

Paul Julien, Chair
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 AMEND RULES 113, 115,)
119, 120, 126, 128, AND 134, AND) Supreme Court No. R-12-____
APPENDICES 3 AND 4, OF THE)
JUSTICE COURT RULES OF) (Expedited adoption requested)
CIVIL PROCEDURE)
)
)
_____)

Petitioner respectfully petitions this Court to amend the Justice Court Rules of Civil Procedure. The Appendix to this petition shows the text of the proposed amendments. For the reasons specified in Section IV of this petition, Petitioner requests expedited adoption of these rule amendments.

I. Background. This Court adopted the Justice Court Rules of Civil Procedure (the “JCRCP”) by Order number R-12-0006, entered on August 30, 2012. The effective date of these rules is January 1, 2013. Petitioner, as Chair of

the Committee on Civil Rules of Procedure for Limited Jurisdiction Courts (“RCiP.LJC”), was also the Petitioner in R-12-0006.¹

The JCRCP include forty-eight rules, an introduction, forms, and tables. In preparing training materials for these new rules, and in the course of training, Petitioner discovered several errors and omissions in the rules, and Petitioner is filing this Petition to correct them. In addition, this Court’s entry of an Order in R-11-0031 on December 10, 2012, requires further revisions to the JCRCP.

II. Content of the proposed amendments. Petitioner requests amendments to the following rules and appendices.

(1) Rule 113 and Appendix 3: This rule concerns “Serving a summons and complaint.” Rules 113(a) and 113(b) contain provisions for the most common situations of justice court service, specifically, personal service on individuals, corporations, and other business entities within the State of Arizona.

Rule 113(c) deals with “special situations,” that is, service in less common circumstances. Rather than adopting provisions for each of these circumstances, Rule 113(c) refers the reader to Appendix 3 of the JCRCP, which contains corresponding portions of Rule 4.1 of the Arizona Rules of Civil Procedure. Appendix 3 includes Ariz. R. Civ. P. Rule 4.1(h) for service upon the State of

¹ The Court established RCiP.LJC by Administrative Order 2011-13, which provides that the terms of Committee members expire on December 31, 2012.

Arizona; Rule 4.1(i), concerning service upon a county, municipal corporation, or other governmental subdivision; and Rule 4.1(j), regarding service upon other governmental entities.

On December 10, 2012, this Court entered Order number R-11-0031, which amended Ariz. R. Civ. P. 4.1. These amendments clarify service of process on a governmental entity in Arizona, and consolidate Rule 4.1 (h), (i), and (j) into a revised section (h). This rule change is effective on January 1, 2013. Order R-11-0031 requires corresponding revisions to JCRC P Rule 113(c) and to JCRC P Appendix 3.

(2) Rule 115: The title of this rule is “How to calculate time.” Rule 6 of the Arizona Rules of Civil Procedure was the model for Rule 115. However, Rule 6(b), entitled “enlargement,” does not have a counterpart in Rule 115. The Authors’ Comments to Rule 6(b) in McAuliffe’s Arizona Civil Rule Handbook explain, “Rule 6(b) confers upon the court the authority to extend or enlarge the period of time within which an act must be performed.” Although a justice of the peace may have inherent authority to enlarge time, Petitioner believes that an amendment to Rule 115 should expressly provide the authority. A proposed new section (c) of Rule 115, entitled “Extension of time,” would explicitly state that authority.

(3) Rule 119: Rule 119(a), “Amendments to pleadings,” is based on Rule 15(a) of the Ariz. R. Civ. P. However, Rule 119(a) omitted a counterpart to Rule 15(a)(3) that specifies the time within which a response to an amended pleading must be filed. An amendment to Rule 119(a) would correct the omission.

