

**ARIZONA SUPREME COURT**  
*Committee on Civil Rules of Procedure in Limited Jurisdiction Courts*  
 Minutes  
 March 2, 2011

Members present:

Hon. Paul Julien, Chair  
 Hon. Jill Davis  
 Hon. Timothy Dickerson  
 Hon. Maria Felix  
 Mary Blanco  
 David Hameroff  
 Stanley Hammerman  
 Emily Johnston  
 Nathan Jones  
 William Klain  
 George McKay  
 David Rosenbaum  
 Roger Wood  
 Anthony Young

Member not present:

Hon. Gerald Williams

Guests:

Hon. Steven McMurry  
 Theresa Barrett

Staff:

Mark Meltzer  
 Lorraine Nevarez  
 Tama Reily

**1. Call to Order; Introductions.** The Chair called the meeting to order at 10:05 a.m. and welcomed the members and guests to the inaugural meeting of this Committee. The Chair provided an overview of the objectives of the Committee, which include the submission of a report to the Arizona Judicial Council by December 2011.

The Chair advised that Judge Williams was absent because of military reserve duty, and that Judge Adam had a new judicial assignment that necessitated her resignation prior to the first meeting. Each Committee member then provided brief biographical information. The Chair inquired whether members should be added to the Committee. He noted that Judge Adam had considerable expertise on the subject of self-represented litigants. The members supported adding a member to replace Judge Adam. The Chair added that he would work hard to reach consensus among the members.

The Chair reviewed materials that were included in the members' notebooks, including A.O. 2011-13, and he reminded the members of the availability of documents on the Committee's webpage (<http://www.azcourts.gov/cscommittees/CivilRulesofProcedureforLJCourts.aspx>). The Chair reviewed proposed written rules for conducting Committee business, and a motion was then made:

**Motion RCiP.LJC 11-001:** That the proposed rules for conducting Committee business be adopted as proposed. The motion was seconded and discussed.

**Action on RCiP.LJC 11-001:** The motion passed by a unanimous vote of the members.

**2. Roundtable discussion of the rules of civil procedure in limited jurisdiction courts in Arizona.** The members reviewed Arizona Revised Statutes § 22-211 concerning the application of the superior court rules of procedure in LJ courts. The members proceeded to a roundtable discussion of the strengths and weakness of the current rules. A summary of comments includes:

- There are many self-represented parties in LJ courts. It would promote consistency, equalize advantages, and reduce surprise if self-represented parties were aware of their rights and responsibilities under the rules.
- In cases with attorneys, fees may approach or exceed the amount in controversy, and this can lead to unhappy outcomes. Reducing the cost of litigation is desirable.
- Rules should have a plain meaning to the average person. It would also assist LJ judges if the rules had more clarity. Other goals should include uniformity, access, and education.
- Policy objectives of the rules such as promoting efficiency and achieving justice should be considered before drafting changes to the existing rules.
- Maricopa County Justice Courts have a “best practices” committee.
- Individual clerks have different areas of knowledge and levels of experience. Clerks cannot give legal advice, although clerks provide self represented litigants with handouts and checklists. Self-represented litigants frequently don’t read those materials thoroughly, and less written information might be more effective because it’s more likely to be read.
- Court websites can provide useful information for self-represented litigants in civil cases.
- The relatively new rules of procedure for eviction actions simplified the eviction process for all stakeholders, including landlords, tenants, and judges. That committee’s goal was to devise rules that were fair and that reduced confusion, and it now appears that the eviction rules have achieved that goal. The superior court rules of civil procedure apply in evictions only when they were specifically incorporated in the eviction rules.
- Evictions require an information sheet to be served with the complaint. Could an information sheet be provided with the complaint that’s served on a civil defendant? A suggestion was made that the sheet could include information about the consequences of a civil judgment.
- What documents should be attached to a complaint to give a defendant notice of the basis of a lawsuit; for example, what should be attached to a complaint for an unpaid credit card balance? Should essential documents be attached to a complaint or should they instead be attached to a subsequent filing, such as an application for entry of default?

- An organic approach should be used when creating rules so they are seen as a whole body. Other relevant rules could be cross-referenced in a rule. Rules should not be aspirations. Practice pointers should be in comments rather than in the rules.
- Some procedural rules are critical, and even self-represented litigants should be required to follow those rules. Rules ensure consistency.
- The majority of cases conclude with the entry of judgment by default. There should be focus on the fairness and due process of default procedures. If a defendant does file an answer it is sometimes cryptic and results in a judgment for plaintiff on the pleadings. There are very few jury trials, and trials don't present major issues concerning rules. Post-judgment proceedings present more rules issues. Litigants should be satisfied that the process was fair and not overly costly.
- The Legislature adopted § 22-211, and the Legislature could amend or repeal this statute. The Legislature should be made aware of the existence of this Committee, and it should be provided an opportunity to participate in the Committee's work.

The Chair thanked the members for their comments, and a break was then taken for lunch.

**3. RCiP.LJC workgroups.** Following the lunch break, the Chair reviewed a document entitled "workgroups and roadmap." RCiP.LJC will evaluate the existing rules of civil procedure in blocks. The preliminary block consisting of introductory Rules 1 and 2 was presented by staff in the afternoon.

Each of three remaining blocks of rules was assigned to one of three workgroups. It was noted that the first workgroup would report at the second Committee meeting on March 31, the next group at the third Committee meeting on April 20, and the final group at the fourth meeting. Each workgroup should be prepared to present to the Committee recommendations for draft rules within its block. The workgroups are as follows:

Workgroup #1: Commencement of the action, pleadings, and parties: rules 3 through 25, excluding rule 7 on motions and rule 16 on pretrial procedures. Workgroup #1 members are Judge Dickerson (Chair), Ms. Blanco, and Messrs. Hameroff, Klain, and Young.

Workgroup #2: Motions and pretrial procedures, depositions and discovery, trials: rules 7, 16, and 26 through 53. Workgroup #2 members are Judge Davis (Chair), Ms. Johnston, and Messrs. McKay and Wood.

Workgroup #3: Judgments, remedies, arbitration, and general provisions: rules 54 through 83. Workgroup #3 members are Judges Felix (Chair) and Williams, and Messrs. Hammerman, Rosenbaum, and Jones.

Each workgroup includes (a) a judicial member, (b) a member from a legal aid organization, and (c) representatives from Maricopa County, Pima County, and one other county.

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**4. Presentation regarding Rules 1 and 2, Arizona Rules of Civil Procedure.** Staff presented two proposed introductory rules for the Committee’s consideration. Staff noted provisions in the Justice 2020 Strategic Agenda and in A.O. 2011-13 that mentioned simplifying rules and processes. Staff referred members to a 1994 Supreme Court committee on the effective use of juries that had included a similar concept, which was that instructions to the average juror should be in “clear and understandable language.” Staff also referred to two articles in the *Arizona Attorney*, one in the February 2011 issue on drafting jury instructions that are comprehensible to lay persons; and the other in the November 2005 issue concerning Rule 1.

Five guidelines for simplification of LJ civil rules were suggested: 1) using common words and avoiding legal jargon; 2) using simple sentences; 3) identifying parties consistently; 4) including general provisions at the beginning; and 5) deleting rules with little or no application to LJ proceedings. Staff also compared the twelve page rules for magistrate courts in West Virginia with the existing 234 pages of the Arizona civil rules.

Staff also reviewed provisions in the Rules of Procedure for Eviction Actions, the Rules of Procedure in Civil Traffic and Civil Boating Violation Cases, the Arizona Rules of Protective Order Procedure, and pertinent provisions of Title 22 of the Arizona Revised Statutes concerning small claims.

Staff’s draft Rules 1 and 2 were discussed by the members. Revisions to the draft rules were proposed, and these will be incorporated in a document that staff will provide with the materials for the next Committee meeting.

**5. The roadmap.** The Chair reviewed the roadmap for future meetings.

An issue was raised concerning which of the two options that were described in AO 2011-13 would be preferable: a new set of specialized rules of civil procedure for limited jurisdiction courts in Arizona, or amendments to the existing rules of civil procedure that would be applicable only in limited jurisdiction courts? It was the sense of the members that this was a decision that should be made at the inception of the Committee’s work. The following motion was then made, seconded, and discussed.

**Motion RCiP.LJC 2011-002:** To adopt a freestanding, separate set of rules for justice court civil actions that may or may not incorporate the existing superior court rules of civil procedure, and for which there is not already a discreet set of procedural rules or statutes.

Members in favor of the motion believe that a separate set of rules for justice court civil actions would provide self-represented litigants with increased knowledge of their rights and responsibilities. This philosophy in part was incorporated in the eviction rules, and, like eviction cases, the majority of justice court civil cases do not proceed to trial. The eviction rules include safeguards that require landlords to give information to tenants at the inception of a case, and that require judicial officers to assure that due process is respected in the default process. LJ civil rules could adopt similar safeguards. Existing superior court rules could be cross-

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referenced in a new set of LJ rules to the extent that specific superior court rules were still useful in LJ proceedings. The text of certain existing rules could also be incorporated in the new LJ rules, although this would tend to increase the length of any new rules. Some of the existing rules rarely if ever get used in justice courts.

The opposing view was that dispensing with the existing rules would impair the predictability of outcomes. A new set of rules might eliminate the application of an established body of case law that has developed under the existing rules. Dispensing with the existing rules could also limit procedural options that are currently available to litigants. One option would be to simply annotate the existing rules with an indication of whether each rule does or does not apply in justice courts. Another option would be having a parallel numbering system for the superior and LJ rules, similar to what is used in federal rules (for example, Rule 56 of the federal civil rules and local district court civil Rule 56.1, both of which apply to summary judgment motions.)

**Action on RCiP.LJC 2011-002:** The motion carried, twelve in favor, one opposed.

The Chair noted that the scheduled May 26 meeting date falls before the Memorial Day weekend, and that the meeting date of June 16 conflicts with the State Bar Convention. After discussion, the members agreed to vacate these two dates, and in lieu to have a meeting on Thursday, June 9, 2011.

**6. Call to the Public; Adjourn.** There was no response to a call to the public. The meeting was adjourned at 2:35 p.m.

The next meeting date is **Thursday, March 31, 2011.**

**ARIZONA SUPREME COURT**  
*Committee on Civil Rules of Procedure in Limited Jurisdiction Courts*  
 Minutes  
 March 31, 2011

Members present:

Hon. Paul Julien, Chair  
 Hon. Timothy Dickerson  
 Hon. Maria Felix  
 Hon. Gerald Williams  
 Mary Blanco  
 David Hameroff  
 Stanley Hammerman  
 William Klain  
 George McKay  
 David Rosenbaum  
 Anthony Young

Members present by telephone:

Hon. Jill Davis, by Valerie Winters, proxy  
 Emily Johnston  
 Nathan Jones

Members not present:

Hon. Hugh Hegyi  
 Roger Wood

Guests:

Linda Grau  
 Theresa Barrett

Staff: Mark Meltzer, Tama Reily

**1. Call to Order; approval of meeting minutes.** The Chair called the meeting to order at 10:08 a.m. The Chair informed the members of the recent appointment of Maricopa County Superior Court Judge Hugh Hegyi to the Committee.

The members then reviewed the March 2, 2011 meeting minutes.

**Motion:** A motion was made and seconded to approve the March 2, 2011 meeting minutes. The motion was seconded. The motion carried unanimously. **RCiP.LJC 11-003**

**2. Review of materials.** The Chair noted two statutes and an Arizona Supreme Court opinion:

- A.R.S. § 22-201. This statute provides that justice courts have “exclusive original jurisdiction of civil suits when the amount involved is ten thousand dollars or less.”
- A.R.S. § 22-406. This statute permits a city or town to bring a civil action in a municipal court to recover a penalty or forfeiture. The statute provides that the action “shall be brought and conducted as civil actions in justice of the peace courts.” The members discussed whether the LJ civil rules being considered by this Committee would be applicable to these cases. Several members felt that the rules would apply, and stated reasons for their beliefs, but the consensus of the Committee was that this is a question that did not need to be addressed at this time.

- *Preston v. Kindred*, a March 24, 2011 opinion, involved an interpretation of Rule 17(a) of the Arizona Rules of Civil Procedure. The opinion includes principles for interpreting court rules.

**3. Presentation by staff regarding Rules 1 and 2.** Staff presented Rules 1 and 2 as they were modified following member comments at the March 2<sup>nd</sup> meeting. Staff highlighted the following changes:

- Staff's draft Rule 2 was deleted in its entirety because it incorporated provisions from other rules (Rules 4(b), 10(d), 11, 80(i), and 11(a)) that have been assigned to the workgroups.
- The consensus of the members was to use the word "lawsuits" in these rules rather than the word "cases".
- A provision was also added that would permit any Arizona Rule of Civil Procedure that had not been incorporated in the LJ rules to still be "invoked" by a party or by the court.
- A Committee comment was added for further guidance in interpreting the LJ rules.

Members discussed the provision that would allow a rule to be invoked. Among the comments were these:

- How would a party invoke a rule? Would it be done by a motion? What would be the standard that a litigant would need to show in order to invoke a rule?
- Invoking a rule might promote surprise and may disadvantage litigants. Such a provision runs contrary to the premise of leveling the playing field for justice court litigants.
- If a complex Arizona Rule of Civil Procedure could be invoked, attorneys would make blanket requests to invoke it at the onset of every case, to the detriment of self-represented parties.
- Some judges would allow rules to be invoked, others wouldn't, and this could create disparity among the courts and possibly encourage forum shopping.

It was also pointed out that while draft Rule 1 excluded small claims cases from its scope, there are no special rules for defaults in small claims, so other rules of civil procedure, such as the ten-day provision of existing Rule 54, are customarily applied in small claims cases. The Chair noted that while small claims cases are not within the charge to this Committee, this Committee should not overlook any impact these proposed rules might have on small claims proceedings.

Another member noted that cross-reference tables would be useful when discussing or using these rules. One table should reference any new LJ rule to the existing rule, and another table

should do the reverse. The issue of rule numbering was also mentioned. Comments were made that sequential numbering would best serve self-represented litigants, while maintaining the existing rule numbering scheme would be helpful for attorneys. It was noted that if new rules are ultimately adopted, training would be available for all stakeholders to educate them about these rule changes.

