

IN THE SUPREME COURT OF THE STATE OF ARIZONA

In the Matter of:)
)
IMPLEMENTATION OF THE FAST) Administrative Order
TRIAL AND ALTERNATIVE) No. 2017 - 116
RESOLUTION (FASTAR))
PILOT PROGRAM IN PIMA COUNTY)
_____)

In December 2015, this Court established the Committee on Civil Justice Reform. The Committee was directed to develop recommendations, including rule amendments and pilot projects, to reduce the cost and time required to resolve civil cases in Arizona’s superior court.

The Committee submitted its report containing fifteen proposals to the Arizona Judicial Council (AJC). The AJC approved all fifteen proposals. Proposal No. 12 recommends that the Court “*implement a pilot program in Pima County under which plaintiffs can opt for a short trial in court instead of compulsory arbitration.*”

The Presiding Judge of the Superior Court in Pima County requested that this Court approve new rules to implement a pilot program in Pima County, called the Fast Trial and Alternative Resolution Program (“FASTAR”). In conjunction with implementation of the program, the Presiding Judge in Pima County requested this Court approve lowering of the jurisdictional limit of cases subject to arbitration in the Superior Court in Pima Country to one thousand dollars. The new court rules and lower jurisdictional limit establish the framework necessary to experiment with using short trials and an alternative resolution program instead of compulsory arbitration in cases in which the amount of money sought does not exceed \$50,000.

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

IT IS ORDERED that:

1. The FASTAR rules and forms (Attachment 1) are approved for use in the Superior Court in Pima County, effective November 1, 2017;
2. The jurisdictional limit for arbitration claims authorized by A.R.S. § 12-133 is established at one thousand dollars for Pima County for the duration of the pilot program;
3. The Presiding Judge of the Superior Court in Pima County is authorized to approve changes to or addition of forms as necessary to implement the FASTAR program; and

4. The pilot program will run from November 1, 2017, until October 31, 2020.

IT IS FURTHER ORDERED that the Superior Court in Pima County and the Administrative Office of the Courts monitor the pilot program during its three-year term. An annual progress report shall be submitted to the Arizona Judicial Council on or before December 1st beginning in 2018.

Dated this 26th day of October, 2017.

FOR THE COURT:

SCOTT BALES
Chief Justice

APPENDIX 1

Part One: Rules for the Fast Trial and Alternative Resolution Program
(“FASTAR”)

Rule 101. Fast Trial and Alternative Resolution Generally

- (a) Application and Objective.** Rules 101 through 126 (“these rules”) apply in counties designated for the superior court’s pilot program for a fast trial with an alternative resolution option. These rules use the acronym “FASTAR” to refer to the program. The program’s objective is to achieve a more efficient and inexpensive, yet fair, resolution of eligible cases. One of these rules may be cited as “FASTAR ###.”
- (b) Eligibility Criteria.** The court administrator will assign to the FASTAR program all civil actions that meet each of the four following eligibility criteria:
- (1)** The plaintiff requests monetary damages only, and is not requesting injunctive or other non-monetary relief.
 - (2)** The amount of money sought by each plaintiff exceeds the limit set by local rule for compulsory arbitration.
 - (3)** The amount of money sought by any party does not exceed \$50,000, including punitive damages but excluding interest, costs, and attorneys’ fees.
 - (4)** The plaintiff will not need to serve the summons and complaint on any defendant in a foreign country.
- (c) Civil Rules.** The FASTAR rules supplement the Arizona Rules of Civil Procedure (the “civil rules”), and the civil rules, excluding Rules 72 through 77, continue to apply to FASTAR cases. However, a FASTAR rule applies if a civil rule is inconsistent with these rules or these rules specifically provide otherwise.
- (d) Plurals.** The use of the words “plaintiff” and “defendant” in these rules includes the respective plurals.

Rule 102. Certificates; Forms

- (a) FASTAR Certificate.** At the time of filing any civil complaint requesting money damages not exceeding \$50,000 for any claimant, the plaintiff must file a separate FASTAR certificate. The FASTAR certificate must state whether the action meets the four FASTAR eligibility criteria listed in Rule 101(b). The plaintiff must serve the FASTAR certificate on each defendant with the summons and complaint.
- (b) Controverting Certificate.** Any defendant who disagrees with the plaintiff’s FASTAR certificate must file a controverting certificate that specifies the reason for disagreement. The defendant must file the controverting certificate with the answer

or with a Rule 12 motion, whichever is filed first. If the defendant files a controverting certificate, the matter must be referred to the assigned judge for a determination of whether the case is eligible for the FASTAR program.