(4) Rule 120: One feature distinguishing the justice and superior court rules is that several of the new justice court rules require inclusion of specific notices in discovery and motion documents. For example, Rule 123(c) requires a notice of deposition of a party to specify, among other things, what a deposition is, and the maximum length of a deposition. Rules 124, 125, and 126 include analogous requirements so that the receiving party has an understanding of the nature of the discovery request, quantitative limits, and other information concerning interrogatories, a request for production, and a request for admissions. Rule 128, the general rule on motions, and Rule 129, the rule on motions for summary judgment, also require notices at the beginning of the motion that inform the opposing party of the party’s right to respond, and the consequence of failing to respond.

Petitioner has received comments requesting that the rules clarify that the content of each notice is a requirement of each respective rule. Rather than amending each of the six rules mentioned in the preceding paragraph, Petitioner suggests, as a more concise and utilitarian alternative, an amendment only to Rule

120, which is entitled “Providing Documents to Other Parties (‘Serving Documents’) After the Summons and Complaint.” Because the six aforementioned notices are included in documents provided to other parties, Rule 120 would be an appropriate, single location for this amendment.

(5) Rule 126: This rule on requests for admissions requires, in section (c), that the propounding party send a second notice if the other party fails to respond. A form provided within Rule 126(c) now requires a “notation of service under Rule 120(e).” This requirement contains a scrivener’s error. It should have said a “notation of service under Rule 120(d).”

(6) Rule 128: Rule 128(c) details proceedings on a motion. It correctly states that a party opposing a motion has ten days after the motion “is served” to file a response. However, it erroneously states that a party has five days after a response “is filed” to file a reply. One effect of this error is to deprive the replying party of the additional five days allowed by 115(b) for “service” of a document by postal mail or by e-mail. Petitioner requests an amendment to Rule 128(c) that allows a party to file a reply five days after the response “is served.”

(7) Rule 134: After further consideration of applicable statutes, Petitioner requests two amendments to this rule on the procedure for “trials.” First, Rule 134 omits the number of jurors needed to try a case, and to return a verdict, as specified in A.R.S. § 21-102(d). Second, the rule currently permits four peremptory

challenges, contrary to A.R.S. § 22-223(d), which allows only three peremptory challenges.

(8) Appendix 4: Appendix 4 of the JCRCF is entitled “Table of Cross-References (JCRCF to ARCP)”. The proposed amendments to Rules 113(c), 115(c), and 120(g) require new or revised sections in the Table of Cross-References, as shown in the Appendix to this rule petition.

III. Comments. The Education Services Division of the Administrative Office of the Courts conducted a Judicial Training Academy on the new JCRCF for about fifty justice court judges and staff on December 10, 2012. The training faculty, which included Petitioner and other RCiP.LJC members, noted several of the changes proposed by this petition during their presentations. Those attending this training expressed no opposition to the changes.

IV. Conclusion and Request for Modified Comment Period. Pursuant to Rule 28(G) of the Rules of the Supreme Court, Petitioner requests the Court to consider expedited adoption of these amendments at the earliest opportunity, followed by a public comment period. The proposed amendments are more technical than substantive. Expedited adoption by the Court will facilitate a smoother implementation of the rules, and will provide greater clarity and accuracy for judges, staff, and civil litigants in justice court. In addition, the proposed

changes to Rule 113 will make this rule consistent with the amendments to Ariz. R. Civ. P., Rule 4.1, which take effect January 1, 2013.

RESPECTFULLY SUBMITTED this 24th day of December, 2012

By /s/ _____
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Appendix

Throughout this Appendix, deleted text is shown by ~~strike through~~. New text is shown by underline.