**Motion:** A motion was made to defer the issues about rule numbering and invoking rules until after the substance of the proposed rules had been drafted. The motion was seconded. The motion passed unanimously. **RCiP.LJC 11-004**

**4. Presentation by workgroup #1.** Judge Dickerson began by noting the approach used by workgroup #1 on Rules 3 through 25. These rules were divided among the workgroup member. Each member then presented a draft of their assigned rules to the workgroup, and the draft rules were discussed and revised by the group. In analyzing which rules should apply in justice courts, the workgroup members used an “80/20” rule: would the rule apply in at least eighty percent of the cases, or not apply in fewer than twenty percent of the cases? There were also deviations from this norm, such as “90/10” or “95/5” scenarios. If the workgroup decided to include a particular rule, it was worded to maximize its understanding by self-represented litigants. Some legal words, however, were considered as “terms of art”, and these terms were maintained to preserve their authority and nuance. After the workgroup meetings, staff drafted a “combined” set of rules that followed a sequence of what a self-represented litigant would want to know when filing a lawsuit.

Ms. Blanco presented on Rule 3 through 6. A provision on formatting was included in this subset, as was a provision that litigants would need to provide the court with mailing envelopes when submitting a proposed order. A provision was also included that would permit a plaintiff up to a year to serve the summons and complaint. It was noted that all methods of service provided in the existing rules had been maintained in the corresponding LJ rule. Staff suggested including the hour as well as the day on the filing stamp to harmonize with the practice in AZ Turbo Court. A member suggested that using the term “place of the lawsuit” might be more understandable than “venue”. Another member believed that the rules should clarify the distinction between “service” of process and “service” of subsequent documents, and that this distinction would benefit court clerks as well as litigants.

Judge Dickerson presented a draft of Rules 7 through 10. The proposed rules for pleading were simplified. Arcane defenses were deleted, such as a demurrer that’s provided in Rule 7(b). Provisions for a cover sheet in Rule 8(h), and for a complex civil program in Rule 8(i), were removed. Rule 9, which concerns pleading of special matters, was also redacted. The actual language used in existing Rule 8(c) for affirmative defenses, although stated in legal jargon, was preserved. A provision for fictitious defendants was included in this subset.

Mr. Hameroff discussed Rules 11 through 15. These rules were simplified and shortened. He noted that he did not agree with a suggestion in staff’s combined version that every pleading be verified, because if a pleading is signed, it’s supposed to be true even without a verification. Mr. Hameroff deferred to a version of Rule 15(c) that was submitted by Mr. Klain.

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Mr. Young presented Rules 17 through 19. His proposed rules simplified certain provisions and omitted others. For example, portions of Rule 17(b) concerning title to real property were omitted in light of the lack of authority of LJ courts to hear such cases. Another proposed rule, Rule 19(a), cross-referenced an existing rule of procedure.

Mr. Klain gave a presentation of revisions to Rules 20 through 25. Rule titles as well as rule contents were simplified. The word “events” was substituted for “occurrences”, although this change may compromise the well-established legal phrase of “transaction or occurrence.” Proposed rules for interpleader and intervention referred to the corresponding, existing rules. Rules concerning class actions and derivative actions were omitted. The rule for substitution of parties was revised.

Judge Dickerson concluded workgroup #1’s presentation by offering the following suggestions:

- Workgroups should consider the “80/20” rule, or variations of that rule.
- Workgroups should use a common format when presenting proposed rules.
- Proposed rules should be presented with the full text of the corresponding, existing rule.
- Workgroups should make the full Committee aware of what portion of an existing rule was omitted, and what language was added.

A lunch recess was taken.

**5. Discussion of the rules presented by workgroup #1.** The Committee agreed to review the first 25 rules by using staff’s “combined” version of these rules. The consensus of the members was that they would not vote on whether to adopt any individual rule until all of the proposed LJ rules had been presented.

Shortly after beginning the review, the members expressed comments about the approach taken in the combined version. The comments included the following:

- The Committee needs to be clear about whether an existing rule does or does not apply in justice courts. If a rule has not been expressly included in the LJ rules, and if it has not been included by reference, there should not be room for guessing about whether that rule may still be invoked or whether the rule might still be utilized in LJ courts.
- It might be problematic for attorneys and judges if the rules were renumbered without specifying which of the existing rules don’t apply. On the other hand, it would be easier if self-represented litigants could read only fundamental rules that continue to apply. Self-represented litigants may not understand the meaning of “incorporated by reference.”
- There are reasons why specific individual rules exist in the Arizona Rules of Civil Procedure, even if the reasons or scenarios don’t occur frequently. As an example, executors may not frequently file cases in the superior court, but for the occasions that

they do, there is an existing, governing rule. An executor should have a corresponding procedural rule for appearing in an LJ court. In order to file a lawsuit in a justice court, an executor should not be required to state a compelling reason why a superior court rule should be invoked in LJ court; the LJ rules should have such a provision.

- The Committee needs to discuss every rule and every subsection and then decide if it does or does not apply in justice court. The Committee needs to go through the existing rules in the order that they appear in the rule book.
- The Committee should draft comprehensive correlation tables, such as the example at pages 6 through 8 of the 2011 volume of the Arizona Rules of Court.

The members then returned to existing Rule 3, and discussed the seminal question of whether this rule would apply in justice courts. The members repeated this question of whether an existing rule should apply in justice court proceedings for Rules 4 through 15, and for every subsection of each of those rules.

**6. The roadmap.** At the next meeting, the members will continue their review process for the remaining rules (Rules 17 through 25). It was suggested that members of workgroup #2 follow a similar process during their meetings. Staff will prepare a summary table of the decisions made today by the Committee on Rules 3 through 15. The summary table will be updated after future meetings.

Judge Williams agreed to participate in workgroup #2 so that the workgroup will have five members.

**6. Call to the Public; Adjourn.** There was no response to a call to the public. The meeting was adjourned at 3:07 p.m.

The next meeting date is **Wednesday, April 20, 2011.**

**ARIZONA SUPREME COURT**  
*Committee on Civil Rules of Procedure in Limited Jurisdiction Courts*  
 Minutes  
 April 20, 2011

Members present:

Hon. Paul Julien, Chair  
 Hon. Timothy Dickerson  
 Hon. Hugh Hegyi  
 Mary Blanco  
 David Hameroff  
 Emily Johnston  
 William Klain  
 David Rosenbaum

Hon. Jill Davis  
 Hon. Maria Felix  
 Hon. Gerald Williams  
 Veronika Fabian  
 Stanley Hammerman  
 Nathan Jones  
 George McKay  
 Anthony Young

Members not present:

Roger Wood

Guests:

Jerri Medina  
 Theresa Barrett

Staff: Mark Meltzer, Tama Reily, Julie Graber

**1. Call to Order; introductions; approval of meeting minutes.** The Chair called the meeting to order at 10:05 a.m. The Chair introduced Judge Hugh Hegyi and Ms. Veronika Fabian, new members of the Committee, and Ms. Julie Graber, new Committee staff.

The March 31, 2011 meeting minutes were then reviewed.

**Motion:** A motion was made to approve the March 31, 2011 meeting minutes. The motion was seconded. The motion carried unanimously. **RCiP.LJC 11-005**

After approval of the minutes, the members revisited their charge. The Chair identified a correlation table contained within the Arizona Rules of Family Law Procedure at page 949 of the 2011 volume of the Arizona Rules of Court. This table assists in tying the new family rules to former rules in the Arizona Rules of Civil Procedure. The Chair suggested that a similar table might be useful for any revised rules that may be recommended by this Committee. The Chair added that some communities served by justice court precincts don't have legal aid offices that can provide advice to self-represented litigants, and the court rules may be a primary source of information for these individuals. Members then offered the following comments:

- Rewriting the civil rules for LJ courts in "plain English" would be beneficial, but other changes that would make the administration of justice in LJ courts more effective should also be considered.

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- Rewriting the rules in simpler language does not necessarily require reducing the substance of the rules. Requiring notices to an opposing party at crucial steps of a lawsuit would be effective in informing self-represented individuals of their responsibilities during the litigation process.
- Rules may not be read by self-represented litigants even if the rules are simplified by this Committee. What self-represented litigants need most is basic information on a single page or in very few pages. A good handbook or checklists might be also useful for these litigants. A few courts have developed helpful web pages.
- A small amount of money might mean a lot for litigants in LJ courts. Procedural due process, including notice and an opportunity to be heard, should be an objective of the rules. The rules should provide reasonable limits on the time and expense of litigation.
- The rules of civil procedure are inherently fair, but they may not be used fairly. Unfairness concerns both sides of a case. Self-represented litigants, for example, don't always provide a copy of their answer to the plaintiff, causing a plaintiff uncertainty about the status of a case or causing a plaintiff to incur additional costs for obtaining a copy of the answer from the court clerk.
- Any solutions recommended by this Committee should promote the parties' understanding of the rules as well as uniform application of the rules by justice courts throughout the state. Certain statutes must also be taken into consideration in drafting new rules. For example, although A.R.S. § 22-215 allows oral pleadings, the rules of procedure and Rule 10 in particular appear to require that pleadings be written.
- The process adopted by RCiP.LJC workgroups of going through each rule and each subsection of every rule will help to address questions under A.R.S. § 22-211 about which superior court rules do or don't apply in LJ courts. However, the process of reviewing each rule and subsection of every rule is time consuming, and it may be necessary in the future to ask the Court for additional time that would allow the Committee to complete its work.

**2. Presentation from workgroup #2.** The Chair invited Judge Davis and the members of workgroup #2 to discuss their suggestions. Judge Davis referred the Committee members to written materials that had been prepared by the workgroup and staff. These materials contained the language of each existing rule and every subsection of each rule assigned to them; a recommendation in a table format about whether the rule or subsection should apply as written, or whether it should apply as rewritten, should be incorporated by reference, or did not apply; and if the recommendation was to rewrite a rule, the materials provided by the workgroup included draft language for the proposed rule. The Committee then discussed the following rules presented by the workgroup:

### **Section III: Pleadings and motions; pretrial procedures**

Rule 7.1: motions. The workgroup recommended that consideration of this rule be deferred pending a discussion of other rules on motions (such as Rules 56, 59, and 60). The Committee concurred with this recommendation.

Rule 7.2: motions *in limine*. The workgroup recommended that this rule be rewritten, and that it be included with Section VI of the rules concerning trial. The suggested title of this proposed new rule 47 was changed to “pretrial motions regarding evidence”. Following discussion by the Committee, the word “jury” was deleted from subsection (b) of this proposed rule so that it could apply to bench trials as well as to jury trials.

Rule 16: pretrial conferences; scheduling; management. The workgroup recommended that this rule be rewritten under a shortened title of “pretrial conferences”.

- Proposed subsection (g) of this rule, which is new, is entitled “special rule for collection cases.” It was intended to address the large volume of collection cases that are filed, and to provide defendants in those cases at or prior to pretrial conferences with information that would permit them to understand the nature and origin of the alleged debt.

Members expressed concern that the collection industry was being singled out by this proposed provision. Concerns were also expressed that because some courts set pretrial conferences shortly after an answer was filed, plaintiffs’ counsel may not yet have received the appropriate documentation of the debt from their clients. Other members believed that the merits of a case couldn’t be assessed at a pretrial conference without these documents; and that providing these items at or before the pretrial would be beneficial for both sides and would allow the court to conduct a meaningful pretrial, especially because many courts set only one pretrial conference during a case. Some courts refer cases to mediation prior to conducting a pretrial conference.

It was noted that this proposed provision concerns a disclosure obligation, and that it would be more appropriate to include this concept within Rule 26.1. The members agreed on this point. They also agreed that a time frame for providing these documents to a defendant should be included in a Rule 26.1 provision.

- A provision in the revised Rule 16 providing that the court may sanction a party for failing to comply with a discovery requirement, or for failing to appear at a pretrial conference, was modified by the members by deleting the portion about failing to comply with discovery.
- Proposed paragraphs dealing with “settlement” and “settlement conference” were consolidated by the Committee. The Committee declined to include a provision that the parties should only be allowed to discuss settlement in the presence of a third party

neutral; the draft rule therefore provides that judges may discuss settlement with the parties, or the parties may be given an opportunity to discuss settlement themselves.

Rule 16.1: settlement conferences. The Committee agreed with the workgroup's recommendation that this existing rule is unduly detailed for LJ cases, and that the settlement provisions in proposed Rule 16 are sufficient.

Rule 16.2: good faith settlement conferences. Although this rule may not have frequent application in justice court cases, the members concurred with the workgroup's suggestion that the rule be applied by reference, as indicated in proposed Rule 16.2.

Rule 16.3: initial case management conferences in cases assigned to the complex civil litigation program. The Committee members agreed that this rule is exclusively for cases in the superior court and it does not apply in LJ courts.

#### **Section IV: Depositions and discovery**

Rules 26(a) and 26(b): discovery methods, and discovery scope and limits. Staff noted that the proposed draft reversed the order of these two subsections, so that discovery scope would precede discovery methods. A provision in the proposed rule regarding non-parties at fault was inadvertently omitted and will be added in the next draft. The Committee agreed that the word "party" should be substituted for "counsel" in a provision regarding discovery motions.

A suggestion was made during the Committee's discussion that these paragraphs should include an explanation of what the term "discovery" means. A member believed that discovery should be allowed only by court order following a motion to permit discovery, although the threshold requirement to allow discovery should be a low one. The majority of members felt that discovery should be allowed without the need for a court order; that requiring a court order might raise due process issues; and that requiring a motion might precipitate an increased workflow and a lack of uniform practices in justice courts.

Rule 36: requests for admissions. The members then focused on requests for admissions ("RFA's") under Rule 36. The core issue was the rule's self-executing sanction that requests are deemed admitted if not timely denied. On the one hand, it was felt that requests to admit and the attendant consequence of deeming matters admitted if not denied are used in practice to deprive parties of their day in court. On the other hand, RFA's were considered to be effective tools for narrowing the issues. One member commented that it was the responsibility of a party who was served with RFA's to participate in the litigation process rather than ignoring the litigation. It was also noted that the "deemed admitted" provision was not truly a sanction, because there was no consequence if a party did what it was otherwise obligated to do under the discovery rules: respond with a timely denial.

The Committee discussed options to mitigate rather than eliminate the self-executing feature of Rule 36. Among the options were:

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- 1) Providing a bold and clear warning upon service of an RFA about the consequences of a failure to timely deny or to respond to the RFA's;
- 2) Allowing a "grace" or "cure" period to respond, similar to the notice requirement for a default under Rule 55;
- 3) Requiring the propounding party to file a motion with the court requesting that the matters be deemed admitted

The prevailing view during the discussions was that the intent of A.O. 2011-13 was not to abolish the consequences of discovery violations, but rather to make those consequences clear and comprehensible. The members unanimously felt that providing a bold and clear explanation of the consequences of failing to timely respond was appropriate. Most members further felt that a grace period should also be added to the rule, but that court action to deem the requests admitted should not be required.

