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Hon. Sara J. Agne
Superior Court of Arizona in
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**IN THE SUPREME COURT
STATE OF ARIZONA**

In the Matter of:

PETITION FOR CONFORMING
AMENDMENTS
TO THE ARIZONA JUSTICE
COURT RULES OF
CIVIL PROCEDURE

Supreme Court No. R-19-_____

**Petition to Amend the Arizona
Justice Court Rules of Civil
Procedure to Assure
Proportionality by Conforming
Discovery Limits in Justice Court
Cases to the Limits in Tier 1
Cases Under ARCP 26.2**

This Petition proposes to align the limits on discovery in Justice Court with the limits in Tier 1 cases in the Arizona Rules of Civil Procedure (“ARCP”), to eliminate the anomaly that cases venued in Justice Court (and thus concerning less than \$10,000) would have significantly more discovery than cases concerning greater sums venued in the Superior Court. Curing this anomaly would make discovery proportional across all Arizona civil courts, consistent with this Court’s proportionality-driven establishment of new and lower limits for discovery in Rule 26.2 last year. That would in turn allow the Justice Court Rules to fulfill their echo of the promise of Rule 1 – that “civil lawsuits are resolved speedily, inexpensively, and

fairly”.

I. OVERVIEW AND SUMMARY OF PROPOSED CHANGES.

Petitioners propose amendments to four of the Justice Court Rules of Civil Procedure (“JCRCP”). As discussed more closely in Section III. below, these amendments align the JCRCP discovery limits with the Tier 1 discovery limits in Rule 26.2(f)(1) of the ARCP. They also update the cross-references to the ARCP within the JCRCP for the small number of JCRCP rules this Petition proposes to revise. Updating those cross-references would avoid with respect to the updated rules the confusion that persists in all other JCRCP rules from the current JCRCP retaining in their text cross-references to the pre-January 2017 ARCP. This Petition does not propose to address the problem of outdated cross-references with respect to any rules other than those necessarily affected by resetting the discovery limits as proposed in this Petition. As explained in Section IV. below, the changes to the limits would not only make the JCRCP congruent with the revised and reduced ARCP discovery limits, but would also eliminate perverse incentives, and serve proportionality and efficiency.

II. THE CURRENT JUSTICE COURT RULES OF CIVIL PROCEDURE CONTAIN DISCOVERY LIMITS CONSISTENT WITH THE PRE-JANUARY 2017 ARIZONA RULES OF CIVIL PROCEDURE.

The current JCRCP, which apply to cases in which \$10,000 or less is at issue, exclusive of interest, costs and fees, permit discovery consistent with the discovery limits in the pre-January 2017 Arizona Rules of Civil Procedure. They provide limits of:

- Forty interrogatories for each party, Justice Ct. R. Civ. P. 124(b);
- Ten requests for production for each party, Justice Ct. R. Civ. P. 125(b); and
- Twenty-five requests for admissions for each party, Justice Ct. R. Civ. P. 126(b).

Equally notably, they impose no limit whatsoever on the number of hours for depositions of fact witnesses. Justice Ct. R. Civ. P. 123.

III. THIS PETITION PROPOSES THE FOLLOWING SPECIFIC AMENDMENTS TO ALIGN THE JUSTICE COURT RULES WITH THE LIMITS IN TIER 1 CASES IN ARIZONA RULE OF CIVIL PROCEDURE 26.2(f)(1).

The proposed amendments would align the JCRCP’s discovery limits with the limits in Tier 1 cases in Arizona Rule of Civil Procedure 26.2(f)(1), while updating cross-references in affected JCRCP rules as follows:

- Amending Rule 123(b) to permit a total of five hours of fact witness depositions by adding “Five (5) total hours are permitted for all fact witness depositions,” and adding a cross-reference to “ARCP 26.2(f).”
- Amending Rule 123(c) to add “single” to clarify its application to one deposition.
- Amending Rule 124(a) to omit “, 33.1(d)” as a cross-reference.
- Amending Rule 124(b) to permit five interrogatories for each party by omitting “forty (40)” and adding “five (5),” and adding a cross-reference to ARCP “26.2(f)” and omitting “, 33.1(a), (c).”
- Amending Rule 124(c) to change the cross-reference from ARCP “33.1(f)” to

“33(a).”

