

Report
-of-
The Committee on Civil Rules of Procedure
for Limited Jurisdiction Courts
-to-
The Arizona Judicial Council
December 2011



Justice 20|20

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I. Executive Summary

Administrative Order 2011-13 established the Committee on Civil Rules of Procedure for Limited Jurisdiction Courts (“RCiP.LJC”) in furtherance of the goals of the Arizona Supreme Court’s Justice 20/20 Strategic Agenda. The Order directed the Committee to report to the Arizona Judicial Council in December 2011, and the Committee accordingly submits this report.

The Arizona Rules of Civil Procedure (“*Ariz. R. Civ. P.*”), which govern cases in the superior court, are also generally applicable in justice court.¹ Using the superior court rules as a starting point, the Committee drafted a separate set of civil rules for justice court that is distinguishable by its comparative simplicity and brevity.² The Committee now recommends the filing of a rule petition in January 2012 to adopt these new Justice Court Rules of Civil Procedure (the “JCRCP”). A proposed rule petition containing these rules is included with the Committee’s report.

II. Introduction

(1) **Justice 20/20 Strategic Agenda:** The Committee’s genesis was the Supreme Court’s Justice 20/20 Strategic Agenda, and in particular Goal One: Strengthening the Administration of Justice. In section 1B, “*Simplifying and Enhancing Systems,*” the Strategic Agenda states:

“The legal system can be intimidating and its complexity can make navigation difficult for victims, witnesses, and litigants not represented by counsel. Simplifying the rules for less complex cases and streamlining case management processes can help make court proceedings understandable and should result in greater public trust and confidence in the system.”

The “Action Plan” for this goal includes “*Streamline case processing by ... developing separate, simplified rules for civil cases in justice courts.*”

(2) **Administrative Order 2011-13:** Courts function pursuant to rules of procedure. Administrative Order 2011-13, entered on January 19, 2011, noted that although the rules of civil procedure in the superior court govern civil procedures in justice court, a number of the superior

¹ A.R.S. § 22-211 provides: “*The law governing procedure and practice in the superior court so far as applicable and when not otherwise specifically prescribed, shall govern procedure and practice in justice of the peace courts.*”

² The *Ariz. R. Civ. P.* in the 2011 volume of the Arizona Rules of Court is approximately 167 printed pages, excluding the table of contents, index, and forms. The corresponding length of the JCRCP is about 40 typed pages; it should be even shorter in a printed format.

court rules might not apply to civil cases in justice court, or may be unnecessarily complicated for justice court cases. A.O. 2011-13 also noted that many of the litigants in civil cases in justice courts are self-represented, and these litigants may have little or no training in civil procedure. A.O. 2011-13 stated that the administration of justice would be strengthened by simplifying justice court processes, and by making civil rules of procedure in justice court more comprehensible to everyone.

A.O. 2011-13 also established the Committee on Civil Rules of Procedure for Limited Jurisdiction Courts. (This Committee adopted the acronym of “RCiP.LJC”.) A.O. 2011-13 directed RCiP.LJC to review the rules of civil procedure. It also directed the Committee to determine if either (a) a new set of specialized civil rules of procedure for limited jurisdiction courts in Arizona, or (b) amendments to the existing rules of civil procedure that would be applicable only in limited jurisdiction courts, would promote this Court’s strategic goal of streamlining court processes.

The Committee’s membership includes a judge of the superior court, four justices of the peace, and representatives from three legal aid organizations. The members also include a justice court manager, three attorneys who frequently appear in justice court on behalf of plaintiffs and defendants, the chair of the State Bar’s Civil Practice and Procedure Committee, the former co-chair of the State Bar’s Landlord-Tenant Task Force, and a member of the public. The chair of RCiP.LJC is the Judicial Education Officer of the Administrative Office of the Courts (“AOC.”) To assure statewide diversity, the Committee members were chosen from five counties (Cochise, Coconino, Maricopa, Mohave, and Pima).