Rule 113: Serving a summons and complaint

a. – b. No change

c. **Special situations for service of the summons and complaint on a defendant in the State of Arizona.** Service of the summons and complaint within the State of Arizona on one of the following defendants, or using one of the following methods, must be made as provided in the following sections of Rule 4.1 of the Arizona Rules of Civil Procedure. The rules listed in sub-sections (1) through ~~(9)~~ (7) below are included in the appendix to these Justice Court Rules of Civil Procedure:

1. – 3. No change

4. upon the State of Arizona, a county, a municipal corporation, or any other governmental entity: see Rule 4.1(h);

~~5. upon a county, municipal corporation, or other governmental subdivision: see Rule 4.1(i);~~

~~6. upon other governmental entities: see Rule 4.1(j);~~

~~7.~~ 5. upon a domestic corporation if an authorized officer or agent is not found within the State of Arizona: see Rule 4.1(l);

~~8.~~ 6. by alternative or substituted service: see Rule 4.1(m);

~~9.~~ 7. by service by publication: see Rule 4.1(n).

Proof of service upon any of the above defendants or using one of the above methods must be promptly prepared by the constable or certified private process server who completed service, and the proof of service must be filed with the court, except that proof of service by publication must be filed as provided by Rule 4.1(n). [ARCP 4.1(e)–~~(j)~~(h), ~~(l)~~–~~(n)~~ (j)–(l), 4(d), (g)]

d. – i. No change

Rule 115: How to calculate time

a. – b. No change

c. Extension of time. When these rules or a court order requires that a party do something by a specified time, including but not limited to filing a document, the court may extend that time. The court may do this on motion of a party, or it may do this on its own and without notice to the parties, if the court enters the extension before the expiration of the specified time. After the expiration of the specified time, the court may extend time only if a party files a motion showing that the party's failure to act before time expired was because of the party's excusable neglect. However, the court may extend the time limits for a motion for judgment as a matter of law under Rule 134(b), a motion for new trial under Rule 138(b), or a motion requesting relief from a judgment or an order under Rule 141(c), only if the court finds that a party entitled to notice of the entry of a judgment or an order did not receive notice from the clerk or from another party within twenty-one (21) days of the date of entry, and that no party would be prejudiced if the court allowed an extension.

[ARCP 6(b)]

Rule 119. Amended and Supplemental Pleadings

a. Amendments to pleadings. A party may amend a pleading one time within twenty-one (21) days after service of a responsive pleading. If no response is required, a party may amend a pleading within twenty-one (21) days after the pleading was filed. If a motion is filed under Rule 116(a)(2)(iv), (a)(3) or (a)(4), a party may amend a pleading one time before the date on which a response to the motion is due. However, the filing of an amended pleading before the response to such a motion is due does not, by itself, relieve a party opposing the motion from filing a timely response to the motion. Thereafter, and upon a party's motion, the court may permit the filing of an amended pleading at any stage of the proceeding and on terms that are just. Leave to amend must be freely given when justice requires. A party must file a response to an amended pleading within the time remaining for the party's response to the original pleading, or within twenty (20) days after service of the amended pleading, whichever is greater. [ARCP 15(a)]

b. – d. No change

Rule 120. Providing Documents to Other Parties (‘Serving Documents’) After the Summons and Complaint

a. – f. No change

g. Notices. Rules 123(c), 124(b), 125(b), 126(b), 126(c), 128(c), and 129(c), specify certain notices with mandatory language, including language that describes limits on the length of depositions, the number of discovery requests allowed, and other requirements. The limits and the other requirements contained in these notices control absent a court order modifying them.

Rule 126. Request for Admissions

a. – b. No change

c. Effect of admission; second notice. If a party has not responded to requests for admissions by the date specified in a notice under section (b) of this rule, then the party making the requests must serve a second notice on the party to whom the requests were made in substantially the following form:

“[Case Caption][Notice]

“To: _____:”

“Do not ignore this notice.

“You were served with requests for admissions on _____ [insert date.] The rules of procedure required you to respond to these requests no later than _____ [insert date.] You have failed to respond to some or all of the requests.

“The rules will still allow you to respond to the requests for admissions by _____ [insert date that is fifteen (15) days after the date of this notice]. Each request that you do not respond to by that date will be admitted and taken as true in this lawsuit.

