

# Committee on Improving Small Claims Case Processing

**Monday, November 28, 2016**

1:30 p.m. to 3:30 p.m.

State Courts Building, Conference Room 332

1501 W. Washington, Phoenix, AZ 85007

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**Present:** Judge Steven McMurry, Chair; Mr. Michael Hellon; Mr. Paul Julien; Judge Lisa Royal; Judge William Rummer

**Telephonic:** Judge Timothy Dickerson; Mr. Doug Kooi; Judge David Widmaier

**Absent/Excused:** None

**Guests:** Ms. Mary Blanco; Mr. William Kenworthy; Mr. Colin Oglesbee

**Administrative Office of the Courts:** Ms. Cathy Clarich; Ms. Lynn Golden; Ms. Marretta Mathes; Mr. Marcus Reinkensmeyer

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## **I. Announcements and Introductions**

The November 28, 2016 meeting of the Committee on Improving Small Claims Case Processing was called to order by the Chair, Honorable Steven McMurry, at 1:30 p.m. The Chair provided background regarding the rationale for forming this committee, namely, that small claims case processing in Arizona is not a “speedy” resource for dispute resolution, which is contrary to the reason for its existence. The Chair indicated that this is evident because only a fraction of the cases filed are being resolved within a six-month timeframe. Time standards data was referenced.

For the purpose of attendance and establishing a quorum, the Chair asked for member roll call and introductions of staff and guests.

## **II. New Business**

### **a. Review of Administrative Order 2016-115**

The Chair read Administrative Order 2016-115, and stated the task charged of the committee: making recommendations that may include rule amendments to reduce the time required to resolve small claims cases. The Chair pointed out that this committee must have its recommendations together by June 30, 2017.

### **b. Preliminary Discussions**

Mr. Paul Julien inquired as to whether the jurisdictional dollar amount increase from \$2,500 to \$3,500 has had any impact on case processing. Mr. Mike Hellon inquired whether the case processing problems experienced are jurisdiction-based.

The Chair indicated that we can get the numbers for each jurisdiction, which are coming in through the time standards process. The Chair indicated that he believes that most of the problem is with self-represented litigants who file their case and do not know what to do next. He pointed out that there is no rule about what to do when a plaintiff fails to follow through. Judge Widmaier detailed how his court processes and tracks small claims cases, which results in small claims cases being timely processed in his court.

The Chair inquired into the service process. Ms. Mary Blanco detailed problems in Maricopa County with litigants serving the complaint via certified mail, as opposed to certified restricted mail, and how these cases are handled differently between judges. Judge Dickerson indicated that the problems in his court stem from the plaintiff incorrectly filling out paperwork and failing to follow through.

The Chair stated that he was seeking from the committee a consensus that Arizona needs a simple set of rules for small claims cases, to be followed statewide. There was no dissent. Mr. Mike Hellon stressed that we also must do a better job on the front end in explaining what is required, and some of the problems we are seeing may go away.

Mr. Paul Julien stressed that the objective of the committee should not be to dismiss more cases. Other members agreed and indicated that the idea is to make the system more user-friendly so that self-represented litigants can get their cases through the system without delay. The intent should be that the small claims process should be a simple and quick resolution.

### **c. Adoption of Rules for Conducting Business**

The Chair returned to a previous item on the agenda that dealt with conducting business for this committee. The Rules for Conducting Committee Business (supplied by the AOC) were presented. Discussion ensued regarding whether a committee member could use another committee member as a proxy. The current rules state that one committee member cannot use another committee member as a proxy. Judge Rummer stated that an informed vote is better than an uninformed vote, and moved to amend this rule to allow a committee member to use another committee member as a proxy. The Chair called for second. None given. The motion failed for lack of a second.

A motion was made to vote for adoption of rules. The motion was seconded. Vote – ayes were unanimous. The motion passes.

### **III. Next Meeting Dates and Other Items**

The Chair indicated that he is interested in the roadmap of this project, and would like to handle the future committee meeting dates so that the committee can decide what the members will bring to the next meetings.

Judge Dickerson commented that the committee must ensure that the product of this committee must be able to be used by all courts, and not be tailored to a particular jurisdiction. The Chair indicated that his intention is to have everyone draft a set of rules so that the committee can piece together a product that will work on a statewide level.

The Chair would like to have a meeting in January, 2017. Mr. Marcus Reinkensmeyer, AOC, made a few suggestions to the Chair regarding resources for rules. He suggested looking at model rules from other states that have recently completed rule rewrites. He also stated that as the committee's report deadline approaches, the Limited Jurisdiction Committee and LJ Court Administrators should be approached for their comments before the June Judicial Conference.

The Chair stated that the purpose of the first meeting is to come up with a committee draft set of rules that can be refined, but which represents a consensus of the committee as to how these rules should look.

It was determined the best times and dates for upcoming meetings would be January 5, 2017 from 10:00 a.m. to 2:00 p.m., working through lunch; February 6, 2017 from 1:30 p.m. to 3:30 p.m.; and March 13, 2017 from 1:30 p.m. to 3:30 p.m. If additional meetings are necessary, they can be determined at the January 5, 2017 meeting.

### **IV. Roadmap**

The Chair would like to see everyone draft a set of rules or a few rules that they would like to propose. He indicated that the language should be kept simple and plain. Mr. Paul Julien inquired as to whether the rules had to be drafted from scratch, or if the members could use each other's drafts as a platform, and make edits/comments to those sets. The Chair indicated that making edits/comments to the drafts of other would be okay.

Ms. Cathy Clarich, AOC, posed the question about whether the forms utilized are state forms or local forms. Committee members indicated that the forms are Supreme Court forms and used across the state for the most part. The consensus was that the committee should look at not only the rules, but the forms as well.

Mr. Paul Julien shared his thoughts on civil proceedings and how Arizona's Rules of Court book is very large, and can seem daunting. He suggested that perhaps the

small claims rules could be a subset within the civil rules. The Chair replied that after a request for input, he received suggestions that would not require another set of rules, but would be difficult for small claims litigants to understand. Committee members agreed that the Supreme Court Small Claims Pamphlet needs to be redone, and could be helpful to litigants.

## **V. Call to Public**

The Chair made a call to the public. Ms. Mary Blanco stated that the Encanto Justice Court utilizes a small claims checklist to simplify things for the public. She offered to send it out to the committee members.

Judge Rummer stated that his court distributed a list to help litigants present documents in a more organized manner. He offered to share this information with the committee members.

Mr. William Kenworthy shared that his July 2016 report titled “Improving Arizona Time Standards Performance for Small Claims Cases”, contains a proposal that suggests the public be required to serve court documents before filing so that when the plaintiff files the complaint, he or she can file proof of service at the same time. Copies of the report were made available for committee members to look over.

## **VI. Adjournment**

The Chair adjourned the meeting at 2:35 p.m.

**Next Committee Meeting Date:**  
Thursday, January 5, 2017  
10:00 a.m. to 2:00 p.m.  
State Courts Building, Room 331  
1501 W. Washington St., Phoenix, AZ 85007

## **Committee on Improving Small Claims Case Processing**

**Thursday, January 5, 2017**

10:00 a.m. – 2:00 p.m.

State Courts Building, Conference Room 331

1501 W. Washington, Phoenix, AZ 85007

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**Present:** Judge Steven McMurry, Chair; Mr. Michael Hellon; Mr. Paul Julien; Judge Lisa Royal; Judge William Rummer; Mr. Colin Oglesbee (for Mr. Doug Kooi)

**Telephonic:** Judge Timothy Dickerson; Judge David Widmaier

**Absent/Excused:**

**Guests:** Ms. Mary Blanco

**Administrative Office of the Courts:** Ms. Cathy Clarich; Ms. Lynn Golden; Ms. Marretta Mathes; Mr. Marcus Reinkensmeyer

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### **I. Regular Business**

#### **A. Call to Order / Welcome and Opening Remarks**

The January 5, 2017 meeting of the Committee on Improving Small Claims Case Processing was called to order by the Chair, Honorable Steven McMurry, at 10:04 a.m. For the purpose of attendance and establishing a quorum, the Chair asked for member roll call and introductions of staff and guests.

#### **B. Approval of the November 2016 Minutes**

The draft minutes from the November 2016 meeting of the Committee on Improving Small Claims Case Processing were presented for approval. A motion was made by Mr. Michael Hellon and seconded by Judge William Rummer to approve the draft meeting minutes. The motion passed unanimously.

### **II. Updates**

#### **A. Small Claims Case Processing Time Standards Statistics**

Ms. Marretta Mathes, AOC shared information regarding current statistics for time to disposition on small claims cases throughout the state, excluding Mohave and Pima Counties, for Quarter 1 of FY17. Mr. Colin Oglesbee

reported that the numbers for Pima County Consolidated Court are similar to those of Maricopa County.

