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Committee on Civil Rules of Procedure for  
Limited Jurisdiction Courts  
1501 W. Washington St.  
Phoenix, AZ 85007

IN THE SUPREME COURT

STATE OF ARIZONA

PETITION TO ADOPT JUSTICE COURT )  
RULES OF CIVIL PROCEDURE )  
 ) Supreme Court No. R-12-0006  
 )  
 ) Amended Rule Petition  
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 )  
\_\_\_\_\_ )

The Court's Order dated January 13, 2012 opened this rule petition for comment until March 16, 2012. The Order also allowed the filing of an amended rule petition before April 27, 2012. Petitioner respectfully files this amended rule petition with the attached, revised version of the proposed justice court rules.

**1. Summary of comments.** Thirteen comments, from justices of the peace, attorneys, and the State Bar of Arizona, were filed during the initial nine-week comment period.

The State Bar Civil Practice and Procedure Committee and the Board of Governors Rules Committee engaged in a robust review process of this rule petition prior to its consideration by the Board of Governors.<sup>1</sup> Petitioner is pleased with the Bar’s formal comment, which “...commends the Committee for its efforts and supports the adoption of the Proposed Rules with the modifications detailed below.”

Other comments posted on the Rules Forum opposed a specialized set of civil rules for justice court:

*“Rewriting the existing Rules will do little to simplify the legal process or level the playing field.”* (Comment by Mr. Seidberg)

*“I do not feel the current proposed rules will accomplish the goals set forth by the Supreme Court. It will not reduce costs, nor do I expect it to make case flow more efficient for the justice courts. Frankly, I think the rules should be left alone.”* (Comment by Ms. De La Rosa)

*“The proposed rules did nothing to simplify the rules.”* (Comment by Ms. Nix)

Almost every comment, including those supporting the rule petition, had some criticism of the proposed rules. RCiP.LJC took a positive view of these

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<sup>1</sup> Several RCiP.LJC members, as well as the Chair and staff, attended one or more of these meetings at the State Bar.

criticisms, which led to improvements in the draft rules.<sup>2</sup> A discussion of specific issues follows.

**2. Renumbering the rules.** Judge Steven McMurry’s comment said in part:

*“I oppose the proposed Civil Rules of Procedure for Limited Jurisdiction Courts. My fundamental objection lies with the decision to jettison the numbering system used with the Federal Rules, and to adopt a new and unique numbering system. A motion for summary judgment would no longer be governed by Rule 56. It would now be a motion filed under Rule 129... We should not discard the Federal Rules in favor of our own unique system. In both the federal system and in Arizona case decisions, the details and meaning of the Federal Rules have been ‘fleshed out’ by the common law system. There is, however, no common law system developing the law as applied in the Arizona Justice Courts.”*

The Committee discussed its rationale for renumbering and re-sequencing the justice court rules in its report to the Arizona Judicial Council. ([See the report](#) at pages 6–8.) The report noted at page 4, “...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 *JCRCP.*”

Although their report stated that existing common law would apply to these rules, the members chose to make their intent clearer by two additions within the body of the rules. First, new Rule 101(d) expressly provides for the application of

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<sup>2</sup> The minutes of the March 30 and April 13, 2012 Committee meetings, which are available on [RCiP.LJC’s webpage](#), detail the members’ discussion of the comments. Three of the individuals who filed comments appeared at the March 30 meeting and shared their views with Committee members.

Arizona appellate decisions that have interpreted corresponding superior court rules. Second, brackets immediately after the text of a subsection of a justice court rule now contain the corresponding superior court rule(s).<sup>3</sup>

New Rule 101(d) says:

***“Relationship of these rules to the Arizona Rules of Civil Procedure.*** *These rules replace the Arizona Rules of Civil Procedure (‘the superior court rules.’) Differences in language between a justice court rule and a superior court rule are intended only to make the justice court rule simpler and easier to understand. Case law interpreting a superior court rule is authoritative unless a justice court rule expressly adds a requirement or provides a right not found in a superior court rule. For ease of reference, any related superior court rules are shown in brackets at the end of a corresponding subsection of these rules.”*

For example, JCRCP Rule 129 concerns summary judgment, and brackets after each subsection of Rule 129 show applicable provisions of Ariz. R. Civ. P. Rule 56. Because Rule 129 and Rule 56 are corresponding rules, case law such as *Orme School v Reeves* will continue to apply in justice court. These changes should assist justice court judges and litigants in locating and applying case law that is relevant to a justice court rule, notwithstanding the new numbering scheme of these proposed rules.

