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8 **IN THE SUPREME COURT**
9 **STATE OF ARIZONA**

10 In the Matter of:

Supreme Court No. R-16-0022

11 **PETITION TO AMEND THE**
12 **RULES OF PROCEDURE FOR**
13 **EVICITION ACTIONS**

14 **REPLY OF**
15 **THE STATE BAR OF ARIZONA**

16 Pursuant to Rule 28 of the Rules of the Supreme Court, the State Bar of
17 Arizona (“State Bar”) respectfully responds to comments submitted in opposition to
18 the Petition to Amend the Rules of Procedure for Eviction Actions by adding a
19 change of judge rule, as Rule 9(c). The proposed rule would permit a change of
20 judge as a matter of right and for cause in eviction actions in justice courts. The
21 proposed rule is similar to Rule 133(d) of the Justice Court Rules of Civil Procedure
22 that permits a change of judge in other civil cases heard by the justice courts. As
23 discussed in the Petition, eviction cases in justice courts are the only civil cases in
24 justice or superior courts without a change of judge rule. The State Bar believes
25 Arizona courts should provide an opportunity for a change of judge as a matter of

1 right in all cases as a matter of fundamental fairness. Thus, this Petition promotes
2 access to justice by providing this procedural safeguard to eviction litigants, who are
3 often tenants facing a substantial hardship if they are displaced from their homes.
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5 The Committee on Limited Jurisdiction Courts (“LJC”) submitted a comment
6 opposing the Petition. The LJC claims the amendment is impractical, unnecessary,
7 imprudent, and will likely have an adverse impact on tenants. As explained below,
8 the State Bar disagrees with the LJC’s averments.
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10 As support for the assertion that the rule is not needed, the LJC claims the
11 central courthouse, in Phoenix, will honor a change of judge request because “[n]o
12 judge wants to hear a case in which his or her objectivity is in question.” What
13 remains unclear, is how a litigant would even know such a procedure is available.
14 This informal policy referenced by the LJC is not commonly known by litigants and
15 legal services attorneys. Both litigants and legal services attorneys should not be
16 presumed to know or to be able to rely on this unwritten, discretionary trend of
17 granting such requests. Moreover, if such requests are routinely granted, this policy
18 should be memorialized into a rule that can be referenced and relied upon by all
19 litigants. Also important to note, in Pima County, the second largest county, all eviction
20 cases are heard in a consolidated justice court. www.jp.pima.gov/home/htm
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1 The LJC asserts that isolated rural courts cannot easily accommodate requests;
2 and stand-alone urban courts may find it difficult to readily accommodate a change
3 of judge request. The State Bar anticipates the contrary. The State Bar believes that
4 the number of change of judge requests in rural courts will be few. Currently, there
5 are few eviction cases filed in these courts, even fewer where the tenant appears, and
6 even fewer litigants that appear and request a change of judge. For example, during
7 the prior three years ending June 30, 2014, only 18 eviction cases were filed in the
8 Duncan Justice Court. None of those cases went to trial. See
9 <http://www.azcourts.gov/Portals/39/2013DR/JPGreenlee.pdf>;
10 <http://www.azcourts.gov/Portals/39/2014DR/JPGreenlee.pdf>. Thus, the proposed rule
11 change would have had no effect on justice court administration in the Duncan
12 Justice Court over that three year period. In fact, no trials took place in Duncan
13 Justice Court during those years.¹

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17 Other rural courts throughout the state reflect similar statistics. In the Safford
18 Justice Court, located in Graham County, 58 evictions were filed in 2014. None of
19 these matters proceeded to trial. <http://www.azcourts.gov/Portals/39/>

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23 ¹ The statistical reports lump all civil cases, including evictions, into one category
24 for trials. Thus, it can be inferred that there were no trials for eviction matters from the
25 reports that reflect no civil trials taking place in this time period.

1 [2014DR/JPGraham.pdf#page=5](http://www.azcourts.gov/Portals/39/2014DR/JPGraham.pdf#page=5). In the Quartzsite Justice Court, located in La Paz
2 County, 20 evictions were filed in 2013, none of which proceeded to trial.
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4 <http://www.azcourts.gov/Portals/39/2014DR/JPLaPaz.pdf#page=5>. In Lake Havasu
5 Justice Court in Mohave County, 172 evictions actions were filed in 2014, and none
6 of these cases proceeded to trial. [http://www.azcourts.gov/Portals/
7 39/2014DR/JPMohave.pdf](http://www.azcourts.gov/Portals/39/2014DR/JPMohave.pdf). Finally, in Pinetop/Lakeside Justice Court in Navajo
8 County, 52 evictions were filed between 2013 and 2014, and none proceeded to trial.
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10 <http://www.azcourts.gov/Portals/39/2014DR/JPNavajo.pdf#page=7>.

