

Hon. Jeffrey Bergin
Presiding Judge
Superior Court of Arizona in Pima County
110 W. Congress St.
Tucson, AZ 85701

IN THE SUPREME COURT STATE OF ARIZONA

PETITION TO PERMANENTLY	)	No. R-24-
ADOPT RULES FOR THE FAST TRIAL	)	
AND ALTERNATIVE RESOLUTION	)	
PROGRAM ("FASTAR")	)	
_____	)	

Introduction.

By Administrative Order No. 2017-116, this Court adopted Rules of the Fast Trial and Alternative Resolution Pilot Program ("FASTAR Rules") for a pilot program in the Superior Court of Arizona in Pima County. Because the program has significantly reduced the overall time to disposition in qualifying cases, Petitioner requests the Court to permanently adopt the FASTAR Rules, as those rules were modified by this Court's December 8, 2021, Order in [R-20-0012](#). This petition also requests modifications to FASTAR Rules 101 and 126, as shown in Parts C and D of this petition and as detailed in attached Exhibits 1 and 2. A December 14, 2023, status report to the Arizona Judicial Council is filed on the Rules Forum with, and in support of, this petition. Further, on December 14, 2023, the Arizona Judicial

Council authorized the filing of this rules petition. The Supreme Court's December 6, 2023 Order [R-20-0012](#), in contemplation of this rules petition, extended the FASTAR program and the FASTAR rules "until further order of this Court."

A. Background.

Supreme Court Administrative Order [No. 2015-126](#) established the Committee on Civil Justice Reform ("CJRC"). In October 2016, the CJRC submitted its final report to the Arizona Judicial Council ("AJC") with more than a dozen recommendations.

The CJRC studied the compulsory arbitration process set forth in the Arizona Rules of Civil Procedure. While the compulsory arbitration process was intended to provide a speedy and economical alternative to a jury trial, the CJRC determined that it did not uniformly achieve those goals. The CJRC found that the time from filing a complaint to the entry of judgment in cases subject to compulsory arbitration could require as much time as if the matter had gone to trial on a standard trial track. The CJRC also found that court-appointed arbitrators occasionally have no experience in the subject matter they are arbitrating, or that setting arbitration hearings and deciding cases are lesser priorities for attorney arbitrators than attending to their clients' cases.

Additionally, while compulsory arbitration provides a right to "appeal" an arbitration award, the CJRC noted that Civil Rule 77 provides a trial *de novo* rather

than an appeal on the record of the arbitration. Trials *de novo* often involve new witnesses and evidence, thereby increasing rather than mitigating litigation costs. Finally, the CJRC noted that Defendants who prevail at the new trial can obtain sanctions, including attorney's fees and expert witness fees, against a plaintiff who nonetheless prevailed at the arbitration. (See Civil Rule 68(g) regarding sanctions on an offer of judgment, and Civil Rule 77(h) concerning sanctions on an appeal from a compulsory arbitration award.)

To address the shortcomings of the compulsory arbitration process, the CJRC recommended the implementation of a pilot program in Pima County ("FASTAR") that would allow plaintiffs whose complaints requested only monetary damages in an amount of \$50,000 or less to opt for a short trial rather than proceeding to compulsory arbitration under Civil Rules 72 through 77.

The Court adopted a three-year FASTAR pilot program in the Superior Court in Pima County, as well as rules for the FASTAR program, by Administrative Order No. 2017-116. FASTAR procedures allow plaintiffs to choose either Alternative Resolution, which is similar to compulsory arbitration, or a Fast Trial before a judge or a jury.

The program demonstrated positive trends in its first two years. The program's successes led then Pima County Presiding Judge Kyle Bryson to file rule

petition number [R-20-0012](#) requesting permanent adoption of the program and its associated rules, with amendments to certain rules.

In March 2020, while R-20-0012 was pending, the COVID-19 pandemic erupted. The pandemic caused a significant interruption to the program's success and effectiveness. Given limited court operations and the restrictions on jury trials, judges in Pima County were simply unable to enforce the expedited timelines required under the FASTAR rules. Because the pandemic made it impossible to accurately assess the success of the program, Judge Bryson asked this Court to defer consideration of his petition. On October 29, 2020, the Court entered Administrative Order [No. 2020-158](#), which extended the pilot program until December 31, 2021. At its December 2020 Rules Agenda, the Court deferred its consideration of the petition until the August 2021 Rules Agenda.

At its August 2021 Rules Agenda, the Court determined it should extend the FASTAR Pilot Program for an additional two years, but only after an additional period for public comments on the proposed rule amendments. The Court considered and adopted the amendments at its December 2021 Rules Agenda. The Court's Order in [R-20-0012](#) also extended the pilot program until December 31, 2023.

