

SUPREME COURT OF ARIZONA

In the Matter of) Arizona Supreme Court
) No. R-24-0004
RULES 101 AND 126(a)(2), FASTAR)
RULES IN PIMA COUNTY)
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)
)
)
)
) FILED 08/22/2024

**ORDER REQUESTING COMMENT ON PROPOSED STATEWIDE RULES FOR THE
FAST TRIAL AND ALTERNATIVE RESOLUTION PROGRAM**

The Fast Trial and Alternative Resolution ("FASTAR") Program aims to provide a speedier and more economical alternative to compulsory arbitration and jury trial for plaintiffs requesting only monetary damages in an amount of \$50,000 or less. See Rule 101(a), Pima County Rules for the FASTAR Pilot Program (the "FASTAR Rules") ("The program's objective is to achieve a more efficient and inexpensive, yet fair, resolution of eligible cases.").

In 2017, this Court established a three-year FASTAR pilot program in the Superior Court of Pima County by Administrative Order No. 2017-116. In 2020, due to the program's success, then-Presiding Judge Kyle Bryson filed rule petition number R-20-0012 requesting permanent adoption of the FASTAR Rules in Pima County. Thereafter, due to disruptions caused by the pandemic, the pilot program and rules were extended by

administrative order without permanent adoption until December 31, 2021. See Admin. Order No. 2020-158 (2020).

At this Court's August 2021 Rules Agenda, the Court determined that it should extend the FASTAR Pilot Program for an additional two years but only after a period of public comment on proposed FASTAR rule amendments. The Court considered and adopted the amendments on December 8, 2021 and extended the FASTAR Pilot Program in Pima County until December 31, 2023.

On December 5, 2023, this Court entered an order noting that a court-ordered progress report on the FASTAR Program in Pima County had recommended that the Court elevate FASTAR from a pilot program to a permanent program. The order also noted that Judge Jeffrey Bergin, then-Presiding Judge of the Superior Court in Pima County, would be filing a rule petition in the 2024 rules cycle seeking permanent adoption of the FASTAR Rules.

On January 4, 2024, Judge Bergin filed a petition to permanently adopt FASTAR Rules in the form approved by this Court's December 8, 2021 Order in R-20-0012, but with revisions allowing the FASTAR Rules to apply in any county that authorizes adoption of the program for cases within that county. The Court circulated Judge Bergin's petition for comment; multiple constructive comments were submitted; and Judge Bergin filed a reply agreeing with a number of the comments as additions to his proposal.

The Court has considered Judge Bergin's petition, the public comments submitted, and the reply. The Court deems it necessary to entertain an abbreviated period of public comment on the proposed revisions to the FASTAR Rules, as modified, and an associated revision to Rule 72(a), Rules of Civil Procedure. The rule revisions are shown in Attachment A. A proposed revision to Choice Certificate 103(b) is shown in Attachment B. After submission of public comment as provided below, this Court will consider at its December 2024 Rules Agenda whether to adopt the attached amendments on a permanent basis. If it decides in the affirmative, the FASTAR Rules will become effective on July 1, 2025, as an option for all Arizona counties. Upon consideration,

IT IS ORDERED that the amendments shown in Attachments A and B are opened for public comment under Rule 28(c), Rules of the Supreme Court of Arizona, with all comments due no later than October 1, 2024, and any reply due no later than October 15, 2024.

The amendments shown in Attachments A and B may be viewed by going to: <http://www.azcourts.gov/Rules-Forum>. This opens the "Welcome" page. This order and Attachments A and B are posted under the file for this rule petition, which can be found by opening the category "Rules of Civil Procedure" and scrolling down the page.

For instructions on how to post comments electronically, click on <https://www.azcourts.gov/rules/Forum-FAQ> at the top of the "Forum FAQ" page and then "How do I file a comment on a Rule 28 petition?"

Alternatively, commenters may submit comments by filing an original and one paper copy of the comment and one electronic copy of the written comments and supporting documents in Microsoft Word format on a CD or other compatible electronic medium with the Clerk of the Supreme Court, 1501 West Washington St., Room 402, Phoenix, AZ 85007 in an envelope marked "Rule Comment."

Any person filing a comment must send a copy of the comment to the Petitioner electronically or by ordinary mail.

DATED this 22nd day of August, 2024.

/s/
ANN A. SCOTT TIMMER
Chief Justice

TO:

Rule 28 Distribution
Hon Jeffrey T Bergin
Brian Marchetti
Hon Samuel A Thumma
David DeWendt Buechel
William C Bacon
Page Chancellor Marks
Hon D Gregory Sakall
Michael J Bell
Lisa M Panahi
Richard B Biggs
James William Rappaport

ATTACHMENT A¹

RULES OF CIVIL PROCEDURE

Rule 72. Suitability for Arbitration or a FASTAR Program

(a) Decision to Require Compulsory Arbitration or a FASTAR Program.

