

## Yavapai County Division II Expedited Trial Process for Civil Cases

### **Purpose**

The Expedited Trial Process (hereinafter "ETP") is designed to provide a fast and efficient mechanism to bringing cases to an early resolution or trial. Entry into ETP is by stipulation of the parties. If the parties stipulate to entering ETP, they are bound by the rules for ETP throughout proceedings in the trial court. The Rules of Civil Procedure apply generally in ETP cases but the parties agree to modify these Rules as necessary to give effect to the Rules of ETP.

### **Cases Eligible for ETP**

#### Non-Arbitration Cases:

The parties may stipulate that any Civil case assigned to Division II of the Superior Court enter ETP. In non-arbitration cases the stipulation to enter ETP may be filed any time after the Answer has been filed. Any Motion to Dismiss filed pursuant to Rule 12 of the Arizona Rules of Civil Procedure must be fully litigated and ruled upon prior to filing the ETP stipulation. Any Motion to Dismiss filed after the ETP stipulation shall be denied.

#### Arbitration Cases:

Cases subject to arbitration pursuant to A.R.S. §12-133 are also eligible to enter ETP. The parties shall file an ETP stipulation. The stipulation in arbitration cases shall also include a joint statement that good cause exists to remove the case from arbitration. Good cause, in this context, is the desire to eliminate the costs attendant to arbitration, the agreement to limit discovery, and to avoid the costs of appeals from arbitration. The ETP stipulation in arbitration cases must be filed within 20 days of the Answer. Any Motion to Dismiss filed pursuant to Rule 12 of the Arizona Rules of Civil Procedure must be fully litigated and ruled upon prior to filing the ETP stipulation. Any Motion to Dismiss filed after the ETP stipulation shall be denied.

### **The Stipulation**

#### *Direct Stipulation by Unrepresented Parties*

The ETP stipulation filed by unrepresented parties must contain the following statements: 1) the parties have read and understand the ETP rules and 2) the parties agree to be bound by the Rules of ETP. The parties' signatures must be notarized. The Stipulation in Arbitration cases must also establish "good cause" as described above.

#### *Stipulation by Avowal of Counsel*

Counsel for a party may file the ETP Stipulation on behalf of the client. The Stipulation must include an avowal from counsel to the following: 1) they have explained the ETP rules to their client; 2) the client

understands the Rules of ETP and 3) the client agrees to be bound by the Rules of ETP. The Stipulation in arbitration cases must also contain an avowal of “good cause” as described above.

### **Amendment of Complaint/Cross-Complaint**

If a party is granted leave to file an Amended Complaint, the non-amending party may withdraw from the ETP stipulation. The notice of withdrawal from ETP must be filed no later than 20 days from the filing of the Amended Complaint.

### **New Party Plaintiffs or Defendants**

If a new party is joined in ETP litigation, the case shall be removed from ETP unless the joined party files an ETP stipulation. The new party must file the ETP stipulation within 10 days of filing their Complaint or Answer.

### **Conferences; Trial Date**

#### Status and Trial Setting Conference

The judge will set a Status/Trial Setting Conference no later than 180 days after the filing of the ETP.

#### Trial Date

At the Status/Trial Setting conference, the court will set a trial date that is no earlier than 90 days from the date of the Status/Trial Setting Conference. The Court shall also attempt to set it no later than 120 days from the Status/Trial Setting Conference.

#### Pretrial Conferences

The judge may set one or more Civil Rule 16 pretrial conferences.

#### Joint Report and Proposed Scheduling Order Not Required

Civil Rule 16, which requires parties to file a joint report and proposed scheduling order, does not apply in ETP cases.

#### Sanctions

The judge may impose a sanction against a party or a party’s counsel who is substantially unprepared to participate in good faith in a conference under this rule.

#### Interim Status Conferences

The parties may ask the Court to set interim status conferences as needed. Such a request shall be made by emailing the Court’s Judicial Assistant with dates wherein both parties are available. The parties may appear telephonically at the status conference unless ordered otherwise by the Court.

## Discovery

### Scope of Discovery

The parties agree to be bound by the discovery limits applicable to Tier One cases outlined in the Arizona Rules of Civil Procedure 26.2(F)(1). The 120 days for discovery shall be calculated from the date the stipulation to enter ETP is filed.

### Medical Records Authorizations and Depositions of Treating Physicians/Medical Providers

#### *Medical Authorizations*

In a personal injury case, the Plaintiff shall, within 20 days of filing the ETP stipulation, meet and confer with the defendant(s) and discuss which medical records are necessary to determine the issues before the Court. The parties shall submit a joint order for the disclosure of the medical records. Any order must contain a deadline for the medical provider to produce the records. The Order will require the medical records be sent to the Plaintiff.

