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IN THE SUPREME COURT

STATE OF ARIZONA

In the Matter of:

PETITION TO AMEND RULES 133	)	
AND 134, JUSTICE COURT RULES	)	Supreme Court Number
OF CIVIL PROCEDURE	)	R-13-00__
	)	
	)	(expedited consideration requested)
_____	)	

Pursuant to Rule 28 of the Rules of the Supreme Court, David K. Byers, Administrative Director, Administrative Office of the Courts, respectfully petitions this Court to adopt amendments to the Justice Court Rules of Civil Procedure (“JCRCP”), as shown in the Appendix. These amendments will make the justice court rules more compatible with an array of revisions to Title 22 of the Arizona Revised Statutes, as adopted by Laws 2013, Chapter 212, HB 2459.

**I. Background and Purpose of the Proposed Rule Amendments.** The Fifty-first Legislature (2013) passed House Bill 2459 during its First Regular Session. The purpose of this legislation was to update justice and municipal court

statutes in Title 22. Title 22 has six articles that respectively deal with justice court precincts and precinct officers, civil proceedings in justice courts, criminal proceedings in justice courts, municipal courts, the small claims division of justice courts, and a homeless court. HB 2459 revised statutes in each of these six articles. It amended dozens of Title 22 statutes, and added or repealed several more. HB 2459 also changed the designation of Title 22 from “Justices of the Peace and Other Courts Not of Record” to “Justice and Municipal Courts.” Most of HB 2459’s revisions were in statutes affecting justice courts, and a lesser number were in statutes on municipal courts.

The majority of revisions in HB 2459 concerned style rather than substance. This was consistent with the intent of limited jurisdiction court judges who proposed these amendments. Accordingly, and notwithstanding the broad scope of the HB 2459 revisions, this rule petition requests amendments of only two rules of civil procedure.

## **II. Amendments to JCRCP Rule 133.**

Amendments to Rule 133(b): A.R.S. § 22-204(B) currently provides:

“Either party may demand a jury at any time before trial, and if not then demanded, trial by jury shall be deemed waived.”

The Committee on Civil Rules of Procedure for Limited Jurisdiction Courts drafted the JCRCP. This committee believed it would be appropriate to include a time limit in the rules to avoid situations where parties demanded juries on the day of

trial, but the committee was constrained by the statute, which allowed these belated requests. HB 2459 deleted the words “at any time” from the above-quoted provision of § 22-204(B). Because this statute has removed the previous constraint, the proposed amendment to Rule 133(b) would require a party to demand a jury “at least ten (10) days” before the start of trial.

Amendments to Rule 133(c): Sections 15 and 16 of HB 2459 repealed the previous text of A.R.S. § 22-204, and added new text for this section. The new § 22-204 is entitled “Change of venue; grounds.” Subsection (A) of the new statute provides in part that venue may be changed if a party files an affidavit “after the answer has been filed” alleging certain specified grounds.

JCRCP Rule 133(c) [“change of precinct (‘change of venue’)”] covers the same subject matter as this statute, and the rule’s text includes specific references to § 22-204. However, Rule 133 was adopted when the previous § 22-204 was in effect. Rule 133 provides that a defendant wishing to change venue must file an affidavit “within the time allowed for filing an answer.”

The proposed amendments to JCRCP Rule 133(c) would accomplish several objectives. The first objective is to eliminate the inconsistency between the statute, which permits a party to file the affidavit after the answer, and the rule, which requires a party to file an affidavit within the time to answer. The second objective of the amendment is to add a deadline for filing the affidavit, so that a party cannot

file the affidavit on the date or on the eve of trial. The proposed amendment would require a party to file a change of venue affidavit within ten days of the date of filing an answer. The third objective of the rule amendment is to preclude a party from filing a change of venue affidavit if the judge has already heard an issue in the case, for example, a motion to dismiss, on its merits. The final objectives are to integrate other grounds for change of venue specified by § 22-204 within the body of Rule 133(c), and to renumber a reference from § 22-204(B) to § 22-204(D), which is required because of the statutory changes.