Rule 26.1: prompt disclosure of information. In the course of discussing this proposed rule, Committee members advised that in some counties, the parties are advised by the court of the need to exchange disclosure statements, but that this is not done statewide. A provision should be included in the draft rules to heighten awareness of the disclosure requirements. A proposed provision regarding disclosure of "legal authority" was modified by the Committee to instead require disclosure of a "legal theory". A provision requiring a party to disclose and to provide copies of relevant documents that were known to exist was also modified by the members to require the party to instead disclose a list of those documents "whether favorable or not, and their location if known."

Rule 26.2: exchange of records and discovery limitations in medical malpractice cases. This case type was with very rare exceptions felt to be non-existent in justice court cases, and the rule was therefore not included in the draft of proposed rules.

Rule 27: depositions before action or pending appeal. This rule was believed by the members to be applicable only in the superior court, and it too was not included in the proposed draft.

Rule 28: persons before whom depositions may be taken. The members favored keeping this rule in the proposed draft with modifications suggested by the workgroup that simplify the rule.

Rule 29: stipulations regarding discovery practice. Notwithstanding a recommendation of the workgroup that this rule was unnecessary, after discussion by the members the rule was thought to have value and it should be included in the draft. Staff will rewrite a proposed Rule 29.

**3. Next steps.** Workgroup #2 will continue its presentation at the next meeting, and if time permits, workgroup #1's recommendations will be revisited. Workgroup #3 will present at the August 11 meeting.

**4. Call to the Public; Adjourn.** There was no response to a call to the public. The meeting was adjourned at 3:07 p.m.

The next meeting date is **Thursday, June 9, 2011.**

**ARIZONA SUPREME COURT**  
*Committee on Civil Rules of Procedure in Limited Jurisdiction Courts*  
 Minutes  
 June 9, 2011

Members present:

Hon. Paul Julien, Chair  
 Hon. Maria Felix  
 Hon. Hugh Hegyi  
 Hon. Gerald Williams  
 Mary Blanco  
 David Hameroff  
 Stanley Hammerman  
 Nathan Jones  
 William Klain  
 George McKay  
 David Rosenbaum  
 Anthony Young

Members present by telephone:

Hon. Jill Davis  
 Hon. Timothy Dickerson  
 Emily Johnston

Members not present:

Veronika Fabian

Guests:

Mary Jacoby  
 Jack Escobar

Staff: Mark Meltzer, Julie Graber

**1. Call to Order; introductions; approval of meeting minutes.** The Chair called the meeting to order at 10:20 a.m. The Chair informed the members of Mr. Wood's resignation from the Committee. The Chair then turned to the April 20, 2011 meeting minutes.

**Motion:** A motion was made to approve the April 20, 2011 meeting minutes. The motion was seconded and it was carried unanimously. **RCiP.LJC 11-006**

**2. Continuation of the presentation of rules by workgroup #2.** The Chair invited Judge Davis and the members of workgroup #2 to recap any significant revisions that were made to their assigned rules during the April 20 meeting, and to proceed with rules that had not yet been discussed by the Committee.

**V. Depositions and discovery**

Rule 26: general provisions governing discovery. Staff advised that an omission of a provision regarding non-parties at fault had been addressed with a new section 26(g)(5). The members agreed to the new language, with the addition of the following phrase at the end of the draft provision to conform to the current standard: "...upon motion showing good cause, reasonable diligence, and lack of unfair prejudice to the parties."

Rule 26.1: prompt disclosure of information. Members noted that some justice courts notify the parties when disclosure statements are due. A phrase was then added that would permit the court

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*Minutes: June 9, 2011*

to modify the time for disclosure; the provision now states that disclosure is due “within forty calendar days after the defendant has filed an answer, or as the court may otherwise direct...”

At the April 20 meeting, a “special rule” for collection cases, which would require plaintiff to disclose evidence of the debt during or before the pretrial conference, had been moved from Rule 16 to Rule 26.1. This special rule was further discussed. Some members believed that the proposed provision was one-sided because it did not impose a corresponding duty on defendants, and that it was redundant and duplicated other obligations under Rule 26.1. Other members felt that bringing relevant documents to a pretrial conference would help make the conference a meaningful event, and that a second mention of this duty would emphasize its importance.

As a consequence of this discussion, the provision was moved back to draft Rule 16(b). This provision was further modified to provide:

- That both parties, and not solely the plaintiff, are required to exchange relevant documents.
- That it applies to all cases, and not just to cases involving “written consumer debt.”
- That if a party does not personally attend the conference but rather appears by telephone, the party must provide these documents in advance of the conference.
- That if there are good reasons why these documents are not “reasonably available”, the court may grant an additional fourteen days to provide them.

The members generally agreed that these changes would further the mandate of A.O. 2011-13 by making pretrial conferences in justice courts more meaningful. Although every justice court may not schedule a pretrial conference in civil cases, for those that do these provisions should make the conference more productive, and should promote the possibility of a case being settled at the conference.

A separate provision for collection cases in Rule 26.1 was also discussed. Because the ownership of consumer debt is a recurrent issue in collection cases, the suggested provision would require a plaintiff in a 26.1 disclosure statement to provide evidence of the chain of title of debt ownership. As many as three-quarters of civil cases in justice court, or even more, are suits for the collection of consumer debts. Defendants in these cases frequently have questions about why a particular plaintiff, who may be an assignee of the original debt, has filed the suit. Members opposed to this proposed provision stated that it would impose a substantive requirement rather than a procedural one; that the proposed language would apply to a subset of cases rather than to cases generally; that other disclosure obligations dictate that this type of evidence be provided in assignment cases even without a special rule; and that the proposed language would not improve the quality of evidence that should be produced. A motion was then made:

**Motion:** that proposed language in Rule 26.1, which would require a plaintiff in a consumer debt collection case to disclose evidence establishing the chain of title for

ownership of the debt, be removed from the rule. The motion was seconded and further discussed. Motion passed by a vote of 9-5-0. **RCiP.LJC 11-007**

Rule 29: Agreements concerning discovery. The workgroup concluded that this rule was unnecessary. However, the consensus of the full Committee at the April 20 meeting was that this rule be adopted with new language. Staff prepared proposed language for the Committee to review. After a comparison of the proposed language with the existing rule, the members agreed that new language was not required, and that Rule 29 should be incorporated by reference.

The members discussed how to deal with “incorporation by reference” in the LJ rules. Should there be a mention of incorporation by reference following each rule that is incorporated, so that the reader would be prompted to look elsewhere for the pertinent rule; or should there be a table in the LJ rules that lists in one place all of the superior court rules that have been incorporated by reference? The members deferred these questions to a future discussion.

Rule 31: Depositions upon written questions. The members concurred that this rule should be incorporated by reference.

Rule 30: Depositions upon oral examination; Rule 32: Use of depositions in court proceedings; Rule 33: Interrogatories to parties; and Rule 34: Production of documents. Although the members discussed these rules separately, the separate discussions shared common conclusions. It is not uncommon for any of these discovery methods to be used in justice court. The existing civil rules of procedure provide important details about each of these procedures, and these details should be adopted in their entirety. However, the proposed LJ rules should also address issues noted by AO 2011-13, including the number of self-represented litigants in these proceedings, the need to make the rules of procedure more comprehensible to these litigants, and the benefit of modifying processes to assure that the rules fairly accommodate those who are not law trained. Accordingly, the members recommend the following structure for these rules within the LJ set:

1. Self-represented litigants are typically not familiar with “depositions,” “interrogatories,” and similar terms. These LJ rules should start with a brief statement, in “plain and simple” language, about the meaning of each term.
2. The LJ rules should include information about the duty of litigants to respond to discovery, the time for litigants to respond, and the consequences of failing to respond. This information should be within the body of the LJ rules, and it should also be provided in notices that are furnished with each discovery request.
3. The LJ rules should refer to or incorporate the corresponding, existing rule of civil procedure for detailed information about the requirements for depositions, interrogatories, and requests for production.

The members recognize that this solution may not fully accommodate the objective of explaining to self-represented litigants all of the nuances of the civil rules, because this structure refers the litigants to the existing rules. However, this solution provides the litigants with basic information about each discovery procedure, and it benefits self-represented litigants by alerting them of their responsibilities to proactively respond to any discovery requests they may receive.

Rule 36: Requests for Admissions. During the April 20 meeting, the members recommended that the party to whom requests for admission are directed should be sent a notice if that party's responses are past due. This notice would inform the party that their responses are outstanding, but that a "cure" period analogous to a default cure period would be afforded by the rule and as included in the notice. The members agreed that this would be the second notice provided under Rule 36. The first notice that would be sent to a party under Rule 36 would be similar to the notices described above under discovery Rules 30, 32, 33, and 34.

Staff drafted language concerning the second notice after the April 20 meeting, and that language was discussed today. The discussion concluded with the following recommended language for the second notice provision of Rule 36:

If a party has not responded to request for admissions within the time period provided in this rule, then the party making the request must provide a notice to the party to whom the request was made in substantially the following form:

"[Case Caption]

"TO: \_\_\_\_\_:

"Do not ignore this notice.

"You were served with requests for admission on \_\_\_\_\_ [insert date]. The rules of procedure required you to respond to these requests no later than \_\_\_\_\_ [insert date]. You have failed to respond to some or all of the requests.

"The rules will still allow you to respond to the requests for admission by \_\_\_\_\_ [insert date that is fifteen days after the date of this notice]. Each request that you do not respond to by this date will be taken as true in this lawsuit.

"Date: \_\_\_\_\_"

Any matter thereafter admitted under this rule is conclusively established in the pending lawsuit unless the court permits an admission to be withdrawn or amended. The court may permit an admission to be withdrawn or amended only when it serves the interests of justice and when it furthers a decision of the lawsuit on its merits.

Rule 35: Physical and mental examinations. The members agreed to incorporate this rule by reference.

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Rule 37: Sanctions for discovery and disclosure violations. The discussion concerning this rule included observations that it educates judges as much as it informs litigants concerning sanctions that are available; but those sanctions are not frequently imposed. Moreover, the “good faith” certification required by subsection (a)(2)(C) is typically not included with motions that are filed in cases involving self-represented litigants. The members agreed that Rule 37 should be incorporated by reference, but that sections (a)(2)(C) and (e) should be specifically excluded. The members further agreed that a reference to sanctions might be included in the discovery notices described above, and that these references might serve as fair warning to self-represented litigants about the consequences of failing to comply with discovery obligations.

## **VI. Trials**

Rules 38, 39, 47, 48, 49, and 51: trials. A.R.S. § 22-220(B) provides in part that “either party may demand a jury at any time before trial.” The members believe that this statute would not preclude the court from establishing by rule the time in which a jury demand must be made before a jury is waived, and they agreed that staff’s proposed rule concerning a demand for jury trial was appropriate. Regardless, jury trials in civil cases are rare. The judges on the committee have had only a handful of jury trials in their cumulative years on the bench. Staff noted that the matter of jury trials is touched upon in existing rules 38, 39, 47, 48, 49, and 51, and that the subsections of the these rules do not collectively describe a jury trial in sequential or chronological order. Staff drafted three new rules for jury trials that would provide an orderly description of jury procedures compatible with Title 22 statutes on jury trials. Because of the scarcity of jury trials, the members considered whether the Committee should grapple with rules for jury trials. The members concluded that they would decide at a future time whether to incorporate the existing jury trial rules by reference, or whether they would use staff’s proposed rules as those rules may later be modified or renumbered.

Rule 38.1: Setting of civil cases for trial; Rule 40: assignment of cases for trial. The members agreed that these rules were not congruent with processes currently utilized by justice courts, and the members would exclude these two rules from any new set of rules. The members had particular objections to the “active” and “inactive” scheme for dismissal of cases under Rule 38.1 for lack of prosecution. The members agreed that justices of the peace should be able to dismiss a case if the case has not been reduced to judgment within one year from the date of filing, as long as an appropriate notice has been given to the parties prior to any dismissal. Judge Hegyi will draft proposed language for a new rule.

Rule 42(a) and (b): Consolidation; separate trials. Cases are not often consolidated for trial, and separate trials are ordered very infrequently in justice courts. The members nonetheless agreed to staff’s proposed language concerning consolidated and separate trials.

Rule 42(f): Change of judge. Workgroup #2 deferred consideration of Rule 42(f) to the full Committee. It appeared at the inception of the Committee’s discussion of this rule that while there was agreement that there should be a right to a change of judge for cause in the LJ rules,

there was no unanimity on the right to a peremptory change of judge. Some members believe that a peremptory right should be allowed in justice courts. Other members indicated that even in those courts where the right is currently recognized, the existence of the right is criticized and the policy underlying the right is under review. The discussion of this rule was tabled.

**3. Next steps.** The Chair noted that the Committee has not concluded its review of workgroup #2's rules, which go up to Rule 53. The discussion of these rules will continue at the next meeting. Thereafter, the Committee will proceed to the rules assigned to workgroup #3, and will revisit the rules assigned to workgroup #1.

**4. Call to the Public; Adjourn.** There was no response to a call to the public. The meeting was adjourned at 3:00 p.m.

The next meeting dates are **Wednesday, July 20, 2011** and **Thursday, August 11, 2011**.

**ARIZONA SUPREME COURT**  
*Committee on Civil Rules of Procedure in Limited Jurisdiction Courts*  
 Minutes  
 July 20, 2011

Members present:

Hon. Paul Julien, Chair  
 Hon. Jill Davis, by Valerie Winters, proxy  
 Hon. Maria Felix  
 Hon. Hugh Hegyi  
 Hon. Gerald Williams  
 Mary Blanco  
 Veronika Fabian  
 David Hameroff  
 Stanley Hammerman  
 Emily Johnston  
 Nathan Jones  
 William Klain  
 George McKay

Members present by telephone:

Anthony Young

Members not present:

Hon. Timothy Dickerson  
 David Rosenbaum

Guests:

Theresa Barrett

Staff: Mark Meltzer, Julie Graber

**1. Call to Order; introductions; approval of meeting minutes.** The Chair called the meeting to order at 10:05 a.m. The Chair made introductory remarks and thanked the members for their effort and progress.