All records produced pursuant to the court order shall be disclosed to the Defendant. The disclosure of these records shall occur within 15 days of receipt by the Plaintiff. Plaintiff may redact these records to prevent the disclosure of privileged material. The Plaintiff must create and keep a log of any redacted materials.

#### *Treating Physician/Medical Provider Depositions*

- (1) Time Limit. The Depositions of medical providers shall be limited to 3 hours. The time spent deposing an expert shall not be calculated in the total time for ETP depositions.
- (2) Location. Parties must endeavor to take a deposition of a medical provider at the witness' usual place of business, if requested by the witness.
- (3) Fee Limit. The deposition fee of a medical provider witness is limited to that person's usual fee, but the fee may not exceed \$500 per hour. A party may file a motion showing good cause for exceeding this limit.
- (4) Apportionment of Fee. Each party who asks questions during the deposition of a medical provider is responsible for the witness' fee in proportion to the witness' time used by that party during the deposition. The judge can order reasonable, fair, and appropriate cost-shifting or cost-sharing of the medical provider's fee.
- (5) Video Recording. Any party may video record the deposition of a medical provider by any unobtrusive and reliable device, and without leave of court, but the party must provide a copy of the video, without charge, to other parties within 10 days after the deposition.

## Expert Witness Disclosure and Depositions

### *Disclosure*

The disclosure of expert testimony shall be governed by Arizona Rules of Civil Procedure 26.1(d)(1)-(3). The Court may, upon motion and only for good cause, order the expert to prepare a report complying with Arizona Rule of Civil Procedure 26.1(d)(4). The party seeking the preparation of the report shall pay the costs and fees associated with its preparation.

### *Depositions*

- (1) Time Limit. The Depositions of experts shall be limited to 3 hours. The time spent deposing an expert shall not be calculated in the total time for ETP depositions.
- (2) Location. Parties must endeavor to take a deposition of an expert's usual place of business, if requested by the witness.
- (3) Fee Limit. The deposition fee of an expert is limited to that person's usual fee, but the fee may not exceed \$500 per hour. A party may file a motion showing good cause for exceeding this limit.
- (4) Apportionment of Fee. Each party who asks questions during the deposition of an expert is responsible for the expert's fee in proportion to the witness' time used by that party during the deposition. The judge can order reasonable, fair, and appropriate cost-shifting or cost-sharing of the expert's fee.
- (5) Video Recording. Any party may video record the deposition of a medical provider by any unobtrusive and reliable device, and without leave of court, but the party must provide a copy of the video, without charge, to other parties within 10 days after the deposition.

### Discovery Disputes

Discovery disputes (including motions to compel) shall be handled pursuant to the Rules of Civil Procedure.

## **Settlement Conferences, Offers of Judgment, Settlement**

### Settlement Conferences

The parties agree any judicial settlement conference may be held by the trial judge. The parties may seek leave of the Court to set the settlement conference before a different Division. The Court will attempt to accommodate this request. However, any request for an out of Division settlement conference will not modify the timelines for discovery, dispositive motions, or trial. A judicial settlement conference will only be set by a stipulated request of the parties.

### Rule 68 Offers of Judgment

Rule 68 of the Arizona Rules of Civil procedure is not applicable in ETP cases.

### Settlement

If the parties settle an ETP case, they must file an appropriate stipulation for entry of a final judgment or a stipulation and order of dismissal or notice of settlement. All parties and their attorneys will be jointly and severally responsible for payment of jury fees if they fail to notify the court their case has settled by noon on the business day before the scheduled trial date.

### **Motions for Summary Judgment**

Any motion for summary judgment must seek judgment on an entire claim or on the entirety of the claims in the complaint. All other motions for partial summary judgment are precluded. Cross motions for summary judgment are precluded.

### Time for Filing

Any motion for summary judgment shall be filed no later than 20 days before the Status / Trial Setting Conference. If the 20<sup>th</sup> day falls on a weekend or holiday, the motion must be filed by the next business day. Any motion for summary judgment filed after this date shall be denied. The response shall be filed within 25 days after the motion. The reply shall be filed within 15 days of the response. The Court has the discretion to award attorney's fees to the prevailing party on the motion for summary judgment.

### Motion

The motion shall contain a brief statement of the relevant facts. The motion must be accompanied by exhibits supporting the facts listed in the Statement of Facts section of the brief. The motion must cite directly to each exhibit. The Court will not consider any exhibit that is not directly cited in the Statement of Facts. A Separate Statements of Fact is precluded.

### Response

The response shall contain a brief statement of the relevant facts. The response must be accompanied by exhibits supporting the facts listed in the Statement of Facts section of the brief. The response must cite directly to each exhibit. The Court will not consider any exhibit that is not directly cited in the Statement of Facts. A Contravening Separate Statements of Facts is precluded.

