



*IMPACT OF THE FASTAR PILOT
PROGRAM ON CIVIL CASES IN THE
SUPERIOR COURT IN PIMA COUNTY*

Final Report

December 2019

Paula Hannaford-Agor, JD
Director, NCSC Civil Justice Initiative

TABLE OF CONTENTS

Introduction	1
Objectives and Design of the FASTAR Pilot Program	2
NCSC Evaluation	2
Findings from CMS Analyses.....	4
Findings from Attorney Survey	6
Respondent Characteristics.....	6
Knowledge and Awareness of FASTAR Pilot Program	7
Opinions about FASTAR Choice	8
Compliance with Discovery Rules.....	11
Open-Ended Comments	13
Conclusions and Recommendations.....	14
Acknowledgements	15
Appendix A: FASTAR PROGRAM EVALUATION ATTORNEY SURVEY	16

INTRODUCTION

In October 2016, the Arizona Committee on Civil Justice Reform (Committee) submitted its report to the Arizona Judicial Council with 15 recommendations to improve civil case processing related to case management, discovery, compulsory arbitration, and court operations. Many of the recommendations related to case management and discovery were adopted effective July 2018 as modifications to the Arizona Rules of Civil Procedure. Arizona has also implemented recommendations related to technology, especially extending eBench to all superior courts, allowing judges to access court files and draft minute entries and orders from the bench. Judicial training is ongoing, including efforts by the Arizona Judicial Education Center to migrate resources to a new platform that is expected to improve access.

Recommendation 12 of the Committee’s report focused on cases that are subject to compulsory arbitration under Rules 72 through 77 of the Arizona Rules of Civil Procedure. The Committee noted that the Arizona Judicial Branch has been a national leader in employing compulsory arbitration for lower-value cases,¹ which can resolve cases less expensively due to the need for less discovery and do not necessarily require live expert witness testimony.² The Committee also noted several concerns about compulsory arbitration, especially its diversion of cases away from jury trials and its impact on lawyers’ opportunities to acquire trial experience. They also cited concerns about the quality of decision-making by less experienced and knowledgeable arbitrators as compared to trial judges. Finally, they noted that the rules governing appeals from arbitration judgments may unfairly disadvantage plaintiffs due to requirement that plaintiffs must pay the defendant’s litigation costs unless the case outcome following an appeal exceeds the arbitration judgment by at least 23 percent.³ Many of these concerns were raised in the context of automobile tort cases.

To address the shortcomings of compulsory arbitration, the Committee recommended implementation of a pilot program in which parties could opt for a “short trial” instead of compulsory arbitration.⁴ Due to the volume of cases assigned to compulsory arbitration and the appeal rate from arbitration judgments, the Committee concluded that the Superior Court in Pima County was best positioned to undertake the pilot project. Based on the number of trials *de novo* conducted annually, the Committee members anticipated that a pilot project in Pima County would produce enough short trials to make informed judgments about the viability of a short trial program. They also anticipated that the program would reduce the number of retrials from arbitration awards, thus preserving court resources. The Supreme Court of Arizona adopted the Committee’s recommendation and approved experimental rules for implementation of the “Fast Trial and Alternative Resolution (FASTAR) Program for a three-year period effective November 1, 2017.”⁵

¹ Thirteen of Arizona’s 15 county superior courts have implemented compulsory arbitration for cases ranging from \$1,000 in La Paz County to \$50,000 in Cochise, Coconino, Graham, Maricopa, Mohave, and Pima Counties.

² COMMITTEE ON CIVIL JUSTICE REFORM, A CALL TO REFORM: REPORT TO THE ARIZONA JUDICIAL COUNCIL 18 (Oct. 2016).

³ ARIZ. R. CIV. PROC. Rule 77(h).

⁴ Both Maricopa and Pima County have experimented with “short trials,” which are streamlined bench or jury trials before a 4-person or 6-person jury. PAULA HANNAFORD-AGOR et al., SHORT, SUMMARY & EXPEDITED: THE EVOLUTION OF CIVIL JURY TRIALS 26-32 (NCSC 2012).

⁵ ARIZ. S. CT., In the Matter of Implementation of the Fast Trial and Alternative Resolution (FASTAR) Pilot Program in Pima County, Admin. Order 2017-116 (Oct. 26, 2017).

OBJECTIVES AND DESIGN OF THE FASTAR PILOT PROGRAM

The FASTAR Pilot Program was designed to address the shortcomings of compulsory arbitration that had been identified by the Committee, especially for automobile tort cases. Specifically, it was intended to provide an opportunity for parties in cases that were otherwise eligible for compulsory arbitration (e.g., monetary damages only up to \$50,000) to choose to resolve the case by bench or jury trial without first incurring the time and costs associated with arbitration. In fact, the program was designed to flip the presumption of compulsory arbitration for these cases by requiring the plaintiff to affirmatively choose “Alternative Resolution” (arbitration) if that was the preferred method of case resolution. If a plaintiff failed to select Alternative Resolution, the case would be assigned to the Fast Trial track by default. Only the plaintiff can exercise the choice of proceeding by Fast Trial or Alternative Resolution.⁶ To relieve plaintiffs’ concerns about cost-shifting, the program also prohibited offers of judgments for short trials.⁷ The program was expected to increase the number of trials, thus providing opportunities for lawyers to obtain trial experience and reducing the number of trials *de novo* from arbitration.

The FASTAR Pilot Project established an expedited timeframe for initiating the case, conducting discovery, and resolving the case by Fast Trial or Alternative Resolution. Compared to the 90-day timeframe to serve the defendant with the summons and complaint under Arizona Civil Procedure Rule 4(i), the experimental rules governing the FASTAR Pilot Program require the plaintiff to serve the defendant within 60 days and must choose whether to proceed by Fast Trial or Alternative Resolution within 20 days of the defendant’s first responsive filing.⁸ If proceeding by Fast Trial, all fact discovery must be completed within 120 days after the first answer or 190 days after filing, whichever is sooner.⁹ A trial date must be scheduled within 270 days of filing.¹⁰ If the plaintiff opts for a jury trial, the parties may stipulate to a 6-person jury with a 5/6 verdict decision rule (compared to an 8-person jury with a 6/8 verdict decision rule). Trials may be up to 2 days in length and jury verdicts in excess of \$50,000 must be entered as the judgment. If the plaintiff chooses Alternative Resolution, the court must assign an arbitrator (arbitrator) within 30 days of the answer and the arbitrator must schedule the alternative resolution hearing within 120 days of assignment.¹¹

Either party may appeal a jury verdict or judgment from a bench trial to the Court of Appeals. The defendant, but not the plaintiff, may appeal the arbitrator’s judgment within 20 days of the award decision.