Overall, the time to disposition statistics have improved, but the state is still falling far below time standards.

Judge Lisa Royal inquired as to whether more in-depth data was available in order to determine where the delays in the case processing reside.

### **III. Committee Direction**

#### **A. Rules versus Statutory Rewrite**

The Chair noted that Judge Widmaier had suggested a rewrite of the statutes governing small claims, which the Chair supports but acknowledges may be difficult.

Jerry Landau, AOC Legislative Lobbyist, discussed the prospects of rewriting small claims legislation. Mr. Landau stated that rewriting the statutes for small claims is not an insurmountable task—they are over 35 years old and probably should also be reassessed. Mr. Landau explained the process and timeframes for proposing new legislation.

The Chair inquired as to the consensus on this issue. Judge Widmaier indicated that he could go either way, by rule or statute, but reiterated that if rules are developed, they must be simple and take the audience into consideration. Judge Royal noted that this appears to be a three tier process which includes statutory revisions, rule proposals, and instructional materials for the public.

The Chair indicated that the committee would work on coming up with a rough short set of rules at this meeting, and appointed Judge Widmaier and Mr. Michael Hellon to keep track of what the committee will need to seek regarding legislative changes. Any informational material will be placed in an instructional brochure that the committee will create. The Chair inquired as to any dissents. There were none.

Mr. Paul Julien indicated that he agreed with the direction of the committee, but acknowledged the difficulty in accomplishing the task in this manner. He suggested that perhaps the narrow charge of the committee could be accomplished in a more simplified manner rather than creating a new set of rules and proposing a statutory rewrite. However, Mr. Paul Julien acknowledged that the current system seems to favor defendants, and perhaps changing the direction to make the process simpler might benefit plaintiffs more and create a balance.

#### IV. Procedural Areas of Discussion

The committee examined the following procedural areas of small claims cases, and agreed on the following verbiage for the first draft of proposed rules:

##### A. Introduction / Purpose

###### Rule 1:

The following Rules, used in combination with the statutes, will govern the small claims process in the Justice Courts. Ch. 5 Art 1

##### B. Jurisdiction

###### Rule 2:

The lawsuit must be filed in the court in the jurisdiction where the defendant lives or where the action occurred.

##### C. Parties

###### Rule 3:

The Plaintiff is the person filing the lawsuit. The Defendant is the person being sued. The plaintiff has a duty to correctly name the defendant: person or business, organization, association, or corporation. A business, organization, association, or corporation must file a letter of authorization with each filing indicating who has been designated to represent the business, organization, association, or corporation.

##### D. Complaint

###### Rule 4:

- A. **The Complaint.** The case is started when the Plaintiff files his/her Complaint. The Complaint must be on a form provided by the Court. The Complaint should be clear and legible, and briefly state why the Defendant owes the Plaintiff a specific amount of money. The claim cannot exceed the statutory limit. There will be a filing fee that the Court will waive in cases of hardship.
- B. **One Claim.** (If the Plaintiff seeks an amount more than the statutory limit from the same Defendant for the same reason, the claim must be filed as a regular civil action and not as a small claim. A Plaintiff may not split an original amount sought from the same Defendant for the same reason that exceeds the statutory limit into multiple, smaller claim amounts in the Small Claims Division.) ***To be Revisited.***

- C. The plaintiff may file an amended complaint to correct an error. There will be no amendment to add a claim for an amount that was not owed at the time of the filing of the original complaint, or to add a party.

## **E. Service**

### **Rule 5:**

- A. The Plaintiff must serve the Defendant with a copy of the Complaint, along with a Summons from the Court, and set of instructions from the court. Service by publication and alternative services are not permitted in small claims cases.
- B. The Plaintiff must provide the Court with an official document proving service within 30 calendar days of filing the Complaint and obtaining the issuance of the Summons. The document proving service must show that the Defendant listed in the original complaint has received the Complaint and Summons.
- C. A single extension of service may be requested for a maximum of 30 calendar days. The extension of service must be accompanied by written proof of at least one prior attempt to obtain service. If written proof of a prior attempt for service is not provided, the extension will be denied. Time for service of any Complaint may never exceed 60 calendar days from the date that the original Complaint was filed. If proof of service is not received within 60 days, the case shall be dismissed without prejudice

## **F. Answer / Counterclaim**

### **Rule 6:**

- A. **The Answer.** Within 20 calendar days of being served, the Defendant must file an Answer explaining why he/she does not owe any or all that the Plaintiff demands. The Answer should be on a form provided by the Court. If the Defendant believes that the Plaintiff should actually be paying him/her, the Defendant can file a Counterclaim with the Answer. The amount sought by the Counterclaim cannot exceed the statutory limit. The Plaintiff need not respond to a Counterclaim; it will be assumed that the Plaintiff denies it. Upon receipt of the answer, the Court will set a hearing date within 30-60 days and notify the parties.

If, however, a county has an Alternative Dispute Resolution program, small claims cases may be set for trial/hearing 30-60 days after the Alternative Dispute Resolution hearing.

- B. **Failure to File An Answer.** If the Defendant does not file an Answer within 20 days of being served, the Court will set a hearing 30-60 days after the due date of the Answer to review the plaintiff's proof of damages. The plaintiff will avow that the defendant is not in active military duty is at least 18 years of age, and is competent. Note: Need rule change for 101(c), JCRP

The remaining procedural areas will be reviewed at the next committee meeting, which will include: Hearing Officers, Transfer to Civil, Scheduling Hearings, Setting and Conducting Hearings, Motions, Party Representation, Judgments/Correcting Judgments, Debtor's Examination, Dismissals, and Forms.

**V. Next Meeting**

The Chair would like to present this committee's discussions to the Time Standards Committee on February 1, 2017.

The decision was made to extend the time for the next meeting of the Committee on Improving Small Claims Case Processing to accommodate finishing the draft set of rules. It will now take place on:

Monday February 6, 2017  
10:00 a.m. – 2:00 p.m., Conference Room 331

**VI. Call to Public**

The Chair made a call to the public. Mr. Colin Oglesbee stated he is planning to submit a rule petition so that the time for service in justice courts will match the time for service in superior courts.

Judge Royal volunteered to draft a set of instructions for the rules worked on today.

**VII. Adjournment**

The Chair ended the meeting at 2:05 p.m. (no call to adjourn was made).

**Next Committee Meeting Date:**  
Monday February 6, 2017  
10:00am – 2:00pm  
Conference Room 331  
State Courts Building  
1501 W. Washington St., Phoenix, AZ 85007

## **Committee on Improving Small Claims Case Processing**

**February 6, 2017**

10:00 a.m. – 2:00 p.m.

State Courts Building, Conference Room 331

1501 W. Washington, Phoenix, AZ 85007

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**Present:** Judge Steven McMurry, Chair; Mr. Michael Hellon; Mr. Paul Julien; Mr. Doug Kooi; Judge Lisa Royal

**Telephonic:** Judge Timothy Dickerson; Judge William Rummer

**Absent/Excused:** Judge David Widmaier

**Guests:** Ms. Mary Blanco; Ms. Jane Carter

**Administrative Office of the Courts:** Ms. Cathy Clarich; Ms. Lynn Golden; Ms. Marretta Mathes

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### **I. Regular Business**

#### **A. Call to Order / Welcome and Opening Remarks**

The February 6, 2017 meeting of the Committee on Improving Small Claims Case Processing was called to order by the Chair, Honorable Steven McMurry, at 10:02 a.m. For the purpose of establishing a quorum, the presence of committee members was noted.

#### **B. Approval of Minutes from January 3, 2017 Meeting**

The draft minutes from the January 5, 2017 meeting of the Committee on Improving Small Claims Case Processing were presented for approval. A motion was made by Mr. Paul Julien and seconded by Mr. Michael Hellon to approve the draft meeting minutes. The motion passed unanimously.

### **II. Procedural Areas of Discussion**

Rules 1 – 6 were drafted in the last committee meeting, and were included in the meeting packet for review. The Chair inquired as to whether there was any comment regarding these rules. There were no comments.

The committee examined the following procedural areas of small claims cases, and agreed on the following verbiage for the first draft of proposed rules:

## **A. Transfer to Civil**

### **Rule 7:**

Either party can request that the case be transferred to the Civil Division of the Justice Court. A party might request a transfer under the following circumstances:

- a. Either party wants attorney representation; or
- b. The Defendant's counterclaim exceeds \$3,500; or
- c. The parties want to preserve their right to appeal.

The request to transfer must be filed with the court no later than 10 business days before the hearing. If the transfer out of the Small Claims Division is triggered by an act of the Defendant, the Plaintiff has 10 business days from the date the court issues the notice of the transfer to dismiss the entire action, or it will proceed as a case in the regular Civil Division. The court will notify both parties of the transfer.

