

1 Lisa M. Panahi, Bar No. 023421
2 General Counsel
3 State Bar of Arizona
4 4201 N. 24th Street, Suite 100
5 Phoenix, AZ 85016-6288
6 (602) 340-7236

**IN THE SUPREME COURT
STATE OF ARIZONA**

7 In the Matter of:

Supreme Court No. R-20-0012

8 **PETITION TO PERMANENTLY**
9 **ADOPT RULES FOR THE FAST**
10 **TRIAL AND ALTERNATIVE**
11 **RESOLUTION PROGRAM**
12 **(“FASTAR”)**

COMMENT OF
THE STATE BAR OF ARIZONA

13 Pursuant to Rule 28(e) of the Arizona Rules of Supreme Court, the State Bar
14 of Arizona (the “State Bar”) hereby submits the following as its comment to the
15 above-captioned Petition.

16 The State Bar of Arizona is encouraged by the progress of the FASTAR pilot
17 program in Pima County. Data from the program’s first two years indicates an
18 increase of jury trials with a significantly decreased time from case initiation to
19 disposition. This initial data indicates that the FASTAR program has promise to
20 achieve its objectives of increasing access to the jury trial system, while still
21 providing for efficient, streamlined resolution of lower-dollar cases.
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24 Because the FASTAR program has only been in effect for two full years,
25 however, the State Bar does not at this time endorse the proposed permanent

1 adoption of the FASTAR rules. Instead, the State Bar recommends that the Court
2 extend the current pilot program for an additional three years through an
3 administrative order. At the same time, the State Bar recommends that the Court
4 adopt the Petitioner’s other proposed modifications to the FASTAR rules (with one
5 proposed change, discussed below). Among other things, the Petitioners’ proposed
6 modifications would permit other counties to implement the FASTAR program,
7 which will provide valuable feedback that can be taken into account in formulating
8 a permanent set of FASTAR rules following the conclusion of the proposed extended
9 pilot program.
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13 **I. BACKGROUND**

14 In 2017, based on the recommendation of the Committee on Civil Justice
15 Reform, the Court established a “pilot program in Pima County under which
16 plaintiffs can opt for a short trial in court instead of compulsory arbitration.” *See*
17 *Admin. Order 2017-116 (Oct. 26, 2017)*. The pilot program, called the “Fast Trial
18 and Alternative Resolution Program” or “FASTAR,” was for three years and is
19 currently set to expire on October 31, 2020.
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22 Under the FASTAR rules, a plaintiff suing only for monetary damages and only
23 amounts less than \$50,000 may opt for either (1) a fast trial before a judge or jury or
24 (2) arbitration. Before the pilot program, such cases were subject to compulsory
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1 arbitration. Under the pilot program, the choice is plaintiff's to make. FASTAR
2 103. A party may appeal a final judgment from a FASTAR trial to the court of
3 appeals. FASTAR 118(d). If a plaintiff chooses arbitration via FASTAR's
4 "Alternative Resolution" rather than a trial, then the plaintiff may not appeal the
5 arbitrator's decision, but other parties may appeal to the superior court. FASTAR
6 126(a)(2). If appealed, the parties are entitled to a trial de novo on all issues
7 determined by the arbitrator. FASTAR 126(d).
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10 During the three-year pilot, the superior court and the Administrative Office of
11 Courts were required to monitor the program and submit an annual progress report.

12 *Id.* The first of three reports was issued on March 4, 2019, and is attached as **Exhibit**

13 **A.** The second report was issued on December 12, 2019, and is attached as **Exhibit**

14 **B.** Because the program is currently in its third year, the third report is not yet
15 available. The reports disclose that:
16

- 17 • plaintiffs chose the "Fast Trial" option in approximately 43%
18 of eligible cases in year 1 and in 40.2% of eligible cases in year
19 2;
- 20 • on average, a case's time to disposition shrunk from
21 approximately 8 months pre-FASTAR to approximately 5
22 months;
- 23 • there were 5 FASTAR trials during year 1 and 15 FASTAR
24 trials during year 2;
- 25 • there was 1 appeal from a FASTAR trial.