11 While the number of eviction cases filed in urban justice courts may be higher,
12 a rule granting a right to a change of judge is not anticipated to significantly impact
13 the court's administration given the large number of default judgments in eviction
14 cases. To the extent this Court is concerned about the proposed Rule 9(c) over-
15 burdening the justice courts, the State Bar respectfully requests a one-year
16 provisional rule-term that could be extended if the concerns expressed by the LJC
17 do not come to fruition, as anticipated by the State Bar. If the rule change is
18 promulgated on a one year basis, this will give the LJC sufficient time to document
19 any actual widespread administrative issues. If such evidence is procured, the Court
20 would have the opportunity to revisit the propriety of this proposed new rule.
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1 Arizona has a statute that addresses change of venue requests in justice courts,
2 and provides the timeframe in which the parties must appear before the new justice
3 pursuant to the order of transfer.²
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5 Just as the time requirements for change of venue orders have proven to be
6 attainable, the State Bar believes that requests for change of judges can be attained
7 in a similar, timely manner under proposed Rule 9(c).
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9 The LJC also claims the amendment is not prudent. The LJC cites to the
10 Arizona Judicial Council resolution standard and claims it will not be possible to
11 meet this standard in isolated rural courts and most likely in stand-alone urban
12 courts. The LJC has not provided data in support of this assertion. If this Court is
13 inclined to promulgate this rule on a one-year provisional basis, the one year will
14 give the justice courts time to provide this data, if it in fact supports the LCJ's
15 concerns. As explained in the Petition, the case processing standards are intended to
16 provide the courts with a framework for the development and testing of case
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21 ² Pursuant to A.R.S. § 22-205(B), when there is the transfer of a case for the disqualification
22 of a justice:

23 **B. The order of transfer shall state the reason for the transfer**
24 **and the name of the justice court to which the transfer is made,**
25 **and shall require the parties and witnesses to appear before**
the justice court named in the order, not less than two nor
more than five days after its date. (Emphasis added).

1 management reports and are intended to complement, not supplant, due process
2 considerations. These standards are not set in stone, but should be able to
3 accommodate the change of judge requests, and can be tweaked if necessary. The
4 one-year limit will provide everyone an opportunity to see what effect, if any, the
5 change of judge rule has on processing standards and judicial administration.
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7 The LJC claims the amendment will likely have an adverse impact on tenants.
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9 The LJC claims that tenants are unrepresented 99% of the time, will not know about
10 this rule, or would not have the knowledge and sophistication to use it. The State
11 Bar knows of no other situation where such a claim is considered a valid reason to
12 not promulgate a procedural rule. Certainly it was not a valid reason to not have
13 change of judge provisions in Rule 42 of the Rules of Civil Procedure or Rule 133
14 of the Justice Court Rules of Procedure. Proposed Rule 9(c) brings parity to eviction
15 cases heard in justice courts with eviction cases before superior courts, and other
16 civil cases.
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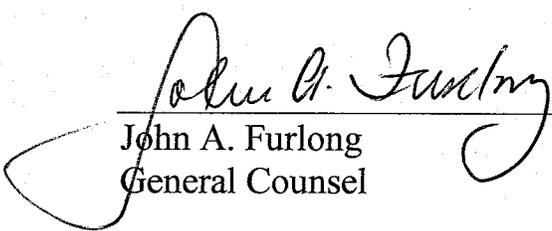
19 Finally, the LJC's claim that neither justices of the peace nor landlord
20 attorneys were consulted about the proposed rule change before the petition was filed
21 is incorrect. The LJC comments were submitted by Maricopa County Justice of the
22 Peace Steven McMurry who attended the Board of Governors' meeting where this
23 Petition was discussed and voted upon; he provided testimony in opposition to the
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1 Petition. Additionally, Maricopa County Justice of the Peace Gerald Williams
2 attended the State Bar Rules Review Committee meeting and provided testimony
3 opposing the rule change and also submitted a letter written by Judge McMurry.
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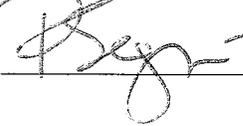
5 **CONCLUSION**

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7 For all these reasons, the State Bar respectfully requests that the Court approve
8 the Petition; or in the alternative, the Court limit the rule change to a one year
9 provisional term to provide sufficient time for the justice courts to collect data on
10 the number of change of judge requests and the effects, if any, on judicial
11 administration. Such a rule change will promote fundamental fairness for litigants in
12 eviction cases in furtherance of this Court's stated access to justice objectives.
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15 RESPECTFULLY SUBMITTED this 28th day of JUNE, 2016.

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19 John A. Furlong
20 General Counsel

21 Electronic copy filed with the
22 Clerk of the Arizona Supreme Court
23 this 29th day of June, 2016.

24 by: 
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