The Chair made a call to the public. Ms. Mary Blanco offered comments for consideration regarding the timeframe for the request to transfer reflecting business days instead of calendar days. Ms. Jane Carter offered comments regarding addressing how the case will proceed if an attorney appears after 10 business days.

## **B. Setting and Conducting Hearings**

### **Rule 8:**

- a) Setting the Hearing.** When the court receives the Answer and knows the Defendant disputes the claim, it will set a hearing to resolve the matter and notify the parties of the date, time, and location. Upon receipt of the Answer, the hearing will be scheduled no less than 30 nor more than 60 calendar days after the filing of the Answer.

If, however, a county has an Alternative Dispute Resolution program, small claims cases may be set for trial/hearing 30-60 calendar days after the Alternative Dispute Resolution hearing.

- b) Conducting the Hearing.** The judicial officer will hear the sworn testimony of both parties and examine their documents. The judicial

officer may ask questions, and may permit the parties to question each other. Formal Rules of Evidence do not apply in the hearings. In courts where hearing officers are used, a party may choose to have a Justice of the Peace hear the case, but must make that request in writing within 5 business days of learning about the scheduled hearing. If there is a counterclaim, both the claim and the counterclaim will be heard at the hearing.

**c) Failure to Appear for Hearing.** If both parties fail to appear at the hearing, the lawsuit will be dismissed without prejudice. If the Plaintiff appears but the Defendant fails to appear, the court will hear the Plaintiff's claim, accept evidence, and award the judgment, if substantiated by the evidence. If the Plaintiff fails to appear, but the Defendant appears, the court will dismiss the lawsuit with or without prejudice, or award judgment for the Defendant.

**d) Appearing Telephonically at the Hearing.** Either party may, for good cause, appear telephonically at the hearing by submitting a written request to the court at least 10 business days prior to the hearing. The notice must contain that party's telephone number. The court will then provide a phone number to that party. If this notice is not made within the time requirement, the party may not appear telephonically.

The Chair made a call to the public. Ms. Mary Blanco suggested that the timeframe for setting the hearing reflect 30-60 days instead of 30-45 days.

### **C. Rescheduling Hearings**

#### **Rule 9:**

**Rescheduling the Hearing.** As soon as possible, but at least 10 business days prior to the hearing date, either party, for good cause, may request that the hearing be rescheduled. Failing to provide reasons and proof with the request, and/or multiple requests, are reasons to deny such a request. Emergency requests may be considered for good cause.

The Chair made a call to the public. Ms. Mary Blanco stated consider make this a "request" instead of a "motion" to comport with statute.

### **D. Interpreter or Special Accommodations**

#### **Rule 10:**

**Request for Interpreter or Special Accommodations.** The court must be notified of requests for interpreter or special accommodations within 10 business days of the scheduled hearing.

## **E. Judgments**

### **Rule 11:**

**Judgment from the Hearing.** The judgment shall clearly state the determination of the rights of the parties. The judicial officer may issue the judgment at the end of the hearing or take the matter under consideration, wherein the judgment will be issued and mailed to the parties within 10 business days after the hearing. The judgment is due and payable immediately after the judgment is rendered. The decision of the judicial officer shall be final and binding on both parties

The Chair made a call to the public. Ms. Mary Blanco offered comment regarding the specificity of the timeframe to render a decision.

## **F. Vacating Judgments**

### **Rule 12:**

A party wishing to vacate the judgment will proceed under Rule 141 of the Justice Court Rules of Civil Procedure.

## **G. Dismissals**

### **Rule 13:**

**Dismissal of Complaint by Parties.** At any time prior to the filing of the answer, the Plaintiff may dismiss the complaint by filing a Voluntary Dismissal with the court. The Plaintiff will mail a copy of the voluntary dismissal to the Defendant. At any time prior to the hearing, the parties may agree to dismiss the case by filing a Stipulated Dismissal with the court. This form may be obtained at the court and requires the signature of both parties.

The Chair made a call to the public. Ms. Cathy Clarich requested clarification regarding the document the judge will issue when the case is administratively dismissed.

The following items were also discussed, and the committee agreed on the following decisions regarding these matters as follows:

**H. Hearing Officers** (taken out of order)

No rule needed, covered by statute.

**I. Motions** (taken out of order)

Addressed in Rule 6.

**J. Party Representation** (taken out of order)

Placed in Rule 3, making reference to statute.

The Chair made a call to the public. Ms. Mary Blanco requested clarification on the letter of authorization.

**K. Debtor's Examination**

The committee agreed not to address this via a rule and will consider asking the legislature to repeal the provision that allows debtor's exams at small claims hearings.

The Chair made a call to the public.

**L. Forms** (taken out of order)

Discussion ensued regarding whether forms should be included as part of the rules. The committee agreed that the developed forms will not be required by the rules for use, but instead will be recommended for use.

Ms. Cathy Clarich offered comments for consideration regarding English/Spanish, and the ability to change forms that are included in rules.

Ms. Mary Blanco volunteered to draft some forms for committee consideration.

**M. Small Claims Instructions**

Judge Lisa Royal estimates having the draft instructions emailed to committee members by February 15, 2017.

### **III. New Business & Next Meeting**

#### **A. New Business**

Mr. Doug Kooi will be leaving the service of the courts effective February 17, 2017 and made a suggestion for his replacement.

Mr. Hellon inquired about addressing statutes. The Chair requested that Mr. Mike Hellon compile a list of statutes and proposed amendments to be addressed to the next meeting.

The Chair made a call to the public.

#### **B. Next Meeting**

The Chair asked if the date and time of the next scheduled meeting was acceptable. There was no dissention. Therefore,

**Next Committee Meeting Date:**  
Monday, March 13, 2017  
1:30 p.m. – 3:30 p.m.  
Conference Room 331  
State Courts Building  
1501 W. Washington St., Phoenix, AZ 85007

### **IV. Adjournment**

A motion to adjourn the meeting was made by Judge Lisa Royal and seconded by Mr. Mike Hellon. The motion was approved unanimously. The meeting adjourned at 1:20 p.m.

## Committee on Improving Small Claims Case Processing

**March 13, 2017**

1:30pm – 3:30 pm

State Courts Building, Conference Room 331

1501 W. Washington, Phoenix, AZ 85007

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**Present:** Judge Steven McMurry, Chair; Mr. Michael Hellon; Mr. Doug Kooi; Judge Lisa Royal

**Telephonic:** Judge Timothy Dickerson; Mr. Paul Julien; Judge William Rummer

**Absent/Excused:** Judge David Widmaier

**Guests:** Ms. Mary Blanco; Ms. Jane Carter

**Administrative Office of the Courts:** Ms. Cathy Clarich; Ms. Lynn Golden; Ms. Marretta Mathes; Mr. Mark Meltzer

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### **I. Regular Business**

#### **A. Call to Order / Welcome and Opening Remarks**

The March 13, 2017 meeting of the Committee on Improving Small Claims Case Processing was called to order by the Chair, Honorable Steven McMurry, at 1:32 p.m. For the purpose of establishing a quorum, the Chair conducted roll call and introduced staff and guests.

#### **B. Approval of Minutes from February 6, 2017 Meeting**

The draft minutes from the February 6, 2017 meeting of the Committee on Improving Small Claims Case Processing were presented for approval. A motion was made by Mr. Doug Kooi and seconded by Mr. Michael Hellon to approve the draft meeting minutes. The motion passed unanimously.

#### **C. Update on LJC Feedback**

Judge McMurry presented an update of this committee's work to the Limited Jurisdiction Court (LJC) Committee. The information was well received by LJC. A formal vote for approval of the rules was not requested. Judge McMurry is also providing an update on this committee's work at the Presiding Judges Meeting on March 22, 2017.

## **II. Areas of Discussion**

### **A. Review of Draft Rules and Proposed Revisions**

Judge McMurry stated that Ms. Mathes had taken comments and suggestions received and compiled them into a new version of draft rules for the committee's review. The procedural portions of the instructional document drafted by Judge Royal was also incorporated into the rules to fill any holes.

Judge McMurry went through each rule and indicated where there might be a need for discussion. He indicated that he did not have any issues with Rules 1 or 2, but asked the committee to look at Rule 3 and suggested that subsections (b) and (c) should be combined regarding the definition of "Defendant" and properly naming the parties. There was no dissension.

The committee looked at Rule 4(a) regarding the Complaint and discussed whether anything from Rule 110 of the Justice Court Rules of Civil Procedure needed to be incorporated. The consensus was to leave Rule 4(a) as is.

The committee discussed service with regard to certified mail versus certified restricted mail. The consensus was to leave the requirement as certified mail only. This will be the method for serving businesses as well. The committee agreed that the time to serve the summons and complaint would be 60 days from filing, the time to file proof of service would be 65 days from filing, and the rules would not have a provision for extensions on service.