- Amending Rule 124(d) to change the cross-reference from ARCP “33(b)” to “33(c).”
- Amending Rule 125(b) to permit five requests for production for each party by omitting “ten (10)” and adding “five (5),” and adding a cross-reference to ARCP “26.2(f).”
- Amending Rule 126(b) to permit ten requests for admissions for each party “ten (10)” and adding “five (5),” and adding a cross-reference to ARCP “26.2(f),” and changing a cross-reference from ARCP “36(c)” to “36(b).”

IV. THIS SMALL NUMBER OF SURGICAL CHANGES WOULD FURTHER THE GOAL OF PROPORTIONALITY WHILE ELIMINATING ANY PERVERSE INCENTIVE TO FILE CASES IN JUSTICE COURT TO TAKE UNNECESSARY DISCOVERY.

These amendments would update the JCRCP’s discovery limits to match those in Rule 26.2, which became effective on July 1, 2018. These reduced discovery limits were the result of careful consideration by the Committee on Civil Justice Reform, which this Court created in late 2015 and charged with identifying ways “to reduce the cost and time required to resolve civil cases.” Petition R-17-0010, at 2. The limits sought to serve the goal of proportionality by establishing tiered limits to discovery so that cases with lower amounts in controversy would receive less discovery. Thus, under new Rule 26.2(f)(1), in cases with the lowest amount in controversy (\$50,000 or less) each side is presumptively allowed only “5 total hours of fact witness depositions, 5 ... interrogatories, 5 ... requests for production, 10 ... requests for

admission, and 120 days in which to complete discovery.” *See* Ariz. R. Civ. P. 26.2(f)(1); Ariz. R. Civ. P. 26.2(c)(3)(A). Justice Court resolves cases in which the amount in controversy is less than \$10,000. Ariz. Const. art. 6, § 32; A.R.S. § 22-201(B)-(C). Justice Court thus needs these cost-reducing reforms at least as much as the Superior Court needs them for Tier 1 cases, and likely more so. Petitioners see several advantages in aligning discovery in Justice Court with discovery in Tier 1 cases:

First, these amendments serve the core value of proportionality emphasized by Rule 26(b)(1) of the ARCP and given greater effect by Ariz. R. Civ. P. 26.2. Making Justice Court discovery proportional, as outlined in the above Section III, assists in avoiding potential inefficiencies of voluminous discovery. This Court made discovery more proportional in cases in which less than \$50,000 is at issue by establishing Tier 1 limits on discovery. *See* Ariz. R. Civ. P. 26.2(c)(3)(A); Ariz. R. Civ. P. 26.2(f)(1). This Court should do the same for Justice Court cases, as they comprise a subset of the Tier 1 case population.

Second, this proposal would reinforce this Court’s efforts toward making the ARCP and the JCRCP congruent. *See* Justice Ct. R. Civ. P., Introduction to the Justice Court Rules of Civil Procedure (“These justice court rules are based on the Arizona Rules of Civil Procedure....”).¹ This Court recently approved a petition for a similar amendment to Rule 113 of the JCRCP – there to align with the timeline of

¹ Making the two sets of rules congruent would also make developing case law concerning these limits applicable in both courts. *See id.*

service in Rule 4(i) of the ARCP, as reflected by this Court’s Order on Petition R-17-0033. Petitioners seek changes to the JCRCP in part to serve the important goal of congruence, which can only make the courts more intuitive and less confusing as there are fewer arbitrary differences in procedure between them.

Third, these amendments would eliminate perverse incentives for forum shopping. Specifically, Petitioners seek to avoid the current large discrepancy between available limits of discovery tools in either forum, as litigants (or their counsel) may be incentivized to opt for a forum with greatly expanded discovery. Providing recourse to greater discovery than in the Superior Court is manifestly not the purpose of the Justice Courts. Eliminating this incentive to file small cases in Justice Court can only help users of the system “increase their trust and confidence in the legal system.” *See* Justice Ct. R. Civ. P., Introduction to the Justice Court Rules of Civil Procedure.

V. CONCLUSION

For the above-stated reasons, Petitioners hereby move this Court pursuant to Supreme Court Rule 28 to make the above-described changes, which are set forth in blackline in the attached Exhibit A. While Petitioners are mindful of the significant changes both the ARCP and JCRCP have undergone in recent years, they respectfully suggest that they propose minor, surgical changes which will achieve the benefits of increasing proportionality and efficiency in the JCRCP, thus serving justice for users of the Arizona Justice Courts.

RESPECTFULLY SUBMITTED this 10th day of January, 2019.

By: /s/ Amanda Z. Weaver

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