“Date and signature: _____”

“[Notation of service under Rule ~~120(e)~~ 120(d)]”

Any matter admitted under this rule is conclusively established in the pending lawsuit unless the court permits an admission to be withdrawn or amended. The court may permit an admission to be withdrawn or amended only when it serves the interests of justice and when it furthers a decision of the lawsuit on its merits.

[ARCP 36(c)]

d. No change

Rule 128. Motions

a. – d. No change

e. Proceedings on a motion. Any party opposing a motion has ten (10) days after the motion is served to file a response to the motion with the court. The time to respond to a motion remains in effect even if the court has set a pretrial conference. The court may treat a party's failure to respond to a motion as the party's consent that the motion be granted. Within five (5) days after a response is ~~filed~~ served, the moving party may file with the court a reply to the response, but a reply is not required. A response and a reply, if any, must be provided to ("served on") the other parties as required by Rule 120. **[ARCP 7.1(a)]**

f. – g. No change

Rule 134. Trials

a. Trial procedures. The court may impose reasonable time limits for a trial or for any portion of a trial. The order of proceedings in a trial by jury, so far as applicable, also governs a trial to a judge without a jury. A jury will be summoned, and a trial to a jury will proceed, as provided by Title 22, Chapter 2 of the Arizona Revised Statutes, and as provided by this rule. Unless the parties agree otherwise, the number of individuals selected as trial jurors, and the number of jurors needed to render a verdict, will be as provided by Title 21, Chapter 1, of the Arizona Revised Statutes, or as otherwise provided by law. The order of trial is as follows:

(1) Potential jurors are summoned to the court and are given an oath to truthfully answer questions about their qualifications to serve as trial jurors. The judge, and the parties as the judge may allow, then ask questions to prospective jurors concerning their qualifications and fitness to serve as jurors. Potential jurors may be challenged for cause during the course of questioning. Upon request, the judge may allow the parties to make brief opening statements to the prospective jurors before the questioning process. After the questioning process, each side may exercise ~~four~~ three peremptory challenges, or some other reasonable number of peremptory challenges as the court directs, of potential jurors. The jurors then selected to hear the case are sworn, and the judge gives the jury preliminary instructions concerning the jury's duties, its conduct, the order of proceeding, and elementary legal principles that govern the trial. The judge will instruct the jurors that each of them may take handwritten notes during the trial, which the jurors can take to the jury room, and the court will provide jurors with note-taking materials.

(2) The plaintiff or plaintiff's counsel may make an opening statement. Opening statements of every party must be brief and must be limited to facts that the party expects the evidence will establish.

(3) The defendant or defendant's counsel may make an opening statement, or may defer making an opening statement until the close of plaintiff's evidence.

(4) Other parties, if any, may make opening statements in the order directed by the judge.

(5) The plaintiff will introduce evidence.

(6) The defendant will introduce evidence.

(7) Other parties, if any, may introduce evidence in the order directed by the judge.

(8) The plaintiff may then introduce evidence in rebuttal.

(9) Before a time set by the judge, a party may request that the judge give certain instructions to the jury. The judge will determine the final instructions after consultation with the parties, and the judge will then give the jury its concluding instructions of law. The instructions will be available in writing for the jury during its deliberations.

(10) Each party, in the order set forth above, may provide a summation to the jury. The party having the burden of proof on the case as a whole is entitled to provide a rebuttal.

(11) The jury will retire with trial exhibits and the jurors' notes to a private and convenient place for its deliberations in the charge of a proper officer of the court, who will not allow any communication to be made to them, except to ask if they have agreed upon a verdict, or as ordered by the judge. If the jury wishes to communicate with the judge, it shall make the desire known to the officer orally or in writing, who will then inform the court.

(12) A verdict reached by a jury will be announced in open court in the presence of the jurors and the parties, and noted in the court's records, and the jurors may then be discharged. Judgment will be given on the verdict.

(13) If it appears after a reasonable time that it is unlikely that the jury will reach a verdict, the jury may be discharged, and the matter may be tried again.

