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

9 In the Matter of:

Supreme Court No. R-19-0020

10 **PETITION TO AMEND RULES**
11 **123, 124, 125, AND 126 OF THE**
12 **ARIZONA JUSTICE COURT**
13 **RULES OF CIVIL PROCEDURE**

COMMENT OF THE
STATE BAR OF ARIZONA

14 Pursuant to Rule 28(D) of the Arizona Rules of Supreme Court, the State Bar
15 of Arizona (the “State Bar”) hereby submits the following as its Comment to the
16 above-captioned Petition.

17 The Petition seeks to amend four of the Justice Court Rules of Civil Procedure
18 (“JCRCP”) to align the discovery limits therein with the Tier 1 discovery limits in
19 Rule 26.2(f)(1) of the Arizona Rules of Civil Procedure (“ARCP”) for fact witness
20 depositions and written discovery.
21

22 The State Bar generally supports the Petition, with one proposed modification.
23 The tiered discovery limits in the ARCP can be modified by stipulation or by the
24 Court for good cause. Ariz. R. Civ. P. 26.2(g) (Obtaining Discovery Beyond Tier
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1 Limits). The proposed amendments to the JCRCP do not expressly provide a
2 mechanism for parties to seek additional discovery where warranted by the needs of
3 the case. The State Bar believes that parties in Justice Court should be able to seek
4 additional discovery, beyond the Tier 1 limits, where supported by good cause.
5 Allowing this flexibility is particularly important in Justice Court matters, because
6 the disclosure requirements in the JCRCP are more restrictive than the disclosure
7 requirements under the ARCP.
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10 The State Bar has discussed this concern informally with Petitioners,¹ and
11 based on those discussions, the State Bar understands that Petitioners will be
12 proposing an amendment to their Petition to incorporate a good cause exception to
13 the proposed discovery limits.
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15 The basis for the proposed modification is discussed below.

16 **DISCUSSION**

17 **I. SUMMARY OF THE PETITION**

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19 Petition R-19-0020 seeks to amend Arizona Justice Court Rules of Civil
20 Procedure 123 through 126. The amended discovery rules would permit the same
21 level of discovery for Justice Court actions as is permitted for cases in Superior
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24 ¹ Two of the Petitioners serve as members of the State Bar's Civil
25 Practice & Procedure Committee, and the issues were discussed as part of the
Committee's review of the Petition.

1 Court that qualify for Tier 1 discovery under Rule 26.2(f)(1) of the Arizona Rules
2 of Civil Procedure. The Petitioners note that because cases in Justice Court
3 necessarily involve controversies under \$10,000, the goal of proportionality would
4 be served by permitting the same amount of discovery as allowed for cases up to
5 \$50,000 in Superior Court. Petitioners also believe that the current disconnect
6 between the discovery rules creates a “perverse incentive” for forum shopping
7 because Justice Court currently allows for greater discovery.
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10 **II. THE STATE BAR SUPPORTS THE PETITION, WITH THE**
11 **ADDITION OF A GOOD CAUSE EXCEPTION FOR OBTAINING**
12 **ADDITIONAL DISCOVERY.**

13 **A. Differences in Disclosure Requirements Between Justice Court and**
14 **Superior Court.**

15 Petitioners note that making the discovery rules in Justice Court identical to
16 the Tier 1 discovery rules in Superior Court would “reinforce this Court’s efforts
17 toward making the ARCP and JCRCP congruent.” However, while the Petition
18 would make the discovery limits themselves congruent, the actual impact would be
19 to make discovery in Justice Court potentially more restrictive than what is
20 permitted under the Arizona Rules of Civil Procedure. This is because the initial
21 disclosure requirements of ARCP Rule 26.1 are much more fulsome than the
22 requirements of JCRCP Rule 121.
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24 For example, in both courts parties must disclose the identities and contact
25 information of all persons with knowledge of the dispute. However, in Superior