The Chair then asked the members to review the June 9, 2011 meeting minutes.

**Motion:** A motion was made to approve the June 9, 2011 meeting minutes. The motion was seconded and it was carried unanimously. **RCiP.LJC 11-008**

**2. Review of the recent draft of the Justice Court Rules of Civil Procedure (“JCRCP”).** The Chair asked staff to review a recent draft of the JCRCP, including written comments that had been submitted by members concerning the draft. The draft is designed to serve as a comprehensive set of rules of civil procedure for justice courts. The document also incorporates specified Arizona Rules of Civil Procedure by reference. The draft identifies each of the proposed justice court rules by a three-digit number.

The members discussed and made changes to the draft document as indicated below, excluding grammatical and other simple corrections.

**Rule 102b: Duties of parties.** The following sentence was added to the duty of parties to appear in court: “A party who is represented by an attorney may appear in court through the attorney, unless otherwise ordered by the court.”

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**Rule 104b: Allegations in pleadings.** A requirement that allegations be made “in separately numbered paragraphs” was deleted. This draft rule had no sanction if allegations weren’t made in separately numbered paragraphs, and because many pleadings would be filed by self-represented litigants, courts might allow a pleading even if this requirement had not been followed. If a pleading is incomprehensible because it does not have separately numbered paragraphs, a party can file a motion for a more definite statement, or an analogous motion.

**Rule 105g: Filing pleadings and documents.** References in this rule and in other rules throughout this draft to the “clerk of the court” were revised to refer either to “the clerk” or to “the court,” because justice courts don’t have a “clerk of the court.” More significantly, the members agreed that a document was “deemed” filed not just when it was “delivered” to the court, as indicated in the draft, but when it was “delivered” and “accepted”. The members believed that adding “accepted” would make the JCRCP rule more compatible with proposed revisions to Supreme Court Rule 124, and that this term would be flexible enough to cover both paper and electronic filings. Staff noted that certain policies pertaining to e-filing are contained in documents other than rules, such as administrative orders or directives from the court.

**Rule 105b:** The paragraph heading was changed from “certification” to “**effect of a signature,**” but the text of the paragraph was not changed.

**Rule 105c:** The paragraph heading was changed from “certification of a pleading” to “**verification of a pleading,**” and the words “certification” and “certified” in the draft were changed to “verification” and “verified”, respectively. The members added language that states that a pleading must be “verified” if a verification “is required by A.R.S. § 22-216 or by law.” If a pleading that requires verification is filed without one, the members believe that the filer would ordinarily be given an opportunity to provide a verification before the pleading would be stricken.

**Rule 107d: Partnerships.** The members discussed whether Rule 107 (“naming the plaintiff or plaintiffs”) should also include a provision for corporations. A suggestion was made that a sentence should be added to Rule 107d that would provide: “A corporation shall sue and be sued in its legal name.” An observation was made that there is no corresponding provision concerning corporations in Rule 17, Ariz. R. Civ. P. The members concluded that Rule 17 did not include corporations because the requirements for how a corporation must sue or be sued are established by substantive rather than procedural law; and therefore, corporations were omitted from the draft of Rule 107d.

**Rule 112: Claims for relief.** The draft provided that if the amount of a claim could not be calculated with certainty, “no specific amount needs to be stated.” The members agreed to the following revision that would assure that the amount in controversy is within the jurisdiction of the justice court: “If the amount of the claim cannot be calculated with certainty, no specific amount needs to be stated, but the complaint must state that the amount sought does not exceed the jurisdictional limit of the justice court.”

**Rule 113: Contents of the complaint.** The requirement that the complaint include the proper name of every plaintiff and of every defendant was revised to state that the complaint shall include “the proper name of every plaintiff and of every defendant, if known, or the fictitious name of a defendant under Rule 108a.”

**Rule 114a: Issuance of the summons.** The members considered text that would allow a summons to be issued by the court not only when a complaint was filed, but also “at a later date if requested by the plaintiff.” However, the members felt this might contradict policies that promote efficient case management as well as a provision regarding abatement of the summons (Rule 115b), and the text was therefore not included.

**Rule 115: Service of the summons and complaint.** A number of changes to this rule were made by staff prior to the meeting following circulation of an initial draft. The changes included reorganizing the paragraphs by grouping together the provisions for service on in-state defendants; to clarify service on individuals; and to add text regarding the requirement of filing a proof of service. These changes were acceptable to the members, except that a provision in paragraph (c) stating that service be made by “the court’s constable” was revised to “the constable;” this change was intended to accommodate service by a constable outside the precinct where the suit is pending.

**Rule 115h: Acceptance of service.** The members compared provisions for “acceptance or waiver” in Ariz. R. Civ. P. Rule 4(f) with “waiver of service” under Rule 4.1(c). The members agreed to include a provision in Rule 115 for acceptance of service, but not one for waiver of service. The members discussed whether service under draft Rule 115h would be completed when the acceptance was signed, or when the acceptance was filed; the members agreed that service should be complete when the acceptance was filed. The members agreed to retain language in the rule requiring that an acceptance be notarized.

**Rule 118a: Defendant’s response to a complaint or to a third party complaint.** The draft rule provided that the answer must include sentences that “admit or deny” the allegations of a complaint. The members agreed that the rule should also provide that an answer “may state that a party does not have enough knowledge concerning specific allegations of a complaint.”

**Rules 119a and 119b: Required counterclaim and permitted counterclaim.** The draft of Rule 119a provided that the defendant could file a required counterclaim arising out of the same “transaction or event”, whereas the draft of Rule 119b referred to permitted counterclaims not arising out of the same “transaction or occurrence.” For consistency, the members agreed that both paragraphs will refer to the “transaction or occurrence (event).”

**Rule 119e: Reply to counterclaim; answer to cross-claim.** The draft rule provided that a party “shall not be in default for failing to file a reply to a counterclaim or an answer to a cross-claim unless the party filing the counterclaim or cross-claim demands in their pleading, or the court orders, that a reply or answer be filed.” The consensus of the members was that a responsive

pleading to a counterclaim or cross-claim should always be required, and accordingly, the quoted language was deleted from the draft. The time for filing a responsive pleading under this paragraph is twenty days, to which the members added, “or as ordered by the court.”

**Rule 121a: Amendments to pleadings.** The draft provided that an amended pleading could be filed, if no response was required, within fifteen days after it was filed; the members agreed to change this to twenty days after the pleading was filed.

**Rules 122a and 122b: General rule and Application of this rule.** The members had an extensive discussion on the meaning of “service”. The method of service of the initial complaint is different from the method of service of documents after an appearance; but the word “service” is used in both instances. The members discussed using an alternative term, such as “deliver” or “provide” for service after an appearance, but concluded that the word “service” has legal significance; and because service triggers other duties under the rules, such as the duty to respond, the word “service” should be retained for post-appearance service.

The members agreed to make the following changes to these two paragraphs to clarify the meaning of “service” in these contexts:

1. The order of paragraphs (a) and (b) of Rule 122 was reversed. The paragraph entitled “application of this rule” now comes before the paragraph entitled “general rule”.
2. The paragraph entitled “application of the rule” now states: “There are two types of service under these rules. Service of the summons and complaint shall be made as provided in Rule 115. All other documents that are filed with the court after service of the summons and complaint shall be served as provided by this Rule 122.”

**Rule 122b: General rule.** The draft rule stated that a copy “shall be promptly provided to every party in the lawsuit...” The members agreed to add specificity to this requirement by stating that a copy “shall be served on every party in the lawsuit before or promptly after it is filed...”

**Rule 122c: Methods of providing a document to other parties.** The draft rule specified five methods of providing service. To the method allowing service by first class mailing, the members added “or by using a commercial courier who produces a written confirmation of delivery.”

**Action item:** The language concerning a commercial courier should be clarified at the next meeting: does service by a commercial courier constitute “delivery”, or is it service by “mailing” that requires the addition of five days to the response time?

**Rule 122g: Documents that are not filed with the court.** This rule specifies that disclosure statements, among other documents, must be served on other parties, but disclosure statements are not filed with the court. The members added this sentence: “Although disclosure statements

are not filed with the court, a court may require that a copy of each party's disclosure statement be provided for the judge's review."

**Rule 123a: Duty to disclose.** The language in this draft paragraph was revised to state the duty to disclose more concisely. A final sentence was also added that references the penalty provisions of paragraph (h). Accordingly, Rule 123(a) now states:

"Each party has a duty to give to the other parties in the lawsuit a written disclosure statement. The disclosure statement shall inform the other parties about the basis of the disclosing party's claims or defenses. The duty to disclose is an affirmative duty; a disclosure statement must be given to the other parties even without another party asking that disclosure be provided. Under paragraph (h) of this rule, the court may penalize a party who fails to timely disclose complete and accurate information."

**Action item:** The phrase "the duty to disclose is an affirmative duty" may have a meaning that is not readily comprehensible to self-represented litigants; and because the concept is re-stated in plain language after the semi-colon, the phrase may be redundant. Should the phrase be deleted?

**Rule 123h: Penalties for failure to disclose or to timely disclose, or for disclosure of inaccurate information.** The members agreed to supply guidance as to the level of information a disclosure statement requires. This guidance is provided in a new first sentence of this paragraph that states: "A disclosure statement shall include enough information that reasonable parties will not be surprised at trial."

**Rule 125a: Definition; before whom a deposition may be taken.** The draft stated that "a certified court reporter in Arizona is deemed an officer authorized to administer oaths." The members revised this to state: "A certified court reporter in Arizona may administer oaths."

**Rule 125b: Notice of deposition.** The draft provided that a notice of deposition shall be served on the party or witness. The members deleted the words "or witness."

**Rule 130f: Hearing on a motion.** The members discussed whether this paragraph should refer to a "hearing" or to an "oral argument." The consensus was to use the term "hearing", which would include proceedings at which evidence might be presented.

**Rule 134a: Trial by jury or to the court.** The members agreed to add the following sentence at the end of this paragraph: "The failure of the plaintiff to appear at the time set for trial may result in dismissal of the lawsuit, and the failure of a defendant to appear may result in judgment for the plaintiff."

**Rule 134d: Change of judge.** The members agreed that a change of judge for cause should be included in the JCRCP. The matter of change of judge as a matter of right, as set out in Rule 42(f)(1), prompted additional discussion. Rule 42(f)(1) specifically refers to a change as a matter

of right “in any action pending in the superior court...” Change of judge as a matter of right is not otherwise provided by law, and the members discussed whether, in the absence of other authority, a change of judge as a matter of right could be included within the JCRCP.

It appears that justices of the peace in a number of counties honor changes of right. The members discussed whether a change of right, if one was included in the JCRCP, should be limited to urban counties. It was noted that a change in an urban county might result in a case going to a different judge down the hallway, whereas a change in a rural county might present logistical challenges in finding a judge who could be many miles away. It was also noted that the proposed Rules of Procedure for Eviction Actions included a change as a matter of right, although this proposal was ultimately not adopted by the Supreme Court; but evictions are distinguishable by their expedited nature and changes of judge as a matter of right would cause undesirable delay in eviction actions. Civil actions are not similarly expedited.

The issue of whether to include a change of judge as a matter of right was presented in the form of a motion:

**Motion:** A motion was made to incorporate by reference the provisions of Rule 42(f), including a change of judge as a matter of right, within the Justice Court Rules of Civil Procedure. The motion was seconded, and after further discussion, the motion passed unanimously. **RCiP.LJC 11-009**

The members then agreed on the following language for Rule 134d:

**“d. Change of judge.** A party in a justice court lawsuit has a right to a change of judge in the same manner as provided in Rule 42(f) of the Arizona Rules of Civil Procedure.”

**Rule 140a: Entry of default.** This draft JCRCP provision regarding notice upon the filing of an application for entry of default was modeled on Rule 55(a). Rule 55(a) includes a provision requiring that notice be provided to an attorney if the party claimed to be in default “has an attorney.” Whether a party “has an attorney” may not always be clear, and the members discussed whether notice to counsel should be required if the attorney does not actually represent the defendant in the matter at issue. Some members felt that providing notice to an attorney, regardless of whether or not counsel represents the defendant in the existing controversy, is a relatively simple matter and should be required. Other members expressed that if notice is given to counsel, even though counsel doesn’t represent the defendant in the particular matter, the plaintiff’s attorney may be precluded from communicating with the defendant because of concerns with an attorney-client privilege, and yet have to deal with counsel who has no authority to act for the defendant.

The members then agreed to the following language for Rule 140(a)(2)(D):

“If the party who files the application for default knows that the party claimed to be in default is represented by an attorney concerning this lawsuit, the request to enter default

must also be mailed to that attorney, whether or not the attorney has formally appeared in this lawsuit.” (Underline added to these minutes.)

A member suggested that with regard to this language, the 2011 opinion of Division One in *Neeme vs. Spectrum* should be considered.

**Action item:** Staff will circulate the opinion and the members will discuss the above language further at the next meeting.

**Rule 140c: Default judgment by hearing.** Following discussion, the members also made changes to the draft of this paragraph. First, Rule 55(b)(2) requires that notice of a default hearing be provided to a party in default if the party “has appeared in the action.” That rule does not specify who must provide the notice. The members agreed that notice of a default hearing should be provided to a party in default if the party “has an address known by the plaintiff”, regardless of whether the defendant has appeared in the action; and that the notice must be served by the plaintiff, and not by the court. Second, the members agreed to add to this paragraph the following sentence: “The amount of damages, but not liability, may be contested if that party or their representative appears at the default hearing.”

**3. Next steps.** The Chair expressed optimism that at the conclusion of the August 11 meeting of this Committee, a version of the JCRCP would be ready to present to stakeholders for comment. Specifically, the following schedule is contemplated for presenting the JCRCP to:

the Committee on Limited Jurisdiction Courts (“LJC”) on August 31;

the Limited Jurisdiction Court Administrators Association (“LJCAA”) on September 1;

the Justices of the Peace Association on September 7 – 9;

the Committee on Superior Court (“COSC”) on September 9;

the LJC again (if needed) on October 19.

This schedule will allow stakeholders to submit comments concerning the JCRCP before these new rules are presented to the Arizona Judicial Council (“AJC”) on December 15, 2011. Consideration should also be given to inviting comments concerning these rules from the State Bar of Arizona.

**4. Call to the Public; Adjourn.** There was no response to a call to the public. The meeting was adjourned at 3:05 p.m.