- (c) **Forms.** Forms for the “FASTAR Certificate” (Rule 102(a)), a controverting certificate (Rule 102(b)), and the “Choice Certificate” (Rule 103(b)) are available on the superior court website of each county participating in the program.

Rule 103. Plaintiff’s Choice

- (a) **Plaintiff’s Choice.** For every case in the FASTAR program, the plaintiff alone has the choice of proceeding by Fast Trial or Alternative Resolution.

(b) **Manner of Choosing.**

- (1) **“Choice Certificate.”** When filing the complaint, or not later than 20 days after the first filing by any defendant, the plaintiff must file and serve on the defendant a “Choice Certificate.” The Choice Certificate must state whether the plaintiff chooses to proceed by Fast Trial or by Alternative Resolution.
- (2) **“Waiver.”** If the plaintiff chooses Alternative Resolution, then plaintiff’s Choice Certificate must include express waiver of the rights:
 - (A) to have a trial before a judge or jury, and
 - (B) to appeal the Alternative Resolution decision, award, or judgment to the superior court or to an appellate court.

- (c) **Failure to Choose.** If the plaintiff does not timely file a Choice Certificate, the case will proceed by Fast Trial.

(d) **Effect of a Counterclaim, Cross-claim, or Third-Party Complaint.**

- (1) If the case includes a counterclaim, cross-claim, or third-party complaint, the action will proceed by Fast Trial if the plaintiff timely made that choice in the plaintiff’s Choice Certificate, or if the plaintiff failed to file a timely Choice Certificate. A defendant, counterclaimant, cross-claimant, or third-party plaintiff has no right under these rules to make the choice or to file a Choice Certificate.
- (2) If the case includes a counterclaim, cross-claim, or third-party complaint, the action will proceed by Alternative Resolution if the plaintiff timely made that choice in the plaintiff’s Choice Certificate. In that circumstance, and notwithstanding the waiver under Rule 103(b)(2), the plaintiff retains the right to appeal and to have a trial before a judge or jury regarding the decision or award on the counterclaim, crossclaim, or third-party complaint.

Rule 104. Modification of Civil Rule 4(i) Regarding Time for Service; Dismissal of an Unserved or Timely-Served Defendant

(a) General Limitation. The time limit of Civil Rule 4(i) does not apply to FASTAR cases. Instead, a plaintiff must serve the summons and complaint on every defendant within 60 days after the filing date of the complaint.

(b) Dismissal of an Unserved Defendant. If the plaintiff does not complete service within 60 days after filing the complaint, the court will notify the plaintiff that it will dismiss the action without prejudice as to any unserved defendant 15 days after the date of the court's notice, and without further notice, unless the plaintiff completes service within those 15 days.

(c) Extension. Within 60 days after filing the complaint, the plaintiff may request and the court may extend the time for completing service, but the court may not extend the time limit for service more than 90 days after the filing date of the complaint.

(d) Dismissal of a Timely-Served Defendant. The court will dismiss without prejudice any timely-served defendant who did not file an answer or other response within 120 days after the filing date of the complaint, unless the plaintiff has filed a Rule 55 application for the entry of default of that defendant before the 120th day. The court will provide the plaintiff at least 20 days' notice before dismissing that defendant in a multi-defendant case, or before dismissing a case that has only one defendant.

Rule 105. Modification of Civil Rules 4.1 and 4.2 Regarding Waiver of Service

(a) Generally. The time limits provided in Civil Rules 4.1(c) and 4.2(d) regarding waiver of service do not apply in FASTAR cases. Rules 105(b) and 105(c) modify those time limits. The other provisions of Civil Rules 4.1(c) and 4.2(d) apply to FASTAR cases with these modifications.

(b) Returning the Waiver. Regardless of whether a defendant is within or outside of Arizona, a defendant must return a request for waiver of service within 15 days after the plaintiff sent it.

(c) Time to Respond. A defendant who is within Arizona must file a response to the complaint within 35 days after the plaintiff sent the waiver of service. A defendant who is outside Arizona must file a response to the complaint within 45 days after the waiver was sent.

Rule 106. Assignment of a Judge

The court will promptly assign a judge to every FASTAR case. The assigned judge may be a superior court judge or commissioner, or a judge pro tempore. Parties may challenge the assigned judge as provided by Civil Rules 42.1 and 42.2.

Rule 107: Medical Authorizations

The plaintiff in a personal injury action, if requested by the defendant, must provide a written authorization that allows the defendant to obtain copies of records plaintiff produced or identified under Civil Rule 26.1, or that are otherwise relevant to the condition that is the subject of the action. The plaintiff is not required to provide a written authorization for records that are subject to a claim of privilege properly asserted under Civil Rule 26.1(h).

