. records of regularly conducted business activity qualified under Arizona Rule of Evidence 803(6); and
10. a sworn witness statement, except from an expert witness, whether or not the witness is available to appear in person, if listed in the prehearing statement.

### ***What do I do after the hearing?***

Within **ten (10) days** after completing the hearing, you must:

-File your Notice of Decision with the Clerk of the Court

AND

-Mail or deliver copies of the Notice of Decision to all parties or their counsel

A Notice of Decision can be as simple as “I find for the Plaintiff and find her damages to be \_\_\_\_” or “I find for the Defendant.” You may, but are not required to, provide your reasoning for the decision.

Within **ten (10) days** of filing the Notice of Decision, the prevailing party must submit the following to you:

-A proposed form of Arbitration Award

AND

-A verified statement of costs and an affidavit of attorneys’ fees if fees are awardable. Parties and counsel have **five (5) days** after receipt to file objections. Within **ten (10) days** of receipt of objections, the arbitrator shall pass upon the objections, sign, and file the award with the Clerk of the Court and mail or deliver copies to all parties or their counsel. NOTE: the arbitration is not formally ended until an “Award” is filed. Please be sure the word, “proposed” does not appear on the original award. The Clerk’s office will not file a “proposed” award even if you sign it.

### ***What do I do with exhibits?***

Return them to the parties at the end of the hearing or after the award has been filed.

### ***How can an arbitrator set a hearing if not all the defendants have answered?***

If an assigned arbitrator determines that fewer than all parties have answered and wishes to set a hearing within **120 days**, the arbitrator may set a telephonic scheduling conference with all parties served to date. The arbitrator may order the plaintiff or counsel to immediately notify all parties who have been served, of the date and time of the scheduling conference.

### ***What should an arbitrator do if a default has been entered against a defendant?***

If a default has been entered against a named defendant, the arbitrator loses jurisdiction over the defaulted defendant only, and the case against that defendant should be referred to the assigned judge for all default proceedings.

## **ADDITIONAL COMMON QUESTIONS/ISSUES**

### ***What if I have a conflict of interest in the case?***

You must file a pleading with the Clerk of the Superior Court, copying the ADR Program Manager, establishing that you have an ethical conflict of interest or other good cause that exists under A.R.S. §12-409 or §21-211. This must be done within **fifteen (15) days** after receipt of Order. If it is approved by the judge, ADRS will then reassign the case to someone else.

REMEMBER: you remain the arbitrator in the case until you receive an Order or Minute Entry from the Superior Court, saying you are excused.

NOTE: each side is allowed one peremptory strike. This "Notice of Peremptory Strike" must be filed with the Clerk of the Court, copying the ADR Program Manager, within **ten (10) days** after the date of the "Notice of Appointment of a Civil Arbitrator." If this is done, you will be removed as arbitrator from this case once the judge has issued this Order for Reassignment of Arbitrator.

### ***Where do I file documents?***

TurboCourt:

<https://turbocourt.com/go.jsp?act=actShowAppInfo&tmstp=1692991822947&fldAppInfoCourtList=460037864&id=15611124&selectedCase=null#next>

### ***Do I need to arrange for a court reporter?***

There is no requirement to make a record of the hearing. If one of the parties wants a court reporter for the hearing, they must provide and pay for the reporter: ARCP Rule 75(f). Keep in mind that even if a party elects to provide and pay for a court reporter, those charges are not a taxable cost.

### ***CONTINUANCES:***

If necessary, you may extend the time for hearing for "good cause." Please refer to the "Extension of Time for Hearing" section for guidance.

If a bankruptcy is filed during the arbitration process, please prepare and file a "Bankruptcy Notice" indicating the bankruptcy number, referring the case back to the assigned judge.

### ***EXTENSIONS OF TIME FOR HEARING:***

Delays in arbitration have been a significant problem. You may receive a request to extend time to hold the hearing. As arbitrator, for good cause, you may shorten or extend time pursuant to ARCP 74(c). You are encouraged to grant a brief extension only if good cause is shown through a timely formal pleading. If you grant an extension, a formal written, signed order should be forwarded to the Arbitration Department. Remember: A Motion to Set is required within **270 days** of the date of filing.

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Please refer all Motions to Continue on Inactive Calendar and Motions to Consolidate cases to the assigned judge.

Some examples of what should be considered in determining good cause are:

- 1) Whether the underlying circumstances were foreseeable or due to lack of preparation;
- 2) Whether the parties are proceeding with due diligence;
- 3) The complexity of the case;
- 4) The novelty of the issues;
- 5) Prejudice to another party; and
- 6) The need to dispose of actions or set them for trial in accordance with the fast-track time limits - Motions to Set are required within 270 days of the filing of the action. (See Rule 38.1 ARCP).

Some examples of what do not amount to good cause are:

- 1) Stipulations that are not supported by factual bases;
- 2) Motions grounded on pending settlement negotiations; and
- 3) Motions grounded on failure to serve a defendant where due diligence in trying to serve has not been shown.