1 **Ex. B** at 3-4. The reports also note that there is a case pending before the Arizona
2 Supreme Court challenging the FASTAR program. **Ex. B** at 4; *see Duff v. Lee*, 246
3 Ariz. 418, 439 P.3d 1199 (App. 2019), *review granted Duff v. Lee*, Case No. CV-
4 19-0128-PR. Oral argument was held on February 18, 2020, but the case remains
5 under consideration by the Court (as of Apr. 24, 2020). Among other things, the
6 case challenges that the FASTAR program conflicts with A.R.S. § 12-133, which
7 states that the “superior court, by rule of court, shall . . . [r]equire arbitration” in
8 cases seeking monetary damages of less than certain threshold amounts.
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11 In both reports, “there are no recommendations now for changes to the
12 FASTAR program.” **Ex. B** at 4. The December 2019 report states that the “data
13 continues to be promising” due to the decrease in time to disposition, the significant
14 number of cases in the Fast Trial track, and the low rate of appeals.
15

16 17 **II. THE PETITION**

18 In Petition R-20-0012, the Presiding Judge of Pima County Superior Court
19 (Judge Kyle Bryson) asks the Court to permanently adopt the FASTAR rules, based
20 on Pima County’s positive experience with the pilot program. The Petitioner also
21 requests that the FASTAR rules be amended so that they are available for use in
22 every county’s superior court if the superior court decides to “establish[] a program
23 for a fast trial with an alternative resolution option.” Petition at 5. As Petitioner
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1 explains, “[t]his modification would allow any of Arizona’s 15 counties to establish
2 a permanent FASTAR program by local rule, administrative order, or policy.” *Id.*
3

4 In addition to making the rules permanent and allowing for expansion to other
5 counties, the Petition proposes various other substantive and non-substantive
6 amendments to the rules. *See* Petition at 5-18 (describing rules and proposed
7 changes).
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9 The Petition explains that the FASTAR program allows plaintiffs their day in
10 court but “eliminates the need for an expensive trial de novo following an arbitration,
11 provides trial experience for attorneys, and underscores the historic and cultural role
12 of juries in the American justice system.” Petition at 4.
13

14 **III. THE STATE BAR RECOMMENDS THAT THE PILOT PROGRAM**
15 **BE EXTENDED AND THAT PETITIONER’S PROPOSED**
16 **CHANGES BE IMPLEMENTED THROUGH ADMINISTRATIVE**
ORDER, RATHER THAN AS A PERMANENT RULE

17 **A. The Pilot Program Should Be Extended By Administrative Order**
18 **For An Additional Three-Year Period.**

19 The State Bar is supportive of the FASTAR program and its goals, and shares
20 in Petitioner’s view that the results so far are promising. This initial data shows that
21 the FASTAR program is achieving some of its objectives. The State Bar believes,
22 however, that it is premature to permanently adopt the program. Instead, the State
23 Bar recommends that the pilot program be extended for an additional three years,
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1 with certain modifications as proposed by Petitioner--including that the pilot
2 program be expanded to allow other counties to participate.

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4 The FASTAR pilot program still has nearly another year of its initial three years
5 of experience and data to gather -- but it will be a year with skewed data due to
6 pandemic limitations. The progress reports filed with the Arizona Judicial Council
7 for the program's first two years show promising but limited data concerning use of
8 court resources, case-type, litigant satisfaction, and other measurements of the
9 program's goals. The only information on litigant experience is "Anecdotal
10 Information" contained in the initial report to the Arizona Judicial Council (Exhibit
11 A), stating that "[c]omments from lawyers about the FASTAR system have been
12 split," and noting: (i) concerns from personal injury plaintiffs' lawyers about the
13 cost of securing the testimony of treating physicians; and (ii) concerns about a
14 plaintiff's inability to appeal an arbitrator's decision under the Alternative
15 Resolution Track. *See* Exhibit A, at pp. 3-4.¹

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19 It also appears from the available data that the use of the Fast Trial option has
20 not been selected as often in tort motor vehicle cases as in other types of cases, such
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24 ¹ This type of information may be forthcoming through the Comment process
25 from the Pima County Bar Association or other litigants who have participated in
the program.