NCSC EVALUATION

The FASTAR Pilot Program is consistent with Recommendation 4 of the CCJ Civil Justice Initiative recommendations, which describes a streamlined process for cases that present uncomplicated facts and legal issues.¹² To assess the effectiveness of the FASTAR Pilot Program in achieving its objectives, the Arizona Administrative Office of the Courts (AOC) requested technical assistance from the National Center for State Courts

⁶ *Id.*

⁷ EXPERIMENTAL RULES FOR THE FAST TRIAL AND ALTERNATIVE RESOLUTION PROGRAM [*hereinafter* FASTAR RULES] Rule 109.

⁸ *Id.* Rules 103-104,

⁹ *Id.* Rule 112(c). The timeframe for completing discovery and the allowable scope of discovery for cases assigned to the Fast Trial track are the same as for Tier 1 cases under the Arizona Civil Procedure Rule 26.2(f).

¹⁰ *Id.* Rule 111(b).

¹¹ *Id.* Rules 120(e) and 122(b).

¹² CCJ CIVIL JUSTICE IMPROVEMENTS COMMITTEE, CALL TO ACTION: ACHIEVING CIVIL JUSTICE FOR ALL 21 (NCSC 2016) [*hereinafter* CALL TO ACTION].

(NCSC) through its Civil Justice Initiative (CJI) Implementation Plan.¹³ The NCSC collaborated with the AOC and court leadership in the Superior Court in Pima County to design a multi-component approach to document the impact of the FASTAR Pilot Program on case characteristics and outcomes and on attorney satisfaction. The evaluation framework specifically focused on the frequency with which plaintiffs affirmatively chose the Fast Trial or Alternative Resolution options, respectively; the proportion of cases that resolved by bench or jury trial in the Fast Trial track; and the level of support expressed by lawyers for the FASTAR Pilot Program.

To conduct the evaluation, the NCSC examined 1,505 FASTAR cases disposed from October 5, 2017 through September 30, 2019 (FASTAR sample) and compared case outcomes to case outcomes disposed before implementation of the pilot program (baseline). Table 1 shows the data elements included in the FASTAR sample dataset. The original dataset included some duplicate cases reflecting dispositions for individual parties. The cleaned dataset used for analysis reflects the disposition that fully closed the case. The FASTAR choice data element indicated that 25 cases had changed the FASTAR choice during the litigation. The NCSC used the Case Look Up function on the Superior Court in Pima County website to identify the FASTAR Choice in effect at the time of final disposition.

TABLE 1: CMS DATA ELEMENTS EXTRACTED FOR FASTAR EVALUATION

Case number
Case name
Case type (contract, tort, real property, other civil)
Filing date
Disposition date
Disposition type (dismissed, settlement default, judgment, other disposition)
FASTAR Choice (Fast Trial, Alternative Disposition, default Fast Trial)

Half of the FASTAR sample (52.8%) consisted of contract cases, a majority of which were consumer debt collection cases (54.4%). The remaining cases included tort cases (45.0%), most of which were automobile tort cases (40.4%); unclassified civil cases (2.2%); and two real property cases (<0.1%). The most frequent type of case disposition was dismissal due to settlement (38%), followed by an adjudicatory judgment, such as trial, arbitration, or summary judgment (20%); dismissal for failure to serve or failure to prosecute (19%); default judgment (13%); or other disposition (11%). Eight cases disposed by jury trial and six cases by bench trial.

The NCSC also developed a survey to document attorney perceptions of the FASTAR Pilot Program. The survey was designed to document attorney opinions in general and in the context of a disposed case in which each attorney appeared as counsel of record. At the time that the survey was developed, a total of 605 unique FASTAR cases had been full disposed. Because many attorneys appeared as counsel in multiple cases in the dataset, the NCSC was able to identify 243 unique attorneys associated with those cases. To reduce the burden of responding to more than one survey, the NCSC selected one case per attorney. To the extent possible, the NCSC selected cases that

¹³ The CJI Implementation Plan is a cooperative effort by the NCSC and IAALS (Institute for the Advancement of the American Legal System), with financial support by the State Justice to assist state courts in implementing recommendations of the CCJ Civil Justice Improvements Committee through educational programs, technical assistance, and the development of tools and resources.

disposed by settlement, judgment, or trial, so that attorneys would be able to comment on their experience in cases in which the FASTAR rules and procedures could have had some meaningful impact. The survey was distributed from July 23 to August 5, 2019 to attorneys identified as counsel of record in at least one FASTAR case disposed by June 30, 2019. The survey is attached as Appendix A. A total of 29 attorneys responded to the survey (11.9% response rate).¹⁴ Their responses reflect their perceptions about the FASTAR Pilot Program in 29 unique cases – that is, none of the attorneys provided responses about the same case.

FINDINGS FROM CMS ANALYSES

A FASTAR Certificate indicating that the case was eligible for the FASTAR Pilot Program was filed in 98% of the FASTAR sample cases. In the remaining 2% of cases, the case disposed before a FASTAR Certificate could be filed or the case was removed from the FASTAR Pilot Program following a challenge to its eligibility. Based on the FASTAR tracks selected by the parties, arbitration remains the preferred process for cases valued less than \$50,000. In more than half of the cases (56%), the plaintiff chose Alternative Resolution compared to only 26% for the Fast Trial track. The remaining 18% defaulted into the Fast Trial track after failing to timely file a FASTAR Choice Certificate.

The choice of FASTAR track differed significantly based on case type, however. Parties in tort cases were more likely to opt for Alternative Resolution (66%) compared to parties in contract (48%) or other civil (17%) cases.¹⁵ The high rate of Alternative Resolution in tort cases was due primarily to the overwhelming preference by parties in automobile tort cases (70%) compared to other types of tort cases (25%).¹⁶ The preference for Alternative Resolution in automobile tort cases is particularly striking given that the FASTAR pilot program was specially designed to address complaints about compulsory arbitration in these cases.

The manner of disposition also varied by FASTAR choice. Table 2 breaks down the manner of disposition by FASTAR choice.¹⁷ Settlement was the most common disposition across all three FASTAR tracks, accounting for more than half (53.8%) of all case dispositions. Cases assigned to the Alternative Disposition track and that defaulted to the Fast Trial track were significantly more likely to settle than cases in which the plaintiff affirmatively chose the Fast Trial track.¹⁸ In contrast, compared to cases assigned to the Alternative Resolution track, cases assigned to the Fast Trial and default to Fast Trial tracks were significantly more likely to dispose through non-trial adjudicatory process, usually summary judgment.¹⁹ Cases that defaulted to the Fast Trial track were significantly less likely to dispose by default judgment.²⁰ There was no significant difference in the trial rate between cases that selected the Fast Trial track and cases that default to the Fast Trial track.

¹⁴ The NCSC requested that the Superior Court in Pima County send a reminder notice to attorneys from the original email distribution list to boost the response rate, but this was not ultimately done.

¹⁵ $F=30.430$ ($df=3$), $p<0.001$.

