

## MARICOPA COUNTY SUPERIOR COURT ANNOUNCES CERTIFIED ARBITRATOR PROGRAM IN RESPONSE TO COVID-19

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In response to the COVID-19 public health emergency, the Maricopa County Superior Court recently announced its Certified Arbitrator Program. The program is the result of various studies focused on making court operations more efficient and responsive to litigants in this unique time. Moving forward, the parties to any Maricopa County Superior Court civil case where the amount in controversy is between \$50,001 and \$300,000 may elect to have their case decided by a Certified Arbitrator.

Parties electing to use a Certified Arbitrator must file a written agreement to that effect with the court no later than thirty days after the complaint is served. The parties may choose a particular arbitrator if they so desire. If the parties do not agree on an arbitrator, or their desired arbitrator is unavailable, the court will select one for them. When the court assigns an arbitrator, each side has the right to change that arbitrator. They may do so only once, and it must be within ten days of the arbitrator being appointed.

Parties have until the arbitration hearing to decide whether the arbitration will be binding. This decision significantly affects the parties' rights on appeal. When binding arbitration is elected, the arbitrator's decision may only be appealed on the grounds that the parties' agreement to binding arbitration was not an enforceable contract.

When the parties elect nonbinding arbitration, the Certified Arbitrator's decision is appealable under the same standards as a Special Master's decision. In these cases, a court will review any legal questions decided by the arbitrator de novo, meaning without deference to the arbitrator's conclusions. An arbitrator's factual findings are treated differently. The parties may stipulate that the court simply accept the arbitrator's findings without review. Or, they may ask the court to review the arbitrator's factual findings de novo. Otherwise, the reviewing court will accept the arbitrator's factual findings unless they are clearly erroneous, a high standard to overcome.

Attorneys who wish to serve as Certified Arbitrators under the new program must first be qualified by the court. To do so, candidates must provide to the court evidence of good standing with the Arizona State Bar, the areas of law they concentrate in, and any specialty certifications they may have. Candidates must also detail their training and experience as an arbitrator and provide the court with two letters of recommendation. A list of Certified Arbitrators will be maintained by the court and posted publicly on its website—<https://superiorcourt.maricopa.gov/civil>.

Compensation for Certified Arbitrators is based on the amount in controversy. Where the dispute concerns less than \$100,000, the arbitrator earns \$2,000. When the amount is between \$100,001 and \$200,000, the arbitrator is paid \$3,000. For all other cases, the arbitrator is paid \$4,000. If the parties elect nonbinding arbitration, they must pay the arbitrator their pro rata share of the cost before the arbitrator performs any duties. Parties are not required to pay the Certified Arbitrator when they agree to binding arbitration. The Maricopa County Superior Court Certified Arbitrator Program is set to expire on July 15, 2021.

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**Patrick Gorman** concentrates his practice in the areas of bad faith and extra-contractual liability, breach of contract claims, insurance coverage, professional liability and other general civil litigation matters.