(1) Rules 72 through 77 apply if the superior court in a county, by a majority vote of the judges in that county, decides to require arbitration of certain claims and establishes jurisdictional limits by local rule under A.R.S. § 12-133.

(2) Notwithstanding paragraph (1) of this Rule 72(a), if the superior court in a county, by a majority vote of the judges of that county, decides to establish a FASTAR program in that county, Rules 101 through 126 of the Rules for the Fast Trial and Alternative Resolution (“FASTAR”) Program instead of Rules 72 through 77 of these rules will apply to civil cases within the limits set forth in the FASTAR Program.

(3) Such a decision to require arbitration of certain claims or to establish a FASTAR program must be incorporated into a superior court order that is filed with the Supreme Court clerk, with a copy filed with the clerk in that county. Except when a rule is inconsistent with a specific provision in Rules 72 through 77 of these rules or the Rules for the Fast Trial and Alternative Resolution (“FASTAR”) Program, the Arizona Rules of Civil Procedure apply to all actions in arbitration and to all actions under a FASTAR program.

(b)-(e) [No change]

~~PIMA COUNTY RULES FOR THE FAST TRIAL AND ALTERNATIVE RESOLUTION (“FASTAR”) PILOT PROGRAM~~

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~~ in which a majority of the judges in that county have voted to establish a program based upon a fast trial with an alternative resolution option as provided in these rules. 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)-(d) [No change]

¹ Additions to the text of a rule are shown by underscoring and deletions are shown by ~~strike through~~.

Rule 102. Certificates; Forms.

(a)-(c) [No change]

(d) Exceptions. If extraordinary case characteristics indicate that an otherwise eligible case is not suitable for FASTAR, a party for good cause shown may request the court to exclude the case from the FASTAR program and allow it to proceed under the civil rules applicable to non-FASTAR cases. Extraordinary case characteristics include cases where a plaintiff is unable to serve a defendant within the time provided by Rule 104 despite diligent efforts to serve the defendant. If a case is excluded under this subsection, Tier 1 discovery limits of Rule 26.2(f)(1), Rules of Civil Procedure, apply unless otherwise ordered.

Rule 103. Plaintiff's Choice

(a) [No change]

(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 Form 103(b) "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) [No change]

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

(1) [No change]

~~(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~~90 days after the filing date of the complaint.

(b) Service by Publication. If a plaintiff obtains an order permitting service by publication under Civil Rule 4.1(l) or Civil Rule 4.2(f) within 90 days after the filing date of the complaint, the affidavit of publication must be filed within 130 days of the filing date of the complaint.

~~**(b)(c) Dismissal of an Unserved Defendant.**~~ If the plaintiff does not file proof of timely ~~complete~~-service within ~~60-90~~ days after filing the complaint or within 130 days if subsection (b) applies, 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 files proof of timely service ~~completes service~~-within those 15 days. Unless the court orders otherwise, a dismissal order must include an order that, if the action was commenced within the time limited for the action, the plaintiff may commence a new action for the same cause within 60 days of the date of dismissal.

~~**(e)(d) Extension.**~~ Upon a showing that, despite timely and diligent efforts, the plaintiff has been unable to serve a defendant within the 90 days permitted by this rule, the Court may permit one extension of the service deadline. The extension may only be for so long as necessary for the plaintiff to complete service with immediate and diligent efforts, and in no circumstance may exceed 30 days. Any order permitting such an extension must include an order extending all other deadlines under the rules by the same number of days granted in the 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)(e) [No change in text]**~~

* * *

Rule 117. Fast Trial

~~**(a)-(c) [No change]**~~

(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 document are admissible in evidence:

(1) The following medical bills, ~~although the admission of any specific medical bill does not relieve the admitting party of its burden of proving that the amount of the bill is reasonable, and the treatment or service described in the bill was medically necessary, the amounts of which are presumed reasonable, although any party may offer evidence to dispute the presumption of reasonableness of a medical bill.~~

~~**(A)-(D) [No change]**~~

~~**(2)-(5) [No change]**~~

(e)-(g) [No change]

* * *

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. Any trial conducted under this rule is governed by FASTAR Rules 110 through 119.~~

(b)-(h) [No change]

ATTACHMENT B²

Form 103(b). Choice Certificate

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.~~

²Additions to the text of the form are shown by underscoring and deletions of text are shown by ~~strike through~~.

Dated: _____

SIGNATURE