¹⁶ Non-automobile tort cases included cases alleging medical and professional malpractice, negligence, personal injury, property damage, and defamation cases.

¹⁷ Table 2 omits cases that were dismissed for failure to serve, dismissed for failure to prosecute, and other non-meritorious dispositions.

¹⁸ $F=9.644$ ($df=2$), $p<0.001$.

¹⁹ $F=13.396$ ($df=2$), $p<0.001$.

²⁰ $F=13.213$ ($df=2$), $p<0.001$.

TABLE 2: MANNER OF DISPOSITION BY FASTAR CHOICE

	Alternative Disposition (n=545)	Fast Trial (n=240)	Default Fast Trial (n=253)	Total (n=1,038)
Default Judgment	24.0%	21.3%	4.0%	18.1%
Settlement	55.8%	41.3%	59.3%	53.8%
Judgment	20.2%	34.6%	34.0%	26.7%
Trial	n/a	2.9%	2.8%	2.9%

On average, the time from filing to disposition was 193 days, but this varied considerably based on the manner of disposition. Cases in which a default judgment was entered had the fastest time to disposition at 155 days, followed by cases disposed by non-trial adjudicatory judgment (189 days), settlement (206 days) and bench or jury trial (256 days). Within each FASTAR track, however, the time to disposition differed for each disposition type, and in different directions. See Table 3. For example, the difference in time to disposition for default judgments was significant across all three FASTAR tracks, ranging from 150 days for Alternative Resolution cases to 194 days for cases that default to the Fast Trial track.²¹ For both settlements and non-trial adjudicatory judgments, however, cases assigned to Alternative Resolution took longer to resolve than either the Fast Trial or default to Fast Trial cases. This was a marginally significant difference for settlements²² and a significant difference for non-trial adjudicatory judgments.²³

TABLE 3: TIME TO DISPOSITION (DAYS) BY FASTAR CHOICE

	Alternative Disposition (n=545)	Fast Trial (n=240)	Default Fast Trial (n=253)	Total (n=1,038)
Default Judgment	150	161	194	155
Settlement	215	190	207	206
Judgment	229	139	183	189
Trial	n/a	260	252	256

²¹ F=3.069 (df=2), p=0.049.

²² F=2.358 (df=2), p=0.096.

²³ F=31.545 (df=2), p<0.001.

FINDINGS FROM ATTORNEY SURVEY

The attorney survey design included six parts. The first part requested that each respondent confirm factual information about a specific case in which the attorney appeared as counsel of record. It then asked background information about the respondents and their legal practice (length of time as licensed attorney, law firm size and practice specialties). The third part focused on respondents' knowledge and awareness about the FASTAR Pilot Program, especially the implementation process involving education about the pilot program rules and procedures for the local legal community. The fourth part explored plaintiffs' reasons for choosing the FASTAR track for the selected case or defendants' reactions to the case being assigned to that track. The fifth part requested information about the scope of discovery undertaken in the case and whether the FASTAR rules governing discovery provided each side with sufficient information with which to represent their clients. The last part asked respondents whose cases disposed by bench or jury trial or by arbitration judgment about their experience with those procedures under the FASTAR rules. For the last part, however, only two respondents' cases disposed by trial or arbitration, which are too few for reliable analysis and are omitted from this report.

RESPONDENT CHARACTERISTICS

The survey response rate was 11.9%, which is low but not atypical of external surveys.²⁴ The respondents, however, did not closely mirror the expected demographics and case experiences and thus may not necessarily reflect attorney attitudes and opinions about the FASTAR pilot program.²⁵ For example, attorneys representing plaintiffs responded at higher rates (14%) than attorneys representing defendants (9%). Nearly two-thirds of respondents (65%) were attorneys of record in tort cases, primarily non-death personal injury and property damage, which is significantly higher than the proportion of tort cases in the FASTAR Pilot Program. Respondents also differed in their FASTAR track choices with 41% choosing Fast Trial compared to 26% of cases overall; 38% chose Alternative resolution compared to 56% overall; and 21% defaulted into the Fast Trial track compared to 18% overall. These differences may indicate self-selection bias, including stronger opinions about the FASTAR Pilot Program, that prompted them to respond to the attorney survey. This possibility should be taken into account when interpreting the survey findings.

²⁴ External survey response rates typically range from 10 to 15 percent. Andrea Fryrear, *Survey Tips: What's a Good Survey Response Rate?* (July 27, 2015), available at <https://www.surveygizmo.com/resources/blog/survey-response-rates/>.

²⁵ More than three-quarters of the respondents (76%) had 10 or more years of litigation experience, and two-thirds (66%) were solo practitioners or worked in smaller law firms (2 to 5 attorneys). Most (79%) of respondents focused their legal practices on one or two areas of law. Auto tort and premises liability practices were the two dominant practice areas, accounting for nearly half (45%) of respondents. Other practice areas identified by respondents included debt collection (28%), employment law (17%), malpractice (17%) and landlord/tenant (13%).

KNOWLEDGE AND AWARENESS OF FASTAR PILOT PROGRAM

Survey respondents were asked to indicate their level of agreement on a scale of 1 (strongly agree) to 7 (strongly disagree) with a series of statements about the FASTAR Pilot Program and its implementation in the Superior Court in Pima County.

TABLE 4: STATEMENTS CONCERNING KNOWLEDGE AND AWARENESS OF FASTAR PILOT PROGRAM

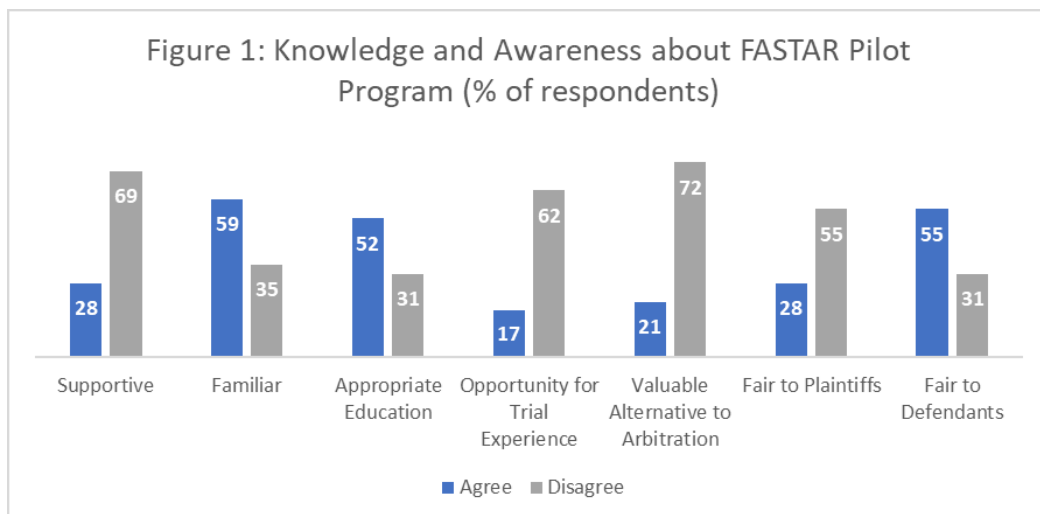
I am supportive of the FASTAR Pilot Program.
I was familiar with the FASTAR rules before filing this case.
The court took appropriate states to educate local attorneys about the FASTAR Pilot Program.
The FASTAR Pilot Program provides attorneys with valuable opportunities to gain jury trial experience.
The FASTAR Pilot Program is a valuable alternative to compulsory arbitration.
The FASTAR Rules are fair to plaintiffs.
The FASTAR Rules are fair to defendants.