1 as contract/debt collection cases. Statistics from Pima County show, for example,
2 that since the program's inception, approximately 73% of motor-vehicle tort case
3 plaintiffs have selected the Alternative Resolution option rather than the Fast Trial
4 option, compared with approximately 49% of contract cases, 50% of non-motor-
5 vehicle tort cases, and 19% of unclassified civil cases. Thus, the FASTAR program
6 is not currently appealing to a large category of litigants, i.e., those in low-dollar
7 value motor-vehicle tort cases, that it was intended to attract. This disparity suggests
8 that additional study is warranted to determine if other rule modifications should be
9 made to expand the use of the program in tort cases.
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13 Additionally, the State Bar is informed that Maricopa County is currently
14 evaluating implementation of the FASTAR program, and that other smaller counties
15 (Yuma and Yavapai) are also considering doing so. The State Bar urges the Court
16 to encourage other counties to implement the FASTAR pilot program because it
17 would be useful to gain additional information from the experience of counties both
18 larger and smaller than Pima County, before the FASTAR rules are adopted on a
19 permanent basis. For example, there is a concern that the program's increased
20 reliance on courts for trials may present unique challenges in a larger county such as
21 Maricopa. Additional data over a longer period of time would allow the Court and
22 stakeholders to better evaluate the benefits and costs of the program, including its
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1 feasibility in other counties with varying geographic realities and divisions of the
2 superior court. Thus, any extension of the pilot program as proposed by the State
3 Bar should include Petitioner's proposed modifications to the FASTAR rules to
4 permit other counties to participate. The Court also should continue to require
5 periodic reporting to the Arizona Judicial Council, from all jurisdictions
6 implementing the pilot program.
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9 Finally, the pending *Duff v. Lee* matter leaves the FASTAR program under a
10 cloud of uncertainty. That case should be resolved before the Court considers
11 permanent changes to the program.
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13 Taking all of the foregoing into account, the State Bar believes that extending
14 the pilot program for an additional three years will allow more flexibility to modify
15 the applicable rules to address gaps and other issues with the program's
16 implementation as its use expands to other counties. This is preferable to adopting
17 the rule permanently at this time, which would make it more difficult to adjust as
18 additional data and experience is gained.
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21 **B. Petitioner's Proposed Modifications Should be Adopted, With
22 One Proposed Change.**

23 The Petition proposes several modifications to existing FASTAR rules. With
24 one minor exception, the State Bar agrees that the proposed changes should be
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1 adopted, either as part of the extended pilot program as supported by the State Bar,
2 or in any permanent rule that the Court may adopt.

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4 The State Bar proposes one modification to Petitioner’s proposed changes, as
5 follows. Petitioner proposes adding a new section (d) to Rule 102, titled
6 “Exceptions,” which provides that: “If extraordinary case characteristics indicate
7 that an otherwise eligible case is not suitable for FASTAR, a party for good cause
8 shown may request the court under Civil Rule 26.2 to assign the case to a different
9 tier.” However, FASTAR eligibility is not expressly tied to Rule 26.2’s tiering
10 system. The objective of the Petition would be better served if a new section (d) to
11 Rule 102 instead read as follows: “If extraordinary case characteristics indicate that
12 an eligible case is not suitable for FASTAR, a party for good cause shown may
13 request the court to exclude the case from the FASTAR program and allow it to
14 proceed under the Arizona Rules of Civil Procedure applicable to non-FASTAR
15 cases.” This language more clearly implements the Petition’s stated intent of
16 providing a “safety valve” that allows the court to remove a case from the FASTAR
17 program.
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22 **C. If the Court Permanently Adopts the FASTAR Rules, It Should**
23 **Do So as Part of the Arizona Rules of Civil Procedure.**
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1 Finally, if the Court grants the Petition and adopts the FASTAR rules on a
2 permanent basis, it should do so through amendments to the Arizona Rules of Civil
3 Procedure rather than by administrative order. This approach would be similar to
4 that taken in Ariz. R. Civ. P. 8.1, which implements the commercial court program
5 and expressly provides that the rule only applies in those counties that have elected
6 to establish a commercial court. If the Court elects to permanently adopt the
7 FASTAR rules as part of the Arizona Rules of Civil Procedure, some additional
8 modifications would be needed to conform them with existing rules, including Rules
9 72 through 77 governing mandatory arbitration.
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12 **CONCLUSION**

