

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2008-006701

12/17/2009

HONORABLE LINDA H. MILES

CLERK OF THE COURT  
L. Crawford  
Deputy

TOWN OF GILBERT

CHARLES K AYERS

v.

QUEEN CREEK SUMMIT L L C, et al.

GARY L BIRNBAUM

ALTERNATIVE DISPUTE  
RESOLUTION - CCC

**JURY TRIAL SET**  
**PRETRIAL MANAGEMENT CONFERENCE SET**

Courtroom 106

10:12 a.m. This is the time set for Telephonic Status Conference. Plaintiff is represented telephonically by counsel, Joseph M. Hillegas Jr., appearing for Charles K. Ayers. Defendants Queen Creek Summit, LLC, Rite of Passage, Inc., Canyon State Academy, Inc., and Youth Partners Foundation are represented telephonically by counsel, Gary L. Birnbaum and Barry R. Sanders.

A record of the proceedings is made by audio and/or videotape in lieu of a court reporter.

In preparation for the conference, the Court reviewed documents in the Court's file in this case, including Plaintiff's Notice of Statement of the Case, and Defendants' Proposed Joint Notice of Statement of the Case, both of which were filed on December 14, 2009.

Discussion commences regarding the status of the case and discovery issues.

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2008-006701

12/17/2009

With the understanding that it would be the Defendants' obligation to show that the documents produced in response to a request for production of documents are confidential and subject to a Protective Order, the parties stipulate to a Protective Order modified to provide that Plaintiff and its representatives will not discuss the contents of any of the documents produced absent an agreement between the parties or court order.

Discussion commences regarding the subpoena issued by Plaintiff for appraisals completed by Defendants' expert, Mr. Martori.

Defendants' counsel agrees to provide copies of Mr. Martori's appraisal reports relating to properties within 5 miles of the subject property from 2005 forward as requested by Plaintiff's counsel.

Defendants' counsel agrees to revise the Protective Order and Confidentiality Agreement, as stipulated by the parties this date. Defendants' counsel agrees to e-mail a copy of same to Plaintiff's counsel by the close of business on December 18, 2009, and Defendants' counsel will provide the documents to Plaintiff's counsel by December 21, 2009.

Discussion commences regarding the Stipulated Scheduling Order, filed August 18, 2009.

Pursuant to the parties' agreement,

IT IS ORDERED modifying the Stipulated Scheduling Order signed by Judge Hicks on August 17, 2009 to extend the discovery and disclosure deadline dates as follows:

1. Any and all discovery requests shall be served by 5:00 p.m. on March 1, 2010.
2. The parties shall mutually and simultaneously disclose their rebuttal expert witnesses and opinions and rebuttal fact witnesses by 5:00 pm. on February 19, 2010.
3. All discovery shall be concluded by 5:00 p.m. on April 21, 2010.
4. The parties shall have exchanged up-to-date final Rule 26.1 Supplemental Disclosure Statements by 5:00 p.m. on May 4, 2010.
5. All pretrial motions, other than motions in limine, must be filed by 5:00 p.m. on June 1, 2010.

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2008-006701

12/17/2009

IT IS FURTHER ORDERED setting this matter for a Jury Trial on **September 9, 2010, September 13, 2010, September 14, 2010, September 15, 2010 and September 16, 2010 at 9:30 a.m. each day**, in this Division. (See LATER).

IT IS FURTHER ORDERED setting a Pretrial Management Conference on **August 27, 2010 at 9:00 a.m.**, (time allotted: 30 minutes), in this Division. (See LATER).

IT IS FURTHER ORDERED that the parties shall participate in a mandatory Settlement Conference. This matter is referred to the Court's Alternative Dispute Resolution Office for the appointment of a judge *pro tempore* to conduct a settlement conference. **Counsel and/or the parties will receive a minute entry from ADR appointing the Judge pro tempore.** Counsel and any self-represented litigants shall contact the appointed judge pro tempore to arrange the date, time and location for the settlement conference. The judge *pro tempore* is requested to conduct a settlement conference not later than **July 9, 2010**. The Office of Alternative Dispute Resolution will not do the scheduling of the settlement conference so please do not contact that office.

11:00 a.m. Matter concludes.

LATER:

Due to the unavailability of a jury on September 9, 2010, the Court's Judicial Assistant coordinated a new trial date with counsel.

By agreement of the parties,

**IT IS ORDERED** as follows:

**1. TRIAL**

The Jury Trial set to begin on September 9, 2010 for 5 days is vacated and reset to **September 7, 2010, September 8, 2010, September 9, 2010, September 13, 2010 and September 14, 2010 at 9:30 a.m. each day**, in this Division.