III. Background

(1) ***Decision regarding a separate set of rules:*** RCiP.LJC held its first meeting on March 2, 2011, and met seven times thereafter. Each meeting was five hours, and every member attended most or all of the meetings. After lengthy discussion at the first meeting, the members formally agreed to adopt a separate set of rules for justice court civil actions, rather than draft amendments to the existing superior court rules. Part IV of this report supports this decision.

(2) ***Review of limited jurisdiction court rules in other states:*** Other states have rules of civil procedure for limited jurisdiction courts, but some of these rules are not remarkably different from their corresponding rules for general jurisdiction courts. These lower court rules are therefore comparatively complicated.³

³ See for examples: Nevada’s Justice Court Rules of Civil Procedure <http://www.leg.state.nv.us/courtrules/JCRCRP.html>; and Civil Rules for Courts of Limited Jurisdiction http://www.courts.wa.gov/court_rules/CRLJ for the State of Washington.

One notable exception is the Rules of Civil Procedure for the Magistrate Courts of West Virginia, a set of twenty-three rules.⁴ A printed version of these rules is only twelve pages. These rules were adopted in 1988, and they apparently function well in West Virginia. The members of RCiP.LJC, however, felt that the West Virginia rules did not supply the desired functionality for Arizona justice courts. For example, the West Virginia rules do not provide for interrogatories, depositions, summary judgment, or other established Arizona court practices. The members also contemplated a future increase in the jurisdictional limit of Arizona's justice courts, and they wanted to assure that the new civil rules would be appropriate if that occurred.⁵

(3) **Resolution of competing interests:** The members identified various competing interests throughout their discussions. These competing interests or “*tensions*” existed:

- Between simplification and functionality. Would simplifying the rules sacrifice their functionality?
- Between the needs of attorneys and the needs of self-represented litigants. Could the rules be sufficiently straightforward for those who appear in court without a lawyer, while also including procedural options used by practicing attorneys?
- Between terms with legal significance and terms stated in “*plain English*.” Are there synonyms for words such as “*pleadings*,” “*service*,” and “*discovery*,” and even if there were, should the new rules forego or should they continue to use these traditional legal terms?
- Between the adoption of new rules and the continued use of existing rules in order to preserve established case law. Could incorporation of superior court rules by reference, or the development of cross-reference tables for the two sets of rules, create a bridge that would link the new rules to valuable case law precedents?

⁴ There are 158 magistrates in West Virginia, with at least two in every county and ten in the largest county. These magistrates hear misdemeanors, conduct felony preliminary hearings, and adjudicate civil cases with \$5,000 or less at issue. The civil rules for these courts can be found at <http://www.state.wv.us/wvsca/rules/CivProcMagCts.htm>. District Court Rules for the State of Arkansas, which similarly have jurisdiction of civil cases not exceeding \$5,000, are also commendably short, but these rules too are considered to be overly simple for application in Arizona. See http://courts.state.ar.us/rules/district_court_rules/index.cfm.

⁵ The justice court jurisdictional limit for civil cases is currently \$10,000, exclusive of interest, costs, and attorneys fees. See A.R.S. § 22-201(B).

The members believe that the resulting rules have struck a reasonable balance between each of these tensions.⁶ The members in particular believe that most of the draft rules have counterparts in the superior court rules, and therefore case law developed under the Ariz. R. Civ. P. will apply to issues arising under the JCRC.

(4) **Methodology:** At the first meeting, RCiP.LJC divided its members into three workgroups. Each workgroup was assigned a block of the superior court rules. The workgroups were charged with determining if all of the superior court rules and each subsection of every rule applied in justice court civil cases. If a rule or subsection did apply, the workgroups were asked to determine whether the existing provision should be incorporated by reference, or whether new and simplified language should be used. This process was a useful methodology, but it was extraordinarily time consuming due to the complexity and length of the existing rules. There are 108 rules of procedure for the superior court,⁷ with over 400 subsections.⁸

Each workgroup met twice. Based on findings of these workgroups, a complete set of Justice Court Rules of Civil Procedure was introduced at RCiP.LJC's meeting in July 2011. The full Committee thereafter engaged in detailed discussions on these rules and reviewed several successive drafts. Specific features of the recommended rules are summarized in the proposed rule petition.