The committee considered whether to add a rule that addresses how to calculate time. The consensus was to leave the number of days specified as "calendar" or "business" days, and to add a reference in Rule 1 to Rule 115 of the Justice Court Rules of Civil Procedure.

The committee discussed what will happen if the defendant fails to file an answer. The hearing will be automatic; the plaintiff does not have to do anything. There was discussion among the members regarding eliminating the default process. It was suggested that there be a dual track whereby the court can hold a hearing, or the court can vacate the hearing if it has the proper documentation from the plaintiff.

The committee agreed to remove the rule that would allow a plaintiff to dismiss the case if the defendant files a counterclaim and requests that the case be transferred to the civil division.

The committee agreed to use the term "hearing" in the rules instead of "trial."

The committee agreed that the rule regarding correcting judgments should not be limited to allowing only the winning party to file a request to correct the judgment.

## **B. Notice to Plaintiff and Defendant**

- a. Notice to Plaintiff and Defendant – ¶ 3, #4 grammatical error
- b. Number 6 defining plaintiff and defendant should come sooner in listing
- c. Is this document redundant with the rules? Defendants may not have the rules, so this is to assist them in next steps
- d. Number 12 remove “trial date”

## **C. Call to the Public**

Mr. Mark Meltzer, AOC, provided some suggestion with regard to ensuring that due process is taken into consideration with regard to holding hearings. He also commented that “business days” and “calendar days” creates significant confusion for litigants and noted that the federal courts are doing away with the distinction. Lastly, he recommended that these rules not make reference to the Justice Court Rules of Civil Procedure for time calculation.

## **III. New Business & Next Meeting**

Judge McMurry would like another meeting to tie up loose ends and summarize information. Forms and legislation will be discussed at the next meeting. After discussion, the best date and time to meet was determined to be:

### **Next Committee Meeting Date:**

Monday, April 17, 2017  
1:30pm – 3:30pm  
Conference Room 331  
State Courts Building  
1501 W. Washington St., Phoenix, AZ 85007

## **IV. Adjournment**

A motion to adjourn the meeting was made by Mr. Mike Hellon and seconded by Mr. Doug Kooi. The motion was approved unanimously. The meeting adjourned at 3:35 p.m.

# Committee on Improving Small Claims Case Processing

**May 30, 2017**

10:00am – 2:00 pm

State Courts Building, Conference Room 331

1501 W. Washington, Phoenix, AZ 85007

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**Present:** Judge Steven McMurry, Chair; Mr. Michael Hellon; Mr. Doug Kooi; Judge Lisa Royal; Mr. Paul Julien

**Telephonic:** Judge Timothy Dickerson

**Absent/Excused:** Judge William Rummer; Judge David Widmaier

**Guests:** Mary Blanco, Jane Carter

**Administrative Office of the Courts:** Ms. Cathy Clarich; Ms. Lynn Golden; Ms. Marretta Mathes

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## **1. Call to Order / Welcome and Opening Remarks**

- a. Introductions - For the purpose of establish a quorum, Judge Steven McMurry, Chair, listed all members in attendance, in-person and telephonically. He also introduced AOC staff in attendance and guests in attendance.
- b. Approval of minutes from March 13, 2017 Meeting – The draft minutes from the March 13, 2017 meeting of the Committee on Improving Small Claims Case Processing were presented for approval. A motion was made by Mr. Mike Hellon and seconded by Mr. Doug Kooi to approve the draft meeting minutes. The motion passed unanimously.
- c. Update on Presiding Judge’s Meeting Feedback – Judge McMurry and Ms. Marretta Mathes attended the Presiding Judges’ Meeting in March 2017, and they answered questions from the judges, specifically on the 60 day service timeframe. The presiding judges also inquired as to whether the committee had looked to practices in other states. Overall, the presiding judges seemed pleased and supportive of the work the committee is doing.

## **2. Areas of Discussion**

a. Small Claims Data Analysis - Ms. Marretta Mathes spoke with the Executive Office before the Presiding Judges' Meeting to discuss the progress of the committee, how the draft rules will improve time to disposition, and to consider all avenues for making the small claims process faster and more efficient for litigants. The Executive Office asked if any review of other states' procedures was done and whether there was any data analysis conducted to determine the bottlenecks. Ms. Mathes reviewed the data and offered some suggestions for committee consideration on the following:

1. Small Claims Data Analysis in Arizona FY16
2. Other States' Practices
3. Proposed change in procedure (setting a hearing at filing, eliminating the answer requirement, dismissing cases that have been served but are resolved before hearing, ADR concerns). Options of potential draft rules with changes to improve the time standard were included in the meeting packets for committee members to review.

b. Current Rules Changes -

Revisions were made on the following rules:

- 1) Rule 1(a)
- 2) Rule 3
- 3) Rule 4
- 4) Rule 5(b), (c)
- 5) Rule 6
- 6) Rule 7
- 7) Rule 8
- 8) Rule 9(c)
- 9) Rule 10
- 10) Rule 11(a)
- 11) Rule 12

c. Additional Revision of Rules – Judge McMurry, Chair

1. The committee has identified Rule 101(b) of the Justice Court Rules of Civil Procedure as requiring a revision. Inquiry was made as to whether there are any other rules that will need to be revisited based on proposed rules drafted thus far.
2. Judge McMurry made a call to the public on this issue.

d. Proposed Legislation Revision – Mr. Mike Hellon

1. Mr. Hellon and Judge William Widmaier, Committee Members, have been tracking legislative changes that will be necessary in order to move forward with the draft set of rules. Discussion of changes necessary.
2. Judge McMurry made a call to the public on this issue.

e. Potential Opportunities for Public Education – Ms. Mathes and Ms. Catherine Clarich, AOC

Ms. Mathes and Ms. Clarich discussed possible options for public education, including the use of AZ Court Help, a website that provides information about different case types, links and resources to other specialized legal information access, and support from Arizona law librarians. Feedback was solicited from the committee.

f. Forms –

1. At the last committee meeting there was discussion about making forms available for public use. These forms would not be part of the rules, but would be “recommended for use.” Mr. Paul Julien provided forms that he thinks will best service this purpose.
2. Ms. Mary Blanco also provided forms to the committee for consideration as forms “recommended for use.”
3. Judge McMurry asked how the committee wanted to proceed. It was determined that the forms can be addressed later, and that Spanish translations would be a good practice.

**3. New Business and Call to the Public**

a. New Business –

- 1) Next Steps – discussion about who will present an initial report/recommendations to LJC, PJ’s, and AJC for final approval in October 2017.
- 2) Judge McMurry made a final request for new business and call to the public. There were none.

#### **4. Adjournment**

- a. Motion to adjourn meeting – A motion to adjourn the meeting was made by Mr. Mike Hellon and seconded by Judge Lisa Royal. The motion was approved unanimously. The meeting adjourned at 1:11 p.m.

# Committee on Improving Small Claims Case Processing

**August 15, 2017**

11:30am – 1:00pm

State Courts Building, Conference Room 412

1501 W. Washington, Phoenix, AZ 85007

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**Present:** Judge Steven McMurry, Chair; Mr. Michael Hellon; Mr. Paul Julien

**Telephonic:** Judge Timothy Dickerson; Mr. Doug Kooi; Judge Lisa Royal

**Absent/Excused:** Judge William Rummer; Judge David Widmaier

**Guests:** Ms. Micci Tilton

**Administrative Office of the Courts:** Ms. Cathy Clarich; Ms. Lynn Golden; Ms. Marretta Mathes; Mr. Mark Meltzer; Mr. Marcus Reinkensmeyer;

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## **1. Call to Order / Welcome and Opening Remarks**

- a. Introductions – For the purpose of establishing a quorum, Judge Steven McMurry, Chair, listed all members in attendance, in-person and telephonically. He also introduced AOC staff and guests in attendance.
- b. Approval of minutes from the May 30, 2017 Meeting – The draft minutes from the May 30, 2017 meeting of the Committee on Improving Small Claims Case Processing were presented for approval. A motion was made by Mr. Mike Hellon and seconded by Mr. Doug Kooi to approve the draft meeting minutes. The motion passed unanimously.

## **2. Areas of Discussion**

- a. Pima County Consolidated Justice Court (PCCJC) Concerns – The Chair recognized concerns from PCCJC about the proposed rules presented by the committee for review and comment.

Ms. Tilton, Interim Court Administrator of PCCJC, stated that the court's biggest concern with the proposed rules is the volume of small claims filings in the court. If all cases are set for hearing at the time of filing, as the proposed rules contemplate, the workload placed on the hearing officers and court staff used for small claims cases would be time and cost prohibitive. Approximately 3,500 events would be put on the calendar per

year, equating to about 14-17 hearings per day. Currently, the small claims hearing officers handle about 2-3 trials per session because most cases are handled by default without a hearing.