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<sup>3</sup> The proposed justice court rules also include a detailed table in the appendix that contains cross-references to the Ariz. R. Civ. P. The JCRCP are not the only Arizona rules to deviate from the numbering scheme of the Rules of Civil Procedure; the Arizona Rules of Family Law Procedure also use different numbering.

**3. Incorporation by reference.** Judge David Widmaier commented:

*“...the vast number of rules incorporated by reference make the new set of rules cumbersome if not unusable. It is our opinion that what we now have is two sets of rules to replace one. We would like to see many of the rules that are incorporated by reference to: either be incorporated as a rule verbatim, or incorporated through a re-write, or both.”*

RCiP.LJC acknowledges the merit of Judge Widmaier’s comment, and the Committee has eliminated the use of incorporation by reference in the revised draft. Rules that were previously incorporated by reference are now included in the JCRCP, albeit with simplified text.<sup>4</sup> The additional text increases the length of these rules, but better fulfills the goal of having a self-contained set of rules (“*one-stop shopping*”) for justice courts.

**4. Signatures.** Rule 109 is the correlative of superior court Rule 11. The State Bar expressed concern that the modified language of Rule 109(b) sets a different standard for signatures than Rule 11(a). The Committee had no intent to

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<sup>4</sup> Portions of three superior court rules (Rule 4.1, service of process within Arizona; Rule 4.2, service of process outside the State of Arizona; and Rule 64.1, civil arrest warrant) are relatively technical, and there are no modifications to the text of these rules. However, rather than including the complete text of infrequently used portions of these superior court rules within the body of Rules 113 and 145, respectively, the justice court rules now direct the reader to an appendix in the JCRCP where the relevant provisions of these three superior court rules are reproduced in their entirety. In addition, Rule 106 generally describes intervention and interpleader, two procedures that are rare in justice court; Rule 106 then directs the reader to superior court rules 24 and 22, which are contained in the appendix, for further information on these procedures.

establish a different standard, and the Committee’s motivation for adding Rule 101(d), *supra*, was in large measure to address this specific concern.

Rule 108(b) provides that the JCRCP applies to electronic as well as paper filings, and the Committee initially included language in Rule 109(a), “*signatures*,” based on Administrative Order 2010-58.<sup>5</sup> However, Committee members do not believe that the rules should permit self-represented parties to file documents on behalf of other self-represented parties, particularly when those parties may have separate or conflicting claims or defenses. The Committee also recognizes implications under JCRCP Rule 109(b), which is the analog of superior court Rule 11(a), of self-represented parties signing documents for other parties. The Committee revised Rule 109(a) by continuing to recognize that justice court e-filing has technical limitations, while at the same time holding parties who do not sign an electronically filed document to the same standard in Rule 109(b) as parties who sign filed documents. Nevertheless, the members believe that electronic filing should change to conform to the rules on signatures rather than vice versa, and they would prefer improvements in technology that allow multiple signatures on a document filed electronically by multiple self-represented parties.

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<sup>5</sup> A.O. 2010-58 permits a single, self-represented justice court litigant to sign and to e-file a document on behalf of multiple plaintiffs or multiple defendants. This Order accommodates a technical limitation of the electronic filing application that does not allow multiple signatures on intelligent forms.

**5. Special rules for collection cases involving assigned debts.** A large percentage of civil cases in justice court involve collection of assigned debts. As noted at page 6 of the petition, RCiP.LJC members previously considered issues about pleading and disclosure in assigned debt cases. An RCiP.LJC workgroup succeeded in breaking an RCiP.LJC impasse and achieving a resolution, later ratified by the full Committee, concerning the disclosure requirements of Rule 121(a)(3) for assigned debt cases. In addition, RCiP.LJC's proposed rule for complaints in assigned debt cases, Rule 110(b)(2), requires identification of the original owner of the debt.

