



Current Ariz. R. Civ. P. 80(a) provides as follows:

**(a) Agreement or Consent of Counsel or Parties.** If disputed, no agreement or consent between parties or attorneys in any matter is binding, unless:

- (1) it is in writing; or
- (2) it is made orally in open court and entered in the minutes.

*Id.* The Rule was adopted in 1939 (Rules Civ. Proc., Rule 80(d); 21-2004, Code 1939), and has remained virtually unchanged since that time.

Proposed Ariz. R. Civ. P. 80(a) provides as follows:

**(a) Agreement or Consent of Counsel or Parties.** If disputed, no agreement or consent between parties or attorneys in any matter is binding, unless:

- (1) it is in writing; ~~or~~
- (2) it is made orally in open court and entered in the minutes; ~~or~~
- (3) it is made before a mediator or judicial officer and is memorialized either before a court reporter or in an audio or video recording.

The rationale for the proposed change is grounded in the modern realities of civil litigation. Many mediations and settlement conferences are now conducted remotely via video technology. Such technology allows for reliable recordings which could easily and accurately document the parties' agreements and settlements. However, the current version of Ariz. R. Civ. P. 80(a) does not allow for

recordings unless they are done in open court. Also, while a court reporter could provide a reliable record of agreements reached, the use of a court reporter may not be sufficient under current Ariz. R. Civ. P. 80(a), unless the matter was documented in open court.

While the proposed Ariz. R. Civ. P. 80(a) would be an innovation for the Rules of Civil Procedure, a comparable rule exists in Rule 69(a)(3) of the Arizona Rules of Family Law Procedure that allows for an “agreement’s terms [to be] stated in an audio recording made before a mediator or a settlement conference officer appointed by the court.” Rule 69(a)(3), Arizona Rules of Family Law Procedure. That rule is consistent with A.R.S. § 38-424 which allows for “electronic recording devices in lieu of court reporters or stenographers.” *See also* A.R.S. § 12-223(A).

For the foregoing reasons, the undersigned respectfully petitions this Court to amend Ariz. R. Civ. P. 80(a) as set forth above.

RESPECTFULLY SUBMITTED this 29th day of December, 2022.

*Greg Sakall*

GREG SAKALL  
Judge, Division 23  
Superior Court of Arizona - Pima County