Rule 108: Disclosure and Discovery Disputes

If the parties are unable to satisfactorily resolve a disclosure or discovery dispute in a FASTAR case, they must present the dispute to the judge or arbitrator in a single joint motion that states the parties' positions. The joint motion must not exceed 3 pages of text (1-1/2 pages per side.) The parties must include with their joint motion a good faith consultation certificate that complies with Civil Rule 7.1(h).

Rule 109. Application of Civil Rule 68 Regarding Offers of Judgment

Civil Rule 68 on offers of judgment does not apply to Fast Trial proceedings. An offer of judgment is permitted in an Alternative Resolution Proceeding under Rule 121(d).

Part Two: Rules for a Fast Trial**Rule 110. Role of the Assigned Judge**

The assigned judge will make all legal rulings in the case, including rulings on motions, and will conduct a trial.

Rule 111. Conferences; Trial Date

(a) Status and Trial Setting Conference. The judge will set a status and trial setting conference no later than 120 days after the filing date of the complaint.

(b) Trial Date. The court will set a trial date that is at least 190 days, but not more than 270 days, after the filing date of the complaint. On stipulation and with the judge's consent, the court may set a trial date that is less than 190 days after the filing date of the complaint.

- (c) **Pretrial Conferences.** The judge may set one or more Civil Rule 16 pretrial conferences.
- (d) **Joint Report and Proposed Scheduling Order Not Required.** Civil Rule 16(b), which requires parties to file a joint report and proposed scheduling order, does not apply in Fast Trial cases.
- (e) **Sanctions.** The judge may impose a sanction against a party or a party's counsel who is substantially unprepared to participate in good faith in a conference under this rule.

Rule 112. Disclosure and Discovery in Fast Trial Cases

(a) **Disclosure Deadline.** The parties must exchange Civil Rule 26.1 disclosure statements within 20 days after the filing date of the first answer. Disclosure statements of any subsequently appearing defendant must be exchanged within 20 days of the filing of that defendant's answer. The parties have a duty to make continuing and supplemental disclosures without a specific request from any other party.

(b) Discovery Limits.

- (1) **Written Discovery.** Each side in a Fast Trial case has the following discovery limits: 5 Civil Rule 33 interrogatories, 5 Civil Rule 34 requests for production, 10 Civil Rule 36 requests for admissions, and one Civil Rule 35 examination.
 - (2) **Depositions.** A party is entitled to a total number of witness deposition hours equal to the number of witnesses that party is entitled to depose under Civil Rule 30(a)(1) (i.e., parties, experts, and documents custodians) multiplied by two hours.
- (c) **Discovery Deadline.** Parties in a Fast Trial case must complete all discovery under Civil Rules 26 through 36 within 120 days after the filing date of the first answer or 190 days after the filing of the complaint, whichever is sooner. The judge may extend this deadline only for good cause.

Rule 113. Depositions of Medical Providers and Experts

(a) Generally.

- (1) **Two-Hour Time Limit.** Depositions of a medical provider, whether testifying as a fact witness or as an expert, and depositions of a non-medical expert witness, are limited to one hour per side and a total of two hours for all sides.
- (2) **Location.** Parties must endeavor to take a deposition of a medical provider or expert at the witness' usual place of business, if requested by the witness.

(b) Fee.

- (1) **Fee Limit.** The deposition fee of a medical provider or expert witness is limited to that person's usual fee, but the fee may not exceed \$500 per hour. A party or expert witness may file a motion showing good cause for exceeding this limit.
 - (2) **Apportionment of Fee.** Each party who asks questions during the deposition of a medical provider or expert is responsible for the witness' fee in proportion to the witness' time used by that party during the deposition. The judge can order reasonable, fair, and appropriate cost-shifting or cost-sharing of the expert's fee.
- (c) Video Recording.** Any party may video record the deposition of a medical provider or expert by any unobtrusive and reliable device, and without leave of court, but the party must provide a copy of the video, without charge, to other parties within 10 days after the deposition.

Rule 114. Summary Judgment Motions

Parties must file motions for summary judgment at least 60 days before the trial date. Parties must file a response within 15 days after service of the motion, and a reply within 5 days of service of the response.

Rule 115. Settlement

- (a) **Judgment or Dismissal.** If the parties settle a Fast Trial case, they must file an appropriate stipulation for entry of a final judgment or a stipulation and order of dismissal.
- (b) **Responsibility for Jury Fees.** All parties and their attorneys will be jointly and severally responsible for payment of jury fees if they fail to notify the court by noon on the business day before the scheduled trial date that their case has settled.

Rule 116. Defaults

If the court has entered a default against one or more but fewer than all defendants, the court may conduct proceedings against the defaulted defendants under Civil Rule 55, and may proceed with a Fast Trial for the remaining parties.

