

We the attorneys listed below write in opposition to the proposed amendment to make the FASTAR Pilot Program permanent in the Pima County Superior Court.

At the outset, we note our shared belief that compulsory arbitration as set out in Rules 72-77 of the Arizona Rules of Civil Procedure works well in cases with a value below \$50,000. That said, our opposition to FASTAR is based on the following factors:

1) **Lack of Client Interest.** In our collective experience handling personal injury cases, very few clients have expressed dissatisfaction with an arbitration rather than a jury trial. In fact, most (if not all) of our clients have expressed relief at having their “day in court” be in a conference room or over Zoom with an arbitrator, and not in a courtroom surrounded by unpredictable strangers.

2) **Compulsory Arbitration Works.** In our collective experience, compulsory arbitration with a randomly selected arbitrator is a fair and cost-effective manner to resolve cases. We have had only positive experiences with compulsory arbitrators. While some have been unfamiliar with civil subject matter, all the arbitrators strived to apply the law to the facts and render a fair outcome.

3) **Rule 117(d)(1) is a Significant Impediment to Considering a FASTAR Trial.** In our collective experience and opinion, it makes no economic sense for a personal injury plaintiff to conduct a FASTAR trial in the typical tort case. By choosing ADR, pursuant to Rule 123(d), the plaintiff can submit medical records and bills into evidence on their face. In a FASTAR Trial, pursuant to Rule 117(d)(1), medical bills are not facially admissible. Rather, the plaintiff must establish the bill is reasonable and the treatment or service described in the bill was medically necessary. Calling a medical provider (or more than one) to a trial to lay foundation as to reasonableness and necessity of treatment is not economically viable. It also may be impossible, as most medical providers do not want to testify at trial (or otherwise) and scheduling their appearance is not a simple, straightforward task.

4) **FASTAR’s Waiver of Appeal Rule is Unfair to Plaintiffs.** We collectively believe it is unfair to force a plaintiff to waive their right to appeal an arbitration award. While the need for a plaintiff to appeal an arbitration award is very rare, the inability to do so is punitive toward the plaintiff. Precluding only the plaintiff from appealing appears to be an effort to force plaintiffs into a trial in which they do not want to participate. We have all explained the appeal waiver to clients over the past four years and many have reacted with outrage or confusion. Clients simply do not understand why they are forced to waive their right to appeal but the defendant does not.

5) FASTAR Service of Process Timeframe is Unfair to Plaintiffs. The 60-day timeframe for service of process set out in Rule 104 is punitive for plaintiffs, in particular because the adverse insurance carriers will rarely assist in effectuating service. As practicing lawyers who file lawsuits, we can all attest that serving a defendant usually goes one of two ways. The first way is easy, as there is either a statutory agent or a valid and easily identifiable address for service. For those cases, the length of time to serve is not an issue as a process server accomplishes service immediately. The other way is the hard way, which is becoming more and more prevalent. In those cases, service takes a long time because the defendant is either difficult to locate or is evading service. It is important to remember that in Pima County we rarely have police reports for car accidents and even if a report is authored it often is not available for many months. As such, locating the address for the driver is not always a simple task. Often the first address proves to be incorrect, requiring additional research. Only having 60 days, and only allowing for one 30-day extension is problematic and creates unnecessary issues for service. It also creates an unfair situation in which the service of process length is different for a plaintiff simply because they had the unfortunate luck of getting in a car accident in Pima County that is worth less than \$50,000. In any other county, or in Pima County if the value exceeds \$50,000, the plaintiff has 90 days to serve. The reality of this rule is that it is punitive toward the plaintiff (and the plaintiff's lawyer).

If FASTAR does become permanent, which we hope it does not, we offer the following suggestions to help improve the program:

1) ADR Option in Turbo Court. Turbo Court already auto generates a FASTAR Certificate. Currently, if choosing ADR, the Plaintiff needs to file a separate statement, and that separate statement costs \$6.70 per e-filing. Because most cases are resolved via settlement and not via an arbitration award, that cost is ultimately passed along to the client. This issue can be solved by allowing plaintiffs the ability to select the ADR option in Turbo Court, rather than having to file a separate statement.

2) Universal ADR Appeal. As noted, it is unfair and punitive to force only the plaintiff to waive their right to appeal an arbitration award. This issue can be solved by allowing either plaintiff or defendant to appeal the ADR award.

3) Facial Admission of Medical Records in FASTAR Trials. As noted, a FASTAR Trial is typically not economically viable due to the requirement to establish bills are reasonable and the treatment or service described in the bill was medically necessary. This issue can be solved by amending Rule 117(d)(1) to make it identical to Rule 123(d).

4) Uniform Service of Process. As noted, it is unfair that plaintiffs subject to FASTAR have a shortened time frame for service of process. This issue can be solved by increasing the length of time for service of process in FASTAR to 90 days.

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