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

10 In the Matter of:

11 **PETITION TO AMEND RULE 81,**
12 **RULES OF THE SUPREME**
13 **COURT**

Supreme Court No. R-

Petition to Amend
Rule 81, Rules of the
Supreme Court

14
15 Pursuant to Rule 28, Ariz. R. Sup. Ct., and by approval of the Bench on
16 November 12, 2019, the Maricopa County Justice Courts respectfully petitions this
17 Court to amend Rule 81 of the Rules of the Supreme Court; more specifically,
18 amend the definition of Part D: Pro Tempore Part-Time Judge in the Application
19 section to include volunteer Small Claims and Civil Traffic Hearing Officers
20 appointed pursuant to state statute.

21 **Proposal**

22 Justice Courts rely upon civic-minded individuals to resolve many of the
23 small claims and civil traffic matters filed in its courts. Those individuals are
24 appointed pursuant to A.R.S. §§ 22-506 and 28-1553, respectively.
25

1 The Code of Judicial Conduct does include a hearing officer under the
2 definition of “Judge.” Accordingly, under the Application section, the volunteer
3 hearing officers must fall under either Part C: Continuing or Periodic Part-Time
4 Judge or Part D: Pro Tempore Part-Time Judge. The definition of the latter is as
5 follows:

6 A pro tempore part-time judge is a person appointed pursuant to
7 Article 6, § 31 of the Arizona Constitution, or municipal charter or
8 ordinance, who serves or expects to serve repeatedly on a less than
9 full-time basis, but under a separate appointment by a presiding judge
for each limited period of service or for each matter.

10 As indicated above, the hearing officers are appointed pursuant to statute, not the
11 Constitution or a municipal charter or ordinance.

12 Thus, by default, the volunteer hearing officer must fall under Part C:
13 Continuing or Periodic Part-Time Judge, defined as follows:

14 A judge who serves part-time on a continuing or periodic basis,
15 but is permitted to devote time to another profession or occupation
and whose compensation is less than that of a full-time judge...

16
17 The distinction is more than academic because different portions of the Code
18 apply to the different categories. Most concernedly, Part C judges must comply
19 with Rule 3.7 (participation in educational, religious, charitable, fraternal, or civic
20 organizations and activities), whereas Part D judges do not. This is the ultimate
21 irony: paid pro tempore judges have no restrictions on their charitable activities,
22 but volunteer hearing officers, who by definition are charitable and civic-minded,
23 are restricted as to their volunteer activities. The Maricopa County Justice Courts
24 have had qualified and excellent hearing officer resign because of this restriction.
25

1 We can conceive of no logical reason why volunteer hearing officers be
2 restricted in their charitable activities and can only conclude that this was an
3 accident or an oversight (particularly when you consider that a volunteer civil
4 traffic hearing officer appointed by a municipality is a Part D judge and has no
5 charitable activity restriction).

6 The proposed fix is quite simple: amend the definition of a Part D judge to
7 include one appointed by statute.

8 A pro tempore part-time judge is a person appointed pursuant to
9 Article 6, § 31 of the Arizona Constitution, **state statute**, or municipal
10 charter or ordinance, who serves or expects to serve repeatedly on a
11 less than full-time basis, but under a separate appointment by a
12 presiding judge for each limited period of service or for each matter.

12 **Conclusion**

13 The Maricopa County Justice Courts requests that the Court amend Rule 81
14 of the Rules of the Supreme Court; more specifically, amend the definition of Part
15 D: Pro Tempore Part-Time Judge in the Application section to include volunteer
16 Small Claims and Civil Traffic Hearing Officers appointed pursuant to state
17 statute.

18 RESPECTFULLY SUBMITTED this day, November 14, 2019.

19
20 /s/ Keith Russell
21 Keith Russel
22 Presiding Justice of the Peace
23 Maricopa County Justice Courts
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25 Electronic copy filed with the

1 Clerk of the Arizona Supreme Court
2 this 14th day of November, 2019.

3 by: Charles J. Adornetto

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Appendix

PART D. Pro Tempore Part-Time Judge.

A pro tempore part-time judge is a person appointed pursuant to Article 6, § 31 of the Arizona Constitution, **state statute**, or municipal charter or ordinance, who serves or expects to serve repeatedly on a less than full-time basis, but under a separate appointment by a presiding judge for each limited period of service or for each matter.

(1) A pro tempore part-time judge is not required to comply:

(a) except while serving as a judge with Rules 1.2 (promoting confidence in the judiciary), 2.4 (external influences on judicial conduct), 2.10 (judicial statements on pending and impending cases), 3.2 (appearance before governmental bodies and consultation with government officials), 3.3 (acting as a character witness); or

(b) at any time with Rules 3.4 (appointments to governmental positions), 3.7 (participation in educational, religious, charitable, fraternal, or civic organizations and activities), 3.8 appointments to fiduciary positions), 3.9 (service as arbitrator or mediator), 3.10 (practice of law), 3.11 (financial, business, or remunerative activities), 3.13 (acceptance and reporting of gifts, loans, bequests, benefits, or other things of value), 3.15 (reporting requirements), 4.1 (political and campaign activities of judges and judicial candidates in general), and 4.5 (activities of judges who become candidates for nonjudicial office).

(2) A person who has been a pro tempore part-time judge shall not act as a lawyer in a proceeding in which the judge has served as a judge or in any other proceeding related thereto except as otherwise permitted by Rule 1.12(a) of the Arizona Rules of Professional Conduct.

(3) A pro tempore part-time judge who serves once or only sporadically in a specialized division of a court or in a court without specialized divisions may appear as a lawyer in such specialized division or court during such service.

(4) A pro tempore part-time judge who serves repeatedly on a continuing scheduled basis in a specialized division of a court or in a court without specialized divisions shall not appear as a lawyer in such specialized division or court during such service.

(5) A part-time pro tempore judge who is appointed to perform judicial functions of a nonappealable nature on a continuing scheduled basis shall not appear as a lawyer in other proceedings involving the function of the court in which the service was performed, but may appear as a lawyer in all other areas of practice before the court.