**LENGTH OF TRIAL: 5 days**

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2008-006701

12/17/2009

HONORABLE LINDA H. MILES  
MARICOPA COUNTY SUPERIOR COURT  
NORTHEAST REGIONAL COURT CENTER  
18380 N. 40<sup>th</sup> STREET  
COURTROOM 106  
PHOENIX, AZ 85032

THIS IS A FIRM TRIAL SETTING

Trial days and hours are as follows: Monday through Thursday from 9:30 a.m. to 4:30 p.m. The Court will take two 15-minute recesses, one in the morning and one in the afternoon. The lunch recess will be from 12:00 p.m. to 1:30 p.m.

2. **MOTIONS**

A. **DISPOSITIVE MOTIONS**

All dispositive motions shall be filed **no later than June 1, 2010.**

B. **MOTIONS IN LIMINE**

Any and all motions *in limine* shall be filed no later than **July 28, 2010**, and shall be hand-delivered to opposing counsel and the Court. Such motions must meet the test of *State v. Superior Court*, 108 Ariz. 396, 397, 499 P.2d 152 (1972) (“The primary purpose of a motion *in limine* is to avoid disclosing to the jury prejudicial matters which may compel a mistrial”). *See also*, Ariz. R. Evid. Rule 103(c). Written responses to motions *in limine* shall be filed no later than **August 9, 2010**, and hand-delivered to opposing counsel and this Division. Replies shall not be allowed absent leave of Court. **Prior to filing a motion *in limine*, the parties must meet and confer in accordance with Ariz.R.Civ.P. Rule 7.2(a) to attempt to resolve issues to be raised by such motion, and any motion *in limine* must include a certification that they have done so.** Failure to meet and confer prior to the filing of a motion *in limine* may result in sanctions.

Unless prior written leave of Court is obtained for good cause shown, no party may file more than three (3) motions *in limine*, including all subparts. The parties shall not file motions denominated as “*in limine*” that are, in substance, late-filed motions for summary judgment.

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2008-006701

12/17/2009

The Court will rule on motions *in limine* without oral argument unless otherwise ordered. Any motion *in limine* not timely filed will be deemed waived.

**3. JURY SELECTION**

The Court uses the “struck” method for jury selection. The parties will be permitted to conduct their own *voir dire* after the Court completes its *voir dire*. The purpose of *voir dire* is to secure a fair and impartial jury and not to educate the jury as to the legal/factual theories espoused by a particular party.

**4. PRETRIAL MANAGEMENT CONFERENCE**

As noted above, a Pretrial Management Conference is set for **August 27, 2010 at 9:00 a.m.** (time allotted: 30 minutes), in this Division. The lead trial counsel for each party is required to attend the Pretrial Management Conference. Self-represented litigants are also required to attend. Except as stated above, parties are not required to attend. Failure of any trial counsel or any self-represented litigant to attend the Pretrial Management Conference may result in sanctions.

At the Pretrial Management Conference, counsel for each party and any self-represented litigants shall be prepared to discuss:

- A. Length of *voir dire*, opening statements, examination of witnesses, and closing arguments.
- B. The number of jurors on the jury panel, and the involvement of alternate jurors in deliberation.
- C. Stipulations and objections regarding witnesses and exhibits.
- D. Preliminary and final jury instructions, juror notebooks and verdict forms.
- E. Agreed-upon deposition summaries and excerpts from deposition transcripts and/or videotaped depositions.
- F. Any special witness scheduling, interpreter or equipment-related issues.

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2008-006701

12/17/2009

- G. A brief summary of the case to be read to the jury.
- H. The allocation of trial time per party.
- I. Status of settlement efforts.

**5. MARKING EXHIBITS FOR TRIAL**

Trial counsel and self-represented litigants (“the parties”) are directed to personally meet **no later than July 9, 2010** to exchange trial exhibits and discuss the exhibits prior to submitting them to the Court for trial. At this meeting, the parties’ shall attempt to agree on authenticity, foundation, and admission of the exhibits to shorten the time spent on exhibits during the trial.

At the time of the Pretrial Management Conference, the parties shall present to the Clerk of this Division all exhibits they will be introducing at trial. Counsel shall present all exhibits with a written list of brief exhibit descriptions to the Clerk. Each exhibit shall be clipped or bound if too large to be stapled. Exhibits are to be separated by a colored sheet of paper or by a divider sheet. If counsel are submitting large charts, blow-ups or maps, an 8-1/2 x 11 size copy of same shall be included, which can be marked as the exhibit, and can go into the jury if in evidence. The blow-ups, charts and/or maps can be used for demonstrative purposes but will not be marked as exhibits and will be returned to counsel. The exhibits will be marked by the Clerk in consecutive order: Plaintiff’s exhibits will be marked first; Defendant’s exhibits will be marked second. Exhibits are assigned numbers in a serial fashion. Placeholders will not be accepted and exhibit numbers will not be reserved for exhibits not presented at this time. **The parties shall ensure that there are no duplicate exhibits.** Failure to follow the procedure for submitting trial exhibits may result in the exclusion of that party’s exhibits at trial.