Rule 117. Fast Trial

- (a) **Trial by Jury.** The court will set each Fast Trial case for a jury trial. A demand for a jury is not required. The parties may waive a jury by written stipulation filed at least 10 days before trial. The parties also may stipulate to 6 rather than 8 jurors serving at trial, with 5 of the 6 jurors necessary for returning a verdict or finding. The court will

empanel a jury as provided in Civil Rule 47. The court need not empanel alternate jurors

(b) Pretrial Statement. No later than 15 days before trial, the parties must confer, prepare, file, and submit to the judge a joint pretrial statement. The parties are encouraged to agree on facts and issues. The statement must contain the following:

- (1) a brief statement of the nature of each party's claims or defenses;
- (2) a witness list including the subject matter of a witness's testimony for each witness who will testify;
- (3) an exhibit list and specific legal objections to any exhibits;
- (4) the parties' stipulations concerning undisputed facts and issues; and
- (5) the estimated time required for trial.

Unless the parties agree otherwise or the offering party shows good cause, a party may not call a witness or offer an exhibit at trial other than those listed and exchanged. Legal objections to any exhibits listed are deemed waived unless specifically stated.

(c) Additional Filings Required for a Jury Trial. Unless the parties have stipulated to waive a jury, no later than 10 days before the trial date the parties must file an agreed upon set of jury instructions, verdict forms, and voir dire questions. A party at the same time may file any additional jury instructions, verdict forms, and voir dire questions the party requests, but which the parties have not agreed upon.

(d) Evidence. The Arizona Rules of Evidence apply to a Fast Trial. However, and unless there is a specific legal objection in the joint pretrial statement, the following documents are admissible in evidence:

- (1) Medical bills of licensed or authorized providers, provided the party requesting admission of a bill establishes a foundation that the amount of the bill is reasonable and the treatment or service described in the bill was medically necessary;
- (2) Property repair bills or estimates containing costs or estimates for labor and material, if a bill is dated and itemized, and if the bill states whether the property was repaired in full or in part;

- (3) Records of regularly conducted business activity under Rule 803(6) and certified records of a regularly conducted activity under Rules 902 (11) and (12) of the Arizona Rules of Evidence;
 - (4) A witness's deposition, whether or not the witness is available to appear in person;
 - (5) Medical records and medical reports, if a copy of the record or report was disclosed at least 40 days before trial, unless the opposing party shows good cause not to admit it.
- (e) **Video Recording of Medical Providers and Experts.** A party who deposed and made a video recording of a medical provider or expert under Rule 113(c) may introduce the recording at trial to avoid the cost of calling the expert. However, any party may object to the form or foundation of a question or to the responsiveness of an answer in the video record.
- (f) **Subpoenas.** The court may issue and enforce a subpoena, and a party may serve a subpoena, as provided by Civil Rule 45 and by law.
- (g) **Order of the Fast Track Trial; Limits.** A Fast Trial proceeds in the order described in Civil Rule 40. The manner of selecting a jury, juror notebooks, juror questions of witnesses, jury instructions, deliberations, and the return and entry of the verdict are as provided in other civil trials in the superior court, except for the following presumptive time limits:
- (1) Voir dire: 15 minutes per side
 - (2) Opening statements: 20 minutes
 - (3) Presenting a case in chief, cross examination, and rebuttal: 3 hours per side
 - (4) Closing arguments: 30 minutes
 - (5) Length of trial: 2 full days

Rule 118. Post-Trial Procedures; Appeal

- (a) **Form of Judgment, Costs and Attorneys' Fees.** After the jury returns its verdict, the judge must direct the prevailing party to prepare a statement of costs, a request for attorney's fees, if any, and a judgment, as provided in Civil Rules 54 and 58. Other parties may file objections as provided by the Civil Rules. The judge may then proceed to enter judgment on the verdict.

- (b) **Verdict Exceeding Limit.** If a jury verdict exceeds the monetary limit for the FASTAR program or a limit set by statute, the court must nevertheless enter a judgment for the full verdict amount.
- (c) **Post-trial Motions.** A party may file post-trial motions as provided in other civil cases.
- (d) **Appeal.** A final judgment entered at the conclusion of a Fast Trial is appealable to the Court of Appeals as provided by law.

Rule 119. Dismissal Calendar

The court may place a Fast Trial case on the dismissal calendar under Civil Rule 38.1(d) if the case has not concluded by the entry of judgment within 270 days after the filing date of the complaint.