Figure 1 displays the level of overall agreement (score 1 to 3) and disagreement (score 5 to 7) for each of the seven statements; neutral responses are excluded. The respondents reported that they were familiar with the FASTAR rules before its implementation and that court efforts to educate the local bar about the FASTAR Pilot Program were appropriate.²⁶ But they were generally not supportive of FASTAR either as an opportunity for lawyers to gain trial experience or as a valuable alternative to compulsory arbitration. Their responses also indicated a perception that the FASTAR rules were fair to defendants, but unfair to plaintiffs. Plaintiff lawyers were marginally more likely than defendant lawyers to be unsupportive of FASTAR²⁷ and significantly more likely to view the FASTAR rules as unfair.²⁸

²⁶ Plaintiffs were significantly more likely to disagree that the court provided appropriate education about the FASTAR rules. Plaintiff=4.29, Defendant=2.75, F=4.449 (df=1), p=0.044.

²⁷ Plaintiff=5.82, Defendant=4.33, F=3.371 (df=1), p=0.077.

²⁸ Plaintiff=6.06, Defendant=3.67, F=15.178 (df=1), p<0.001. There was no significant difference between plaintiff and defendant attorneys about whether the FASTAR rules were fair to defendants.



There were a number of statistically significant, and logically consistent, correlations between respondents' responses to statements concerning their knowledge and awareness of the FASTAR Pilot Program. For example, respondents' overall support for the program was directly related to their assessment of the court's efforts to educate the local bar,²⁹ whether they viewed the program as a useful opportunity for trial experience³⁰ or a valuable alternative to compulsory arbitration,³¹ and their assessment of the fairness of the FASTAR rules to plaintiffs.³² Respondents' familiarity with the FASTAR rules was directly related to their assessment of the court's education efforts,³³ which in turn was directly related to their assessment of the fairness of the FASTAR rules to plaintiffs.³⁴ Finally, their opinions about the value of the FASTAR Pilot Program as an opportunity for trial experience³⁵ and as an alternative to compulsory arbitration³⁶ were directly related to their assessments of the fairness of the FASTAR rules to plaintiffs. The consistency among these correlations suggests that respondents understood the statements and their applicability to the case, and their responses to opinion statements were intentional, not random. Interestingly, however, there was no correlation between plaintiffs' knowledge, awareness, or opinions about the FASTAR Pilot Program and their selection of the FASTAR track for their cases.

OPINIONS ABOUT FASTAR CHOICE

The survey next asked respondents which FASTAR track they selected or were assigned. Based on the response and the disposition type for their case, they were presented with a series of statements about the assigned track and asked to indicate their level of agreement or disagreements. Figures 2, 3, and 4 show agreement and

²⁹ Pearson correlation statistic=0.403, $p=0.030$.

³⁰ Pearson correlation statistic=0.802, $p<.001$.

³¹ Pearson correlation statistic=0.859, $p<.001$.

³² Pearson correlation statistic=0.802, $p<.001$.

³³ Pearson correlation statistic=0.387, $p=.038$

³⁴ Pearson correlation statistic=0.475, $p=.009$

³⁵ Pearson correlation statistics=0.618, $p<.001$

³⁶ Pearson correlation statistic=0.642, $p<.001$

disagreement rates for statements related to the Fast Trial, Alternative Resolution, and Default to Fast Trial tracks, respectively.

TABLE 5: SURVEY STATEMENTS CONCERNING FASTAR CHOICE

FAST TRIAL

- The Fast Trial option offered a faster resolution than Alternative Resolution.
- The Fast Trial option offered a less expensive resolution than Alternative Resolution.
- The Fast Trial option offered a fairer resolution than Alternative Resolution.
- The Fast Trial option offered a more predicable resolution than Alternative Resolution.
- I wanted an opportunity to gain [jury] trial experience.
- I have more confidence in the [jury/judge]'s decision-making skills than an arbitrator's.
- My client wanted a [jury/bench] trial.

Defendant only:

- I would have preferred Alternative Resolution for this case.
- I expected to settle this case, so there was no meaningful difference between the Fast Trial and Alternative Resolution Options.