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14 For the stated reasons, the State Bar recommends that the Court withhold
15 adoption of the FASTAR program at this time. It should, instead, extend and broaden
16 the pilot program for an additional three years to allow further study. Additionally,
17 whether or not the Court adopts the rules on a permanent basis, it should amend them
18 as proposed by Petitioner, with the one modification suggested by the State Bar in
19 this comment.
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22 **RESPECTFULLY SUBMITTED** this 1st day of May, 2020.

23 /s/ Lisa M. Panahi
24 Lisa M. Panahi
25 General Counsel

1 Electronic copy filed with the
2 Clerk of the Supreme Court of Arizona
3 this 1st day of May, 2020.

4 by: Patricia Seguin

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EXHIBIT A

March 4, 2019

Hon. Scott Bales, Chair
Arizona Judicial Council
1501 West Washington Street
Phoenix Arizona 85007

Re: First Progress Report to the AJC Regarding the FASTAR Pilot Program

Dear Chief Justice Bales:

Administrative Order No. 2017-116 established a “FASTAR” pilot program in the Superior Court of Arizona in Pima County. This is the first of three progress reports to the Arizona Judicial Council concerning the program.

1. Background. In December 2015, the Supreme Court directed the Committee on Civil Justice Reform to develop recommendations, including rule amendments and pilot projects, to reduce the cost and time of resolving civil cases in the Superior Court of Arizona.

The committee’s subsequent report discussed Arizona’s system of compulsory arbitration, which is currently used statewide for resolving civil cases involving relatively small amounts of money damages. The committee’s report noted drawbacks of that system. First, compulsory arbitration puts litigants before an arbitrator who may have significantly less knowledge than a judge about the substantive area of the case, have little or no experience in conducting an adversary proceeding, or lack the time and inclination to schedule an arbitration hearing. Moreover, a litigant who is dissatisfied with the arbitrator’s award has a right to appeal the award. The appeal is really a new trial in the superior court rather than a record-based appeal. To complicate matters, a party can present new evidence at the trial. Particularly in personal injury cases, a plaintiff who received a favorable arbitration award but a less favorable verdict at trial may wind up bearing the substantial cost of defense experts who were hired solely to testify at the retrial.

Furthermore, compulsory arbitration contributes to a phenomenon referred to as the “vanishing trial.” Arbitration diverts cases from juries, and this serves to undermine the historic constitutional and cultural roles of jury trials in our communities. Also, because arbitration hearings are customarily conducted outside the courthouse, arbitration decreases the exposure of young attorneys to the courtroom and the experience and competency that comes with courtroom trials.

2. **FASTAR.** Among its other proposals, the Committee on Civil Justice Reform recommended the establishment of a pilot program to reduce the cost and time of resolving smaller value cases, and secondarily, to enhance opportunities for courtroom trials. The committee's recommended pilot was titled "Fast Trial and Alternative Resolution Program," but it is usually referred to by its acronym, "FASTAR." The Arizona Judicial Council approved the committee's recommendation, and Supreme Court [Administrative Order No. 2017-116](#) thereafter authorized the FASTAR Pilot Program for Pima County. At the request of the presiding judge in Pima County, the Order lowered the jurisdictional limit for compulsory arbitration to \$1,000, effectively replacing compulsory arbitration in Pima County with FASTAR. The Order established a 3-year term for the pilot, from November 1, 2017 until October 31, 2020. It also adopted a set of rules and forms for use in the FASTAR program.