Part Three: Rules for Alternative Resolution

Rule 120. Assignment of an Arbitrator

- (a) **Arbitrator.** An arbitrator conducts an Alternative Resolution proceeding.
- (b) **Assignment of an Arbitrator by Stipulation.** If (1) all of the parties in a case agree on an arbitrator, (2) the agreed-upon arbitrator provides written consent, and (3) a copy of the stipulation that includes the arbitrator's consent is delivered to the court administrator, the court administrator will assign that person to serve as arbitrator.
- (c) **Assignment of an Arbitrator in Other Circumstances.** Unless the parties agree to an arbitrator under (b), the court administrator must assign the arbitrator from a list of eligible arbitrators. To be eligible for inclusion on the list, an arbitrator must be a resident of the county, and an active member of the State Bar of Arizona in good standing, for at least four years. The court administrator must randomly or by another method select and then assign one arbitrator from the list. Alternatively, the court administrator may select and assign an arbitrator as provided in (d).
- (d) **List of Specialty Arbitrators.** The court administrator, under the supervision of the presiding judge, may prepare a list of arbitrators with designated areas of specialization, concentration, or expertise. A court administrator who has prepared such a list should endeavor to select and assign to a case an arbitrator with experience in the subject matter of the action. If such an arbitrator is unavailable, the court administrator must select an arbitrator as provided in (c).

- (e) **Time of Assignment.** The court administrator must assign an arbitrator no later than 30 days after an answer is filed.
- (f) **Notice of Assignment.** The court administrator must promptly distribute a notice of the arbitrator's assignment to the parties and the arbitrator. The notice must advise the parties of the deadline specified in Civil Rule 38.1(d) for placing an action on the dismissal calendar.
- (g) **Change of Arbitrator as of Right.** Each side is entitled to one change of arbitrator as of right. Even if consolidated with another action, a case is treated as having only two sides. A party waives the right to change of arbitrator by not exercising the right within 10 days after the date on the notice of assignment. If a party appears in the case after the arbitrator's assignment, the party waives the right to a change of arbitrator by not exercising it within 10 days after that party's appearance. A motion for recusal or a challenge of the arbitrator for cause tolls the time to exercise a change of arbitrator as of right.
- (h) **Disqualifying or Excusing an Arbitrator.**
- (1) ***Disqualifying an Arbitrator.*** On written motion, the court may disqualify an assigned arbitrator from serving in a particular action. The motion must establish that the arbitrator has an ethical conflict of interest or that other good cause exists under A.R.S. § 12-409 or § 21-211. The motion must be submitted to and considered by the judge assigned to the action in accordance with the procedures provided in Civil Rule 42.2.
 - (2) ***Excusing an Arbitrator from a Case.*** The presiding judge may excuse an arbitrator from serving in a particular case on the arbitrator's showing that the arbitrator has completed at least two cases during the current calendar year. If the court disqualifies an arbitrator under (h)(1) or excuses an arbitrator under (h)(2), the court administrator must assign a new arbitrator.
 - (3) ***Excusing an Arbitrator from the Assignment List.*** On written motion showing good cause, the presiding judge may excuse a lawyer from the list of arbitrators described in Rule 120(c).
- (i) **Clerk and Presiding Judge.** Whenever this rule refers to duties performed by a court administrator, those duties also may be performed by the court clerk, as provided by local rules, administrative orders, or policies. Whenever this rule refers to duties performed by a presiding judge, they also may be performed by the judge's designee.

Rule 121. General Duties of an Arbitrator

(a) Arbitrator's Powers. The arbitrator has the power to administer oaths or affirmations to witnesses, determine the admissibility of evidence, and decide the law and the facts in a case. An arbitrator is personally immune from suit with respect to actions taken under this and the following rules.

(b) Arbitrator's Rulings.

(1) Authorized Rulings. After assignment of a case, the arbitrator will make all legal rulings, including rulings on motions, except on:

(A) motions to continue on the dismissal calendar or otherwise extend the time allowed under Civil Rule 38.1(d);

(B) motions to consolidate actions under Civil Rule 42;

(C) motions to dismiss;

(D) motions to withdraw as attorney of record under Civil Rule 5.3;

(E) motions for summary judgment that, if granted, would dispose of the entire case as to any party; and

(F) motions for sanctions under Civil Rule 68(g).

(2) Procedure. The parties must deliver to the arbitrator copies of all documents requiring the arbitrator's consideration. The arbitrator may hear motions and testimony by telephone.

(3) Discovery Motions. The arbitrator may limit discovery when appropriate to accomplish the objectives of FASTAR described in Rule 101(a).