The Chair acknowledged that Southern Arizona Legal Aid indicated that it believes there are too many defaults in Tucson courts. The option of an exception for PCCJC was presented. Details were discussed.

Mr. Mike Hellon proposed an alternative in which the court would schedule the hearing at the time of filing, 90 days out. Service would then be required within 20 days of the filing of the complaint. If service cannot be made within 20 days, an extension can be granted. The court would set a deadline for the answer to be filed. If there is no answer filed by the set deadline, the court must send a second notice to the defendant advising them of the requirement to respond within a set timeframe in order to give the defendant a second chance to respond. If the defendant still does not respond, the court can remove the case from the calendar and enter a default judgment. The committee did not discuss the timeframe in which the notice must be sent or how long the defendant would be given to respond upon the receipt of the notice.

Time was spent discussing whether an application for default from the plaintiff would be needed if the defendant failed to respond. Judge McMurry suggested that the file can go to the judge for decision based on the pleadings, and an application for default would not be needed. If the documents before the judge are not sufficient to enter a judgment, the judge will set the case for hearing, and the defendant will have a third opportunity to appear.

Time was spent discussing the amount of time it takes to review documents versus time the time it takes to hold a hearing. Mr. Hellon and Judge McMurry acknowledged that conducting a hearing takes less time, or an equivalent amount of time, than reviewing a request for entry of a default judgment.

A motion was made by Mike Hellon to adopt the following process: The hearing will be set at the time of filing, within 90 days, with instructions to the defendant on the timeframe for responding. An answer will be required within 15 days of service. Once this deadline has passed and no response has been filed, a notice will be mailed from the court that tells the defendant to respond within 15 days of the notice, otherwise the file will be sent to the judge to make a ruling based on the documents received from the plaintiff. The judge may make a ruling on the documents from the plaintiff or scheduled a hearing for all parties to appear. Judge Dickerson seconded. Judge Royal dissented. Motion carries.

- b. Next meeting – Ms. Marretta Mathes will revise the current draft of rules to encompass what was discussed today. Ms. Mathes will send out a meeting notice to the members.
- c. Amendment to proposed Rule 18 – Judge McMurry proposed that a dismissal after 180 days be “without prejudice.” Motion was made by Mr. Hellon. Seconded by Judge Dickerson. Motion carries.
- d. Public Comment –Mr. Rich Kingdon, owner of Shadow Process Service (SPS) stated he attended today to address service times and challenges he would encounter when trying to achieve service within the timeframes in the proposed rules. Judge McMurry indicated the service would be made at least 15 days before the hearing, so service would have to be made 75 days after filing and should be sufficient. The public member agreed.

### **3. Adjournment**

- a. Motion to adjourn meeting – A motion to adjourn the meeting was made by Mr. Mike Hellon and seconded by Judge Dickerson. The motion was approved unanimously. The meeting adjourned at 1:22 p.m.

## Committee on Improving Small Claims Case Processing

**November 14, 2017**

1:00pm – 2:00pm

State Courts Building, Conference Room 230

1501 W. Washington, Phoenix, AZ 85007

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**Present:** Judge Steven McMurry, Chair; Mr. Jonathan Bearup; Mr. Doug Kooi

**Telephonic:** Mr. Michael Hellon; Ms. Lisa Royal

**Absent/Excused:** Judge Timothy Dickerson; Mr. Paul Julien; Judge William Rummer;  
Judge David Widmaier

**Administrative Office of the Courts:** Ms. Cathy Clarich; Ms. Lynn Golden; Ms. Marretta Mathes

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### **1. Call to Order / Welcome and Opening Remarks**

- a) Introductions – The meeting was called to order at 1:05pm by Judge Steven McMurry, Chair. For the purpose of establishing a quorum, Judge McMurry, listed all members in attendance, in-person and telephonically.
- b) Approval of Minutes from August 15, 2017 Meeting – The draft minutes from the August 15, 2017 meeting of the Committee on Improving Small Claims Case Processing were presented for approval. A motion was made by Mr. Doug Kooi and seconded by Mr. Mike Hellon to approve the draft meeting minutes. The motion passed unanimously.

### **2. Areas of Discussion**

- a) September 2017 JP Conference Update –

Judge McMurry provided an update on the small claims presentation at the September 2017 JP Conference. Materials for the presentation were sent to attendees before this committee's August 15, 2017 meeting. As a result, attendees were provided with a copy of the July rules, which require a hearing be set at the time of filing and do not mandate the filing of an answer by the defendant. The July rules gained significant support from the JP's in attendance, and a pilot project was suggested.

b) Utah Small Claims Model –

Ms. Cathy Clarich, AOC, shared information from a recent visit to Utah courts wherein they utilize a similar process as to what is being proposed with the pilot rules. Utah's Small Claims courts have some differences, such as higher volume, higher dollar threshold, the right to appeal, and the right to attorney representation. Utah's rules have been in place for at least ten years. The hearing is set at the time the complaint is filed. The courts allow one postponement of the hearing if necessary. Service is required at least 30 days prior to the trial date, and no answer is required. Judgments on the pleadings are allowed. Utah also has a delayed judgment process to extend the time to satisfy a stipulated amount before a case is closed. Utah has a much higher case volume than Arizona, and reported that 97% of cases are completed within nine months.

Utah also utilizes mediators and pro-tem judges to hear these cases. Ms. Clarich further described the use of a separate calendar that Utah uses to address the large volume of government filings. Specifically, Utah has a specified "government only" small claims case type that allows them to assign the cases to a special calendar. It was suggested that Pima County might look at this type of solution to resolve their volume concerns.

Utah is also moving toward using online dispute resolution (ODR) with an in-house product.

c) Online Dispute Resolution –

Ms. Clarich shared that the AOC is looking for pilot case types for ODR. Small claims, family court IV-D, and possibly some traffic cases are being considered. Parties can mediate via computer with a "chat" system. Mediators review and start a conversation with the parties to try and resolve the case. If there is no resolution, the case is assigned to a judge to review and make a ruling. Litigants never have to step into a courtroom because it uses a web application. Ms. Mathes and Ms. Clarich are working with AOC eCourt Services on this. AOC would like to use this committee as a sounding board in this process.

d) Pilot Project Proposal –

Judge McMurry entertained a motion to approve the pilot project proposal based on the July rules presented (no answer required and hearing set at time of filing), to get some data and experience for informed decision making moving forward. Mr. Hellon asked how this would work with substance and timing. Ms. Mathes stated after review we are looking at starting in January 2018. Motion was made by Mr. Kooi. Seconded by Mr. Jonathan Bearup. Motion was approved.

Ms. Mathes discussed some issues that were raised with regard to the time for service in the July rules. Ms. Mathes requested that the committee approve revising the July rules to require that service be executed within 20 days of the filing of the complaint. Motion was made by Mr. Kooi to change the time for service in the July rules to 20 days after the filing of the complaint. Seconded by Mr. Hellon. Motion was approved.

### **3. Next Steps for the Committee**

Judge McMurry will be asking to the Chief Justice for an extension on the committee term considering the recent updates, proposals, and pilot projects. Members can contact Ms. Mathes to discuss further participation on the committee.

### **4. Good of the Order / Call to the Public**

Judge McMurry made a call to the public for comment. There were none. Mr. Kooi mentioned being very interested in trying the “separate track” for government and non-government case files. It streamlines the process for government cases, and this would possibly really improve certain Pima County cases that have proven difficult to remedy in a timely manner.

### **5. Adjournment**

Motion to adjourn meeting – A motion to adjourn the meeting was made by Mr. Mike Hellon and seconded by Ms. Lisa Royal. The motion was approved unanimously. The meeting adjourned at 1:40 pm.

## **Committee on Improving Small Claims Case Processing**

**Wednesday, March 28, 2018**

10:00 a.m. to 1:00 p.m.