Under the FASTAR rules, cases that request only monetary damages not exceeding \$50,000 are eligible for the program. In lieu of filing a certificate of compulsory arbitration, as the Civil Rules currently require, FASTAR requires the plaintiff to certify whether the case is eligible for FASTAR. Within 20 days after the first filing by any defendant, the plaintiff must also file a "Choice Certificate." This certificate requires the plaintiff to choose either a "Fast Trial" or "Alternative Resolution."

Fast Trial track. If the plaintiff chooses a Fast Trial, the court will set a trial date (it can be either a bench or a jury trial) within 6 to 9 months after the filing date of the complaint. There are rules for expedited disclosure and discovery in the Fast Trial track. There are special provisions for depositions of medical providers to help contain the length of those depositions and limit the provider's hourly charge. These provisions also allow video recording of the medical provider's deposition by any unobtrusive and reliable device, and the introduction of the recording at trial. The length of trial is limited to two days. A final judgment after a fast trial is appealable to the Court of Appeals, as provided by law.

Alternative Resolution track. A plaintiff who chooses Alternative Resolution must (a) waive the right to a trial before a judge or a jury, and (b) waive the right to appeal an alternative resolution decision or award to the superior court or to an appellate court. A court-appointed arbitrator conducts the Alternative Resolution proceeding. The parties can agree to the arbitrator, or the court administrator can assign one. The court administrator also may keep a list of arbitrators with designated areas of expertise. Arbitrators must set a hearing date within 2 to 4 months after their appointment. The arbitration proceeding and the process for entry of an award correspond to current provisions in the Civil Rules for compulsory arbitration. Although a plaintiff who chooses Alternative Resolution waives the right to appeal the award, a defendant may appeal and, like compulsory arbitration, receive a new trial in the superior court.

3. Comparative Data.

Before implementation of FASTAR: In the Superior Court of Arizona in Pima County in 2015, civil filings included:

- 793 compulsory arbitration cases.
- 220 arbitration awards.
- 73 appeals requesting a trial *de novo* (this figure represents about 9% of the cases, and about 33% of the awards).

During compulsory arbitration (i.e. pre-FASTAR), the average time to case disposition was 8 months. However, in those cases in which there was an appeal from the compulsory arbitration award and a trial *de novo*, case resolution took up to 2 years. For the last full year of the compulsory arbitration system in Pima County, when any party could appeal the arbitration award, the court conducted 5 trials *de novo*.

After implementation of FASTAR: From November 1, 2017, to October 4, 2018, choice certificates were filed in 804 cases. In 455 cases (55.3%) the plaintiff chose the Alternative Resolution track. In 349 cases (44.7%), the plaintiff selected the Fast Trial.

The times to disposition are encouraging when compared with the compulsory arbitration system.

- For the Fast Trial track, the average time to case disposition was 154 days (about 5 months).
- For the Alternative Resolution track, the average time to case disposition was 140 days (less than 5 months).

The first FASTAR trial was conducted in June 2018. There have been 9 more FASTAR trials since then, for a total of 10 trials over a 9-month period.

There have been no appeals from the Fast Trial track to the Court of Appeals, or from the Alternative Resolution track to the superior court.

4. Anecdotal Information. Comments from jurors after Fast Trials, although limited, have been overwhelmingly positive. Surprisingly, jurors' main complaints were that "the trial took too long" and that "lawyers kept repeating things."