The next meeting date is **Thursday, August 11, 2011.**

**ARIZONA SUPREME COURT**  
***Committee on Civil Rules of Procedure in Limited Jurisdiction Courts (“RCiP.LJC”)***  
 Minutes  
 September 28, 2011

Members present:

Hon. Paul Julien, Chair  
 Hon. Hugh Hegyi  
 Hon. Jill Davis  
 Hon. Timothy Dickerson  
 Hon. Maria Felix  
 Hon. Gerald Williams  
 Mary Blanco  
 Veronika Fabian

Members present (cont’d):

David Hameroff  
 Stanley Hammerman  
 Emily Johnston  
 Nathan Jones  
 William Klain  
 George McKay  
 David Rosenbaum  
 Anthony Young  
 (All members present)

Guests:

Hon. Rebecca Berch  
 Anne Ronan  
 Jon Hultgren  
 Richard Groves  
 Eric Lougin  
 Floyd Bybee  
 Theresa Barrett

Staff: Mark Meltzer, Julie Graber

**1. Call to Order; stakeholder input; approval of meeting minutes.** The Chair called the meeting to order at 10:05 a.m. The Chair requested a summary of stakeholder input concerning the proposed rules that had been received subsequent to the August 11 Committee meeting.

The Chair noted that he and staff had attended a meeting of the State Bar’s Civil Practice and Procedure Committee (“CPPC”). Mr. Klain, the CPPC’s chair, said that after RCiP.LJC’s rule petition is filed, the CPPC would prepare formal comments. The CPPC’s comments are subject to approval by the Bar’s Board of Governors. A CPPC subcommittee lead by Ms. Anne Ronan has been formed to review a final version of the rules.

Judge Dickerson and Judge Davis reviewed their respective judge meetings in Cochise and Mohave Counties, both of which were attended by the Chair. Comments were generally positive on having a set of civil rules for justice court cases. Questions were asked about whether motions would be eliminated, and how simple the rules will be. It was noted that most judges have their own way of processing a civil case, and every judge wants the draft rules to embody their individual way of doing things.

Judge Felix summarized comments made during the Justice of the Peace Association meeting earlier this month, where the Chair presented the draft rules. It appeared to be the consensus at this meeting that pretrial conferences should be optional rather than mandatory. Other comments that were made included: there should be limits on the number of motions to extend time; complaints should be verified and should include supporting documents; discovery should not be permitted; and the rules should allow entry of a judgment by the court, even without a motion to do so, when an answer does not state a defense. Finally, Judge Williams noted these additional

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comments: judges are lenient in enforcing rules when one of the litigants is self-represented; depositions should be abolished in justice court cases; and there were concerns that eliminating rules may eliminate rights of litigants. In general, the judges were interested in having a set of civil rules that was easier to read.

Staff reported on his presentations to the Limited Jurisdiction Court Administrators Association and the Committee on Superior Court. The LJCAA was interested in whether these draft rules would apply to small claims; they do not, with exceptions, such as the rule on default. COSC inquired on whether the rules would have provisions for appeals; they do not, appeals are covered by the Superior Court Rules of Appellate Procedure (“SCRAP”).

The Chair noted that the Supreme Court was considering a global review of the rules of civil procedure for the superior court. The Chair then asked the members to review the minutes of the prior meeting.

**Motion:** A motion was made to approve the August 11, 2011 meeting minutes. The motion was seconded and it carried unanimously. **RCiP.LJC 11-012**

**2. How simple should the rules be?** The Chair opened a discussion about the level of simplicity the justice court rules should strive to achieve. Judge Hegyi began the discussion. He said that the rules should be simple enough to be briefly explained to self-represented litigants, and they should be intuitive for those litigants. He acknowledged that the current version of the rules is a good simplification of the existing rules, but that alone may not provide the degree of simplification he thinks is necessary.

Judge Hegyi envisions a process where a default is efficiently entered if no answer is filed. If an answer is filed, the clerk would send the parties a notice to appear for a conference with a “conference officer.” The conference officer would quickly determine if a settlement could be reached, and if so, the settlement would be memorialized and sent to the judge for entry. If there was no settlement, the parties would exchange exhibits and a list of witnesses; and the conference officer would provide deadlines for other disclosures and discovery, if discovery was appropriate. This schedule would be memorialized and sent to the judge, who would provide a trial date; and if there was any issue about whether particular discovery could be undertaken, the judge would rule on it. The entire process envisioned by Judge Hegyi could be conducted in about fifteen minutes.

Judge Hegyi feels that this conference would streamline justice court procedures, and is similar to what is done by the Maricopa County Superior Court in domestic cases. The process would be helpful for self-represented litigants because (1) the case would require only two court appearances, one for the conference and the second for trial; (2) the litigant would know after the first appearance when the trial is scheduled; and (3) the process requires that very little be done in writing, which would level the playing field for litigants with little education.

Judge Hegyi believes that this process will provide self-represented litigants with a feeling that they have participated in the legal process, and it will reduce feelings of frustration and alienation. Some of the rules that have already been drafted may be incorporated into his proposed process, but even if his proposal requires additional meetings, he thinks that this Committee should seize a once-in-a-generation opportunity for meaningful change.

Judge Williams questioned whether a conference is more efficient in resolving a case than a motion. For example, he can decide a motion for judgment on the pleadings more quickly than he can conduct a conference. Eviction hearings are accelerated by necessity, but the civil case track is not as speedy. Judge Williams added that while answers are filed in about 20 percent of collection cases, even in many of those cases the defendant answers that money is owed “but...[with some other explanation for non-payment].” Judge Hegyi suggested a rule whereby the judge could review the pleadings in those cases and enter judgment *sua sponte* if there’s no meritorious defense. On the other hand, Judge Hegyi believes that if there is a triable issue under the pleadings, the litigants should have an opportunity to explain their positions in court, because responding to motions and particularly motions for summary judgment can be baffling for self-represented individuals.

Mr. Klain offered support for Judge Hegyi’s view, but commented that he would be cautious about eliminating rights that exist under the current rules. He noted that a proposed amendment to Rule 56 would allow the judge to grant summary judgment for a non-moving party, or for a moving party on grounds not raised by that party. However, who would explain to a self-represented litigant why their case is now over without ever having a “day-in-court” if there was a similar provision in justice court?

Mr. Klain raised the possibility of having two sets of justice court rules: a short set, perhaps four pages, which would be comprehensible to self-represented litigants; and a longer set, like the current draft version, for use by attorneys. The parties would presumptively use the short set, but could “opt in” to use the long set. Mr. Klain also offered a third option: that the judge would determine which set of rules applied. Judge Williams felt that if a self-represented litigant opted for the simplified rules initially, and then later retained an attorney, the attorney might be unfairly bound by the earlier election. Judge Davis observed that a short set of rules might result in a process similar to one used in small claims lawsuits, where there are no rules and the parties are simply encouraged to speak with one another about resolving the case.

Mr. Jones’ concept of simplicity included allowing discovery only upon motion, as is done in limited jurisdiction courts in Nevada. He added that judges in Coconino County justice courts conduct all proceedings because there are no conference officers or mediators, and he questioned whether remote courts would have the available resources if these conferences became mandatory. He believes that the existing draft represents consensus and compromise. He also believes that self-represented litigants are better able to understand these rules than we might suppose, but that it would enhance their understanding if they knew where to look in the rules for answers.

Mr. Rosenbaum observed that much of what Judge Hegyi proposed is included in the current draft of the justice court rules. The current draft includes rules for filing, service, answering, and the like, and even under Judge Hegyi's proposal, rules such as these would be necessary. He noted that the Committee retained discovery and motions in the draft rules because litigators have stated that those rules serve to streamline the process rather than slow it. He also questioned whether courts have sufficient resources to conduct an early, fifteen-minute conference in every disputed case. However, early judicial action that facilitates settlement might be built-in to the existing draft. If the Committee supports early judicial intervention, it should be optional because it might not work in every court. He reminded the members of the values of due process and judicial precedent, and the rules should embody these principles.

Mr. Hammerman commented that appearing in justice court can be intimidating for anyone. It begins with a long line for security, continues with another line at the clerks' counter, and is followed by a wait in the courtroom. He believes that Judge Hegyi's proposal is no less intimidating than the current process. He added that the rules are inherently fair, but they need to be administered more justly. For example, even in situations where he has filed a meritorious motion for judgment on the pleadings, it's been denied so that a defendant can have a day-in-court. Mr. Hammerman said that he's been surprised at trials by witnesses who were never disclosed. Most litigants and some lawyers don't read the rules, and clerks may not have time to answer questions. The process should be explained in a few pages that litigants will actually read and follow. The Chair agreed that additional training on civil procedure would benefit judges and their staff.

Mr. Young expressed his concerns that oversimplification of the rules could dilute due process, and could transform all justice court procedures to the small claims level. He does not support a small claims approach for all cases under \$10,000. He mentioned that oversimplification could discourage litigants if it makes them feel that "the deck is stacked against them." The rules need to promote predictability and consistency.

Ms. Johnston stated that \$10,000 is a significant sum for most self-represented litigants, and the rules should fairly serve these litigants as well as those with counsel. Ms. Johnston expressed concern that when self-represented litigants oppose parties who are represented, attorneys will opt for whatever set of rules is disadvantageous for self-represented individuals. She also felt that conference officers who are not law trained might give litigants the impression that they are not getting a "real" judge on their case.

Ms. Fabian believes that Judge Hegyi's proposal does not provide enough support for consumers. She stated that plaintiffs make mistakes when they file lawsuits, and discovery is her tool for determining those cases in which mistakes were made. She asked why a consumer who owes \$10,001 should have more rights than a consumer who owes slightly less.

The Chair inquired whether volunteer lawyers for self-represented litigants might level the field. One of the members responded that this would be a good opportunity for new lawyers to get

experience, but that most of them would want cases in the superior or federal courts, and would decline to serve as volunteers in justice court cases.

Judge Dickerson expanded on the volunteer ADR program that exists under Cochise County Local Rule 12. Volunteer mediators, many of whom are retired and who have a variety of educational backgrounds, get hours of training before serving in the program. In arbitrations conducted by these volunteers, the rules of evidence are loosely applied, and either side can appeal a volunteer's arbitration decision and have a trial de novo before a justice of the peace. In those Cochise County cases in which an answer is filed and that are not disposed of by motion, eighty percent are resolved by ADR. The Cochise County judges therefore have fewer trials, and he considers the program successful. He acknowledged that other justice courts might not have the resources to establish a similar ADR program.

Judge Dickerson is concerned that if there were two sets of rules, attorneys will opt out of the simple set and self-represented litigants would still have to deal with the more complex set. He is in favor of discovery only for good cause. He added that the limited jurisdiction court reference manuals contain only "the basics" for civil cases, and that more training in civil cases would benefit judges. Staff turnover can also hinder the ability of the clerks to become knowledgeable about the rules and respond to questions from self-represented litigants.

Mr. Hameroff felt that Judge Hegyi's proposal could dispose of a certain percentage of the cases, but not all of the cases. Ms. Blanco stated that giving self-represented litigants an option on which rules applied was too complicated, and that we should have only one set for all cases. She also stated that most cases conclude by default judgment, and the Committee is trying to create a complex scenario for a minority of the cases, that is, those cases where answers are filed. She added that her court is in downtown Phoenix, yet despite the dense population, the court had difficulty in finding a suitable number of volunteer mediators.

Judge Felix added that Pima County Consolidated Justice Courts had over 1400 new civil filings during August. She re-iterated the views expressed at the JP association meeting, that the rules about pretrial proceedings should be permissive rather than mandatory.

Mr. McKay emphasized the view that proceedings in justice court are important, and that these courts should continue to function as a respected component of the court system. For defendants in justice court, the money at stake is considerable. Oversimplification minimizes the protections afforded by law. The litigants deserve these careful protections, and not a ten-minute, television-style version of court proceedings.

Judge Hegyi observed that some of the members appeared to agree with him, and others appear to support the draft rules. Judge Hegyi agreed that the draft rules simplify the existing rules, but the public criticizes the courts for taking too long and for being too confusing, and the draft rules should therefore be even simpler. He questioned whether the average self-represented litigant would understand the current version of the draft.

The Chair thanked the members for expressing their views, and especially Judge Hegyi for initiating this re-evaluation of the rules. The Chair noted that staff throughout this process has listened to the philosophy underlying the members' comments, and has attempted to incorporate the essence of their concepts within the draft rules.

**3. Disclosure concerning assigned debts in collection cases.** The Chair continued with an issue concerning assigned debts in collection cases, specifically, how to provide the defendant-debtor with information about the identity of the original creditor. Ms. Fabian stated that this information, along with the terms of the contract and documentation of the last payment, should be provided early in the litigation, perhaps as attachments to the complaint. She said she benefits from early disclosure to determine if statutes of limitation, choice of law, and other defenses might be available.

The Chief Justice entered the room and briefly thanked the members of the Committee for their time and effort on this project.

Mr. Klain then reiterated his prior position: that the rules should not single out a class of plaintiffs by requiring heightened disclosure. Whether information should be disclosed depends on the particular case, and if a defendant is entitled to the information, there is a process under the discovery rules for obtaining it. Judge Williams stated that the rules should not require attaching documents to complaints; in light of the number of complaints that proceed to default, such a requirement would burden the courts with unnecessarily thick case files. Mr. Hammerman reminded the members that the draft rules are procedural, not evidentiary, and that the rules should not require production of items such as original contracts that contradict federal lending laws. He said that the rules should not have different disclosure standards for plaintiffs and defendants. He mentioned that the members previously discussed this issue, and resolved it by a formal motion at the June 9 meeting, and a member read aloud a portion of the June 9 minutes. Members then made and voted on motions:

**Motion:** A motion was made to include in the rule on the content of the complaint (currently Rule 111) a requirement that the complaint include, in actions to recover on a debt, the identity of the original owner of the debt. The motion was seconded and it carried unanimously. **RCiP.LJC 11-013**

**Motion:** A motion was made that the disclosure requirements, currently set out in paragraphs (c), (d), and (e) of Rule 122 concerning pretrial conferences, be removed to a new, separate rule on disclosure statements, for inclusion with the rules on discovery. The motion was seconded and it carried unanimously. **RCiP.LJC 11-014**

**Motion:** A motion was made and seconded that a requirement currently contained in Rule 122(c)(4), entitled "copies of documents concerning assigned debts", be removed from the new disclosure rule and that it remain in the rule on pretrial conferences, so that plaintiffs in assigned debt cases would be required to bring specified documents to the pretrial conference. Comments concerning this motion included the following:

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- The documents might not be available at the time of the pretrial conference.
- What is the sanction if the documents aren't brought to the pretrial conference? Without a sanction, the requirement is not useful.
- The requirement unfairly singles out a particular class of plaintiffs.
- Creditor-plaintiffs already have a duty under the disclosure rule to disclose any exhibits they will use to prove a case, and this rule is cumulative and unnecessary.
- In cases where disclosure statements have been exchanged before the pretrial conference, this requirement is redundant.