1 Court the parties must disclose “a fair description of the nature of the knowledge or
2 information” possessed by each knowledgeable person. In Justice Court, parties
3 need only disclose the substance of a person’s knowledge if the party anticipates
4 calling that person as a trial witness. *Compare* ARCP 26.1(a)(4)-(5) with JCRCP
5 121(a)(1)-(2).
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7 Similarly, in Superior Court parties are required to disclose copies of all
8 documents that may be relevant to the subject matter of the action, producing copies
9 of hard-copy documents simultaneously with the initial disclosure and producing
10 copies of electronically stored information within 40 days of the initial disclosure.
11 In Justice Court parties need only produce those documents that will be used to
12 support a claim or defense, and disclose a mere list of other relevant documents.
13 *Compare* ARCP 26.1(b) and (c)(2) with JCRCP 121(a)(3) and (5).
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15 Moreover, although the discovery tier system adopted in the Arizona Rules
16 of Civil Procedure works well at a general level, there can be cases where the goal
17 of proportionality breaks down because the amount of damages is unrelated to the
18 complexity of the case. For example, a medical malpractice case in Justice Court
19 could still require discovery for expert witnesses. In Superior Court the parties must
20 make extensive disclosures regarding expert witnesses, but in Justice Court the only
21 mandatory disclosure is the expert’s qualifications and a summary of opinions.
22 *Compare* ARCP 26.1(d) with JCRCP 121(a)(1). Indeed, the Justice Court rules
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1 specifically encourage parties to use interrogatories and depositions to discover
2 facts and opinions to which the expert witnesses will testify. JCRCP 122(f)(4).

3
4 The discovery tier system for Superior Court actions was designed to work
5 in conjunction with the extensive mandatory disclosure rules in the Arizona Rules
6 of Civil Procedure. Simply importing the most restrictive discovery rules into the
7 Justice Court context, with its more limited mandatory disclosures, may not work
8 as intended.

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10 **B. The Petition Should be Amended to Explicitly Permit Additional
Discovery When Appropriate.**

11 The State Bar supports the Petition's proposal to align Justice Court
12 discovery with Tier 1 discovery under ARCP 26.2(f)(1), but is concerned that
13 differences in the disclosure rules, discussed in Section A above, created a potential
14 for unfairness. The State Bar believes that this concern can be adequately addressed
15 by including an explicit provision permitting parties to seek discovery beyond the
16 presumptive limits for good cause. The State Bar notes, in addition, that ARCP
17 26.2(g)(1)(B) and (3) allows parties to stipulate to additional discovery beyond
18 tiered limits, but the court retains power to disapprove the stipulation. In addition
19 to a good cause exception, a similar addition should be considered for the Justice
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1 Court Rules, to clarify the parties' ability to stipulate to additional discovery and to
2 minimize unnecessary motion practice.²

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4 In response to the concerns raised by the State Bar, the Petitioners have
5 indicated their intent to file an amended Petition that will allow additional discovery
6 in Justice Court on motion, for good cause shown. The State Bar supports the
7 Petition with this proposed amendment.

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9 **CONCLUSION**

10 Imposing Tier 1 discovery limits in Justice Court actions is consistent with
11 the goal of proportionality in discovery, which formed the basis for extensive
12 amendments to the Arizona Rules of Civil Procedure that took effect July 2018.

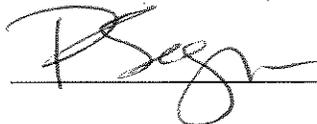
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16 ² It should be noted that the Justice Court rules addressing motions, in
17 JCRCP Rule 128, require filing of a formal motion and response. Effective July 1,
18 2018, the Arizona Rules of Civil Procedure were amended to provide an expedited
19 procedure for resolving discovery disputes that eliminates the need for formal
20 motion practice. *See* Ariz. R. Civ. P. 26(d). When the Arizona Rules of Civil
21 Procedure were extensively amended in 2016, the Justice Court rules did not
22 incorporate those amendments, and instead, continue to cross-reference the pre-2017
23 version of those rules. *See* JCRCP, Rule 101(d). Nor have the Justice Court rules
24 been updated to reflect the proportionality and case management reform
25 amendments adopted effective July 1, 2018, which include the noted expedited
discovery dispute procedure. The State Bar believes that a systemic review should
be undertaken to update the Justice Court Rule's outdated cross-references to the
Arizona Rules of Civil Procedure and to selectively incorporate, where appropriate,
recent amendments to the Arizona Rules of Civil Procedure. However, that
undertaking--which would be extensive--is beyond the scope of the current Petition
or this Comment.

1 However, the differences in the basic structure of the Justice Court discovery rules,
2 specifically the limited mandatory disclosures, means that parties in Justice Court
3 will need an option to seek expanded discovery if appropriate for the particular case.
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5 For these reasons, the State Bar respectfully recommends that the Court adopt the
6 Petition only with an amendment that allows parties to seek additional discovery by
7 motion.

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9 RESPECTFULLY SUBMITTED this 1st day of May, 2019.

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11 
12 Lisa M. Panahi
13 General Counsel

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15 Electronic copy filed with the
16 Clerk of the Supreme Court of Arizona
17 this 1st day of May, 2019.

18 by: 
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