As arbitrator, you are acting as a judicial officer for this case. Any continuance pursuant to ARCP 74(c) should not unduly delay proper preparation for final disposition. If good cause has been shown justifying a continuance of the arbitration hearing, you should continue a hearing only for the length of time necessary to prepare for the hearing. The Arizona Rules of Civil Procedure require filing of a Disclosure Statement. ARCP Rule 72(a) provides that the Rules of Civil Procedure apply.

#### **APPEAL: LIST OF WITNESSES AND EXHIBITS:**

IMPORTANT: Under Rule 77(f)(2), you must file a "List of Witnesses and Exhibits Intended to be Used at Trial" simultaneously with the Notice of Appeal. This list must comply with Rule 26.1. If you do not file this simultaneously with the Notice of Appeal, you will have to use the witnesses and exhibits used at arbitration, which can be limiting.

Additionally, pursuant to Rule 77(c), "at the time of filing the notice of appeal, the appellant must deposit with the clerk a sum equal to one hearing day's compensation of the arbitrator or 10 percent of the amount in controversy, whichever is less."

#### **What is my compensation for arbitration?**

Compensation in Yavapai County is a flat rate of **\$140.00**. This is received only after an award has been filed or if the parties agree to settle and stipulate to dismiss the action at a proceeding before the arbitrator. An invoice for the \$140.00 must be sent to ADRS/Finance.

In lieu of payment, the arbitrator may elect to apply for Continuing Legal Education credit not to exceed 2 hours with the State Bar of Arizona pursuant to MCLE Regulation 104(B)(5).

## RESOURCES:

### Forms:

- <https://courts.yavapaiaz.gov/Departments/Law-Library/Self-Service-Center/Civil/Civil-Additional-Forms>
- <https://www.azbar.org/for-legal-professionals/practice-tools-management/practice-2-0/state-civil-compulsory-arbitration/state-civil-compulsory-arbitration-templates/>

**Clerk of the Court:** <https://courts.yavapaiaz.gov/clerk>

**Arizona State Bar:** <https://www.azbar.org/>

- <https://www.azbar.org/for-legal-professionals/practice-tools-management/practice-2-0/state-civil-compulsory-arbitration/>
- <https://www.azbar.org/for-legal-professionals/practice-tools-management/practice-2-0/state-civil-compulsory-arbitration/state-civil-compulsory-arbitration-videos/>

**Superior Court Law Library:** <https://courts.yavapaiaz.gov/Departments/Law-Library>

### Rules of Civil Procedure, Compulsory Arbitration Rules:

[https://govt.westlaw.com/azrules/Browse/Home/Arizona/ArizonaCourtRules/ArizonaStatutesCourtRules?guid=NBCBAC300893F11E6AE3586336C8657D2&originationContext=documenttoc&transitionType=Default&contextData=\(sc.Default\)](https://govt.westlaw.com/azrules/Browse/Home/Arizona/ArizonaCourtRules/ArizonaStatutesCourtRules?guid=NBCBAC300893F11E6AE3586336C8657D2&originationContext=documenttoc&transitionType=Default&contextData=(sc.Default))

### TurboCourt:

<https://turbocourt.com/go.jsp?act=actShowAppInfo&tmstp=1692991822947&fldAppInfoCourtList=460037864&id=15611124&selectedCase=null#next>

### AZTC (AZ TurboCourt) General Civil e-Filing Quick-Guide:

[https://dss.turbocourt.com/manuals/az/AZTC\\_GCivil\\_3\\_Approaches\\_1\\_0.pdf](https://dss.turbocourt.com/manuals/az/AZTC_GCivil_3_Approaches_1_0.pdf)

### E-File User's Guide:

<https://courts.yavapaiaz.gov/files/sharedassets/courts/v/1/clerk/documents/stateofarizonaefilingportalfilersuserguide.pdf>

**Arizona Judicial Branch:** <https://www.azcourts.gov/>

## NEED AN INTERPRETER FOR COURT PROCEEDINGS & SERVICES?

Contact Carlos Reyes at 928-777-7935 / [careyes@courts.az.gov](mailto:careyes@courts.az.gov)

## FURTHER QUESTIONS?

Contact ADR Services at 928-777-3066 / [yavapaiadr@courts.az.gov](mailto:yavapaiadr@courts.az.gov)

## OATHS AND AFFIRMATIONS:

### WITNESS

You (and each of you) do solemnly swear the testimony you are about to give will be the truth, the whole truth, and nothing but the truth, so help you God?

### AFFIRMATIONS

Occasionally a person prefers not to take an oath and will ask to be affirmed.

### WITNESS AFFIRMATION (Do not raise hand)

**YOU DO AFFIRM** that the testimony you are about to give will be the truth, the whole truth, and nothing but the truth, **THIS YOU DO UNDER THE PAINS AND PENALTIES OF PERJURY?**

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## Glossary of Frequently Used Terms:

**Arbitration Award:** An award is decided by the arbitrator and is issued after the arbitrator files a Notice of Decision with the Court. It is the final judgment if it is not appealed.