Comments from lawyers about the FASTAR system have been split. Many of them support the program, but a sizable number do not. Notwithstanding the special medical provider provisions described above, the most common complaint about the Fast Trial track, from plaintiffs' personal injury lawyers, concerns the cost and inconvenience of securing the testimony of treating physicians. The most common complaint about the

Alternative Resolution track revolves around a plaintiff's inability to appeal the arbitrator's decision.

5. **Other Information.** One plaintiff challenged aspects of the FASTAR system in a personal injury case filed in May 2018. The superior court overruled the challenge, and the plaintiff thereafter sought relief by special action in the Court of Appeals. Division Two heard oral argument in this case on February 20, 2019. As of the submission of this report, a final decision is still pending.

Pima County judges have been approached by judges in at least two other counties who have expressed interest in the FASTAR program. To date, the pilot program operates only in Pima County. However, Yavapai County has a somewhat comparable local program titled "Expedited Trial Process," or ETP.

6. **Conclusion.** There are no recommendations at this time for changes to the FASTAR program. And because the program is still relatively new, it is too soon to know whether the FASTAR program over a longer term will consistently result in speedier or less costly case resolution. However, the data in this regard appears promising, and other counties have shown interest in participating in the program.

Thank you for the opportunity to provide this report. We look forward to continuing the work to make the pilot program a success.

Respectfully submitted,

/s/ _____
Charles V. Harrington
Civil Presiding Judge
Superior Court of Arizona in Pima
County

/s/ _____
Mark Meltzer
Court Services Division
Administrative Office of the Courts

EXHIBIT B

December 12, 2019

Hon. Robert Brutinel, Chair
Arizona Judicial Council
1501 West Washington Street
Phoenix Arizona 85007

Re: Second Progress Report to the AJC Regarding the FASTAR Pilot

Dear Chief Justice Brutinel:

Administrative Order No. 2017-116 established a “FASTAR” pilot program in the Superior Court of Arizona in Pima County. This is the second of three progress reports to the Arizona Judicial Council concerning the program. The first progress report was dated March 4, 2019 and covered the first year of the pilot’s operation. This report provides an update on the pilot’s second year.

1. Background. We reiterate the background of the FASTAR pilot as it was described in the first progress report.

In December 2015, the Supreme Court directed the Committee on Civil Justice Reform to develop recommendations, including rule amendments and pilot projects, to reduce the cost and time of resolving civil cases in the Superior Court of Arizona.

The Committee’s subsequent report discussed Arizona’s system of compulsory arbitration, which is currently used statewide for resolving civil cases involving relatively small amounts of money damages. The committee’s report noted drawbacks of that system. First, compulsory arbitration puts litigants before an arbitrator who may have significantly less knowledge than a judge about the substantive area of the case, have little or no experience in conducting an adversary proceeding, or lack the time and inclination to schedule an arbitration hearing. Moreover, a litigant who is dissatisfied with the arbitrator’s award has a right to appeal the award. The appeal is really a new trial in the superior court rather than a record-based appeal. To complicate matters, a party can present new evidence at the trial. Particularly in personal injury cases, a plaintiff who received a favorable arbitration award but a less favorable verdict at trial may wind up bearing the substantial cost of defense experts who were hired solely to testify at the retrial.

Furthermore, compulsory arbitration contributes to a phenomenon referred to as the ‘vanishing trial.’ Arbitration diverts cases from juries, and this serves to

undermine the historic constitutional and cultural roles of jury trials in our communities. Also, because arbitration hearings are customarily conducted outside the courthouse, arbitration decreases the exposure of young attorneys to the courtroom and the experience and competency that comes with courtroom trials.

Among its other proposals, the Committee on Civil Justice Reform recommended the establishment of a pilot program to reduce the cost and time of resolving smaller value cases, and secondarily, to enhance opportunities for courtroom trials. The Committee's recommended pilot was titled 'Fast Trial and Alternative Resolution Program,' but it is usually referred to by its acronym, 'FASTAR.' The Arizona Judicial Council approved the Committee's recommendation, and Supreme Court [Administrative Order No. 2017-116](#) thereafter authorized the FASTAR Pilot Program for Pima County. At the request of the presiding judge in Pima County, the Order lowered the jurisdictional limit for compulsory arbitration to \$1,000, effectively replacing compulsory arbitration in Pima County with FASTAR. The Order established a 3-year term for the pilot, from November 1, 2017 until October 31, 2020. It also adopted a set of rules and forms for use in the FASTAR program.

