

**IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA**

IN THE MATTER OF LATE CASE FAIR
LIMITS PROCEEDINGS

} ADMINISTRATIVE ORDER NO. 2020-072

Due to concern for the spread of COVID-19 in the general population, the Governor of the State of Arizona declared a statewide emergency pursuant to A.R.S. § 26-303 and in accordance with A.R.S. § 26-301(15). Subsequently, the Chief Justice of the Arizona Supreme Court has issued Administrative Orders No. 2020-48, 2020-60, 2020-70, 2020-75, and 2020-79 addressing measures to be taken by the Judicial Branch, including by presiding judges and authorizing “the presiding superior court judge of each county ... to adopt ... any local rules and orders needed to address the current public health emergency.” As a result, the Arizona Superior Court in Maricopa County has formed various Task Forces to study measures across all departments to make court operations and procedures more efficient and responsive to litigants during this unique time. This Administrative Order hereby adopts one such measure to better serve civil litigants during the exceptional conditions of the public health emergency and the ensuing period of transition to normal court operations. Based on the foregoing:

IT IS ORDERED that from the date of this order until July 15, 2021, the Court establishes as follows a Late Case Fair Limits Proceeding Program for all civil cases not assigned to compulsory arbitration under Local Rule 3.10:

Late Case Fair Limits Proceedings

- A. When the Late Case Fair Limits Proceeding Is Permitted.** In all civil cases not referred to mandatory arbitration, for the duration of the exceptional condition of the COVID-19 pandemic and the ensuing transition to the new normal, the Court may direct the parties to participate in a Late Case Fair Limits Proceeding. The Court may issue that order as early as the date on which discovery and disclosure close.

- B. Appointment of the Late Case Fair Limits Officer.** The Court must appoint a Late Case Fair Limits Officer from a list consisting of: (1) judges of the Court who have not judged any portion of the case; and (2) any retired judicial officers or practicing attorneys as the Presiding Civil Judge may determine are appropriate to include.

- C. Order Establishing the Late Case Fair Limits Proceeding.** The Court should direct the parties to confer with the Fair Limits Officer about whether the case: (1) should be tried; (2) might appropriately or efficiently be resolved in any manner other than trial under the civil rules; or (3) could be resolved through settlement. The Court may direct that the parties attend the Fair Limits Proceeding along with their counsel. Upon issuance of such a Late Case Fair Limits Proceeding order, the Court shall assign a Fair Limits Officer to conduct such a proceeding and notify the Fair Limits Officer and all parties in writing.
- D. Responsibilities of the Parties in the Late Case Fair Limits Proceeding.** When ordered to participate in the Fair Limits Proceeding, they parties must promptly provide the Fair Limits Officer with the pleadings, dispositive motions and related briefing, and any key evidence or other memoranda they deem essential to understanding how to resolve the case. The amount of material to be provided to the Fair Limits Officer is not to exceed 200 pages, unless the Fair Limits Officer requests more. The parties must cooperate with the Fair Limits Officer in promptly scheduling the Fair Limits Proceeding, and must participate in good faith in the proceeding.
- E. Responsibilities of the Fair Limits Officer in a Late Case Fair Limits Proceeding.** The Fair Limits Officer must not take sides. The Fair Limits Officer is to schedule the Late Case Fair Limits Proceeding at the earliest practicable time. The Fair Limits Officer will lead counsel, and if present the parties, in a discussion as to whether they would like to pursue the Trial Path, the Trial Alternatives Path, or Mediation/Settlement.
- F. The Trial Path.** If the parties desire trial, the Fair Limits Officer should explore with the parties methods to streamline the proofs, claims, and trial procedures that are reasonably available and compatible with the case materials furnished to the Fair Limits Officer. These will generally include the prospect of fair agreements to:
- (1) Eliminate claims or defenses;
 - (2) Waive the right to jury trial and consent to a bench trial;
 - (3) Where permitted by the trial judge, proceed by a bench trial before a different judge of the Court or a neutral, including potentially the Fair Limits Officer;
 - (4) Limit the number of witnesses and the length of time they will be examined, including in conjunction with agreements to foreclose lines of questioning or objections so the trial can run most smoothly with remote or video components;
 - (5) Limit the length of trial to specified numbers of days or hours;

- (6) To submit written opening statements and/or closing arguments where feasible;
- (7) Submit testimonial excerpts by video or text in lieu of live testimony;
- (8) Present expert testimony via report or deposition, either barring live examination or limiting it to cross and redirect of the expert;
- (9) Waive rights to post-trial motions, to appeal, or to recover attorneys' fees;
- (10) Limit the range of potentially available recoveries to a high and low number;
- (11) Limit the outcome of the dispute to either of two numbers, with the question to be tried being whether the higher or lower number better approximates the dispute's true value as determined by the trier of fact (known as "baseball arbitration"); or
- (12) Anything else that serves efficiency that the Court, Fair Limits Officer, or parties believe is appropriate to discuss.

G. The Trial Alternatives Path. If the parties wish to resolve their dispute on the merits but not through trial, the Fair Limits Officer shall explore with the parties those reasonably available alternatives to trial. These will generally include fair agreements to:

- (1) Try the case to either one or three neutral arbiters drawn from the list of Late Case Fair Limits Officers, including the case's Fair Limits Officer;
- (2) Try the case to the bench, but with an advisory jury to make recommended findings of fact consisting of one or three neutral arbiters who are not presently judges drawn from the list of Late Case Fair Limits Officers provided for in Part B of this Administrative Order;
- (3) Submit the entire case, or almost all of the case, as a paper trial or with video excerpts, based on briefing and only such small amounts of live testimony as are deemed vital to be heard live; or
- (4) Such other alternatives as the Court, Fair Limits Officer, or parties believe are appropriate to discuss.

H. The Mediation/Settlement Path. If the parties wish to resolve their dispute on the merits but not through mediation or settlement, the Fair Limits Officer must explore with the parties those reasonably available mediation and settlement options. These will generally include fair agreements to:

- (1) Participate in a virtual settlement conference under Ariz. R. Civ. P. 16.1, in which all parties have consented to *ex parte* communications before and during the conference pursuant to Ariz. R. Civ. P. 16.1(f),

appearance by video is deemed to satisfy the attendance requirement in Ariz. R. Civ. P. 16.1(c), and the settlement judge assigns the parties separate virtual meeting rooms and controls the virtual rooms throughout the conference;

- (2) Binding or non-binding private mediation;
- (3) Mediation, whether binding or not, by the assigned Fair Limits Officer or any person on the list of potential Late Case Fair Limits Officers to whom the parties agree as mediator and who is available to mediate their dispute; or
- (4) Such other forms of mediation or aids to settlement as the Court, Fair Limits Officer, or parties believe are appropriate to discuss.

I. Report to Court. No later than fourteen days after the Fair Limits Proceeding, the Fair Limits Officer shall file a written report with the Court, copied to the parties, summarizing the hearing and addressing the relevant issues identified. Upon receipt of this report, the assigned judge may take any action appropriate in the circumstances. Notwithstanding this requirement, the Fair Limits Officer and Court may communicate informally at any time about steps taken or contemplated in the Trial Path of the Trial Alternative Path.

Dated this 13th day of July, 2020

/s/ Joseph C. Welty
Hon. Joseph C. Welty
Presiding Judge

Original: Clerk of the Superior Court

Copies: All Superior Court Civil Department Judges and Commissioners
Dave Byers, Administrative Office of the Courts
Raymond Billotte, Judicial Branch Administrator
Shawn Friend, Deputy Court Administrator
Keith Kaplan, Civil Department Administrator