IV. Comments

RCiP.LJC's chair and staff have presented previous versions of the rules to stakeholder groups, including:

- The Committee on Limited Jurisdiction Courts
- The Limited Jurisdiction Courts Administrators Association
- The Committee on Superior Court

⁶ The members also had to consider the effect of Arizona Revised Statutes, Title 22, Chapter 2, Articles 1, 2, and 3, which established requirements for jurisdiction and venue, pleadings and procedure, and judgments and executions. See further A.R.S. § 12-111, which provides: "*All statutes relating to pleading, practice and procedure shall be deemed rules of court and shall remain in effect as such until modified or suspended by rules promulgated by the supreme court.*"

⁷ The superior court rules are numbered 1 through 86. However, several rules are numbered past the decimal point, such as Rules 4.1, 4.2, 26.1, and 33.1, and this design accounts for 108 rules. Rules 78 and 79 are abrogated.

⁸ The 108 superior court rules contain 421 subsections. The 421 subsections include forty-one subsections that are no longer in use: thirty-one subsections have been "*deleted,*" six have been "*abrogated,*" three have been "*renumbered,*" and one has been "*re-designated.*"

- The Arizona Justice of the Peace Association Annual Conference
- Bench meetings in Mohave and Cochise Counties
- A bench meeting of the Maricopa County Justice Court

A presentation was also made to the State Bar's Civil Practice and Procedure Committee. That Committee established a subcommittee to review the proposed rules, and to prepare comments for consideration by the State Bar Committee and the Board of Governors in response to a formal rule petition.

The chair and staff received dozens of informal, constructive comments during the presentations that resulted in revisions to the draft rules. The following three questions were raised in these sessions, and these questions may be repeated during the formal comment period.

(1) ***Why can't the superior court rules be used in justice courts?*** As noted in the Justice 20/20 Strategic Agenda, a variety of superior court rules have no application to justice court cases. Other rules may apply, but only infrequently. Nonetheless, some commentators have suggested that the Ariz. R. Civ. P. should remain in justice courts in their entirety.

The Ariz. R. Civ. P. are modeled on the federal rules of civil procedure. The federal rules were written by law-trained individuals for use by judges and lawyers in relatively complex federal cases. Consequently, the superior court rules can be unnecessarily complex for those who must apply them in justice court. Those rules are not the "*directions on the package*" for self-represented litigants. Simplified rules should be more useful for the most common case types in justice court, for those who frequently appear in those cases, and for the courts that process and resolve these cases. The proposed rules include the requisite functionality yet also increase comprehensibility. In addition, the proposed rules enhance procedural protections for litigants.

(2) ***Will self-represented litigants read the justice court rules?*** Some commentators suggested that justice court rules should be no longer than one page. Others suggested that self-represented litigants would not read even a single page of rules. However, some self-represented litigants will read the rules, and those who do should find the experience easier and more digestible than reading the superior court rules. One legal aid member commented that we should not underestimate the ability of many self-represented litigants to use information when it is presented to them in an organized and straightforward manner. Parties to litigation are required to participate in the process, which presupposes reading a pleading, a disclosure statement, a notice or order from the court, or court rules.