The State Bar's comment recommended that Rule 110(b)(2) also contain a requirement that the date of default, and the amount due as of the date of default, be included in any complaint for collection of an assigned debt. RCiP.LJC members had extensive and continuous discussions about these requirements and related issues, and the version of the proposed rules filed with the rule petition reflects hard-fought compromises reached by the members on these subjects. At their March meeting, the members reaffirmed their compromise and declined to adopt the Bar's recommended revisions to Rule 110(b)(2). RCiP.LJC notes that there is no universal agreement on the meaning of the date of default (see for example *Navy Federal Credit Union v Jones*, 187 Ariz. 493, Division Two, 1996), and the Bar's proposal might add to rather than reduce issues in debt collection

litigation. In addition, the Bar's recommendation may create a substantive requirement, yet it is RCiP.LJC's position that legislative decisions rather than rules of procedure should generate substantive requirements in this area.

**6. Simplification.** RCiP.LJC's earlier version proposed a substantial simplification of the superior court rules, but certain comments expressed that the proposed justice court rules should be even simpler.<sup>6</sup> In light of those comments, revisions in the attached draft further simplify these rules. The new version incorporates dozens of additional grammatical, syntactical, and stylistic revisions, including a number of changes suggested by Judge Widmaier's comment, and by the State Bar's "*redline*" version. The revised rules also include additional explanations of legal jargon used in the JCRCP, and a new list in the appendix has references to over thirty legal terms defined in the justice court rules.

Nevertheless, RCiP.LJC consciously declined to make the proposed rules comprehensible to the least educated litigant. One member noted that the proposed rules should not use the prose of Shakespeare, but neither should they use the prose of Dr. Seuss. Legal procedures must still be carefully prescribed and accurately detailed. The proposed rules attempt to strike healthy balances between simplicity, functionality, and the inherent authority of court rules. A handbook for self-

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<sup>6</sup> However, some of these comments do not suggest any specific text with simpler verbiage.

represented litigants might be a valuable adjunct to the proposed rules, and could provide additional explanations and further simplification.

**Conclusion.** A committee established in 1934 drafted what later became the Federal Rules of Civil Procedure. The members of RCiP.LJC share certain attributes with the distinguished members of that committee:

*“[S]ince most of the members of the Committee were active practicing lawyers, their ideas proved well balanced and feasible in actual operation, rather than doctrinaire or theoretical....The Committee had no hesitancy to exercise its originality and ingenuity in situations in which its sound judgment indicated the desirability of this course....It operated in the spirit of the observation of Mr. Justice Brandeis that ‘if we would guide by the light of reason, we must let our minds be bold’.”<sup>7</sup>*

Even though the proposed rules may be less than perfect, Petitioner believes these rules will significantly promote the goals of the Justice 20/20 Strategic Agenda, and Petitioner recommends adoption of the revised Justice Court Rules of Civil Procedure attached to this amended petition. Compared to the superior court rules, the proposed justice court rules, among other things:

- Are about eighty percent (80%) shorter, excluding forms and appendices
- Have a more consistent style
- Are simpler and generally more comprehensible
- Include a variety of defined words and phrases

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<sup>7</sup> Alexander Holtzoff, “Origin and Sources of the Federal Rules of Civil Procedure,” 30 N.Y.U.L. Rev. 1057, 1058-1059 (1955)

- Contain notices and warnings that will benefit self-represented litigants
- Have the flexibility to allow for diverse practices of local justice courts
- Should make civil case processing more straightforward and efficient

Should the Court adopt these rules, Petitioner recommends that it delay the effective date for at least ninety days to allow the justice court community sufficient opportunity to prepare for their implementation.<sup>8</sup> Petitioner also recommends that the Court extend the term of the Committee for one year beyond the effective date of the rules. This would allow the members to reconvene after a period of use, to evaluate any issues that have arisen under the rules during their day-to-day operation, and to propose appropriate changes prior to the January 10, 2014 rule petition deadline.

RESPECTFULLY SUBMITTED this \_\_\_\_ day of April, 2012

By \_\_\_\_\_  
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<sup>8</sup> In making this recommendation, Petitioner is mindful of Supreme Court Rule 28(F)(2).

Copy e-mailed on

the date of filing to:

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