ALTERNATIVE RESOLUTION

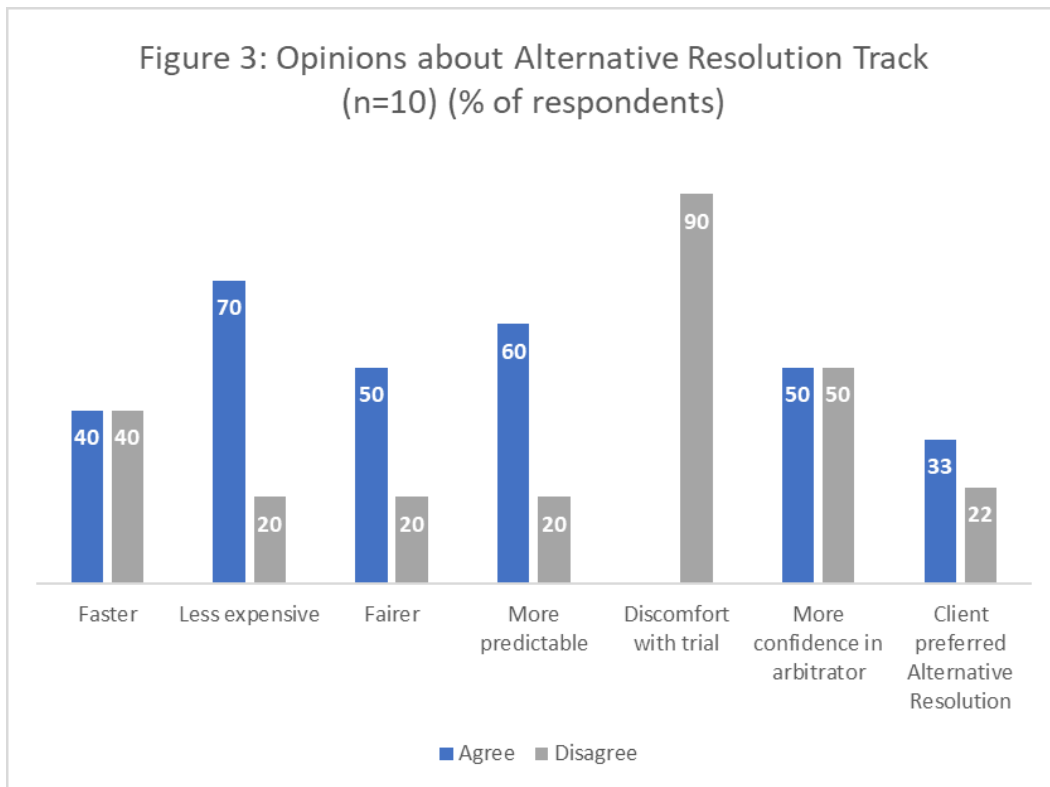
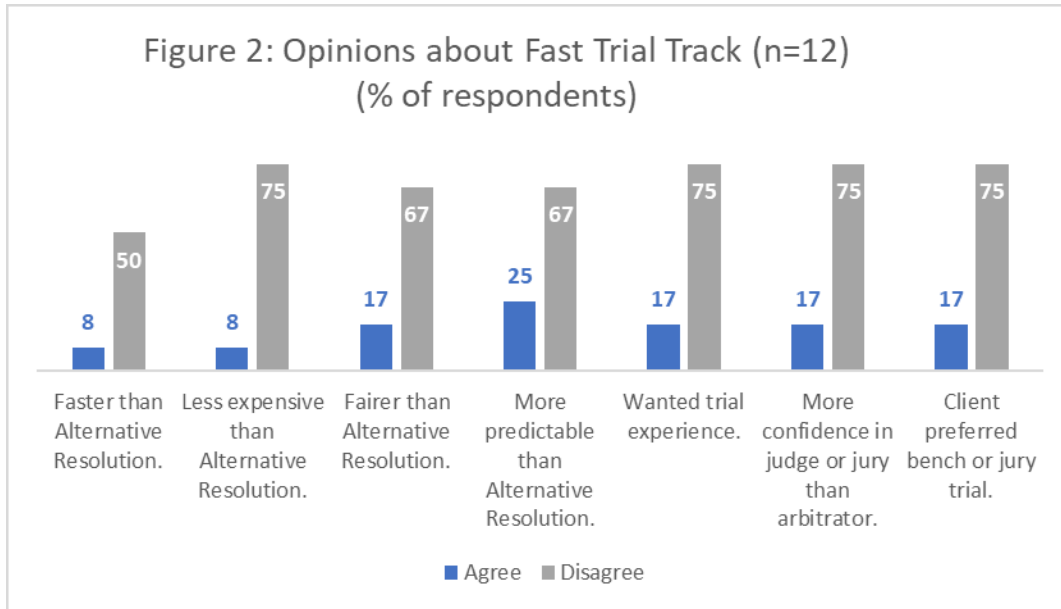
- Alternative Resolution option offered a faster resolution than a bench or jury trial.
- Alternative Resolution option offered a less expensive resolution than a bench or jury trial.
- Alternative Resolution option offered a fairer resolution than a bench or jury trial.
- Alternative Resolution option offered a more predicable resolution than a bench or jury trial.
- I am uncomfortable trying this case to a jury.
- I have more confidence in the arbitrator's decision-making skills than a judge's or jury's.
- My client wanted Alternative Resolution.

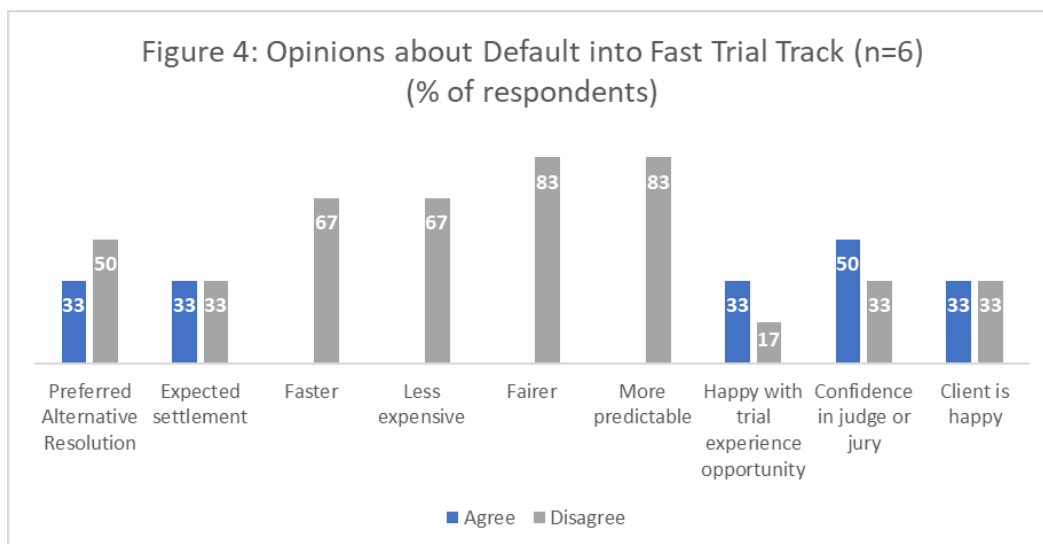
Defendant only:

- I would have preferred Fast Trial for this case.
- I expected to settle this case, so there was no meaningful difference between the Fast Trial and Alternative Resolution Options.

DEFAULT INTO FAST TRIAL

- I would have preferred Alternative Resolution for this case.
- I expected to settle this case, so there was no meaningful difference in the options.
- The Fast Trial option offered a faster resolution than Alternative Resolution.
- The Fast Trial option offered a less expensive resolution than Alternative Resolution.
- The Fast Trial option offered a fairer resolution than Alternative Resolution.
- The Fast Trial option offered a more predicable resolution than Alternative Resolution.
- I am happy that I have an opportunity to gain [jury] trial experience.
- I have confidence in jurors' decision-making.
- My client is happy about having a [jury/bench] trial.