State Courts Building, Conference Room 119 A/B

1501 W. Washington, Phoenix, AZ 85007

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**Present:** Judge Steven McMurry, Chair; Mr. Paul Julien; Ms. Lisa Royal; Mr. Jonathan Bearup

**Telephonic:** Judge Timothy Dickerson; Mr. Michael Hellon; Mr. Doug Kooi

**Absent/Excused:** Judge William Rummer; Judge David Widmaier

**Guests/Speakers:** Mr. Steve Gonzales, Maricopa County Justice Court Administration; Mr. Mark Leong, AOC Staff; Mr. Mark Meltzer, AOC Staff; Ms. Gail Pals, AOC Staff; Mr. Jim Price, AOC Staff; Ms. Maria Santiago, Maricopa County Justice Court Administration

**Administrative Office of the Courts:** Ms. Cathy Clarich; Ms. Lynn Golden; Ms. Marretta Mathes; Mr. Marcus Reinkensmeyer

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### **1. Call to Order / Welcome and Opening Remarks / Approval of Minutes**

- a. **Call to Order, Welcome, and Introductions** – The March 28, 2018 meeting of the Committee on Improving Small Claims Case Processing was called to order at 10:03 a.m. by Judge Steven McMurry, Chair. For the purpose of establishing a quorum, Judge McMurry listed all members in attendance, in-person and telephonically.
- b. **Approval of Minutes from November 14, 2017 Meeting** – The draft minutes from the November 14, 2017 meeting of the Committee on Improving Small Claims Case Processing were presented for approval. A motion was made by Ms. Lisa Royal and seconded by Mr. Paul Julien to approve the draft meeting minutes. The motion passed unanimously.

### **2. Updates**

- a. **Pilot Project Updates** – Judge McMurry shared that the pilot project proposal was passed by LJC and AJC. The Chief Justice signed Administrative Order 2018-01 authorizing the pilot project. Ms. Marretta Mathes and Ms. Cathy Clarich, AOC Staff, provided an update on the pilot project. Ms. Mathes shared that the Administrative Order allows the Executive Director to designate courts for the pilot project. The following courts have volunteered for the pilot project and have been designated for the pilot through Administrative Directive 2018-03:

- Casa Grande Justice Court, Pinal County
- Maricopa-Stanfield Justice Court, Pinal County
- Pima Justice Court, Graham County
- Hassayampa Justice Court, Maricopa County
- Manistee Justice Court, Maricopa County

Ms. Mathes indicated that the Maricopa-Stanfield Justice Court started the pilot in January; the Casa Grande Justice Court and Pima Justice Court started the pilot in February; and the Hassayampa Justice Court and Manistee Justice Court have a target start date of April 16<sup>th</sup>. No data has been collected yet, but AOC intends to have regular follow-up meetings with the pilot courts.

AOC has updated the azcourts website to include information about the small claims pilot.

- b. Rule Petition Updates** – Judge McMurry expressed the importance of this committee to monitor the results of the pilot because the rules proposed in the rule petition are probably not the final version and are subject to change based on pilot project data.

Mr. Marcus Reinkensmeyer, AOC Staff, inquired as to the timetable on the rule petition. Ms. Mathes explained that because data from the larger volume pilot courts will not be received until July, it is the intent to ask the Court to defer hearing the petition until the Special Rules Agenda in December instead of hearing the petition at the normal Rules Agenda in late August/early September so that we can gather as much data from the pilot courts as possible.

Ms. Royal expressed concern that because none of the pilot courts have a volume over 1,000 cases, the results of the pilot may not be a good indicator of how well these rules will work in a court such as the Pima County Consolidated Justice Court (PCCJC), which has a volume of approximately 3,500 cases per year.

### **3. New Business**

- a. Small Claims e-Filing Data Collection for Minors & Forms** – Ms. Gail Pals, AOC Staff, presented and requested input from the committee regarding the Small Claims Complaint that will be generated from the e-Filing application that the e-Filing team is working on for Small Claims cases. Specifically, she indicated that in the GJ Civil application, the system collects the name of a minor if he/she is a litigant although the parent or guardian would be named as the litigant on the case. Ms. Pals is inquiring as to whether this committee takes issue with using the same process for the Small Claims e-Filing. The committee had no objections.

(Taken out of order)

Ms. Mathes indicated that the e-Filing team seeks input for the definitions of “tort”, “debt”, and “contract”. She will provide suggested definitions to committee members for feedback. Ms. Mathes also inquired on behalf of the e-Filing team as to whether it was common practice to allow more than one defendant to file one answer form. Committee members indicated that it should be one answer per defendant, with a marital community constituting one defendant.

Ms. Mathes informed the committee that the e-Filing application for Small Claims is being configured according to the pilot rules and the e-filing team intends to pilot the Small Claims e-Filing in Maricopa County in October.

- b. Compulsory Counterclaims** – Ms. Mathes presented. The current rules include a provision for compulsory counterclaims. Ms. Mathes suggested that the committee consider the implications that may accompany compulsory counterclaims, such as the inability to bring a related claim if a default judgment is entered, the inability to be represented by counsel, and the lack of the right to appeal. Committee members discussed. The Chair entertained a vote to revise the language in Rule 10 regarding counterclaims. A motion was made by Judge Dickerson and seconded by Mr. Julien to revise the language in Rule 10(a)(1) to change “must” to “may” and allow the defendant discretion in deciding whether to file a counterclaim if he/she has a claim that is based on the same event described in the plaintiff’s complaint. The motion passed unanimously.
- c. Venue** – Ms. Mathes presented. The current Rule 5 may conflict with statute regarding the use of the language “justice court precinct” and “or where the claim occurred.” Committee members discussed. Committee members agreed that Ms. Mathes should revise the language to comport with ARS 22-202 and will make a decision at the next meeting as to whether the revised language is acceptable.
- d. Servicemembers Civil Relief Act: Rule 14(c)** – Ms. Mathes requested clarification on Rule 12(c) regarding the requirement to transfer the case to the Civil Division of the Justice Court if the defendant is in active military. Committee members indicated that this should be done because the parties may need to things in the case, such as having an attorney appointed, that would not be appropriate in a Small Claims case.
- e. Voluntary Dismissal After Transfer to Civil Division: Rule 12(c)** – Ms. Mathes raised two issues: (1) Rule 12(c) creates a procedure for cases that will no longer be in the Small Claims division of the Justice Court, and (2) if the case is transferred to the Civil Division, there is currently no provision in the Small Claims Rules or the Justice Court Rules of Civil Procedure that prescribe the timeframe in which the defendant must file an answer if an answer has not yet been filed at the time of the transfer. Committee members agreed that the first issue is not much of a concern because the case will be in the same court. Committee members agreed that the second issue should be addressed in the Justice Court Rules of Civil Procedure when those rules are revisited. The committee also recommended that the committee that reviews the Justice Court Rules of Civil

Procedure look at the issue of attorney fees when the plaintiff dismisses the case within the allotted timeframe after the case is transferred.

**f. MCJC Comments to Pilot Rules** – Ms. Mathes presented and walked committee members through the comments and suggestions provided by Maricopa County Justice Court Administration. Mr. Steve Gonzales provided additional details on the intent of the comments.

- The committee agreed that language should be added to Rule 6(b) and 10(b) to specify that the claim/ counterclaim cannot exceed the justice court's jurisdiction.
- The committee agreed that language should be added to the rules to prohibit amendments to counterclaims since amendments to complaints are not permitted. A motion was made by Mr. Paul Julien and seconded by Mr. Jonathan Bearup to add language to the rules that would prohibit amendments to counterclaims. The motion passed unanimously.
- The comment regarding Rule 7(c) suggesting that 20 days for service is not enough time is something that the pilot project will measure. The comment is noted and will be held in abeyance.
- Discussion was held regarding Rule 10(c) and the requirement to pay a filing fee when filing a counterclaim. A motion was made by Mr. Paul Julien and seconded by Judge Dickerson to add language that if a counterclaim is filed, the defendant must also file an answer, and the answer fee prescribed by statute would cover both filings. The motion passed unanimously.
- Discussion was held regarding Rule 10(e) to add a timeframe in which the defendant must mail a copy of the counterclaim to the plaintiff. Committee members agreed to add language to require the defendant to mail a copy of the counterclaim to the plaintiff on the day of filing.
- The committee agreed that "mail" should be changed to "deliver" in Rule 14(b).
- The committee agreed that the language "if the court allows telephonic appearances" should be added to Rule 14(d). The remainder of the rule will be left as is.
- The committee discussed Rule 15 regarding requesting interpreters and special accommodations. Committee members agreed and emphasized that the rules read "*should*" so that court staff can make arrangements before the hearing, but the judge or hearing officer should ensure that the ADA and Title VI are followed for these requests.
- Rule 16(b) – Committee members agreed to change "enter" to "render" and add a timeframe of five days for court staff to mail the judgment to the parties.
- Rule 16(c) – Committee members agreed to add language to allow the court to correct a judgment on its own motion.

- Rule 17 – Committee members requested that Ms. Mathes research loss of jurisdiction after a certain timeframe, and draft language to account for the possible need of a separate action once the timeframe has passed.
- Rule 19 – Committee members agreed to change “enforcement” to “post-judgment”
- Rule 20 – Committee members agreed to the addition of the following forms: “Request for Telephonic Hearing”, “Notice/Stipulation to Dismiss”, and “Request for Justice of the Peace to Hear Matter”
- The committee agreed that language should be added allowing the court to continue the hearing and order the defendant to file a written response so that the plaintiff is not ambushed by the defendant’s defense.