The motion passed, 8-6-1. **RCiP.LJC 11-0015**

The discussion on this last motion revealed that issues concerning the language of this rule still remain, and Mr. Young, Mr. Hammerman, Ms. Fabian, and Judge Williams as a workgroup will discuss them and propose solutions. At this point Mr. Hammerman left the meeting, designating Mr. Hultgren as his proxy. Mr. Hultgren noted that at the pretrial conference in certain precincts, the clerk provides the parties with a form to complete, the parties return the completed form to the clerk, and the conference is over without the parties ever seeing the judge. Mr. Young stated the workgroup would consider this scenario in addressing issues under the pretrial rule.

**Action:** The workgroup will report at the next Committee meeting.

**4. Default procedures.** Defaults occur in a majority of civil cases in justice courts, and the members proceeded to review the default procedures set out in draft Rule 140. Ms. Blanco noted that in her court, attorneys may file a motion for default judgment concurrently with the application for entry of default, or they may file the motion after the application. Members indicated that their practices vary, with some filing the motion at the same time as the application, and others filing the motion thereafter. Attorneys prepare their own forms of judgment. Ms. Blanco stated that her court prepares default judgments if the plaintiff is self-represented, although one member expressed concern about this. Ms. Blanco suggested that the draft rule should include a time period, perhaps sixty days, after the default is entered in which to file a motion for default judgment.

The discussion encompassed what should occur if an answer is filed after the ten-day grace period, but prior to the entry of a default judgment. Some members held the view that on the tenth day the door is shut, and the answer should no longer be considered by the court; or that if the court receives an answer, it should set the matter for a pretrial conference to inform the defendant that the answer was untimely. Others stated that the length of the grace period is within the court's discretion; if an answer is filed any time before entry of judgment, the case should be set for a pretrial conference and proceed on the merits. While some courts apparently require a motion to set aside a default in this scenario, other courts forego this because the motion is not readily understood by self-represented parties, and because the defendant did what was requested, i.e., file an answer, even though it may not have been timely.

**5. Next steps.** There are a number of issues that must still be discussed. The Chair proposed another meeting on October 25 at the Judicial Education Center in Phoenix. Mr. Klain asked the members to review R-11-0010, abrogating Rule 13(f) and amending Rule 15(a)(1), as well as a proposal the State Bar is considering concerning Rule 56, which he will provide.

**6. Call to the Public; Adjourn.** There was no response to a call to the public. The meeting was adjourned at 3:05 p.m.

The next meeting date is tentatively set for **Tuesday, October 25, 2011.**

**ARIZONA SUPREME COURT**  
***Committee on Civil Rules of Procedure in Limited Jurisdiction Courts (“RCiP.LJC”)***  
 Minutes  
 October 25, 2011

Members present:

Hon. Paul Julien, Chair  
 Hon. Jill Davis  
 Hon. Maria Felix  
 Hon. Gerald Williams  
 Mary Blanco  
 Veronika Fabian  
 David Hameroff  
 Stanley Hammerman  
 Nathan Jones  
 William Klain  
 George McKay  
 David Rosenbaum  
 Anthony Young

Members present by telephone:

Hon. Timothy Dickerson  
 Emily Johnston

Members not present:

Hon. Hugh Hegyi

Guests:

Eric Louvin  
 Ryan Houser  
 Theresa Barrett

Guests present by telephone:

Brittany Robinson  
 Brian Partridge

Staff: Mark Meltzer, Julie Graber

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**1. Call to Order; approval of meeting minutes.** The Chair called the meeting to order at 10:10 a.m. and welcomed the members and guests to the Judicial Education Center. The members then reviewed the minutes of the September 28, 2011 Committee meeting, and a member moved to approve those minutes.

**Motion:** The motion to approve the September 28, 2011 meeting minutes was seconded, and it carried unanimously. **RCiP.LJC 11-016**

The Chair reminded the members of his upcoming presentation to the Arizona Judicial Council on October 28. This presentation will introduce the work of this Committee in advance of presenting the Committee’s report at the AJC’s December 15<sup>th</sup> meeting. The Chair also informed the members that the Maricopa County Justice Court bench requested a presentation of the draft rules, and he will make this presentation on October 26, 2011.

**2. Discussion of the October 20, 2011 version of the draft rules.** Staff presented PowerPoint slides highlighting changes made to the draft version of the Justice Court Rules of Civil Procedure following the September 28 committee meeting. Among the changes were the following:

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- Parts VI, VII, and VIII (that appear now in this order: disclosure and discovery, motions, and settlement/pretrial conferences) were re-sequenced to reflect the typical chronology of a lawsuit.
- The order of what is now Rule 110 (starting a lawsuit, content of a complaint) and Rule 111 (lawsuits involving multiple parties or multiple claims) were reversed.
- There is now a separate rule on disclosure statements (Rule 121.)
- Several of the rules (103, 110, 112, 113, 120, 129, 132, 133, 137, and 140) were re-titled for greater clarity and accuracy.
- A stand-alone Rule 132 regarding pretrial motions on evidence was incorporated within another rule.
- Revisions to Rule 109 regarding signatures and Rule 120 concerning service of documents were made so that these rules are now more consistent with electronic filing practices.
- A new provision was added to Rule 133 that concerns setting a case for trial.
- Rule 148 was modified by allowing forms to be adopted by the AOC and posted on its website. Not including the forms within the rules eliminates the necessity of filing a rule petition whenever a change to a form is required.

The members further discussed particular rules and text.

Rule 104: Staff had added a definition of “lawsuit” (“a lawsuit is a dispute between parties who make claims and parties against whom the claims are made”) within the rule on parties. The members removed this proposed definition and revised the definition of “plaintiff” in this rule.

Rule 122: The members removed the following language from this general rule on discovery: “The court on its own initiative may limit discovery or it may limit specific discovery methods.”

The members discussed including in the discovery rules the “Zlacket” limitations contained in the superior court rules. These limitations cover such items as the number of interrogatories that are permitted, and the allowable length of a deposition. A motion was made to add these limitations to the draft rules.

**Motion:** The motion to add the Zlacket limitations in the various rules on discovery was seconded and carried unanimously. **RCiP.LJC 11-017**

Rules 130 and 131: There are a variety of court practices statewide concerning pretrial and mediation conferences. Some courts set every case in which an answer has been filed for mediation. Some courts combine pretrial and settlement conferences. Certain courts request the parties to fill out a form at a pretrial conference, but the parties do not appear before a judicial officer. Other courts set their cases for arbitration. The routine may differ even within a precinct, based on variables such as whether counsel represents each of the parties, or whether there are particular evidentiary disputes in a case that warrant a pretrial conference. The members agreed that the justice court rules should allow the flexibility that individual courts may wish to utilize in setting these conferences.

In conjunction with the discussion on these rules, the members also considered how long a case should remain active pending the execution of a settlement in circumstances where the case is not resolved by a stipulated judgment. Requesting security for the settlement, or obtaining a defendant's consent to re-file a lawsuit with a waiver of service, are solutions in some but not all of these cases. Some plaintiffs will proceed to trial if a settlement is not reduced to judgment, but members agreed that the court cannot leave a case in an inactive, pending status for an extended time.

The members concluded the discussion with an agreement to have separate rules entitled "optional mediation conference" and "pretrial conference." The members also agreed on language for these rules. Within the rule on pretrial conferences is a provision that allows the trial judge to conduct a settlement conference with the informed consent of the parties.

Rule 133: The members added the following language for setting a trial date: "Absent good reasons as determined by the court or the consent of the parties, a trial may not be set to begin less than one hundred twenty days after an answer was filed."

References to Rule 115: As the committee proceeded through the rules, a member noted repeated references in various rules to time "as calculated under Rule 115." The member thought this was redundant, because all time calculations under these rules are made as provided in Rule 115. Another member disagreed, and stated that a reference should be made to Rule 115 on every occasion that time is mentioned in a rule. The member made a formal motion to this effect.

**Motion:** The motion to refer to Rule 115 in every rule when a time calculation is required was seconded but failed to carry: 2-12.

At this point, a contrary motion was made to eliminate repeated references to Rule 115.

**Motion:** That motion was seconded, and carried: 11-2-1. **RCiP.LJC 11-018**

Rule 139: The members discussed and agreed to revisions in the rule on judgments, and in particular, requirements for filing statements of costs, requests for attorneys' fees, and the time provisions of this rule.

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Rule 140: Staff had proposed in the draft rule on defaults a single, combined process for an application for entry of default and a motion for entry of a default judgment. After further discussion, including information that the recent Moon decision by Division One had been withdrawn, the members favored retaining the two-step process for defaults. The members believed that this is more fair and better protects the rights of the litigants. Staff was directed to revise the rule on default judgments accordingly. The members noted that this revised rule should:

- Include a provision that the filing of the application constitutes entry of default.
- Require that a motion to enter default judgment be mailed to the party in default and to the other parties who have appeared.
- Allow an answer to be filed more than ten days after the entry of default for a good reason, and subject to an opportunity of plaintiff to object; and allow the judge to set aside a default for a good reason.

**4. Cases involving assigned debts.** The Chair then turned to an issue that has divided the Committee: a special disclosure requirement in cases of assigned debts (draft Rule 121(a)(4).) Mr. Hameroff had provided the members with a legal memorandum that contended, among other things, that a separate disclosure requirement imposed on plaintiffs in assigned debt cases might violate the equal protection clause, and that it may constitute a substantive requirement rather than a procedural rule. The memo also took the view that other, general provisions of the disclosure rule adequately covered disclosing relevant information in assigned debt cases. A member opined that disagreement about this single issue could cloud much of the good work done by this Committee. Mr. Klain added that he was opposed to creating a different standard for a specific type of plaintiffs; he had to leave the meeting at this time but he recommended deletion of this provision.

The Chair then asked individual members of the Committee to express their views on this proposed rule. The membership appeared split, and a suggestion was made to submit a report that included both views as well as alternative versions of this rule. The workgroup comprised of Mr. Hammerman, Mr. Hameroff, Mr. Young, Ms. Fabian, and Judge Williams also offered to meet and attempt a resolution of this issue. It was noted that no further Committee meetings are anticipated prior to submitting the Committee's report to the Arizona Judicial Council. A motion was then made that if the workgroup unanimously agrees to language for Rule 121(a)(4) and the disclosure requirement for assigned debt cases, that their agreed-upon language would be deemed adopted by the full Committee and included within the draft version of the rules.

**Motion:** That motion was seconded, and carried unanimously. **RCiP.LJC 11-019**

The members of this workgroup agreed to convene at Mr. Hammerman's office on November 8, 2011.

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**5. Next steps.** Inasmuch as there will be no further meetings prior to presenting the Committee's report to the AJC, and in light of the number of revisions to the rules that are required following today's meeting, the Chair inquired if the members would permit him to finalize the version of the rules that will be presented to the AJC in December. A motion was then made that the Chair has the Committee's authority to finalize the version of the rules that will be submitted to the AJC.

**Motion:** That motion was seconded, and it carried unanimously. **RCiP.LJC 11-020**

The Committee's report will include a request for a "staggered" comment period. If the Court allows, a staggered comment period will enable the members to reconvene after an initial comment period, to review those comments, and if appropriate, to submit an amended petition with a revised version of the rules.

**6. Call to the Public; Adjourn.** There was no response to a call to the public. The meeting was adjourned at 3:10 p.m.

**ARIZONA SUPREME COURT**  
***Committee on Civil Rules of Procedure in Limited Jurisdiction Courts (“RCiP.LJC”)***  
 Minutes  
 March 30, 2012

Members present:

Hon. Paul Julien, Chair  
 Hon. Timothy Dickerson  
 Hon. Maria Felix  
 Hon. Hugh Hegyi  
 Hon. Gerald Williams  
 Mary Blanco  
 Veronika Fabian  
 David Hameroff  
 Stanley Hammerman  
 Emily Johnston  
 Nathan Jones  
 William Klain  
 George McKay  
 David Rosenbaum  
 Anthony Young

Members present by telephone:

Hon. Jill Davis

Guests:

Hon. David Widmaier  
 Hon. Steven McMurry  
 Kenneth Seidberg  
 Theresa Barrett

Staff:

Mark Meltzer  
 Julie Graber

**1. Call to Order; approval of meeting minutes.** The Chair called the meeting to order at 10:05 a.m. The members reviewed the minutes of the October 25, 2011 Committee meeting, and a member moved to approve those minutes. The Chair requested at page 4, under topic 4 (“cases involving assigned debts”), a modification (shown by underline) of the following sentence:

“A motion was then made that if the workgroup unanimously agrees to language for Rule 121(a)(4) and the disclosure requirement for assigned debt cases, that their agreed-upon language would be deemed adopted by the full Committee and included within the draft version of the rules.”

**Motion:** The motion to approve the October 25, 2011 meeting minutes as modified was seconded and it carried unanimously. **RCiP.LJC 12-001**

Mr. Hameroff then moved that the workgroup’s unanimous one page agreement concerning revisions to Rule 121(a)(4), signed on November 8, 2011, be ratified by members of the Committee and attached to today’s meeting minutes.