Under the FASTAR rules, cases that request only monetary damages not exceeding \$50,000 are eligible for the program. In lieu of filing a certificate of compulsory arbitration, as the Civil Rules currently require, FASTAR requires the plaintiff to certify whether the case is eligible for FASTAR. Within 20 days after the first filing by any defendant, the plaintiff must also file a 'Choice Certificate.' This certificate requires the plaintiff to choose either a 'Fast Trial' or 'Alternative Resolution.'

Fast Trial track. If the plaintiff chooses a Fast Trial, the court will set a trial date (it can be either a bench or a jury trial) within 6 to 9 months after the filing date of the complaint. There are rules for expedited disclosure and discovery in the Fast Trial track. There are special provisions for depositions of medical providers to help contain the length of those depositions and limit the provider's hourly charge. These provisions also allow video recording of the medical provider's deposition by any unobtrusive and reliable device, and the introduction of the recording at trial. The length of trial is limited to two days. A final judgment after a fast trial is appealable to the Court of Appeals, as provided by law.

Alternative Resolution track. A plaintiff who chooses Alternative Resolution must (a) waive the right to a trial before a judge or a jury, and (b) waive the right to appeal an alternative resolution decision or award to the superior court or to an

appellate court. A court-appointed arbitrator conducts the Alternative Resolution proceeding. The parties can agree to the arbitrator, or the court administrator can assign one. The court administrator also may keep a list of arbitrators with designated areas of expertise. Arbitrators must set a hearing date within 2 to 4 months after their appointment. The arbitration proceeding and the process for entry of an award correspond to current provisions in the Civil Rules for compulsory arbitration. Although a plaintiff who chooses Alternative Resolution waives the right to appeal the award, a defendant may appeal and, like compulsory arbitration, receive a new trial in the superior court.

2. Comparative Data.

Before implementation of FASTAR: In the Superior Court of Arizona in Pima County in 2015, civil filings included:

- 793 compulsory arbitration cases.
- 220 arbitration awards.
- 73 appeals requesting a trial *de novo*. (This figure represents about 9% of the total number of compulsory arbitration cases, and about 33% of the awards.)

During compulsory arbitration (i.e. pre-FASTAR), the average time to case disposition was 8 months. However, in those cases in which there was an appeal from the compulsory arbitration award and a trial *de novo*, case resolution took up to 2 years. For the last full year of the compulsory arbitration system in Pima County, when any party could appeal the arbitration award, the court conducted 5 trials *de novo*.

FASTAR data: A table displaying FASTAR data for the first two years of the pilot is appended to this report. In summary, it shows as follows.

First year of FASTAR: From November 1, 2017, to October 31, 2018, choice certificates were filed in 967 cases. In 540 cases (55.8%) the plaintiff chose the Alternative Resolution track. By comparison, 414 cases (42.8%) were in the Fast Trial track. (In about 56% of these Fast Trial cases, the plaintiff chose Fast Trial; for the other 44%, cases were defaulted to the Fast Trial track, as the FASTAR rules provide, in the absence of a timely choice.)

- For cases in the Fast Trial track, the average time to case disposition was 160 days (about 5.3 months).
- For cases in the Alternative Resolution track, the average time to case disposition was 175 days (about 5.8 months).

There were 5 FASTAR trials during the first year. One case was appealed.

Second year of FASTAR: From November 1, 2018, to October 31, 2019, choice certificates were filed in 1,002 cases. In 586 cases (58.5%) the plaintiff chose the Alternative Resolution track. By comparison, 403 cases (40.2%) were in the Fast Trial track, including cases defaulted to that track in the absence of a timely choice.