[ARCP 16(h), 38, 39, 47, 48, 49, 51]

b. No change

Appendix 3. Arizona Rules Of Civil Procedure

Rule 4.1. Service of Process Within Arizona

~~(d) **Service of Summons upon Individuals.** Service upon an individual from whom a waiver has not been obtained and filed, other than those specified in paragraphs (e), (f) and (g) of this Rule 4.1, shall be effected by delivering a copy of the summons and of the pleading to that individual personally or by leaving copies thereof at that individual's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein or by delivering a copy of the summons and of the pleading to an agent authorized by appointment or by law to receive service of process.~~

(e) **Service of Summons upon Minors.** Service upon a minor under the age of sixteen years shall be effected by service in the manner set forth in paragraph (d) of this Rule 4.1 upon the minor and upon the minor's father, mother or guardian, within this state, or if none is found therein, then upon any person having the care and control of such minor, or with whom the minor resides.

(f) **Service of Summons upon a Minor with Guardian or Conservator.** Service upon a minor for whom a guardian or conservator has been appointed in this state shall be effected by service in the manner set forth in paragraph (d) of this Rule 4.1 upon such guardian or conservator and minor.

(g) **Service of Summons upon Incompetent Persons.** Service upon a person who has been judicially declared to be insane, gravely disabled, incapacitated or mentally incompetent to manage that person's property and for whom a guardian or conservator has been appointed in this state shall be effected by service in the manner set forth in paragraph (d) of this Rule 4.1 upon such person and also upon that person's guardian or conservator, or if no guardian or conservator has been appointed, upon such person as the court designates.

~~(h) **Service of Summons Upon the State.** If a waiver has not been obtained and filed, service upon the state shall be effected by delivering a copy of the summons and of the pleading to the attorney general.~~

~~(i) **Service of Summons upon a County, Municipal Corporation or Other Governmental Subdivision.** a Governmental Entity. Service upon a county or a municipal corporation or other governmental subdivision of the state entity subject to suit, and from which a waiver has not been obtained and filed, shall be effected~~

by delivering a copy of the summons and of the pleading to the ~~chief executive officer, the secretary, clerk, or recording officer thereof.~~ following individuals:

- (1) For service upon the State, the Attorney General;
- (2) For service upon a County, the Clerk of the Board of Supervisors thereof;
- (3) For service upon a Municipal Corporation, the Clerk thereof; and
- (4) For service upon any other governmental entity:
 - (A) The individual designated by the entity pursuant to statute to receive service of process; or
 - (B) If the entity has not pursuant to statute designated a person to receive service of process, then the chief executive officer(s), or alternatively, the official secretary, clerk, or recording officer of the entity as established by law.

~~(j) **Service of Summons upon Other Governmental Entities.** Service upon any governmental entity not listed above shall be effected by serving the person, officer, group or body responsible for the administration of that entity or by serving the appropriate legal officer, if any, representing the entity. Service upon any person who is a member of the “group” or “body” responsible for the administration of the entity shall be sufficient.~~

~~(l) **Service of Summons upon a Domestic Corporation if Authorized Officer or Agent Not Found within the State.** When a domestic corporation does not have an officer or agent in this state upon whom legal service of process can be made, service upon such domestic corporation shall be effected by depositing two copies of the summons and of the pleading being served in the office of the Corporation Commission, which shall be deemed personal service on such corporation. The return of the sheriff of the county in which the action or proceeding is brought that after diligent search or inquiry the sheriff has been unable to find any officer or agent of such corporation upon whom process may be served, shall be prima facie evidence that the corporation does not have such an officer or agent in this state. The Corporation Commission shall file one of the copies in its office and immediately mail the other copy, postage prepaid, to the office of the corporation, or to the president, secretary or any director or officer of such corporation as appears or is ascertained by the Corporation Commission from the articles of incorporation or other papers on file in its office, or otherwise.~~