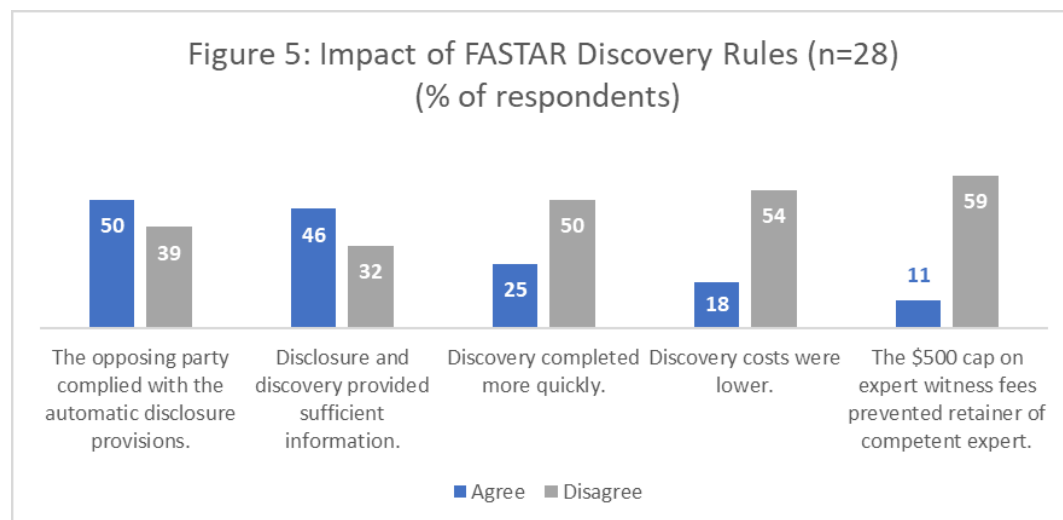
Perhaps the most striking observation about the responses to these statements is that lawyers whose cases were assigned to Fast Trial by plaintiff choice overwhelmingly disagreed with statements that Fast Trial was the preferred option on substantive grounds. In fact, five plaintiffs (out of 17) also described other reasons for choosing the Fast Trial track in an open-ended question, three of which commented that the FASTAR Rule prohibiting plaintiff appeals *de novo* from alternative resolution was their primary reason for choosing the Fast Trial track. In contrast, the majority of attorneys whose cases were assigned to Alternative Resolution reported that option as less expensive, fairer and more predictable than trial (but not faster than trial). There were only 6 attorneys in cases that defaulted into Fast Trial track, but their opinions were similar to those of attorneys in the Alternative Resolution track.

COMPLIANCE WITH DISCOVERY RULES

The rules governing discovery in the FASTAR Pilot Program conform to those enacted for Tier 1 cases filed in the superior courts. Survey respondents were asked to report the amount of discovery that was conducted by each party to assess the degree that parties were complying with the new rules. They were also asked their opinions about the impact of the new rules on their ability to manage cases effectively. Table 4 shows the proportion of cases in which the scope of discovery by the plaintiff and defendant complied with the FASTAR Rules. Overall compliance was fairly high, but plaintiffs on average were more compliant (95.2% compliant) than defendants (87.0% compliant).

TABLE 6: COMPLIANCE WITH FASTAR DISCOVERY RULES			
	FASTAR Rules	Plaintiff	Defendant
Number of fact witnesses		2.55	1.15
Percent compliance with ...			
Interrogatories	5	92.3	77.8
Requests for production	5	96.2	92.6
Requests for admission	10	96.2	88.9
Number of Rule 35 examinations	1	n/a	n/a
Percent compliance with ...			
Deposition time	2 per witness	96.2	88.5
Number of expert witnesses		0.66	n/a
Number of hours for expert depositions	1 per witness	100	n/a

Figure 5 shows respondents' agreement and disagreement with the statements concerning the impact of the FASTAR discovery rules. Respondents were more likely to agree than to disagree that the opposing party complied with automatic disclosure requirements and that the FASTAR rules provided sufficient information on which to assess claims and defenses. Respondents also disagreed that the \$500 cap on the hourly fee for expert witnesses impaired their ability to retain competent expert witnesses. However, they were less likely to agree that discovery was completed more quickly or less expensively due to the new rules.³⁷ These responses did not differ based on which side the attorney represented in the case.



³⁷ Assessments about the impact of the FASTAR discovery rules on time and expense were similar to those of attorneys in Utah regarding the impact of revisions to Rule 26 and in Texas regarding the impact of implementation of the Expedited Actions Rules and may reflect how little discovery actually takes place in contemporary civil litigation. PAULA HANNAFORD-AGOR & CYNTHIA G. LEE, UTAH: IMPACT OF THE REVISIONS TO RULE 26 ON DISCOVERY PRACTICE IN THE UTAH DISTRICT COURTS 36-37 (April 2015); PAULA HANNAFORD-AGOR & SCOTT GRAVES, TEXAS: IMPACT OF THE EXPEDITED ACTIONS RULES ON THE TEXAS COUNTY COURT AT LAW 26-27 (September 1, 2016).

OPEN-ENDED COMMENTS

Twenty-four attorneys responded to the invitation to comment on the FASTAR Pilot Program, more than half of which were generally negative. Six attorneys complained that the timelines for completing various stages of litigation are unrealistically fast, especially the 60-day period for service of process. Two respondents said that the FASTAR program is unnecessary given that Arizona has implemented the new tiered system for civil cases. One attorney opined that “FASTAR is a solution looking for a problem” given the success of compulsory arbitration and another disputed the assumption that trials produce higher quality decisions than arbitration. Four of the comments were generally positive, especially about the limitations on the scope of discovery and the expedited timeframes, the cap on expert witness fees, and the opportunity for more trial experience. The remaining comments were neutral, mostly providing additional details about their cases.

CONCLUSIONS AND RECOMMENDATIONS

The FASTAR Pilot Program was implemented with the intent to address perceived shortcomings in Arizona's approach to compulsory arbitration for lower-value cases (e.g., less than \$50,000) concerning procedural barriers to parties' right to have cases resolved by bench or jury trial and the impact of cost-shifting rules for appeals from compulsory arbitration in the superior courts. The expectation was that the FASTAR Pilot Program would increase the number of trials, thus providing opportunities for lawyers to obtain trial experience and reducing the number of trials *de novo* from arbitration.

In some respects, these expectations were realized. In more than one-quarter of FASTAR cases disposed between November 1, 2017 and September 30, 2019, plaintiffs expressly opted for the Fast Trial track. Cases that either selected or defaulted into Fast Trial were significantly less likely to settle than cases in Alternative Resolution. Moreover, the trial rate for cases that either selected or defaulted into Fast Trial was nearly 2.9 percent. In contrast, the trial rate for civil cases terminated in the Superior Court in Pima County in FY 2017 was 1.7 percent.³⁸ Remarkably, the ratio of bench to jury trials in FASTAR (4:3) was identical to that for civil trial commenced in FY 2017. Attorneys that opted for Fast Trial do have the opportunity to obtain trial experience and they are taking advantage of that opportunity. Based on average time to disposition, FASTAR cases in all tracks appear to be resolving within the allotted timeframes.

Responses to the attorney surveys, however, painted a less positive picture of the FASTAR Pilot Program and the adequacy of its solutions to problems associated with compulsory arbitration. There was a consistent and strong consensus that the FASTAR Rules are unfair to plaintiffs. Especially troubling were responses from attorneys that affirmatively selected the Fast Trial track that suggested that they did so not to take advantage of trial opportunities, but instead to avoid the prohibition on appeals from the Alternative Resolution track. Another major complaint from plaintiffs was the expedited timeframe, especially for completing service on the defendant.

