

Hon. Danelle Liwski
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-24-0004
ADOPT RULES FOR THE FAST TRIAL	)	
AND ALTERNATIVE RESOLUTION	)	REPLY TO COMMENTS
PROGRAM (“FASTAR”)	)	
		)

I. Introduction

By Administrative Order No. 2017-116 this Court adopted rules for a pilot program in the Superior Court in Pima County commonly referred to as “FASTAR.” (“FASTAR” is an acronym for the Fast Trial and Alternative Resolution Program.) Since the beginning of the program, the Pima County Superior Court, through its Presiding Judges has provided progress reports to the Arizona Judicial Council and this Court of the program’s successes and criticisms. The history of the program, its amendments, and extensions to the pilot program are well documented in this Court’s August 22, 2024, order.

On January 4, 2024, then Presiding Judge Bergin filed Rule Petition R-2024-0004, asking this Court to permanently adopt the program in Pima County, and to

allow the FASTAR Rules to apply in any county that authorizes adoption of the program within that county. The Court circulated R-24-0004 for comment, resulting in multiple constructive comments being submitted.

The Court considered R-24-0004 during its most recent Rules Agenda, and on August 22, 2024, issued an order opening for an abbreviated period public comment on proposed revisions to the FASTAR Rules. The Court will consider the Petition and any comments at its December 2024 rules Agenda. Now Presiding Judge Danelle Liwski submits this reply to the comments received.

Petitioner agrees with all revisions set forth in Attachment A to this Court's August 22, 2024, Order. Given the continued disagreement on how to handle the admissibility of medical bills, Petitioner believes some discussion is warranted on the proposed revision of Rule 117 (d).

As noted in Judge Bergin's petition, the admissibility of medical bills and FASTAR Rule 117 has been a concern with the Fast Trial Track. In its December 8, 2021, Order (R20-0012), this Court amended the original version of FASTAR Rule 117. The amendment eliminated the requirement that a plaintiff lay foundation that the amount of a medical bill is reasonable, and the described treatment was medically necessary. The amended rule, current Rule 117 (d), allows a party to admit medical bills without establishing this foundation. However, Rule 117 (d) does not relieve the admitting party of its ultimate burden of proving reasonableness of the amount

billed and necessity of the treatment to prevail on a claim. In its August 22, 2024, order, the Court proposed a new revision. The Court's proposed Rule 117 (d) specifically states that medical bills are admissible absent a specific legal objection in the joint pretrial statement. The proposed revision also adds a rebuttable presumption that the amount of the bills are reasonable. Petitioner believes this is a reasonable amendment that adequately addresses the concern about a plaintiff needing to establish the amounts of bills are reasonable with expert testimony at a Fast Trial, while still holding plaintiffs to their burden of proof, and preserving the rights of defendants in tort cases to require plaintiffs to prove their claims.

Judge Sakall urges this Court to further amend Rule 117(d) and have Rule 117 (d) mirror the arbitration rule regarding medical bills. Under the arbitration rules, medical bills are admissible "without further proof." Judge Sakall expresses concern that this Court's proposed revision, while not altering a plaintiff's burden of proof, does not relieve a plaintiff from the expense of having to call an expert to prove the amounts charged in medical bills to be reasonable. Judge Sakall proposes simply mirroring the arbitration rule to relieve plaintiffs from the burden and expense of calling an expert.

Candidly, members of the Pima County Superior Court bench are somewhat divided on this issue. As noted in both Judge Bergin's petition and Judge Sakall's comment, this is a topic that has generated debate in civil litigation, and not just in

relation to the FASTAR program. Petitioner and others on the Pima County Superior Court bench do not agree that plaintiffs should be permitted to admit any medical bill they wish to without being constrained by legal objections from opposing counsel. Trial judges should be permitted to consider legal objections to the admission of the bills.

Petitioner believes there are significant differences between trial and arbitration. If a Plaintiff chooses a Fast Trial or under the revised rules, should they be adopted, decides to appeal an arbitration award, normal procedures, rules and burdens should apply to that trial as they would in any other civil case. Petitioner has concerns about applying different standards simply because it is a lower value case that proceeds to trial.

Similarly, Petitioner does not believe one can rely on the low number of appeals from arbitration awards to conclude that the arbitration rule about the admissibility of medical bills should be applied to a trial setting. The limited number of appeals does not necessarily mean that the way arbitration handles the admissibility of medical bills is the best procedure protecting all interests. First, arbitration, while less expensive than trial, still causes costs to plaintiffs. Those costs increase if an award is appealed. These added costs may affect a party's decision to appeal an arbitration award. Second, appeals of arbitration awards also come with the risk of sanctions if the outcome at trial is not improved by 23 percent. This significant

sanction would be an additional reason a party may choose not to appeal. Finally, Petitioner does not believe it is accurate to assume that a jury would be as well-equipped as an arbitrator to evaluate the reasonableness of medical bills. Arbitrators have legal experience, although not necessarily in tort cases, and are arguably better equipped than jurors not trained in the law on how to evaluate reasonableness of bills.

The issue of medical bills and their admissibility is an issue that causes a variety of viewpoints and opinions. There are many reasonable opinions and outcomes that can be justified under the law and Arizona's procedural rules. Judge Sakall and Petitioner's differing views are just one example of the disagreements on the issue. While Petitioner has stated her opinion within this reply, Petitioner trusts this Court to consider the legal and procedural arguments surrounding this issue and enact a reasonable, fair, and workable amendment to Rule 117 (d) as it deems appropriate.

Conclusion.

To date, over 10,000 cases have been resolved through the FASTAR program. Disposition times have decreased in both the trial and alternative resolution tracks. 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 permanently adopt the FASTAR Rules in Pima County and modify the FASTAR Rules consistent with the modifications set forth in Attachment A of its August 22, 2024, order.

RESPECTFULLY SUBMITTED this ____ day of October 2024.