(# k) Alternative or Substituted Service. If service by one of the means set forth in the preceding paragraphs of this Rule 4.1 proves impracticable, then service may be accomplished in such manner, other than by publication, as the court, upon motion and without notice, may direct. Whenever the court allows an alternate or substitute form of service pursuant to this subpart, reasonable efforts shall be undertaken by the party making service to assure that actual notice of the commencement of the action is provided to the person to be served and, in any event, the summons and the pleading to be served, as well as any order of the court authorizing an alternative method of service, shall be mailed to the last known business or residence address of the person to be served. Service by publication may be employed only under the circumstances, and in accordance with the procedures, specified in Rules 4.1(n), 4.1(o), 4.2(f) and 4.2(g) of these Rules.

(# l) Service by Publication; Return. Where the person to be served is one whose residence is unknown to the party seeking service but whose last known residence address was within the state, or has avoided service of process, and service by publication is the best means practicable under the circumstances for providing notice of the institution of the action, then service may be made by publication in accordance with the requirements of this subpart. Such service shall be made by publication of the summons, and of a statement as to the manner in which a copy of the pleading being served may be obtained, at least once a week for four successive weeks (1) in a newspaper published in the county where the action is pending, and (2) in a newspaper published in the county of the last known residence of the person to be served if different from the county where the action is pending. If no newspaper is published in any such county, then the required publications shall be made in a newspaper published in an adjoining county. The service shall be complete thirty days after the first publication. When the residence of the person to be served is known, the party or officer making service shall also, on or before the date of the first publication, mail the summons and a copy of the pleading being served, postage prepaid, to that person at that person's place of residence. Service by publication and the return thereof may be made by the party procuring service or that party's attorney in the same manner as though made by an officer. The party or officer making service shall file an affidavit showing the manner and dates of the publication and mailing, and the circumstances warranting the utilization of the procedure authorized by this subpart, which shall be prima facie evidence of compliance herewith. A printed copy of the publication shall accompany the affidavit. If the residence of the party being served is unknown, and for that reason no mailing was made, the affidavit shall so state.

Rule 4.2: Service of Process Outside the State of Arizona

Rule 22. Interpleader [No change]

Rule 24. Intervention [No change]

Rule 64.1. Civil Arrest Warrant [No change]

Appendix 4: Table of Cross-References (JCRC to ARCP)

[**Note for the publisher:** Make the following revisions in the sequence in which the specified JCRC rule number and lettered section appear in the table.]

JCRC Rule #	JCRC Rule title	X-ref. ARCP Rule #	ARCP Rule title
113(c)	<p>Special situations for service of the summons and complaint on a defendant in the State of Arizona:</p> <p>(1) – (3) [No change]</p> <p>(4) upon the State <u>of Arizona</u>,</p> <p>(5) upon a county, a municipal corporation, or other governmental <u>subdivision entity</u></p> <p>(6) upon other governmental entities</p> <p>(7)<u>(5)</u> upon a domestic corporation if an officer or agent is not found within Arizona</p> <p>(8)<u>(6)</u> alternative or substituted services</p> <p>(9)<u>(7)</u> service by publication</p>	<p>4(d)</p> <p>4(g)</p> <p>4.1(h)</p> <p>4.1(i)</p> <p>4.1(j)</p> <p>4.1(h)<u>(j)</u></p> <p>4.1(m)<u>(k)</u></p> <p>4.1(n)<u>(l)</u></p>	<p>Process: by whom served</p> <p>Return of service</p> <p>Service of summons upon the State <u>a governmental entity</u></p> <p>Service of summons upon a county, municipal corporation, or other governmental subdivision</p> <p>Service of summons upon other governmental entities</p> <p>Service of summons upon <u>a domestic corporations, if authorized officer or agent not found within the state partnerships, or other unincorporated associations</u></p> <p>Alternative or substituted service</p> <p>Service by publication; return</p>
115(c)	<u>Extension of time</u>	<u>6(b)</u>	<u>Enlargement</u>
120(g)	<u>Notices</u>	=	=