The response rate for the attorney survey was only 11.9%, so it is possible that the attorneys' views do not accurately reflect the views of most practitioners, but only those of attorneys who strongly dislike the FASTAR Pilot Program compared to compulsory arbitration. Nevertheless, assessments for the Fast Trial versus Alternative Resolution overwhelmingly favored the latter. If so, one obvious conclusion about the FASTAR Pilot Program is that although it created an alternative to compulsory arbitration, it did not satisfactorily address one of the primary complaints of compulsory arbitration – namely, that cost-shifting provisions for appeals from arbitration disadvantage plaintiffs. Perhaps a more productive approach would have been to directly address plaintiffs' complaints about compulsory arbitration either by eliminating the cost-shifting provisions or at least by reducing the threshold over which plaintiffs must improve case outcomes.

Finally, it is important to note that the new rules of civil procedure in Arizona already provide a streamlined process and reduced discovery for cases valued less than \$50,000. Reports about the amount of discovery undertaken in FASTAR cases suggests that compliance with these rules is relatively high and attorneys do not appear to struggle to meet case deadlines. Aligning case management deadlines for FASTAR cases with those for Tier 1 cases would reduce the potential for confusion and inadvertent error.

³⁸ ARIZONA ANNUAL DATA AND ACTIVITY REPORT, SUPERIOR COURT CASE ACTIVITY, PIMA COUNTY 41-43 (FY 2017)

ACKNOWLEDGEMENTS

The NCSC undertook this evaluation in cooperation with the Arizona Administrative Office of the Courts and the Superior Court in Pima County as a technical assistance project of the NCSC Civil Justice Initiative with generous financial support by the State Justice Institute (SJI-16-P-231). The NCSC is indebted to the following individuals who provided essential support for the evaluation including extraction of data from the Pima County case management system, communication with attorneys about the attorney survey, and helpful feedback on an initial draft of the report:

Judge Charles V. Harrington (ret.), Superior Court in Pima County

Judge Jeffrey T. Bergin, Superior Court in Pima County

Cassandra Urias, Deputy Court Administrator, Superior Court in Pima County

Mark Meltzer, Arizona Supreme Court, Administrative Office of the Courts, Court Services Division

Jennifer Albright, Arizona Supreme Court, Administrative Office of the Courts, Senior Policy Analyst

The views expressed in this report are those of the author and do not necessarily reflect those of the Superior Court in Pima County, the Arizona Supreme Court, the State Justice Institute, or the National Center for State Courts.

APPENDIX A: FASTAR PROGRAM EVALUATION ATTORNEY SURVEY

Confirm Information about the case (data uploaded into survey platform based on information extracted by PCSC case management system)

- Case number: _____ Click if correct
- Case name: _____ Click if correct
- Case type: _____ Click if correct
- Filing date: _____ Click if correct
- Disposition date: _____ Click if correct

Attorney and client information (asked to get a sense of which attorneys are taking advantage of the program)

How long have you been in legal practice?

- Less than 5 years
- 5 to 10 years
- 10 to 15 years
- More than 15 years

How many attorneys are employed in your law firm/office?

- 1 (solo practice)
- 2 to 5
- 6 to 10
- 11 to 25
- More than 25

Please indicate the civil litigation area(s) in which you primarily practice? (check all that apply)

- Automobile tort
- Premises liability
- Employment
- Condemnation
- Debt collection
- Malpractice
- Landlord/tenant

In [case name], which party did you represent?

- Plaintiff/petitioner
- Defendant/respondent
- Other

Knowledge/Awareness of FASTAR Program (process evaluation questions to assess the extent to which respondents were aware of the FASTAR program before the case was assigned to a track)

On a scale of 1 to 7, indicate your agreement (1=strongly agree) or disagreement (7=strongly disagree) with the following statements.

I am supportive of the FASTAR Pilot Program. [1/7]

I was familiar with the FASTAR rules before filing this case. [1/7]

The court took appropriate steps to educate local attorneys about the FASTAR Pilot Program. [1/7]

The FASTAR Pilot Program provides attorneys with valuable opportunities to gain jury trial experience.

The FASTAR Pilot Program is a valuable alternative to compulsory arbitration. [1/7]

The FASTAR Rules are fair to the plaintiffs. [1/7]

The FASTAR Rules are fair to defendants. [1/7]

Entry into FASTAR Pilot Program (inquires about Plaintiff Choice Certificate). Note that supplemental questions will only appear after the respondent indicates the FASTAR option selected.

Which option did you choose on the FASTAR Pilot Program Choice Certificate?

Fast Trial

On a scale of 1 to 7, indicate your agreement (1=strongly agree) or disagreement (7=strongly disagree) with the following statements.

- The Fast Trial option offered a faster resolution than Alternative Resolution.
- The Fast Trial option offered a less expensive resolution than Alternative Resolution.
- The Fast Trial option offered a fairer resolution than Alternative Resolution.
- The Fast Trial option offered a more predictable resolution than Alternative Resolution.
- I wanted an opportunity to gain [jury] trial experience.
- I have more confidence in the [jury's/judge's] decision-making skills than an arbitrator's.
- My client wanted a [jury/bench] trial.

- Were there any other reasons that you chose the Fast Trial option? [open-ended question]

Alternative Resolution

On a scale of 1 to 7, indicate your agreement (1=strongly agree) or disagreement (7=strongly disagree) with the following statements.

- Alternative Resolution offered a faster resolution than a jury or bench trial.
- Alternative Resolution offered a less expensive resolution than a jury or bench trial.
- Alternative Resolution offered a fairer resolution than a jury or bench trial.
- Alternative Resolution offered a more predictable resolution than a jury or bench trial.
- I am uncomfortable trying this case to a jury.
- I am more confident in the arbitrator's decision-making skills than a judge's or jury's.
- My client wanted Alternative Resolution.

- Were there any other reasons that you choose Alternative Resolution? [open-ended question]

Defaulted into Fast Trial

On a scale of 1 to 7, indicate your agreement (1=strongly agree) or disagreement (7=strongly disagree) with the following statements.

- I would have preferred Alternative Resolution for this case.
- I expected to settle this case, so there was no meaningful difference in the options.
- The Fast Trial option offered a faster resolution than Alternative Resolution.
- The Fast Trial option offered a less expensive resolution than Alternative Resolution.
- The Fast Trial option offered a fairer resolution than Alternative Resolution.
- The Fast Trial option offered a more predictable resolution than Alternative Resolution.
- I am happy that I have an opportunity to gain [jury] trial experience.
- I have confidence in jurors' decision-making.
- My client is happy about having a [jury/bench] trial.

(Questions directed at Defendants for cases in which the plaintiff chose or defaulted into the Fast Trial option)

On a scale of 1 to 7, indicate your agreement (1=strongly agree) or disagreement (7=strongly disagree) with the following statements.