**4. Review Comments to Rule Petition** – Judge McMurry solicited committee feedback on the rule petition comments received from Judge Adam Watters, Pima County Presiding Justice of the Peace.

Ms. Royal commented that the rules would make it very complicated for PCCJC because of the volume of cases filed into the court. She indicated that PCCJC does not have an issue with monitoring cases, i.e., they dismiss cases for lack of service, etc. She indicated that the issue at PCCJC is having to fall back on the civil rules and being unable to dismiss cases for lack of prosecution until the 270-day mark. Ms. Royal indicated that if the timeframe for dismissal were moved up, the court could be in compliance with the adopted time standards.

Mr. Mike Hellon indicated that he is supportive of Judge Watters’ request for an exemption from the rules. Mr. Hellon indicated that the problems the rules are intended to address are not an issue in Pima County, and the committee’s work should not seek to resolve problems where they do not exist. A motion was made by Ms. Royal and seconded by Mr. Julien to provide an exemption from the rules for the Pima County Consolidated Justice Court based on the volume of cases filed, but to provide a provision for Rule 18(a) to apply to allow PCCJC to dismiss at 180 days for lack of prosecution. The motion passed unanimously.

Judge McMurry asked for committee comments on the rule petition comments received from Judge Gerald Williams of the North Valley Justice Court and Mr. Jeff Fine of Maricopa County Justice Court Administration. Mr. Paul Julien suggested that the committee entertain the idea of having Ms. Mathes look at Judge Williams’ comments and meet with AOC Legal to determine whether there are any legal issues to which the committee should attend. Ms. Mathes will follow up with the committee.

**5. Call to the Public**

The Chair made a call to the public. There was none.

**6. Adjournment**

Motion to adjourn meeting – A motion to adjourn the meeting was made by Mr. Paul Julien and seconded by Ms. Lisa Royal. The motion was approved unanimously. The meeting adjourned at 1:02 p.m.

**Next Committee Meeting Date:**

April 18, 2018

Time: 10:00 a.m.

Telephonic attendance permitted for members

In person attendance:

State Courts Building, Conference Room 230

1501 W. Washington, Phoenix, AZ 85007

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## **Committee on Improving Small Claims Case Processing**

**Wednesday, April 18, 2018**

10:00 a.m. to 11:00 a.m.

State Courts Building, Conference Room 230

1501 W. Washington, Phoenix, AZ 85007

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**Present:** Judge Steven McMurry, Chair

**Telephonic:** Mr. Jonathan Bearup; Judge Timothy Dickerson; Mr. Paul Julien; Mr. Doug Kooi; Ms. Lisa Royal

**Absent/Excused:** Mr. Michael Hellon; Judge William Rummer; Judge David Widmaier

**Guests/Speakers:** Ms. Gail Pals, AOC; Ms. Kimberly Smith, Vision Community Management; Mr. Thomas Zollars, Superior Process Services

**Administrative Office of the Courts:** Ms. Cathy Clarich; Ms. Lynn Golden; Ms. Marretta Mathes; Mr. Marcus Reinkensmeyer

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### **1. Call to Order and Welcome / Opening Remarks / Approval of Minutes**

- a. **Call to Order, Welcome, and Introductions** - The April 18, 2018 meeting of the Committee on Improving Small Claims Case Processing was called to order at 10:07 a.m. by Judge Steven McMurry, Chair. For the purpose of establishing a quorum, Judge McMurry listed all members in attendance, in-person and telephonically.
- b. **Approval of Minutes from March 28, 2018 Meeting** - The draft minutes from the March 28, 2018 meeting of the Committee on Improving Small Claims Case Processing were presented for approval. A motion was made by Mr. Kooi and seconded by Judge Dickerson to approve the draft meeting minutes. The motion passed unanimously.

### **2. Updates**

- a. **Exception from Rules for Consolidated Justice Courts (Rule 20)** - The Chair inquired as to whether members had a chance to review Rule 20 in the draft rules. Ms. Cathy Clarich, AOC Staff, asked for committee member feedback on the language of Rule 20. Discussion ensued. The committee members present support the new rule and its language. Ms. Clarich reminded the committee that this new rule is still a proposal and could potentially be stricken by the Supreme Court.

- b. Pilot Project Updates** - Ms. Marretta Mathes provided an update on the small claims rules pilot program. Data is not yet available, but we will have several months of data to review before filing an amended petition in September 2018.
- c. Motion to Approve Revised Rules for Amended Rule Petition R-18-0021** - Ms. Mathes discussed revisions to the draft rules that were sent to the committee members prior to this meeting. Specifically discussed were:
- Rule 5 - Where to File a Small Claims Lawsuit
  - Rule 7(e) - Failure to Serve Within 20 Days of the Complaint Filing Date
  - Rule 9 - Answer Not Required
  - Rule 10(b) - When to File (Counterclaim)
  - Rule 17- Vacating a Judgment

Mr. Julien indicated, and Ms. Mathes concurred, that a review of the comments from Maricopa County on the revised rules should be conducted. Mr. Julien asked that the Chair represent the committee in future rule revisions instead of utilizing committee meeting time to edit and revise the rules. The Chair agreed.

The Chair entertained a motion to approve the revised rules to include in the amended rule petition that will be filed on April 27, 2018. A motion was made by Judge Dickerson and seconded by Mr. Julien. The motion passed unanimously.

### **3. Call to the Public**

The Chair made a call to the public. Ms. Kimberly Smith of Vision Community Management, a homeowner's association management group, asked about the change in timing for service and mandatory hearing attendance by the plaintiff. She expressed concern about the time, effort, and resources it will take for agencies such as hers to execute service within 20 days and to attend the hearings for all cases. The Chair informed Ms. Smith that the decisions made by the committee regarding hearing attendance were made as an effort to encourage defendant participation since no answer is required. Telephonic attendance may also be an option in some courts in certain instances.

Mr. Thomas Zollars of Superior Process Services sought clarification on Rule 7(d)(2) as to whether "personal service" under these rules should be interpreted similarly to "personal service" as used in Rule 4 of the Rules of Civil Procedure, or whether "personal service" here should be interpreted similarly to personal service of a protective order. While it is currently open to judicial interpretation, the Chair stated that further committee discussion is necessary to clarify this. Ms. Zollars also asked about 20 day timeframe for service and whether proof of service must be filed within 20 days. Ms. Mathes clarified that service must be executed within 20 days. Proof of service can be filed on or before the hearing date.

#### **4. Additional Items & Adjournment**

The Chair inquired as to whether there were any additional items to discuss. There were none.

Motion to adjourn meeting - A motion to adjourn the meeting was made by Mr. Kooi and seconded by Judge Dickerson. The motion was approved unanimously. The meeting adjourned at 10:50 a.m.

**Next Committee Meeting Date:**

September 11, 2018

Time: 10:00 a.m. to 1:00 p.m.

State Courts Building, Room 230

1501 W. Washington St., Phoenix, AZ 85007

## **Committee on Improving Small Claims Case Processing**

**Wednesday, May 22, 2019**

10:00 a.m. to 1:00 p.m.

State Courts Building, Conference Room 119B

1501 W. Washington, Phoenix, AZ 85007

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**Present:** Judge Steven McMurry, Chair; Mr. Paul Julien

**Telephonic:** Mr. Michael Hellon; Mr. Doug Kooi, Ms. Lisa Royal; Hon. William Rummer; and Hon. David Widmaier

**Absent/Excused:** None

**Guests/Speakers:** Mr. Charlie Adornetto; Mr. Charlie Barrett; Ms. Belen Duenas; Ms. Kristen Hoffman; Ms. Lori Johnson; Mr. Luis Lopez; Mr. Jim Morrow; Hon. Keith Russell; Ms. Maria Santiago; Ms. Kim Smith; Ms. Maria Torres

**Administrative Office of the Courts:** Ms. Cathy Clarich; Mr. Mark Leong; Ms. Marretta Mathes; Mr. Jim Price; Mr. Marcus Reinkensmeyer

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### **a) Call to Order and Welcome / Opening Remarks / Approval of Minutes**

- a. **Call to Order, Welcome and Introductions** – The May 22, 2019 meeting of the Committee on Improving Small Claims Case Processing was called to order by the Chair, Honorable Steven McMurry, at 10:00 a.m. The Chair asked for member and staff roll call.
- b. **Approval of Minutes from September 2018 Meeting** – The Chair entertained a motion to approve the September 11, 2018 meeting minutes as presented. A motion to approve the minutes was made by Mr. Paul Julien, seconded by Judge Bill Rummer. The motion passed unanimously.
- c. The Chair provided a recap on why this committee exists. The Chair reviewed the time standards and reminded members of the committee's charge.