Nonetheless, the Committee expects that some self-represented litigants will make minimal use of these rules. The rules are therefore designed to maximize their understanding. For example, the rules require service of a “*notice to defendant*” with a summons.⁹ This notice is a one-page summary of rights and responsibilities, and is similar to a residential eviction information sheet served on a tenant under the Rules of Procedure for Eviction Actions.¹⁰ Also, and unlike the superior court rules, the justice court rules either define or explain terms with legal significance, such as “*party*,” “*service*,” “*deposition*,” “*interrogatories*,” and “*default*.”¹¹

RCiP.LJC also envisions the rules as a foundation rather than an end point for assisting self-represented litigants. RCiP.LJC contemplates that in the future, additional materials will become available for use by self-represented litigants in justice court. These materials would include a set of forms posted on the judicial branch web site (these forms are referenced in Rule 148), and a guidebook for self-represented litigants, similar to the guidebooks that have been developed by the Supreme Court for appeals from justice court.¹²

(3) ***Why do the justice court rules have different numbering than the superior court rules?*** First, presenting the justice court rules in a sequential order is logical and promotes ease of use. Second, a different numbering system distinguishes the JCRCP from the superior court rules, some of which are incorporated by reference.

⁹ See Rule 112(d).

¹⁰ See Rule 148(b) and the Appendix to the JCRCP.

¹¹ See respectively Rules 102(a), 120(a), 123(a), 124(a), and 140(a).

¹² A publication of the National Center for State Courts, “*Future Trends: 2011*,” highlights the courts’ use of social media to assist self-represented litigants:

“Posting videos on visual-media-sharing sites is the most popular method of using social media to share information with self-represented litigants. These short videos, usually one to six minutes, educate litigants about what to expect when filling out forms, filing documents with the clerk, or appearing in court. Addressing the common questions of self-represented litigants, these videos help both litigants and court staff. Self-represented litigants can review the videos at their convenience as they prepare their cases. Better-prepared litigants ask court clerks and judges fewer questions and proceed more quickly. Because the video scripts have been thoughtfully prepared and thoroughly reviewed, court staff can refer litigants to the videos and avoid situations where they may unintentionally provide legal advice instead of legal information.”

(a) *The JCRCP rules are in a different sequence than the superior court rules for logical reasons.* The structure of the JCRCP is sequential, that is, the rules appear in a generally logical order. The JCRCP's table of contents reveals that general rules, such as the duties of a party and court conduct, are at the beginning. Next are the rules a party would follow to initiate the prosecution or defense of a civil lawsuit in justice court. These are followed by rules for disclosure and discovery; rules for motions, pretrial conferences, and trial; and rules for judgment. There are also concluding rules for dismissal of a lawsuit and for special proceedings.

The sequence of the superior court rules has historical roots, and law-trained individuals can locate a particular rule without difficulty. The same may not be true for self-represented litigants who have no legal training, and who are looking for a specific rule within a logical structure. Here are several examples of why re-sequencing and re-numbering was necessary for a logical structure of the justice court rules.

- Rule 1 (“*scope of rules*”) of the Ariz. R. Civ. P. was adopted by the JCRCP, but Rule 2 (“*one form of action*”) was not, so using the numbering of the superior court rules would result in a gap between Rules 1 and 3.¹³
- Rule 3 (“*commencement of action*”) states in its entirety that “*a civil action is commenced by filing a complaint with the court.*” However, Rule 3 does not elaborate on what needs to be alleged in a complaint, and the general rules for pleading do not surface in the superior court rules until Rule 8. Rules 3 and 8, along with several other rules on pleading, should logically be in a group.
- Rules 4, 4.1, and 4.2 concerning “*process*” come before the rules on pleading, yet a pleading is prepared prior to issuance of process (i.e., a summons).¹⁴ Rule 7.1 on motions similarly appears before the rules on complaints, although a complaint precedes a motion.

¹³ Similar “*gaps*” would appear from the exclusion within the JCRCP of other inapplicable rules. Excluded, for example, are Rules 23 (class actions), 31 (depositions upon written questions), 40 (assignment of cases for trial), 44 (proof [sic] records, determination of foreign law), 46 (exceptions unnecessary), 53 (masters), 57 (declaratory judgments), 65 (injunctions), 66 (receivers), 72 through 77 (arbitration), 78 and 79 (both abrogated), and 83 (local rules by superior courts). Gaps would also result from the deletion of medical malpractice and complex civil litigation rules, and by deleting inapplicable subsections of other rules.