(4) Interlocutory Appeal of Discovery Ruling. If an arbitrator makes a discovery ruling requiring the disclosure of matters that a party claims are privileged or otherwise protected from disclosure, the party may appeal the ruling by filing a motion with the assigned judge within 10 days after the arbitrator transmits the ruling to the parties. A party need not respond to the motion unless the court orders a response, but no such motion may be granted without the court providing an opportunity for a response. The arbitrator's ruling is subject to de novo review by the court. If the court finds that the motion is frivolous or was filed for the purpose of delay or harassment, the court must impose sanctions on the party filing the motion, including an award of reasonable attorney's fees incurred in responding to the motion. The time for conducting an Alternative Resolution hearing is tolled while the motion is pending.

(c) **Receipt of Court File.** If the arbitrator believes the court file contains materials needed to conduct the Alternative Resolution hearing, the arbitrator may, within 4 days before the hearing, sign for and receive the original superior court file from the clerk, if the file exists in paper form. Otherwise, the clerk must provide the arbitrator access to an electronic copy of the file. The clerk may deliver documents electronically to any arbitrator who files a consent acceptable to the clerk. Alternatively, the arbitrator may order the parties to provide pleadings and other documents the arbitrator deems necessary.

(d) **Offer of Judgment.** A party to an action subject to Alternative Resolution may serve an offer of judgment under Civil Rule 68.

Rule 122. Prehearing Procedures

(a) **Initial Disclosure.** Unless the parties agree or the arbitrator orders otherwise, the parties must serve their initial disclosure no later than 30 days after the filing date of the first answer.

(b) **Scheduling an Alternative Resolution Hearing.** The arbitrator must set a hearing date not earlier than 60 days but no later than 120 days after the arbitrator's notice of assignment. For good cause, the arbitrator may set an earlier or a later date for the hearing. The arbitrator must provide the parties with at least 30 days' written notice of the date, time, and place of the hearing. The hearing may not be held on a Saturday, Sunday, legal holiday, or during the evening, unless the parties agree.

(c) **Time for Filing a Summary Judgment Motion.** A party must file a motion for summary judgment at least 40 days before the hearing date. The moving party must provide a copy of the motion to the arbitrator and assigned judge. A pending summary judgment motion tolls the time for conducting an Alternative Resolution hearing. If the court finds that a summary judgment motion is frivolous or was filed for the purpose of delay or harassment, it must impose sanctions on the party filing the motion, including an award of reasonable attorney's fees incurred in responding to the motion.

(d) **Assessing Damages Against Defaulted Parties.** If default has been entered against one or more but fewer than all the defendants before the date of the Alternative Resolution hearing, the arbitrator must refer proceedings involving the defaulted defendants to the assigned judge, and the arbitrator must proceed with the Alternative Resolution hearing for the remaining parties.

(e) **Settlement of Actions Assigned to Alternative Resolution.** If the parties settle an action assigned to Alternative Resolution, they must file with the court an appropriate

stipulation for entry of a final judgment or a dismissal order, and must mail or deliver a copy to the arbitrator. The Alternative Resolution terminates on entry of the judgment or order.

Rule 123. Hearing Procedures

(a) Subpoenas. The court may issue and enforce a subpoena, and a party may serve a subpoena, as provided by Civil Rule 45 and by law.

(b) Prehearing Statement.

(1) Requirement. No later than 10 days before the hearing, the parties must confer, prepare, and submit to the arbitrator a joint written prehearing statement. The parties are encouraged to agree on facts and issues.

(2) Content. The statement must contain the following:

(A) a brief statement of the nature of each party's claims or defenses;

(B) a witness list including the subject matter of witness testimony for each witness who will be called to testify;

(C) an exhibit list; and

(D) the estimated time required for the Alternative Resolution hearing.

(3) Evidence Excluded. Unless the parties agree otherwise or the offering party shows good cause, no witness or exhibit may be offered at the hearing other than those listed and exchanged.

(c) Evidence. The Arizona Rules of Evidence apply to Alternative Resolution hearings, except as provided in (d). Certificates or controverting certificates under Rule 102 are not admissible evidence concerning the merits of the case.

(d) Documentary Evidence. Unless a document is not what it appears to be and an objection is stated in the prehearing statement, the arbitrator must admit into evidence the following documents without further proof, if relevant and 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 20 days before the hearing, unless the opposing party shows good cause;
 - (9) records of regularly conducted business activity qualified under Arizona Rule of Evidence 803(6) and certified records of a regularly conducted activity under Rules 902 (11) and (12) of the Arizona Rules of Evidence; 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.
- (e) **Record of Proceedings.** The arbitrator is not required to make a record of the hearing. If any party wants a court reporter to transcribe the hearing, the party must pay for and provide the reporter. The reporter's charges are not considered costs in the action.

Rule 124. Arbitrator's Decision, Award, and Judgment

- (a) **Arbitrator's Decision.** Within 10 days after completing the hearing, the arbitrator must:
- (1) file a notice of decision with the court;
 - (2) notify the parties of the decision in writing.