**Certificate of Compulsory Arbitration:** This statement is filed with Clerk of the Court at the time of filing the original complaint, or the answer to the complaint. It includes a statement of whether the case is subject to arbitration.

**Motion for Summary Judgment:** This is a request that judgment be entered based on the record and the law. For a summary judgment to be entered, there must be no issue of material fact and only a question of the application of the law to uncontested facts.

**Notice of Strike:** Any party may file this notice to request a different arbitrator. A Notice to Strike must be filed within 10 days of an arbitrator being appointed.

**Prevailing Party:** The party who successfully prosecutes or defends by prevailing on its main issue, even though it may not be to the full extent of his original contention.

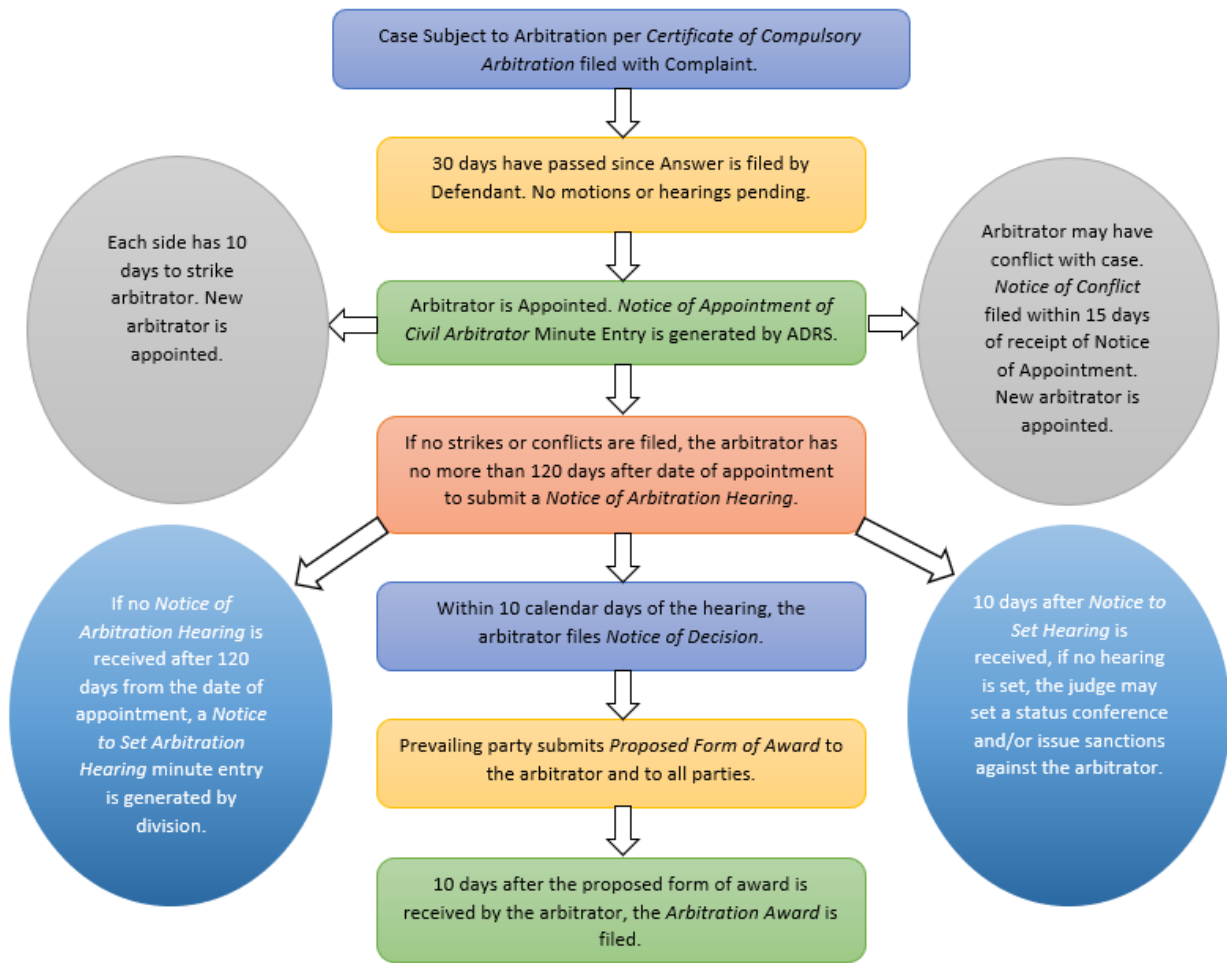
**Recuse:** To withdraw as arbitrator either upon your own independent decision or at the request of one of the Parties.

**Relief:** What you want when you sue. As an arbitrator, you should ask parties for an itemization of all relief requested.

**Trial de Novo:** Means new trial. It is an appeal of an arbitration award. The issues are considered as if the original arbitration has never taken place.



## Arbitration Case Flow Chart



Note: All filings must be submitted electronically through TurboCourt.