B. Data.

1. Generally.

The Pima County FASTAR pilot program began on November 1, 2017. Between November 1, 2017, and October 9, 2023, plaintiffs filed 12,973 cases qualifying for the program. The superior court dismissed 2779 (21%) of those cases for lack of service. Required choice certificates designating a case for either alternative resolution or a fast trial were filed in 5411 (42%) cases. An additional 918 cases defaulted to the trial track for failure to file a required choice certificate. A small number of cases were removed from the FASTAR program for a variety of reasons.

2. The Fast Trial Track.

In the 5411 cases in which plaintiffs filed a choice certificate, Plaintiffs chose the Fast Trial Track in 1137 cases (21%). 525 fast trials were placed on the docket between November 1, 2017, and October 9, 2023. 480 of those cases settled before trial and 45 of the cases proceeded to trial. This data indicates that almost 4% of the cases set for a Fast Trial actually proceeded to trial.

The average time to disposition for cases in the Fast Trial Track remained under 180 days, as it has since the program's inception, with one exception. From November 2019 to November 2020, the COVID pandemic impacted the courts, including the FASTAR program. During that year, FASTAR's expedited deadlines became unenforceable. As a result, the average disposition time for a fast trial case ballooned to 241 days.

3. The Alternative Resolution Track.

In cases with a filed choice certificate, plaintiffs chose Alternative Resolution in 3,109 of the filed cases (57%). From the program's start up through October 9, 2023, 235 formal awards were filed with the Court, and only 12 of those awards (5%) were appealed requesting a fast trial. The average time to disposition for Alternative Resolution cases remained under 200 days, as it has throughout the life of the program.

4. Criticism and Response.

While some criticize the FASTAR program for having a limited number of trials, Petitioner believes that focus is misplaced. To the contrary, the superior court considers the pilot program to have been highly successful when considering the program's reduced disposition times.

Before FASTAR, the average time to disposition in a compulsory arbitration case was approximately 8 months, including cases dismissed for lack of service or for lack of prosecution. If a litigant appealed an arbitration award, final disposition of a matter could take as long as two years. In contrast, the average time for disposition for all FASTAR cases, including those dismissed for lack of service or lack of prosecution, remains at no more than 175 days.

Although Petitioner hears positive feedback about the program from attorneys, some have been critical. A common complaint concerns FASTAR's

expedited deadlines. Under FASTAR Rule 104, the time allowed for service of the complaint in a FASTAR case is 60 days. Rule 104 (c) allows the Court to extend the time for service for an additional 30 days, that is, to no more than 90 days after the filing date of the complaint. Some attorneys are concerned about service in those cases where a defendant could not be served within the 90-day period. Petitioner believes that affected plaintiffs can address this issue through FASTAR Rule 102 (d). This rule allows a party to remove an otherwise eligible case from the FASTAR program if the case has extraordinary characteristics and the party demonstrates good cause why the matter is not suitable for the FASTAR program.

C. Request to Amend FASTAR Rule 126(a)(2).

FASTAR Rule 126(a)(2) governs appeals from an alternative resolution award. Petitioner believes that upon an appeal from a FASTAR alternative resolution award, the parties should be entitled to a trial de novo governed by the Fast Trial rules, rather than a trial governed by the Civil Rules. To avoid any confusion, Petitioner proposes to amend FASTAR Rule 126(a)(2) by including the following language in the final sentence:

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

This proposed modification is attached as Exhibit 1.

D. Request to Amend the Title of these Rules and FASTAR Rule 101 (a).

If the Court grants Petitioner's request to permanently adopt the FASTAR Rules, the title of the FASTAR rules and FASTAR Rule 101 should be modified to eliminate references to a "pilot program." Petitioner suggests the rule be modified in a manner that will allow the rules to apply to any county that authorizes adoption of the program. This proposed modification is attached as Exhibit 2.

Conclusion.

The Superior Court in Pima County supports the FASTAR program. The program has improved the time to disposition for this class of cases without burdening the civil bench or court administration. The program furthers the Court's strategic goal of improving access to justice by shortening disposition times in Tier One civil cases.

Accordingly, Petitioner requests that the Court open this petition for public comment, allow Petitioner to file a reply to submitted comments, and ultimately, to permanently adopt the FASTAR Rules in Pima County, and modify the FASTAR Rules consistent with the modifications included in attached Exhibits 1 and 2.

RESPECTFULLY SUBMITTED this ____ day of January 2024.

A handwritten signature in blue ink, appearing to read "Jeffrey Bergin", is written over a horizontal line.

Hon. Jeffrey Bergin
Presiding Judge
Superior Court of Arizona in Pima County

EXHIBIT 1

Rule 126. Appeal

(a) Filing a Notice of Appeal.

(1) *No change.*

(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) through (i). No change.

EXHIBIT 2

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

Part One: General Provisions

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) **through (d).** No change.