- (3) notify the parties that their exhibits are available for retrieval;
- (4) if an original paper file was obtained from the superior court, return it to the clerk by messenger or certified mail;

(b) Arbitrator's Award.

- (1) **Submission of Proposed Award.** Within 10 days after the notice of decision is filed, either party may submit a proposed form of award to the arbitrator. The proposed award may include blank spaces for requested amounts for attorneys' fees and costs.
- (2) **Award Exceeding Limit.** If an arbitrator finds that the appropriate award exceeds the limit for Alternative Resolution set by these rules or statute, the arbitrator must render an award for the full amount.
- (3) **Objections to Proposed Award.** Within 5 days of receiving the proposed form of award, an opposing party may file objections.
- (4) **Final Award.** Within 10 days of receiving the objections, the arbitrator must rule on the objections and file one signed original award with the clerk. On the same day, the arbitrator must mail or otherwise deliver copies of the award to all parties.

(c) Arbitrator's Failure to File Award. If the arbitrator does not file an award within 40 days after filing the notice of decision, the notice of decision will constitute the arbitrator's award.

(d) Judgment.

- (1) *Motion to Enter Judgment.* Any party may file a motion to enter judgment on the award if no appeal is filed by the deadline for filing an appeal under Rule 126.
- (2) *Dismissal of the Action.* If no party files a motion to enter judgment within 90 days of the filing of the notice of decision and if no appeal is pending, the clerk or court administrator must notify the parties in writing that the action will be dismissed without prejudice unless a motion to enter judgment is filed within 30 days after the date of the notice. If no motion is filed within that time, the court must dismiss the action without prejudice and enter an appropriate order regarding any posted security. No further notice to the parties is required before dismissing the action.

(e) Referral of an Action to the Assigned Judge. If the arbitrator does not file a notice of decision with the clerk within the later of 145 days after the arbitrator's assignment or 30 days after a noticed hearing, the clerk or the court administrator must refer the matter to the assigned judge for appropriate action.

(f) Application of Civil Rule 38.1(d). Civil Rule 38.1(d) (“dismissal calendar”) applies to cases in Alternative Resolution, except the words “alternative resolution” are substituted for the word “arbitration,” and “Rule 124” is substituted for “Rule 76.”

Rule 125. Arbitrator’s Compensation

(a) Generally. An arbitrator assigned to a case under these rules is entitled to receive as compensation for services a fee not to exceed the amount allowed by A.R.S. § 12133(G) per day for each day, or part of a day, necessarily expended in hearing the case. For this rule’s purposes, “hearing” means any fact-finding proceeding or oral argument resulting in the filing of an award, or at which the parties agree to settle and stipulate to dismissal of the case. When more than one action arising out of the same transaction is heard at the same hearing, it will be considered as one case for purposes of compensating the arbitrator.

(b) Amount of Compensation. The compensation paid in each county must be provided by local rule.

(c) Right to Compensation. The arbitrator is only entitled to receive compensation after the arbitrator files an award, or, if the parties agree to settle and stipulate to dismiss the case at a proceeding before the arbitrator, after the case is dismissed.

Rule 126. Appeal

(a) Filing a Notice of Appeal.

(1) Plaintiff May Not Appeal. Except as provided in Rule 103(d), the plaintiff who filed a Certificate under Rule 103(b) and chose Alternative Resolution may not file a notice of appeal of a decision, award, or judgment that was entered in an Alternative Resolution proceeding.

(2) Other Parties May Appeal. Any other party who appears and participates in an Alternative Resolution proceeding may appeal an arbitrator’s award by filing a notice of appeal. However, absent good cause, a party waives the right to appeal if the party fails to appear or to participate in good faith at the Alternative Resolution hearing. A notice of appeal must be entitled “Appeal from Alternative Resolution and Motion for Trial Setting.” The notice must request that the case be set for trial in the superior court, and must state whether a jury trial is demanded and the estimated length of trial.

(b) Time for Filing. To appeal an award, a party must file a notice of appeal no later than 20 days after (1) the award is filed or (2) the date on which the notice of decision becomes an award under Rule 124(c), whichever occurs first.

(c) Deposit on Appeal. 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. The court may waive the deposit only on a showing that the appellant is financially unable to make such a deposit.

(d) Appeal De Novo. Although the proceeding is denominated as an "appeal," the parties are entitled to a trial on all issues determined by the arbitrator. The arbitrator's legal rulings and factual findings are not binding on the court or the parties. If, however, the court finds that further proceedings before the arbitrator are appropriate, it may remand the action to the assigned arbitrator.