**6. WITNESS INFORMATION FORM**

Counsel for each party and any self-represented litigant shall meet **no later than August 20, 2010** to complete the Witness Information Form attached to this minute entry. The parties shall set forth the name of each witness and the estimated time required for direct and cross-examination. Time estimates also shall be set forth for opening statements and closing arguments. The completed form shall be submitted with the Joint Pretrial Statement. The Court will rely

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2008-006701

12/17/2009

upon the Witness Information Form to predict the length of the trial for the jurors and to allocate the time allowed for each party to present its case to the jury.

Attachment: Witness Information Form.

**7. FINAL JOINT PRETRIAL STATEMENT**

The Joint Pretrial Statement meeting the requirements of Ariz.R.Civ.P. Rule 16(d) shall be delivered to this Division by 5:00 p.m. on **August 23, 2010**. The following shall be filed with the Joint Pretrial Statement and copies provided to this Division:

- A. A statement by each party identifying all expert witnesses, the opinions of said experts, and a description of the factual/substantive basis for each such opinion.
- B. A stipulated brief summary of the case, which the Court can read at the outset of *voir dire*.
- C. A list of all exhibits containing a brief description of each exhibit, as well as the objections, if any, to such exhibits and the reasons for such objection. **Any objections not so included are waived.**
- D. A CD containing the full text of all preliminary and final jury instructions jointly agreed upon by the parties in Word format.
- E. CDs containing separate sets of requested instructions that have not been agreed upon in Word format. (Please consider *Rosen v. Knaub*, 175 Ariz. 329, 857 P.2d 381 (1993) and the RAJI Civil 4th Statement of Purpose and Approach before preparing any request for non-RAJI instructions.). Non-RAJI instructions should be numbered consecutively, one per page, with a heading (*e.g.*, Plaintiff's Instruction No. 1, etc.) and authority for the instruction.
- F. Written objections to any jury instructions citing specific authority in support of said objections.
- G. A list, by page and line numbers, of all deposition or other transcribed testimony that may be offered at trial, other than for impeachment, including designations of testimony that a party believes ought in fairness

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2008-006701

12/17/2009

to be introduced pursuant to Rule 32(a) with testimony to be offered by an opponent. The Court shall also be provided with copies of those parts of any such testimony to which objection is made, indicating the testimony objected to and the reasons for such objection. **Any objection not so included is waived.** Since jurors generally prefer narrative summaries, with brief excerpts of questions and answers, to reading many pages of testimony, the parties shall confer as to whether agreed upon summaries can be prepared.

- H. A completed Witness Information Form.
- I. Any voir dire questions a party seeks to ask during jury selection.
- J. Trial memoranda (optional).
- K. Proposed juror notebooks. The Court encourages the use of juror notebooks in appropriate cases. The contents of such notebooks must be in evidence by stipulation or, for exhibits, by court ruling. Any exhibits used shall correspond to the numbered exhibits marked by the clerk. A copy of any juror notebook shall be provided to the Court at the Pretrial Management Conference.

One day's jury fees will be assessed unless the Court is notified of settlement by 2:00 p.m. on the judicial day before trial.

This case is eFiling eligible: <http://www.clerkofcourt.maricopa.gov/efiling/default.asp>



SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2008-006701

12/17/2009

**WITNESS INFORMATION FORM**

WITNESSES FOR PLAINTIFF(S)

	WITNESS NAME	DIRECT REDIRECT	AND CROSS
1			
2			
3			
4			
5			
6			

DIRECT, REDIRECT & CROSS TOTAL: \_\_\_\_\_

WITNESSES FOR DEFENDANT(S)

	WITNESS NAME	DIRECT REDIRECT	AND CROSS
1			
2			
3			
4			
5			
6			

DIRECT, REDIRECT & CROSS TOTAL: \_\_\_\_\_

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2008-006701

12/17/2009

TOTAL WITNESS TIME ESTIMATE: \_\_\_\_\_

TIME ESTIMATE FOR:	PLAINTIFF		DEFENDANT
OPENING STATEMENT			
CLOSING ARGUMENT	1 <sup>st</sup> :	2 <sup>nd</sup> :	