### **b) Updates**

- a. **Rule Petition Update** – Ms. Mathes provided an update of upcoming deadlines for the pending rule petition. The final amended petition is due May 24, 2019. The petition will be open for public comment until June 28, 2019. The reply, if necessary, will be due July 5, 2019. The petition is slotted to go to the Court on its August agenda.

The pilot program report will be presented to the Arizona Judicial Council (AJC) at its June 17<sup>th</sup> meeting. Updated pilot B data can be provided if desired.

- b. **Online Dispute Resolution (ODR)** – Ms. Cathy Clarich provided committee members with an overview of the ODR process that AOC has been exploring and indicated that small claims cases would be a good candidate for ODR.
- c. **Small Claims Legal Info Hub** – Skipped item due to staff being out of the office.

### (c) New Business

- a. **Pilot A Data Review** – Ms. Mathes provided an overview of the data received for pilot A courts. The pilot was successful for the Western Pinal and Casa Grande Justice Courts, with 100% of cases disposed within 180 days. Ms. Mathes provided a breakdown of the statistics for each pilot A court, including average time to disposition, number of cases served, average time for service, continuance rate, and appearance rate. The average time to disposition in the Western Pinal Justice Court was 74 days, and the average time for service (complaint filing to proof of service filing) was 30 days. The average time to disposition in the Casa Grande Justice Court was 54 days, and the average time for service was 20 days (complaint filing to service executed). Ms. Mathes noted that in both courts, although only about 8% of applicable cases had a written answer filed, the defendant appeared for the hearing in 34-51% of applicable cases.
- b. **Pilot A Court Feedback** – Mr. Luis Lopez, Western Pinal Justice Court Supervisor, shared his feedback regarding pilot A. Overall, the pilot has been successful; the court can see the improvement in its statistics. Mr. Lopez indicated that the court favors setting all the cases for hearing and believes that this is what has driven the successful results. Mr. Lopez indicated that Judge Riggs commented that he would like a written answer to be filed so that the court knows the issues prior to the actual hearing.
- c. **Pilot B Data Review** – Ms. Mathes provided an overview of the data received for pilot B courts. The Pima County Consolidated Justice Court (PCCJC) began its pilot on January 1, 2019. As such, we have limited data since the cases in the dataset have not aged past the 150-day mark. The current data reflects that 99% of cases were adjudicated within 100 days, but as time progresses, this percentage will likely decrease as some cases fall into the other two tiers of the time standard. The pending caseload was discussed so that projections could be made related to how many cases may age to 150, 180, and 181+ days. Ms. Mathes provided a breakdown of the statistics for PCCJC, including average time to disposition, average time for service, and continuance rate. The average time to disposition was 65 days, and the average time for service (complaint filing to proof of service execution) was 19 days.

The Maricopa County Justice Courts (MCJC) began pilot B on December 1, 2018. As such, we have limited data since the cases in the dataset have not aged past the 180-day mark.

Ms. Mathes presented a data analysis analogous to the data analysis of the other 3 pilot courts.

MCJC presented a separate analysis on its adjudication rate for cases disposed within 100 days that were filed between December 1<sup>st</sup> and February 5<sup>th</sup> (80%), and on its adjudication rate for cases disposed within 150 days that were filed between December 1<sup>st</sup> and December 15<sup>th</sup> (94%). The average time to disposition was 66 days, and the average time for service (complaint filing to proof of service execution) was 17 days. MCJC reported that it has projected that 99.6% of its cases filed between December 1<sup>st</sup> and 31<sup>st</sup> will be adjudicated within 180 days.

Ms. Lisa Royal, PCCJC, and Judge Keith Russell, MCJC, provided their feedback on the pilot B program. Both indicated that pilot B has gone very well, with minimal resource allocation to make the process work. Ms. Royal and Judge Russell discussed how they are using technology to help in monitoring cases, e.g., automatic notice printing, notices to supervisors when tasks are overdue, etc.

- d. **Pilot Program Discussion** – The Chair asked for feedback from committee members regarding which pilot program they felt would best fit the needs of the state, keeping in mind that having two different processes, one for small courts and one for large courts, is not favored.

Judge Rummer inquired as to whether technology could be used to assist courts in monitoring small claims cases. Ms. Mathes indicated that she and Ms. Clarich met with IT, and LJ AJACS can be programmed in some areas to help courts monitor these cases.

Some committee members raised concerns about requiring a written answer.

A motion was made by Mr. Mike Hellon to adopt and amend the pilot B process, seconded by Judge David Widmaier. The motion passed unanimously.

e. **Review Draft Rules**

1. Rule 7 – Based on the pilot data, the Chair suggested reducing the time for service to 45 days. A motion was made by Mr. Hellon to change the time for service to 45 days from the complaint filing date, seconded by Mr. Doug Kooi. The motion passed unanimously.
2. Rule 6(c) – Ms. Clarich requested confirmation from the committee that no amended complaints are permitted. Discussion was held. A motion was

made by Ms. Royal to amend Rule 6(c) to allow for amended complaints. No second. The motion failed for lack of a second.

3. Rule 9 – The Chair asked committee members to review Rule 9 regarding the language that the plaintiff “may” initiate default proceedings if a written answer is not timely filed. Mr. Hellon indicated that if this language is changed to “must,” then there needs to be clear instructions to the plaintiff indicating the steps that must be taken if no answer has been filed. Mr. Hellon made a motion to change the language in Rule 9 from “may” to “must,” seconded by Judge Widmaier. The motion passed unanimously.

The committee members discussed the reference to the Justice Court Rules of Civil Procedure regarding whether there should be a cross-reference to Rule 140 or placing the text of Rule 140 in its entirety in the Small Claims Rules. Judge Rummer made a motion to remove reference to Rule 140, but leave in “the Justice Court Rules of Civil Procedure”, add a reference to the default forms in parentheses, and add default forms to Rule 21. Mr. Hellon motioned leaving off reference to the Justice Court Rules of Procedure altogether and add “(See Rule 21(b)).” Motion seconded by Judge Rummer. The motion passed unanimously. Ms. Royal inquired as to whether Rule 9 now needs to add in timeframes, etc., for default proceedings since there is no longer a reference to the Justice Court Rules of Civil Procedure. Discussion was held. Ms. Royal made a motion to leave in the verbiage “Justice Court Rules of Civil Procedure.” The motion was seconded by Mr. Hellon. The motion passed unanimously.

4. Rule 11(d) – The Chair suggested adding clarifying language “in the small claims division” to the end of the rule. Mr. Hellon made a motion to make this amendment. The motion was seconded by Mr. Kooi. The motion passed unanimously.
5. Rule 14(a) – The Chair suggested adding the language to the beginning of the rule “A small claim is often heard by a hearing officer.” No motion was made. Verbiage remains as is.
6. Rule 14(d) – Judge Rummer suggested that the rule should reflect the other party’s ability to object to a telephonic appearance. Discussion was held. Judge Rummer made a motion to amend the rule to require notice to the other party in writing when a request to appear telephonically is made. Motion fails for lack of a second.
7. Rule 19(a) – Discussion was held related to the process and language of Rule 19(a). A motion was made by Ms. Royal to move the language from Rule 19(a) to become Rule 7(c), and amending the language to reflect that the court will send a notice to the parties once proof of service is filed, notifying them that their case must be timely litigated within 65 days of

service or it may be dismissed by the court. Motion seconded by Mr. Julien. The motion passed unanimously.

The Chair asked committee members whether there were any comments to the second amended rule petition that still needed to be addressed. Committee members agreed that the amendments made at today's meeting adequately address the comments to the second amended rule petition. The Chair asked for a motion to adopt the draft rules as amended at today's meeting. Mr. Kooi made a motion to adopt the draft rules with the amendments made today, seconded by Mr. Hellon. The motion passed unanimously.

**f. Call to the Public**

The Chair made a call to the public. The following public members addressed the committee:

Ms. Kristin Hoffman, City Property Management – Ms. Hoffman shared concerns about not receiving notice of documents filed by the other party. The Chair indicated that while this is a concern, it is not a concern related to the subject of the Small Claims Rules. She also inquired about clerk training. Ms. Mathes stated that there will be a significant amount of training that will occur if the Supreme Court adopts the proposed Small Claims Rules.

Ms. Belen Duenas, Fast Track Legal – Ms. Duenas expressed a concern about the shortened time for service. Mr. Kooi commented that the committee has looked at the data and relied on the data in making its decision to shorten the time to 45 days.

**g. Additional Items & Adjournment**

The Chair asked if there were any additional items to discuss. There were none.

The Chair entertained a motion for adjournment. A motion was made by Judge Widmaier, seconded by Mr. Hellon. The motion passed unanimously. The meeting was adjourned at 12:40 p.m.