ARIZONA SUPREME COURT
Committee on Civil Rules of Procedure in Limited Jurisdiction Courts ("RCiP.LJC")
Minutes
October 25, 2011

Members present:
Hon. Paul Julien, Chair
Hon. Jill Davis
Hon. Maria Felix
Hon. Gerald Williams
Mary Blanco
Veronika Fabian
David Hameroff
Stanley Hammerman
Nathan Jones
William Klain
George McKay
David Rosenbaum
Anthony Young

Members present by telephone:
Hon. Timothy Dickerson
Emily Johnston

Members not present:
Hon. Hugh Hegyi

Guests:
Eric Louvin
Ryan Houser
Theresa Barrett

Guests present by telephone:
Brittany Robinson
Brian Partridge

Staff: Mark Meltzer, Julie Graber

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1. Call to Order; approval of meeting minutes. The Chair called the meeting to order at 10:10 a.m. and welcomed the members and guests to the Judicial Education Center. The members then reviewed the minutes of the September 28, 2011 Committee meeting, and a member moved to approve those minutes.

> **Motion:** The motion to approve the September 28, 2011 meeting minutes was seconded, and it carried unanimously. **RCiP.LJC 11-016**

The Chair reminded the members of his upcoming presentation to the Arizona Judicial Council on October 28. This presentation will introduce the work of this Committee in advance of presenting the Committee's report at the AJC's December 15th meeting. The Chair also informed the members that the Maricopa County Justice Court bench requested a presentation of the draft rules, and he will make this presentation on October 26, 2011.

2. Discussion of the October 20, 2011 version of the draft rules. Staff presented PowerPoint slides highlighting changes made to the draft version of the Justice Court Rules of Civil Procedure following the September 28 committee meeting. Among the changes were the following:

- Parts VI, VII, and VIII (that appear now in this order: disclosure and discovery, motions, and settlement/pretrial conferences) were re-sequenced to reflect the typical chronology of a lawsuit.

- The order of what is now Rule 110 (starting a lawsuit, content of a complaint) and Rule 111 (lawsuits involving multiple parties or multiple claims) were reversed.

- There is now a separate rule on disclosure statements (Rule 121.)

- Several of the rules (103, 110, 112, 113, 120, 129, 132, 133, 137, and 140) were re-titled for greater clarity and accuracy.

- A stand-alone Rule 132 regarding pretrial motions on evidence was incorporated within another rule.

- Revisions to Rule 109 regarding signatures and Rule 120 concerning service of documents were made so that these rules are now more consistent with electronic filing practices.

- A new provision was added to Rule 133 that concerns setting a case for trial.

- Rule 148 was modified by allowing forms to be adopted by the AOC and posted on its website. Not including the forms within the rules eliminates the necessity of filing a rule petition whenever a change to a form is required.

The members further discussed particular rules and text.

Rule 104: Staff had added a definition of "lawsuit" ("a lawsuit is a dispute between parties who make claims and parties against whom the claims are made") within the rule on parties. The members removed this proposed definition and revised the definition of "plaintiff" in this rule.

Rule 122: The members removed the following language from this general rule on discovery: "The court on its own initiative may limit discovery or it may limit specific discovery methods."

The members discussed including in the discovery rules the "Zlacket" limitations contained in the superior court rules. These limitations cover such items as the number of interrogatories that are permitted, and the allowable length of a deposition. A motion was made to add these limitations to the draft rules.

> **Motion:** The motion to add the Zlacket limitations in the various rules on discovery was seconded and carried unanimously. **RCiP.LJC 11-017**

Rules 130 and 131: There are a variety of court practices statewide concerning pretrial and mediation conferences. Some courts set every case in which an answer has been filed for mediation. Some courts combine pretrial and settlement conferences. Certain courts request the parties to fill out a form at a pretrial conference, but the parties do not appear before a judicial officer. Other courts set their cases for arbitration. The routine may differ even within a precinct, based on variables such as whether counsel represents each of the parties, or whether there are particular evidentiary disputes in a case that warrant a pretrial conference. The members agreed that the justice court rules should allow the flexibility that individual courts may wish to utilize in setting these conferences.

In conjunction with the discussion on these rules, the members also considered how long a case should remain active pending the execution of a settlement in circumstances where the case is not resolved by a stipulated judgment. Requesting security for the settlement, or obtaining a defendant's consent to re-file a lawsuit with a waiver of service, are solutions in some but not all of these cases. Some plaintiffs will proceed to trial if a settlement is not reduced to judgment, but members agreed that the court cannot leave a case in an inactive, pending status for an extended time.