- For cases in the Fast Trial track, the average time to case disposition was 143 days (about 4.7 months).
- For cases in the Alternative Resolution track, the average time to case disposition was 117 days (about 3.9 months).

There were 15 FASTAR trials during the second year. There were no appeals.

3. Other Information. One plaintiff challenged aspects of the FASTAR system in a personal injury case filed in May 2018. The superior court overruled the challenge, and the plaintiff thereafter sought relief by special action in the Court of Appeals. Division Two heard oral argument in this case on February 20, 2019 and on March 29, 2019, it filed an opinion accepting jurisdiction and essentially denying relief. The opinion concluded:

FASTAR and local rules governing [A.R.S.] § 12-133 arbitration limits are procedural matters subject to the supreme court's constitutional authority. We conclude the change in those limits and the implementation of FASTAR in Pima County were an appropriate exercise of that authority, effective November 1, 2017, as set forth in Administrative Order No. 2017-116. [Plaintiff's] case is subject to those provisions. Accordingly, we accept jurisdiction and deny relief, with the exception of affording [Plaintiff] the opportunity to file a FASTAR 'Choice Certificate,' electing a FASTAR short trial or binding alternative dispute resolution, within twenty days of this order.

The Plaintiff thereafter filed a petition for review in the Supreme Court. On November 19, 2019, the Court granted review and set the matter for oral argument.

Yuma County continues to express interest in implementing a FASTAR program. However, its program would require modification of its local rules and technical enhancements to its case management system, both of which are under review.

4. Conclusion. As with the first report, there are no recommendations now for changes to the FASTAR program. The data continues to be promising. For both FASTAR tracks, times to disposition are shorter than under the previous program of compulsory arbitration. A significant number of cases in the pilot program have proceeded in the Fast Trial track and have concluded with trials by jury, expanding the

use of this bedrock of the common law. Appeals in FASTAR cases are almost nil. Litigant satisfaction, although not scientifically measured, is anecdotally high.

We would like to express our gratitude to the Honorable Charles Harrington, who retired from the Superior Court of Arizona in Pima County at the end of October. Judge Harrington was a strong advocate for the FASTAR program. As a member of the Committee on Civil Justice Reform, he was instrumental in the program's conception and design. He then educated the local legal community regarding the program's operation and benefits, which garnered the community's support and laid the foundation for an effective pilot project.

We appreciate the opportunity to provide this report. We look forward to submitting our third report in late 2020.

Respectfully submitted,

/s/ _____
Jeffrey T. Bergin
Associate Presiding Judge
Superior Court of Arizona in Pima
County

/s/ _____
Mark Meltzer
Court Services Division
Administrative Office of the Courts

FASTAR Cases 11/1/17 – 10/31/19

	11/1/17 – 10/31/18	11/1/18 – 10/31/19
Total FASTAR Cases	2060	2334
Choice Certificates Filed	967	1002
Chose Alternative Resolution Track	540	586
Percentage of Alt. Res.	55.8%	58.5%
Chose Fast Trial Track	231	243
Defaulted to Fast Trial Track	183	160
Total Fast Trial Track cases	414	403
Percentage of Fast Trial Track	42.8%	40.2%
Change in Case track – no longer FASTAR	13	13
Percentage of Change in Track	1.3%	1.3%
Trials Held	5	15
Appealed to Appellate Court	1	0
Terminations for Lack of Service	474	405
Terminations for Lack of Prosecution	103	53

Time to Disposition		
Case Tracks	11/1/17 – 10/31/18	11/1/18 – 10/31/19
All FASTAR cases	148 days	111 days
Alternative Resolution	175 days	117 days
Alternative Resolution cases after Choice deadline *	195 days	125 days
Fast Trial Track	160 days	143 days
Fast Trial Track cases after Choice deadline*	175 days	139 days

*excludes Terminated cases for lack of service, lack of prosecution, dismissed, or transferred out