(e) Waiver of Right to Appeal. At any time before the entry of an award by the arbitrator, the parties may stipulate in writing that the award so entered is binding on the parties. If the parties enter such a stipulation, no party may appeal or collaterally attack the award except as allowed by A.R.S. § 12-1501, et seq.

(f) Discovery and Listing of Witnesses and Exhibits on Appeal.

- (1)** Any discovery conducted while the action was assigned to Alternative Resolution may be used on appeal.
- (2)** Simultaneous with the filing of the notice of appeal, the appellant may serve a "List of Witnesses and Exhibits Intended to be Used at Trial" that complies with Rule 26.1.
- (3)** No later than 20 days after the Notice of Appeal is served, the appellee may serve a "List of Witnesses and Exhibits Intended to be Used at Trial" that complies with Rule 26.1.
- (4)** If any party does not serve a timely "List of Witnesses and Exhibits Intended to be Used at Trial," that party's trial witnesses and exhibits will be deemed to be those set forth in any such list previously filed in the action or in the prehearing statement submitted under Rule 123(b).
- (5)** The parties have 80 days after the filing of the notice of appeal to complete discovery under Civil Rules 26 through 37.
- (6)** For good cause, the court may extend the time to conduct discovery or to serve a supplemental list of witnesses and exhibits.

(g) Refund of Deposit on Appeal. The clerk must refund the deposit on appeal to the appellant if:

- (1) the judgment on the trial de novo is at least 23 percent more favorable than the monetary relief or other type of relief granted by the Alternative Resolution award; or
- (2) there is no order from the court for the disposition of the deposit on appeal upon the action's final disposition.

(h) Forfeiture of Deposit on Appeal; Sanctions on Appeal. If the judgment on the trial de novo is not at least 23 percent more favorable than the monetary relief or other type of relief granted by the Alternative Resolution award, the court must order that the deposit on appeal be used to pay the following costs and fees:

- (1) to the county, the compensation actually paid to the arbitrator;
- (2) to the appellee, those costs taxable in civil actions together with reasonable attorney's fees as determined by the trial judge for services necessitated by the appeal; and
- (3) reasonable expert witness fees incurred by the appellee in connection with the appeal.

If the deposit is insufficient to pay those costs and fees, the court must order that the appellant pay them, unless the court, on motion, finds that imposing costs and fees would create a substantial economic hardship that is not in the interests of justice.

(i) Contact by Court. A court may contact an arbitrator regarding the Alternative Resolution award or other matters relating to the Alternative Resolution.

NAME: _____

ADDRESS: _____

TELEPHONE: _____

REPRESENTING: _____

ARIZONA SUPERIOR COURT, PIMA COUNTY

Plaintiff,

v.

Defendant.

CASE NO: _____

RULE 102(a) FASTAR CERTIFICATE

The undersigned certifies that he or she knows the eligibility criteria set by FASTAR Rule 101(b) and certifies that this case:

(NOTE – YOU MUST CHECK ONE OF THE BOXES BELOW OR THE CLERK WILL NOT ACCEPT THIS FORM.)

DOES meet the eligibility criteria established by Rule 101(b); or

DOES NOT meet the eligibility criteria established by Rule 101(b).

Dated: _____

SIGNATURE

NAME: _____

ADDRESS: _____

TELEPHONE: _____

REPRESENTING: _____

ARIZONA SUPERIOR COURT, PIMA COUNTY

CASE NO: _____

Plaintiff,

v.

Defendant.

**RULE 102(b) FASTAR
CONTROVERTING CERTIFICATE**

The undersigned certifies that he or she has read and understands the Rules Applicable to the Fast Trial and Alternative Resolution Program (“FASTAR”), and hereby **CONTROVERTS** the Plaintiff(s)’ Rule 102(a) FASTAR Certificate for the following reasons:

Dated: _____

SIGNATURE

NAME: _____

ADDRESS: _____

TELEPHONE: _____

REPRESENTING: _____

ARIZONA SUPERIOR COURT, PIMA COUNTY

Plaintiff,

v.

Defendant.

CASE NO: _____

**CHOICE CERTIFICATE:
FAST TRIAL OR
ALTERNATIVE RESOLUTION**

The undersigned certifies that he or she has read FASTAR Rule 103 and makes the following choice regarding a Fast Trial or Alternative Resolution pursuant to FASTAR Rule 103 of the FASTAR Rules:

(NOTE – YOU MUST CHECK ONE OF THE BOXES BELOW OR THIS FORM WILL NOT BE ACCEPTED)

Fast Trial

Alternative Resolution: By checking this box and choosing Alternative Resolution, I hereby knowingly and voluntarily waive Plaintiff(s)' constitutional and statutory rights to a trial (jury or bench), including the right to appeal the Alternative Resolution result.

Dated: _____

SIGNATURE