**Motion:** The motion to ratify the workgroup agreement and attach the agreement to today’s minutes was seconded and passed unanimously. **RCiP.LJC 12-002**

**2. General remarks concerning the initial comment period.** The Chair reminded the members that the staggered comment period for R-12-006 provides an opportunity for this Committee to make changes to the earlier version of the proposed rules. Staff presented a summary of comments posted during the initial comment period, and revisions made by staff to the JCRCP as shown in the version provided at today's meeting. During the course of staff's presentation, the members agreed to:

- Retain rather than remove Rule 139(g) concerning a voluntary reduction in the amount of a judgment or verdict
- Approve the addition of a sentence in Rule 140(j) in light of *BYS v Smoudi* (1-CA-CV 10-0906; February 9, 2012)
- Not include a requirement in Rule 141(c) that a movant show a meritorious defense in a motion for relief from a default judgment

Members and guests then made the following comments:

- The rules are still not “approachable” for laypersons. There are too many rules and they do not provide the public with a “lay of the land” that would allow self-represented litigants to meaningfully participate in justice court litigation. Since self-represented litigants will not read the justice court rules, perhaps this committee should simply add provisions to the superior court rules. Self-represented litigants will continue to ask questions to court staff, and court staff will continue to provide them with checklists and handouts.
- This committee cannot help people who will not take the time to read the new rules, and if they fail to read the rules, they do so at their peril. RCiP.LJC should not simplify the rules, as suggested by the Legal Services Committee, to the point that even the least educated litigants understand them.
- Elimination of “incorporation by reference” in the current version of the JCRCP has made the rules longer and less simple, but the rules achieve other salutary goals, such as requiring clear notices to litigants. In light of the length of the rules and the limits of simplifying the text, an easy-to-read guidebook for self-represented litigants would be useful.
- Attorneys will try to find “gaps” in the JCRCP and argue that the superior court rules apply under A.R.S. § 22-211.
- Pending legislation might increase the civil and small claims jurisdictional limits of justice courts. If justice court jurisdiction increases to \$15,000 or higher, there will be

more personal injury cases in justice court, and RCiP.LJC should get input from this stakeholder group.

**3. Rule numbering.** After these preliminary remarks, the Committee focused on the subject of rule numbering. A significant portion of the discussion dealt with ways of making it clear and explicit that case law established under the superior court rules would continue to apply to corresponding rules in the JCRCP, notwithstanding a difference in rule numbers. Some individuals believe that the JCRCP should continue to follow the numbering of the Ariz. R. Civ. P. Staff offered to revise the rules by using the superior court numbering system if anyone could demonstrate how to accomplish this while still preserving the committee's decisions to eliminate certain superior court rules, to consolidate other rules, and to re-sequence the rules to conform them to case flow in justice court civil proceedings. No one mentioned a way to do this. Members and guests then made the following comments:

- The superior court rule numbers are not compatible with the JCRCP's logic, and the justice court rules should retain the new numbering system. Lawyers and judges will quickly adapt to the new numbers. The new numbering system of the JCRCP makes it clear that these are justice court and not superior court rules.
- The JCRCP should restore Table 2, which was included in the prior version, and which cross-referenced the JCRCP to the superior court rules. The family law rules of procedure (ARFLP) deviate from the superior court's civil rule numbering, and use of a cross-reference table in ARFLP is effective in locating corresponding civil rules. A table in the JCRCP should be of similar benefit. In addition to restoring Table 2, the justice court rules should show the superior court rules in brackets, as was done in the most recent version of the JCRCP. The benefits of the new numbering system outweigh adoption of superior court rule numbering.
- It is a huge mistake to deviate from the superior court rule numbering. The justice court rules are significantly different from the family law rules, and by using new numbering, the committee is foregoing the opportunity to explain to litigants that certain superior court rules do not apply in justice court.
- The table of contents of the JCRCP shows that these rules are linear, and users can readily determine where they are in the litigation process.
- The JCRCP should explicitly state that case law developed under the superior court rules also applies to the justice court rules. The JCRCP do not give judges discretion to ignore applicable case law. The same law should apply in every precinct.

Following this discussion, a member made the following motion:

**Motion:** The JCRCP should retain its new numbering system; the JCRCP should include references to the superior court rules in a table as well as in brackets; and a *Committee on Civil Rules of Procedure in Limited Jurisdiction Courts Minutes: March 30, 2012*

provision concerning the binding effect of case law on these rules should be incorporated within Rule 101. The motion was seconded and it passed unanimously. **RCiP.LJC 12-003**

Staff asked the members for additional guidance on whether the rules should provide a table of superior court rules that do not apply in justice court. One suggestion was to include an introductory comment stating that any superior rule that has not been included in the JCRCP does not apply in justice court. Another suggestion was to provide this information in a handbook rather than in the rules. A member asked whether A.R.S. § 22-211 should be considered on this point; another member thought this was unnecessary because there will now be a separate set of rules that apply in justice court. A guest noted that while injunctions under Rule 65 will not apply in justice courts, a separate statute in Title 22 permits a justice court to order replevin.

**4. Incorporation by reference.** Judge Widmaier had strongly encouraged that the JCRCP eliminate incorporation of superior court rules by reference, and he was pleased that the current version of the rules had done so. The Chair added that the committee had spent considerable time in determining which rules to incorporate by reference, but that the current version better fulfills the goal of having a self-contained set of rules (“one-stop shopping”) for justice courts. The additional length of the rules is of concern, but a handbook explaining which rules apply in a particular situation might mitigate the added length.

**5. Creditor-debtor issues.** A member suggested that if anyone wanted to re-open the creditor-debtor issue to do so now, and that if there was no motion to re-open, that the Committee should consider the issue resolved. Another member noted that the minutes should reflect that the members considered a variety of comments on both sides of this issue. The members concurred that they favor abiding by the compromise reached by the workgroup, as reflected in the attachment to these minutes.

**Motion:** At this point, a member moved to not adopt a formal recommendation of the State Bar to amend draft Rule 110(b). The State Bar’s recommendation would require that a complaint in an assigned debt case include the date of default and the amount that is due on the date of default.

Discussion on the motion included the following points:

- RCiP.LJC extensively discussed these issues before reaching a compromise.
- The Supreme Court will have all of the comments when it considers the rule petition, and RCiP.LJC should clearly let the Court know its position.
- The Bar’s recommendation is not onerous, and it benefits collections attorneys because federal law requires them to determine the statute of limitations.

- The Bar’s recommendation would breed litigation because there is no universal agreement on what constitutes the date of default. (See for example: Navy Federal Credit Union v Jones, 187 Ariz. 493, Division Two, 1996)
- The Bar’s recommendation would create a substantive requirement, but legislative or policy decisions rather than rules of procedure should provide the substantive requirements.

**Motion passed:** The foregoing motion to not adopt the Bar’s recommended amendments to draft Rule 110(b) passed, 12 in favor, and 3 opposed. **RCiP.LJC 12-004**

**6. Discussion concerning specific rules.** Mr. Klain summarized proceedings at the State Bar concerning R-12-0006 earlier this year. He stated that he and Judge Hegyi are members of RCiP.LJC as well as the Bar’s Civil Practice and Procedure Committee (“CPPC”), and they accordingly refrained from decision-making concerning R-12-0006 at CPPC meetings. He noted that a CPPC sub-committee formed to study R-12-0006 concluded that the JCRCP was not simple enough. The Bar’s Board of Governors did not concur with the sub-committee on that point. The Board of Governors decided to (1) commend RCiP.LJC’s work, and support the rule petition; (2) make specific recommendations, most of which were contained in a “redline” version; and (3) present both sides of the consumer debt issue in its formal comment on the petition.

With this background, the members proceeded to discuss particular rules and text in the most recent version of the JCRCP.

Rule 109(b): The State Bar recommended that this rule include a portion of the identical language of superior court Rule 11 to assure that there was no difference between justice and superior courts in the standard regarding the effect of a signature. Although RCiP.LJC did not intend to create a different standard, the Bar’s recommendation is well taken. If the JCRCP uses the proposed Rule 11 language, a member inquired if Rule 109(b) could retain the last sentence of the current draft concerning a penalty, including the use of the word “may” rather than “shall” so that imposition of a sanction is discretionary. Although a motion to adopt the Bar’s recommendation with the aforementioned sentence of the existing draft of the JCRCP was pending before the Committee, RCiP.LJC tabled the motion to provide Mr. Klain an opportunity to speak informally with State Bar representatives on this point.

Rule 109(a): The State Bar recommended that if multiple parties filing a document are unrepresented, the document must include the signatures of all parties. Staff believes that such a requirement may contradict A.O. 2010-58, which requires only a single signature for electronically filed documents in justice court in this circumstance. This issue is deferred until the next meeting.

Rule 116(a): The State Bar recommended that the list of affirmative defenses be deleted from this rule, and that the rule state that a party “should” state their defenses in the answer rather than

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“must” state them. Some members felt that including a list of the affirmative defenses would educate the public about what they are, and that eliminating them might create a “gap” between superior and justice court rules; but other members thought the list of defenses added little practical information. The list detracted from the goal of simplicity, and defendants who want to raise one of these defenses will do so in a disclosure statement. The members believed that the word “must” was more consistent with the corresponding superior court rule than “should.”

**Motion:** A member moved that RCiP.LJC adopt the Bar’s recommendation to delete the list of affirmative defenses in Rule 116(a); not to adopt the Bar’s recommended use of the word “should” but to retain the word “must” instead; and that the rule state in part that “an answer must state a party’s legal and factual defenses to a claim.” The motion passed unanimously. **RCiP.LJC 12-005**

Rule 121(a)(2): The title of this paragraph will be changed from “a list of other witnesses” to a “a list of other people with knowledge.”

Rule 102(b): The Bar recommended that parties be required to provide an e-mail address to the court. Some members were opposed to this because a number of filers might not have an e-mail address. Moreover, it was felt that if parties send e-mail to the court, they would expect e-mail replies from the court, and some courts prefer to provide notices by phone or regular mail rather than by e-mail. If the litigants want to exchange documents by e-mail, they can do so without informing the court.

**Motion:** A member moved that the requirement for e-mail addresses be in the caption provisions of Rule 108(a) rather than in Rule 102(b). The motion passed unanimously. **RCiP.LJC 12-005**

Rule 111(a): Judge Segal criticized this rule because it would allow a plaintiff to file multiple but unrelated claims against a defendant. The members concluded that the superior court rules allowed this scenario, and no change was required.

Rule 111(a): The State Bar recommended that a sentence be added to this rule to provide that “the sum total of all claims asserted must not exceed the jurisdictional amount for the court.” RCiP.LJC believes that this is a correct statement when claims are not in the alternative, and that judges understand this principle when determining jurisdiction. However, claims are occasionally made in the alternative (for example, a claim for breach of contract and an alternative claim on account; or breach of contract and breach of warranty claims set out in the alternative.) Rule 111(a) should reflect that when there are alternative theories for recovering on the same transaction or occurrence, the amount of the claims should not be added to determine jurisdiction.

Rule 117(f): The State Bar recommended adding language in this rule that would provide that when a party files a counterclaim or cross-claim exceeding the jurisdiction of the justice court, the party is not required to take further action until the case is transferred to the superior court.

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The members did not have unanimous views on the effect of this proposed language, and Mr. Klain will speak with the Bar to get greater clarity.

Rule 121(a)(4) The members agreed to make the change recommended by the Bar concerning disclosure of written or recorded statements, except the word “that” should be used rather than “which.”

Rule 122(f)(4): The members agreed to adopt the Bar’s recommendations concerning payment of an expert’s fee in responding to a discovery request and to add the additional words “or responding to a subpoena.”

Rule 122(f)(5): The members agreed to the Bar’s suggested phrasing of this provision concerning non-parties at fault.

Rule 124(b): The members agreed to modify the State Bar’s redline addition by substituting these words in the notice: “...incurred by the other party as a result of your failure to appear....”

Rule 129: Judge Segal requested that the required notice to an opposing party on a motion for summary judgment include information about what is required in a response. Staff added language in the text of the notice contained within the current draft about what is required, and the members concurred with this addition.

Rule 129: Judge Segal suggested that these rules should not allow an attorney to file an affidavit in support of a summary judgment motion; and that computer generated or “robo signature” affidavits should likewise be inadmissible on summary judgment motions under the JCRCP. Judge Segal also suggested that the JCRCP did not address issues raised by two cases in sister states in which Midland Funding was a party. The members believe that whether an affidavit or other evidence is proper and admissible should be determined by the rules of evidence rather than by the rules of procedure.

Rule 129: Judge Segal recommended a provision in the rules that would require a hearing to dispose of a summary judgment motion. Some members felt that if a motion was uncontested, no hearing should be required; and that even if a motion is contested, a judge should not be required to conduct a hearing if the judge has found that there is a question of fact and the judge intends to deny the motion. Mr. Klain noted that there is a pending superior court rule petition on this issue because the issue affects the perception of fairness and access to justice, and other members agreed that the justice court rule should parallel the text of the proposed superior court rule.

Rule 145: Judge Widmaier had suggested adding the word “constable” in the rule on civil arrest warrants, although A.R.S. § 1-215 appears to include “constable” within the definition of “peace officer.” Judge Widmaier will follow up on this to determine if the addition of “constable” in this rule is necessary.

Rule 148: Judge Widmaier's concern regarding the availability of forms has been addressed in the latest version of the JCRCP.

Various: Ms. Nix suggested that the proposed rules create different burdens of proof in the justice and superior courts. The members believe that the difference between the two rules concerns pleading requirements, but that the burden of proof remains the same in both courts.

Various: The State Bar's redline in a number of rules changed "attorneys' fees" to "attorney's fees." The members agreed that the phrase should remain in the plural possessive form, and they did not make the requested changes.

**7. Next steps.** The Chair advised that staff would circulate a revised version of the JCRCP to the members in advance of the next meeting, scheduled for Friday, April 13, 2012.

**8. Call to the Public; Adjourn.** In response to a call to the public, Mr. Seidberg thanked the members for the opportunity to participate in today's meeting. The Chair expressed appreciation to Judge McMurry, Judge Widmaier, and Mr. Seidberg for their attendance at today's meeting and for their constructive comments on R-12-0006. The Chair also thanked Theresa Barrett for her leadership during the course of this project.

The meeting adjourned at 3:00 p.m.

Please note: The following page is an attachment to these minutes.

**PART VI: Disclosure Statements and Discovery.**

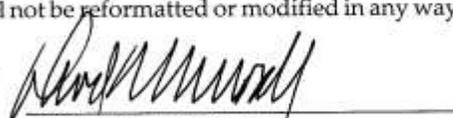
**Rule 121: Duty to serve a disclosure statement.**

*a. Disclosure of information.* Within forty days after the Defendant has filed an answer, or at a time directed by the court, each party must serve on the other parties a written disclosure statement. Every party's disclosure must include the following information:

*(3) Copies of exhibits and information.* (i) A party must provide copies of any documents or exhibits the party will use to support a claim or defense, including copies of electronically stored documents; (ii) In a contested case based upon the collection of a consumer debt (a debt entered into for personal, family, or household purposes), the Plaintiff must disclose all available evidence related to the allegations contained in the complaint. These include: 1. the agreement between the creditor and consumer, if available, upon which the complaint is based; 2. any available billing statement to the consumer; 3. if the debt has been assigned, evidence that the Plaintiff is the owner of the debt; 4. information concerning the date of the last payment made by the consumer, if available; (iii) If the party intends to use at trial any document, object, or exhibit that cannot be easily copied, the party must make the item reasonably available for inspection by the other parties at the pretrial conference or as otherwise agreed to by the parties.