**III. Amendment to JCRCP Rule 134.** JCRCP 134(a) is entitled “trial procedures.” This section includes a provision for the number of peremptory challenges. The rule as originally adopted on January 1, 2013 allowed four peremptory challenges, which is also the number of peremptory challenges permitted by Rule 47(e) of the Arizona Rules of Civil Procedure. However, Rule 134(a) conflicted with A.R.S. § 22-223(B), which allows only three peremptory challenges in a justice court civil case. A rule petition (Supreme Court No. R-12-0044) was filed before the effective date of the JCRCP to correct this inconsistency, and to make other technical corrections. Because this Court adopted R-12-0044 on an emergency basis on February 12, 2013, JCRCP Rule 134(a) now sets the limit of peremptory challenges at three.

Section 27 of HB 2459 amended § 22-223(B) by deleting the specified number of peremptory challenges in a civil case. The statute now simply says, “Either party may challenge any juror either for cause or peremptorily.” This would appear to allow an unlimited number of peremptory challenges, except that Rule 134(a) now sets a limit of three peremptory challenges.

The issue is that Rule 18.4(c) of the Arizona Rules of Criminal Procedure provides in part, “Both sides shall be allowed the following number of peremptory challenges:...(iii) Two, in all cases tried in limited jurisdiction courts.” The criminal and civil rules would be harmonious if the number of peremptory challenges in a justice court civil case was “two” rather than “three.” There is no “magic” in any of these numbers, but there is virtue in making the number of peremptory challenges in a civil and a criminal case consistent. The proposed amendment to JCRCP Rule 134(a) would accomplish that consistency.

**IV. Preliminary Comments.** An informal group of four justices of the peace and two members of the Administrative Office of the Courts reviewed HB 2459 and corresponding rules of procedure, and proposed the amendments shown in the Appendix to this petition. Petitioner has sought no other comments prior to filing.

**V. Request for Expedited Adoption.** Because HB 2459 has an effective date of January 1, 2014, Petitioner requests expedited adoption of the proposed

rule amendments, as permitted by Supreme Court Rule 28(G), with public comment to follow.

RESPECTFULLY SUBMITTED this 18<sup>th</sup> day of July, 2013

By \_\_\_\_\_  
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## Appendix

### Proposed amendment to JCRCP Rules 133 and 134

This Appendix shows additions by underline, and deletions by ~~strikeout~~.

#### **Rule 133.**

##### **a. Setting a lawsuit for trial. [No change]**

**b. Trial by jury or to a judge.** A party may demand a trial by jury of any issue for which a right to a jury trial exists. The trial of the issues so demanded will be by a jury, unless all of the parties agree to a trial by a judge without a jury; or unless the court finds that there is not a right to a trial by jury as to some or all of the issues. A party must demand for a jury trial must be made at least ten (10) days before the start of trial. If a demand for trial by jury has not been timely made, the trial will be before the judge without a jury; but even if no party has demanded a jury, the court may order a trial by jury of any or all of the issues. [ARCP 39(a), (j); see A.R.S. § 22-220]

**c. Change of precinct (“change of venue”).** Even though a plaintiff does not file a lawsuit in the correct precinct, the judge in that precinct may still hear the lawsuit unless the defendant, ~~within the time allowed for~~ ten days of filing an answer, files a request to transfer the venue of the lawsuit to the correct precinct. The request must include an affidavit by the defendant or by the defendant's attorney stating the precinct where defendant resides or does business, and any other reasons that the lawsuit is not in the correct precinct. The judge may grant the request and transfer the lawsuit to the correct precinct for further proceedings unless the plaintiff disputes the request within the time allowed by Rule 128(e), in which case the judge may hold a hearing on the request. Alternatively, if all parties in a lawsuit agree to change the venue as provided by Arizona Revised Statutes ~~§ 22-204(B)~~ § 22-204(D), they may file a written agreement in the precinct where the lawsuit is pending specifying the precinct to which venue will be changed. If a party believes that the party will not have a fair and impartial trial in the precinct where the lawsuit was filed, that a change of venue would benefit the convenience of witnesses and promote the ends of justice, or that there is other good and sufficient cause for a change of venue, then the party must proceed as provided in Arizona Revised Statutes § 22-204(A). A party loses the opportunity to change venue if the judge in the precinct where the lawsuit was filed has heard an issue in the case on its merits. [see A.R.S. §§ 12-404, 22-204]

**d. through f. [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, shall 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 ~~three~~ two 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) through (13) [No change]

**b. Motion for judgment as a matter of law. [No change]**