- I would have preferred Alternative Resolution for this case.
- I expected to settle this case, so there was no meaningful difference between the Fast Trial and Alternative Resolution options.
- The Fast Trial option offered a faster resolution than Alternative Resolution.
- The Fast Trial option offered a less expensive resolution than Alternative Resolution.
- The Fast Trial option offered a fairer resolution than Alternative Resolution.
- The Fast Trial option offered a more predictable resolution than Alternative Resolution.
- I am happy that I have an opportunity to gain [jury] trial experience.
- I have more confidence in [jurors'/judge's] decision-making than an arbitrator's.
- My client wanted a [jury/bench] trial.

(Questions directed at Defendants for cases in which the plaintiff chose Alternative Resolution)

On a scale of 1 to 7, indicate your agreement (1=strongly agree) or disagreement (7=strongly disagree) with the following statements.

- I would have preferred Fast Trial for this case.
- I expected to settle this case, so there was no meaningful difference between the Fast Trial and Alternative Resolution options.
- Alternative Resolution offered a faster resolution than a jury trial.
- Alternative Resolution offered a less expensive resolution than a jury trial.
- Alternative Resolution offered a fairer resolution than a jury trial.
- Alternative Resolution offered a more predictable resolution than a jury trial.
- I am uncomfortable trying this case [to a jury].
- I am more confident in the arbitrator's decision-making skills than a judge's or jury's.
- My client wanted Alternative Resolution.

(Questions related to compliance with discovery limits)

Please indicate the amount of discovery undertaken by each party in this case.

	Plaintiff	Defendant
Number of fact witnesses		
Number of ARCP Rule 33 interrogatories		
Number of ARCP Rule 34 requests for production		
Number of ARCP Rule 36 requests for admission		
Number of ARCP Rule 35 examinations		
Number of hours for ARCP Rule 30(a)(1) depositions		
Number of expert witnesses		
Number of hours for FASTAR Rule 113 deposition: EXPERT WITNESS 1		
Hourly fee for EXPERT WITNESS 1	\$	\$
Number of hours for FASTAR Rule 113 deposition: EXPERT WITNESS 2		
Hourly fee for EXPERT WITNESS 2	\$	\$
[CONTINUE Questions for each numbered expert witness]		

On a scale of 1 to 7, indicate your agreement (1=strongly agree) or disagreement (7=strongly disagree) with the following statements based on your experience in this case.

- The opposing party complied with the automatic disclosure provisions of FASTAR Rule 112(a).
- The amount of disclosure and standard discovery permitted under the FASTAR Rules provided sufficient information to inform my assessment of the merits of the opposing party’s claims or defenses.
- Discovery was completed more quickly due to the restrictions imposed by the FASTAR Rules.
- Discovery costs were lower due to the restrictions imposed by the FASTAR Rules.
- The \$500 per hour cap on expert witness fees interfered with my client’s ability to retain competent expert witnesses.

Experience with FASTAR

(Questions posed for jury trials)

Date of jury trial: _____

Length of jury trial (voir dire to verdict): _____ hours

How large was the jury?

- 8 jurors
- 6 jurors

Why did you opt for a 6-person jury?

- Other size: _____

Why did you opt for this size jury?

Did the jury trial take place on the originally scheduled trial date? Y/N

If no, what was the original trial date? _____

How many trial continuances were scheduled? _____

On a scale of 1 to 7, indicate your agreement (1=strongly agree) or disagreement (7=strongly disagree) with the following statements.

- Preparation for this jury trial was greater than would have been necessary for Alternative Resolution.
- The amount of time spent on voir dire was sufficient to make informed decisions about the suitability of prospective jurors to sit on this trial.
- The jury pool reflected a fair cross section of the community.
- I was satisfied with the jurors who were ultimately selected as trial jurors.
- The amount of time allocated for the presentation of evidence at trial was sufficient for jurors to understand and make informed judgments about the merits of the case.

All things considered, how close was the evidence in this trial?

1=Evidence strongly supported the plaintiff / 4=Evidence equally supported the plaintiff and defendant /
7=Evidence strongly supported the defendant

How complex was the factual evidence presented at trial?

1=Not at all complex / 7=Extremely complex

How complex was the applicable law for this case?

1=Not at all complex / 7=Extremely complex

How well did the jurors understand the key evidentiary and legal issues in the trial?

1=Not at all well / 7=Extremely well

How satisfied were you with the jury's verdict?

1=Extremely unsatisfied / 7=Extremely satisfied

How satisfied was your client with the jury's verdict?

1=Extremely unsatisfied / 7=Extremely satisfied

(Questions posed to attorneys in cases disposed by bench trial)

Date of trial: _____

Length of trial: _____ hours

Why did you opt for a bench trial instead of a jury trial? [open-ended]

Did the trial take place on the originally scheduled trial date? Y/N

If no, what was the original trial date? _____

How many trial continuances were scheduled? _____

On a scale of 1 to 7, indicate your agreement (1=strongly agree) or disagreement (7=strongly disagree) with the following statements.

- Preparation for trial was greater than would have been necessary for Alternative Resolution.

All things considered, how close was the evidence in this trial?

1=Evidence strongly supported the plaintiff / 4=Evidence equally supported the plaintiff and defendant /
7=Evidence strongly supported the defendant

How complex was the factual evidence presented at trial?

1=Not at all complex / 7=Extremely complex

How complex was the applicable law for this case?

1=Not at all complex / 7=Extremely complex

How satisfied were you with the judgment?

1=Extremely unsatisfied / 7=Extremely satisfied

How satisfied was your client with the judgment?

1=Extremely unsatisfied / 7=Extremely satisfied

(Questions posed to attorneys in cases disposed by Alternative Resolution)

Date of arbitration hearing: _____ (if multiple days, indicate the day the hearing began)

Length of arbitration hearing: _____ hours

Did the arbitration take place on the originally scheduled hearing date? Y/N

If no, what was the original hearing date? _____

How many trial continuances were scheduled? _____

On a scale of 1 to 7, indicate your agreement (1=strongly agree) or disagreement (7=strongly disagree) with the following statements.

- Preparation for arbitration was less than would have been necessary for a bench or jury trial.
- I was satisfied with the arbitrator selected for this case.

How well did the arbitrator understand the key evidentiary and legal issues?

1=Not at all well / 7=Extremely well

How satisfied were you with the arbitrator's judgment?

1=Extremely unsatisfied / 7=Extremely satisfied

How satisfied was your client with the arbitrator's judgment?

1=Extremely unsatisfied / 7=Extremely satisfied

General Comments: The Arizona Judicial Branch is interested in any favorable or unfavorable critical analysis that you may have about how the FASTAR Program operates in practice. Please provide your comments in the space below. [1000 character text field]