The members concluded the discussion with an agreement to have separate rules entitled "optional mediation conference" and "pretrial conference." The members also agreed on language for these rules. Within the rule on pretrial conferences is a provision that allows the trial judge to conduct a settlement conference with the informed consent of the parties.

Rule 133: The members added the following language for setting a trial date: "Absent good reasons as determined by the court or the consent of the parties, a trial may not be set to begin less than one hundred twenty days after an answer was filed."

References to Rule 115: As the committee proceeded through the rules, a member noted repeated references in various rules to time "as calculated under Rule 115." The member thought this was redundant, because all time calculations under these rules are made as provided in Rule 115. Another member disagreed, and stated that a reference should be made to Rule 115 on every occasion that time is mentioned in a rule. The member made a formal motion to this effect.

> **Motion:** The motion to refer to Rule 115 in every rule when a time calculation is required was seconded but failed to carry: 2-12.

At this point, a contrary motion was made to eliminate repeated references to Rule 115.

> **Motion:** That motion was seconded, and carried: 11-2-1. **RCiP.LJC 11-018**

Rule 139: The members discussed and agreed to revisions in the rule on judgments, and in particular, requirements for filing statements of costs, requests for attorneys' fees, and the time provisions of this rule.

Rule 140: Staff had proposed in the draft rule on defaults a single, combined process for an application for entry of default and a motion for entry of a default judgment. After further discussion, including information that the recent Moon decision by Division One had been withdrawn, the members favored retaining the two-step process for defaults. The members believed that this is more fair and better protects the rights of the litigants. Staff was directed to revise the rule on default judgments accordingly. The members noted that this revised rule should:

- Include a provision that the filing of the application constitutes entry of default.
- Require that a motion to enter default judgment be mailed to the party in default and to the other parties who have appeared.
- Allow an answer to be filed more than ten days after the entry of default for a good reason, and subject to an opportunity of plaintiff to object; and allow the judge to set aside a default for a good reason.

4. Cases involving assigned debts. The Chair then turned to an issue that has divided the Committee: a special disclosure requirement in cases of assigned debts (draft Rule 121(a)(4).) Mr. Hameroff had provided the members with a legal memorandum that contended, among other things, that a separate disclosure requirement imposed on plaintiffs in assigned debt cases might violate the equal protection clause, and that it may constitute a substantive requirement rather than a procedural rule. The memo also took the view that other, general provisions of the disclosure rule adequately covered disclosing relevant information in assigned debt cases. A member opined that disagreement about this single issue could cloud much of the good work done by this Committee. Mr. Klain added that he was opposed to creating a different standard for a specific type of plaintiffs; he had to leave the meeting at this time but he recommended deletion of this provision.

The Chair then asked individual members of the Committee to express their views on this proposed rule. The membership appeared split, and a suggestion was made to submit a report that included both views as well as alternative versions of this rule. The workgroup comprised of Mr. Hammerman, Mr. Hameroff, Mr. Young, Ms. Fabian, and Judge Williams also offered to meet and attempt a resolution of this issue. It was noted that no further Committee meetings are anticipated prior to submitting the Committee's report to the Arizona Judicial Council. A motion was then made that if the workgroup unanimously agrees to language for Rule 121(a)(4) and the disclosure requirement for assigned debt cases, that their agreed-upon language would be deemed adopted by the full Committee and included within the draft version of the rules.

Motion: That motion was seconded, and carried unanimously. **RCiP.LJC 11-019**

The members of this workgroup agreed to convene at Mr. Hammerman's office on November 8, 2011.

5. Next steps. Inasmuch as there will be no further meetings prior to presenting the Committee's report to the AJC, and in light of the number of revisions to the rules that are required following today's meeting, the Chair inquired if the members would permit him to finalize the version of the rules that will be presented to the AJC in December. A motion was then made that the Chair has the Committee's authority to finalize the version of the rules that will be submitted to the AJC.

Motion: That motion was seconded, and it carried unanimously. **RCiP.LJC 11-020**

The Committee's report will include a request for a "staggered" comment period. If the Court allows, a staggered comment period will enable the members to reconvene after an initial comment period, to review those comments, and if appropriate, to submit an amended petition with a revised version of the rules.

6. Call to the Public; Adjourn. There was no response to a call to the public. The meeting was adjourned at 3:10 p.m.