### Reply

A party may file a reply. The reply may include additional exhibits for the Court's consideration. The Court will not consider any exhibit that is not directly cited in the reply.

### **Trial**

#### Trial by Jury.

A trial by jury is presumed in all ETP cases where a jury trial is authorized by law. A party need not request a jury. If a complaint includes claims where a jury is authorized and claims where no jury is

authorized, the jury shall be the finder of fact as to all claims. In any case where a jury is authorized, the parties may stipulate to a bench trial.

#### Pretrial Statement

No later than 15 days before trial, the parties must confer, prepare, file, and submit to the judge a joint pretrial statement. The parties are encouraged to agree on facts and issues. The statement must contain the following:

- (1) a brief statement of the nature of each party's claims or defenses;
- (2) a witness list including the subject matter of a witness's testimony for each witness who will testify;
- (3) an exhibit list and specific legal objections to any exhibits;
- (4) the parties' stipulations concerning undisputed facts and issues and exhibits

Unless the parties agree otherwise or the offering party shows good cause, a party may not call a witness or offer an exhibit at trial other than those listed and exchanged. Legal objections to any exhibits listed are deemed waived unless specifically stated.

#### Jury Instructions, Voir Dire, Verdict Forms

In jury trial cases no later than 10 days before the trial date the parties must file: (1) jury instructions in compliance with this Division's standing orders; (2) voir dire in compliance with this Division's standing orders; and (3) joint verdict forms.

#### Evidence

The Arizona Rules of Evidence apply to ETP cases. However, and unless there is a specific legal objection in the joint pretrial statement, the following documents are admissible in evidence:

- (1) Medical bills of licensed or authorized providers, provided the party requesting admission of a bill establishes a foundation that the amount of the bill is reasonable and the treatment or service described in the bill was medically necessary;
- (2) Property repair bills or estimates containing costs or estimates for labor and material, if a bill is dated and itemized, and if the bill states whether the property was repaired in full or in part;
- (3) Records of regularly conducted business activity under Rule 803(6) and certified records of a regularly conducted activity under Rules 902 (11) and (12) of the Arizona Rules of Evidence;
- (4) A witness's deposition, whether or not the witness is available to appear in person;
- (5) Medical records and medical reports, if a copy of the record or report was disclosed at least 40 days before trial, unless the opposing party shows good cause not to admit it.
- (6) Video Recording of Medical Providers and Experts. A party who deposed and made a video recording of a medical provider or expert may introduce the recording at trial to avoid the cost of calling the expert. A party wishing to use a video recording of a medical provider or expert must disclose which

portions of the video they intended to use at trial 30 days prior to the Trial Setting Conference. Any objection must be filed with Court within 15 days of this disclosure.

#### Subpoenas

The court may issue and enforce a subpoena, and a party may serve a subpoena, as provided by Civil Rule 45 and by law.

#### Order of ETP trials and presumptive time Limits

ETP trials proceed in the order described in Civil Rule 40. The manner of selecting a jury, juror notebooks, juror questions of witnesses, jury instructions, deliberations, and the return and entry of the verdict are as provided in other civil trials in the superior court, except for the following presumptive time limits:

- (1) Voir dire: 20 minutes per side
- (2) Opening statements: 30 minutes
- (3) Closing arguments: 45 minutes
- (4) The time for trial shall be split evenly between the parties.

A party may seek permission from the court to extend the time for sections (1), (2), and (3). If the Court grants the request, the additional time shall be subtracted from that parties allocated time under subsection (4). The Court, upon stipulation of the parties and in a more complicated case, may increase the time allotted in sections (1), (2), and (3).

### **Post-Trial Procedures; Appeal**

#### Form of Judgment, Costs and Attorneys' Fees

After the jury returns its verdict, the judge must direct the prevailing party to prepare a statement of costs, a request for attorney's fees, if any, and a form of judgment, as provided in Civil Rules 54 and 58. Other parties may file objections as provided by the Civil Rules. The judge may then proceed to enter judgment on the verdict.

#### Post-Trial Motions

A party may file post-trial motions as provided in the Arizona Rules of Civil Procedure.

#### Appeal

A final judgment entered at the conclusion of a trial is appealable as provided by law.

### **Defaults**

If the court has entered a default against one or more but fewer than all defendants, the court may conduct proceedings against the defaulted defendants under Civil Rule 55, and may proceed with an ETP for the remaining parties.

### **Dismissal Calendar**

The court may place an ETP case on the dismissal calendar under Civil Rule 38.1(d) if the case has not concluded by the entry of judgment within 300 days after the filing of the ETP stipulation.