¹⁴ The term “*process*” is not used in the JCRCP.

- Rules regarding trials are dispersed throughout the Ariz. R. Civ. P. rather than being in a single section. See Rule 7.2 (“*motions in limine*”), Rule 16 (“*pretrial conferences*”), Rules 38 through 52 concerning trials, and Rules 80(a) and 80(b) (“*conduct in trial*” and “*exclusion of minors from trial*”).
- Rule 41 concerning dismissals is contained within the section of the superior court rules on trials.

Simplifying the JCRCP has therefore required re-sequencing the Ariz. R. Civ. P. The re-arrangement should enhance comprehension and facilitate use of the JCRCP by self-represented litigants and other stakeholders.

(b) *Three-digit numbers differentiate the JCRCP from the Ariz. R. Civ. P.* The re-sequenced rules of the JCRCP are designated by three-digit numbers, which are distinguished from single or double digit numbering in the Ariz. R. Civ. P. These two sets of rules need to be distinguished because of the use of “*incorporation by reference.*”

The draft JCRCP is a freestanding document that provides procedures for the great majority of civil cases in justice courts (the “80” in the “80/20” rule.) This “80” includes the large percentage of cases disposed of by default or resolved during the pretrial stage. The remaining “20” are covered via incorporation of specified superior court rules within the JCRCP by reference.¹⁵ For example, civil jury trials are not the norm in justice court.¹⁶ The superior court rules concerning jury trials are therefore incorporated in the JCRCP by reference.¹⁷ Because there are frequent references in the JCRCP to the Ariz. R. Civ. P., the use of a different numbering system helps avoid confusing the two sets of rules.¹⁸

¹⁵ RCiP.LJC used the “80/20” rule to determine if a superior court rule should be included in the JCRCP or instead incorporated by reference. If the rule under consideration would apply to eighty percent or more of justice court cases, it is included in the JCRCP with new language. The rule is incorporated by reference if it is used only infrequently. Table 1 of the JCRCP identifies superior court rules that have been incorporated by reference.

¹⁶ The AOC’s data books show that during fiscal year 2010, there were 126,000 civil cases filed in justice courts statewide, yet there were only 71 civil jury trials that year. For FY 2009, there were 84,351 civil filings and just 42 civil jury trials statewide.

¹⁷ JCRCP Rule 134 contains the procedure for jury trials through incorporation by reference. Rule 134 incorporates six separate rules of the Ariz. R. Civ. P. with pages of text, reducing the entire justice court rule to only six lines.

¹⁸ Table 2 of the JCRCP cross-references these rules to provisions in the Ariz. R. Civ. P.

V. Recommendation

In conclusion, the Committee requests that the Arizona Judicial Council approve the filing of a rule petition seeking the adoption of the proposed Justice Court Rules of Civil Procedure. The Committee believes that these rules, if adopted, will further the salutary goals of the Justice 20/20 Strategic Agenda.

The accompanying rule petition requests a “*staggered*” comment period. The Committee requests the opportunity to reconvene after the initial comment period, to address issues raised by those comments, and, if appropriate, to file an amended rule petition. In this regard, the Committee is mindful of a statement made by the reporter for the committee that restyled the federal rules of civil procedure:

*“...nobody would claim that the new rules are perfect. You can always go back and find things that could be further improved....If any mistakes were made in the restyling project, they can be easily fixed.”*¹⁹

The Committee expresses its appreciation to Janet Johnson, Theresa Barrett, Amy Wood, and Jennifer Greene at the AOC for their guidance on this project. Each of the Committee members also expresses deep gratitude to the Chief Justice for the extraordinary opportunity to serve on this Committee and to further the vision of Justice 20/20.

¹⁹ Joseph Kimble, “*Lessons in Drafting from the New Federal Rules of Civil Procedure*” (2007).