pro se
A Manageable Compulsory Arbitration System for Personal Injury Cases

by James Fritz

Imagine yourself having just been given the task of revamping the superior court's compulsory arbitration system. Let's combine the rules into one set, the "Arizona Uniform Civil Rules of Practice and Procedure."

The joint pre-hearing statement is also a good idea, although many lawyers do not want to take the time to do a "joint" statement. The Rule 26.1 Statement can serve as the pre-trial statement on appeal de novo. Do away with the list of witnesses and exhibits; the rule no longer serves a meaningful purpose. It is common in many cases for the arbitrator to request to see the Rule 26.1 Statements, which makes the preparation of the joint pre-hearing statement itself redundant. Either do away with the joint pre-hearing statement and submit the Rule 26.1 Statements or condense the joint pre-hearing statement one- to two-page summary of the case.

Time deadlines give insurance companies too much control over the process. Plaintiffs often file their cases without having in hand all records necessary for disclosure and discovery. Efficiency will flow from a higher degree of case preparedness and from the elimination of the games we play. Raise the limits to $100,000 for arbitration. Bank trust departments for years have shunned accounts or estates under this amount and the superior court should do likewise.

A personal injury case valued at $100,000 or less should be resolved within one year after filing of the complaint, regardless of whether resolved by arbitration or arbitration and trial.

Let's combine the Rule 26.1 disclosure statement, the certificate of arbitration and answers to uniform interrogatories into one—that's right—one pleading and combine it with the complaint or answer when they are filed. Whether the case is or is not one for arbitration can be noted somewhere on the complaint by marking a box. The defendant is entitled to be served with and should receive such a bundle of material in order to better appreciate the nature and extent of the claims raised. The insurance carrier, if known to the plaintiff, should also receive a copy by certified mail as notice in the event that the defendant does not notify the carrier of the lawsuit.

The plaintiff is presumed to have all of his ducks in a row when the complaint is filed. Filing the complaint / disclosure / discovery response statement will confirm this fact. Cut the 120 days for service to 60 and eliminate service by publication for personal injury cases. If the defendant cannot be located, serve the insurance company that the plaintiff has spent the last two years communicating and negotiating with. The recent rule change permitting waiver of service still draws out the timeline for processing the case. Few plaintiff attorneys utilize the provision because of the potential for delay in moving forward. The rule provides that the defendant has 30 days to return the waiver, and then gets an additional 60 days in which to file an answer. Give the defendant 20 days in which to return the waiver and 20 days after return of the waiver in which to answer. With the plaintiff being required to disclose his case, no longer will the defense lawyer be able to cry about not having enough time to do discovery, even in cases in which the plaintiff has not provided information and documentation to the insurer. The plaintiff should be required to provide signed medical record release authorizations for each provider and employer for which medical treatment or time from work is alleged where the attorney is unable to provide complete records with an affidavit as to their completeness and authenticity, thereby eliminating much of the cost and time incurred to subpoena records. The physician-patient privilege should be considered waived for this discovery only and plaintiff should disclose all prior accidents, injuries and also medical providers for five years before the accident. If the defendant feels the need to go back further than five years, it must be by stipulation or a showing of good cause on motion to the arbitrator. Medical records from the provider that are related to the accident should come to the defendant with the custodian's affidavit as part of the complaint / disclosure / discovery response statement.

Forty-five days, including five extra days for mailing, is sufficient for the defendant to exchange a Rule 26.1 statement. Providing complete medical records and signed records release authorizations for all other records will save vast amounts of money and time in discovery. When the complaint / disclosure / discovery is filed, the case should go to the arbitration desk for superior court and a list of three prospective arbitrators should then be sent to the plaintiff attorney. The defendant will get his copy upon filing his notice of answer / disclosure / discovery. Both sides then have 10 days from the date of the answer to exercise their strikes. If they strike the same lawyer, the arbitration desk arbitrarily chooses from the two remaining names. In

cases with multiple defendants, it will be one strike per side.

Discovery will be completed within 90 days of filing the answer. The hearing will be held no more than 120 days from the date of answer. All discovery will be completed before the hearing, and no more discovery on appeal unless upon stipulation of the parties or for good cause. Arbitrations will be no more than one-half day in duration. The arbitrator should issue the award within five days, and the notice of decision is eliminated.

Appeal can be a half-day trial to the court or one-day to the jury as a short trial. In either case, there would be no further appeal. The risk of appeal is always borne more easily by the defendant in personal injury cases because of the insurance company's deep pockets. Raise the bond amount for appeal from $75 to $500. If an insurer decides to make one of the advertising law firms appeal every award on the 100 cases it has with the firm, it may think twice about the interest lost on $50,000. A very big problem also exists on the plaintiff's side—the judgment—proof plaintiff. The higher bond will at least soften some of the blow of not being able to collect.

If the parties and insurance carriers are financially at risk if they go forward, cases will settle, and the public that relies upon lawyers and the judicial system can once again view us as something other than a very slow-moving, bottomless money pit.

James Fritz *is a certified specialist in injury and wrongful death litigation and a sole practitioner in Tempe.*