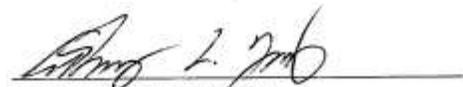
The above language is approved as is and shall not be reformatted or modified in any way.

  
Stanley M. Hammerman, Esq.

  
David E. Hameroff, Esq.

  
Veronika Fabian, Esq.

  
Hon. Gerald Williams

  
Anthony L. Young, Esq.

**ARIZONA SUPREME COURT**  
***Committee on Civil Rules of Procedure in Limited Jurisdiction Courts (“RCiP.LJC”)***

Minutes  
April 13, 2012

Members present:

Hon. Paul Julien, Chair  
Hon. Jill Davis  
Hon. Timothy Dickerson  
Hon. Maria Felix  
Hon. Gerald Williams  
Mary Blanco  
David Hameroff  
William Klain  
George McKay  
David Rosenbaum  
Anthony Young

Members present by WebEx:

Veronika Fabian  
Stanley Hammerman  
Nathan Jones

Members not present:

Hon. Hugh Hegyi  
Emily Johnston

Guests:

Jonathan Reeves  
Theresa Barrett

Staff: Mark Meltzer, Julie Graber

=====

**1. Call to Order; approval of meeting minutes.** The Chair called the meeting to order at 10:05 a.m. and thanked the members for their continuing contributions to this Committee. The Chair reiterated that he intends to file an amended rule petition by April 27, 2012. The Supreme Court thereafter will open the amended petition for public comments.

The members then reviewed the minutes of the March 30, 2012 Committee meeting.

**Motion:** A member made a motion to approve the March 30, 2012 meeting minutes, the motion received a second, and the motion carried unanimously. **RCiP.LJC 12-006**

**2. Elimination of incorporation by reference.** Judge Williams stated that Judge Widmaier’s comment during the initial comment period was constructive. The Chair concurred with this observation, and added that elimination of incorporation by reference, as suggested by Judge Widmaier, may have been not just desirable but also very necessary. The Chair explained that the publisher of the Arizona Rules of Court is contemplating a two-volume set of rules rather than including all of the rules in a single volume. The Chair said that incorporation by reference could have become quite problematic for users of the JCRCP if the justice court and superior court rules were in separate volumes. The Chair added that a bill to increase small claims jurisdiction from \$2,500 to \$5,000 passed the Legislature, although the Governor vetoed that bill, while another bill to increase the civil jurisdictional limit of justice courts is still pending.

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**3. Signatures.** Staff introduced Jonathan Reeves. Mr. Reeves, who works for the AOC, is a member of the AZ TurboCourt e-filing team. Mr. Reeves offered his views of the State Bar’s proposed changes to Rule 109(a) concerning signatures. Mr. Reeves explained that AZ Turbo Court utilizes an interactive questionnaire to prepare forms for filing in justice court, and the resulting intelligent form does not accommodate more than one party’s signature. This process is different from the superior court e-filing application, where documents containing multi-party signatures are e-filed as attachments. The Bar’s proposed change to Rule 109(a) would require multiple parties to sign documents filed in justice court, including electronic documents, which is incompatible with AZ Turbo Court’s justice court architecture. Administrative Order 2010-58 addresses this issue by allowing one party to sign and to e-file a document on behalf of multiple parties.

Judge Williams and other members thought that the rules should not permit self-represented individuals to file documents on behalf of other parties, particularly when parties have separate or conflicting claims or defenses. Mr. Rosenbaum believes the issue of individuals signing on behalf of other parties implicates the requirements of Rule 11 [Rule 109(b).] Although the members concurred that AZ Turbo Court should change to conform to the rules, and not vice versa, Mr. Reeves stressed that a change allowing multiple signatures on an intelligent form is not yet technically achievable.

The members discussed revisions to Rule 109(a) that would hold parties who do not sign an electronically filed document to the same standard as parties who sign documents and at the same time recognize the technical limitations of AZ Turbo Court. The discussion resulted in changes to the third and fourth sentences of this rule, with the edits shown by underline and strikethrough as follows:

“When two or more parties jointly file a document, ~~at least one of all of the~~ each of these parties who file the document must sign it. However, if the document is filed through an electronic application where only one electronic signature is allowed, all parties who submit the document are responsible for the document under Rule 109(b).”

**Motion:** A member made a motion to adopt these revisions, and to include a comment in the amended rule petition expressing the members’ preference for improved technology that would allow multiple signatures in a document filed electronically by multiple self-represented parties. The motion received a second and passed, eleven in favor and two opposed. **RCIP.LJC 12-007**

**4. Renumbering.** The discussion turned to renumbering. The Committee intends that case law developed under the superior court rules will continue to apply to the justice court rules. Mr. Klain asked the Committee to clarify that when judges interpret the JCRCP they can consider, in addition to Arizona case law, relevant and persuasive decisions from other jurisdictions. He added that an exception to these principles would arise when there are new procedural requirements in the justice court rules that are not contained in the superior court rules. Mr. Klain proposed a revision to Rule 101(d) that would incorporate these concepts. The members

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discussed Mr. Klain's proposed language and made further revisions until the text of the rule read as follows, with underline and strikethrough showing changes from the pre-meeting version:

“These rules replace the Arizona Rules of Civil Procedure (the superior court rules.) ; although Arizona appellate law concerning the Arizona Rules of Civil Procedure may apply to these rules, as stated in the introductory comment. ~~Where the language or purpose of an Arizona justice court rule parallels that of a superior court rule, appellate court decisions interpreting the superior court rule are binding with respect to applying or interpreting the justice court rule.~~ Differences in language between a justice court rule and a superior court rule are intended only to make the justice court rule simpler and easier to understand. Case law interpreting a superior court rule is authoritative unless a justice court rule expressly adds a requirement or provides a right not found in a superior court rule.”

**Motion:** A member made a motion to include the foregoing revisions, the motion received a second, and the motion carried unanimously. **RCIP.LJC 12-008**

**Motion:** A member made a corresponding motion to include the foregoing revisions in the introductory comment. The motion received a second and the motion carried unanimously. **RCIP.LJC 12-009**

**5. Discussion concerning other rules.** The Committee proceeded to discuss other specific rules.

Rule 117(f): The Committee had no further clarification from the State Bar concerning the Bar's proposed revision that would require a party filing a counterclaim exceeding the jurisdiction of the justice court to take no further action. The members considered and discussed ARS section 22-201(G) and scenarios where a party would attempt to file, contrary to the Bar's suggested revision, a reply to such a counterclaim in the justice court.

**Motion:** A member moved to make no changes to the current Rule 117(f), the motion received a second, and it carried unanimously. **RCiP.LJC 12-010**

Rule 146(a): Staff provided updated information from Judge Widmaier concerning the inclusion of the word “constable” in this rule, and the members concurred with the addition of the words “including a constable” after the words “any peace officer in the state.”

Rule 111(a): The members discussed edits to this rule concerning the effect of alternative claims on justice court jurisdiction. During the discussion, the members revised the last sentence of this rule to read as follows:

“Alternative claims for recovery of the same damages should not be added together in determining whether the court has jurisdiction.”

**Motion:** A member moved to adopt this change, the motion received a second, and it carried unanimously. **RCiP.LJC 12-011**

Rule 121(a)(4): This rule requires disclosure of statements. The members considered recommendations from the State Bar and other revisions to this rule. The members discussed shortening the title of this subsection; expanding the disclosure requirement beyond statements of “a party” to include statements of “any person;” whether to include the word “relevant” to describe which statements are disclosed; and if the word “relevant” was not included, whether the words “concerning the issues in this lawsuit” should substitute as a descriptive term. Following this discussion, the revised rule read:

**“Statements.** A party must provide a copy of any written or recorded statements that are within the party’s possession or control and that were given by any person. If a party is aware of such a statement that is not within the party’s possession or control, the party must identify the name and address of the person who gave the statement and the custodian of the copy of the statement, if known.”

**Motion:** A member moved to adopt the revised language. The motion received a second, and the motion carried, twelve in favor and one opposed. **RCiP.LJC 12-012**

After a lunch break, the members returned to the subject of how to best present references to the superior court rules within the JCRC. After further discussion, the members agreed to add the following additional sentence to Rule 101(d): “For ease of reference, any related superior court rules are shown in brackets at the end of a corresponding subsection of these rules.” The members also agreed to delete the previous references to “ARCP -0-” within brackets, which denoted that there were no corresponding superior court rules.

**Motion:** A member made a motion that the JCRC incorporate the foregoing revisions. The motion received a second and it carried unanimously. **RCiP.LJC 12-013**

Rule 122(5)(f): The members considered only referring to ARS § 12-2506 and striking the reference to paragraph (B) of this statute, but because the superior court rule includes the paragraph reference, no changes were made to the current justice court rule.

Rule 127(b): The current version of the rule did not allow the imposition of Rule 127 penalties for groundless denials of requests for admissions. The members discussed a proposal that would allow the imposition of penalties in this circumstance and would delete what is now Rule 127(b).

**Motion:** A member moved to allow the imposition of penalties for groundless denials of requests for admissions, as provided in proposed Rule 126(d); to delete the current Rule 127(b); and to renumber the paragraphs of Rule 127 accordingly. The motion received a second and carried unanimously. **RCiP.LJC 12-014**

Rule 129(d): The members suggested that this provision concerning hearings on motions for summary judgment conform to a corresponding provision in a pending rule petition, R-11-0034.

**Motion:** A member moved that Rule 129(d) conform to the language in superior court Rule 56(c)(1) proposed by R-11-0034, but without the words “in its discretion,” which are implied by the word “may.” The motion received a second and it carried unanimously. If the Court does not adopt this portion of R-11-0034, the Court may wish to redact the corresponding language from Rule 129(d). **RCiP.LJC 12-015**

Rule 106(a) and (b): The proposed rules concerning intervention and interpleader describe these two particular procedures, but those rules lack details about how to initiate them. The State Bar also commented that the current rule on interpleader is difficult to understand. Although there may be few interventions or interpleader complaints in justice court, these provisions should provide the necessary details and clarity.

**Motion:** A member moved to include the relevant portions of superior court rules 24 and 22 in the appendix to the JCRCP. The motion included the addition of the following sentence to Rule 106(b) to assist self-represented litigants in understanding the nature of an interpleader action: “For example, a person who has property in which two or more other persons claim ownership may file a lawsuit asking the court to determine ownership.” The motion received a second and passed unanimously. **RCiP.LJC 12-016**

Amended rule petition: Mr. Klain advised that he needed to leave before adjournment, and prior to leaving, he suggested several largely stylistic changes to the draft amended rule petition.

**Motion:** A member moved to approve the stylistic changes, the motion received a second, and it passed unanimously. **RCiP.LJC 12-017**

The Chair noted that the draft of the amended petition requested, if the Court adopted the proposed rules, an extension of the Committee’s term for one year beyond the effective date of the rules. The members agreed to continue to serve on this Committee in that circumstance.

**Motion:** A member requested that given the broad scope of the proposed rules and notwithstanding Rule 28, that the Court delay the effective date for at least ninety days after the adoption date so that the justice court community could prepare for these new rules. The motion received a second and it carried unanimously. **RCiP.LJC 12-018**

Rule 139(g): Although voluntary reductions of the amount of a judgment are uncommon, the members discussed revising the rule so that the process requires entry of an amended judgment.

**Motion:** A member moved to adopt language that requires a party to file an amended judgment when seeking a voluntary reduction of the judgment amount pursuant to this rule. The motion received a second and it passed unanimously. **RCiP.LJC 12-019**

Rule 140(d): A member made the following motion to correct an error in the current draft that made this rule inconsistent with Ariz. R. Civ. P. Rule 55.

**Motion:** A member moved that the ten-day grace period in Rule 140(d) begin to run from the date of filing the application under Rule 140(b) rather than the date the application was mailed under Rule 140(c). The motion received a second and it passed unanimously. **RCiP.LJC 12-020**

Rule 140(e): The members considered whether a request for entry of default judgment under this rule, as well as an application for the entry of default under Rule 140(c), must be mailed to the party in default, to the parties who were served, or to every other party. These rules presently provide that the application and request must be mailed to “the other parties.” A member moved to amend Rule 140(c) so that service was required only upon parties served with the summons and complaint. One member expressed concern that if these documents were mailed to parties who had not been served, or who had been served but who were not in default, it might cause them to become confused. He also mentioned that it might constitute an “overshadowing” violation under the FDCPA.

**Motions:** The motion to amend Rule 140(c) to require service of the application for entry of default only on parties that were served with the summons and complaint received a second and passed, seven in favor and five opposed. A member then moved to reconsider the vote, and that motion received a second and passed unanimously. The members then noted that the current language in Rule 140(c) requiring service on “the other parties” is consistent with the superior court rule, and the consensus of the members was to retain the current language of Rule 140(c) rather than to adopt the previous revision. A member made a motion to this effect, the motion received a second, and the motion carried unanimously. The next draft will therefore include no changes to the service requirements of Rules 140(c) and 140(e). **RCiP.LJC 12-021**

Rule 140(g): This rule provides that either the court or a party may prepare a form of default judgment. A member suggested the rule require that the party requesting default judgment prepare the judgment. In some counties, however, the court will prepare default judgments for self-represented litigants.

**Motion:** A member moved to revise the language of this rule to express a preference for a party to prepare the form of default judgment. The motion received a second but it did not carry, four in favor and seven opposed. The current language of this rule will therefore remain. **RCiP.LJC 12-022**

Rule 141(b): The members discussed substitute language for the phrase “mistake, inadvertence, surprise, or excusable neglect.” The members decided that these are terms of art, and they made no changes.

Rule 145: The sheriffs in Maricopa and Mohave counties return unserved civil arrest warrants after one year, and the members considered adding a time limitation for the effective period of a warrant under this rule. The Pima County sheriff returns civil arrest warrants only if they remain unserved after five years. The members concluded that the purge dates on these warrants should be set by each court, and that a time limitation in Rule 145 is unnecessary.

Rule 146: The members discussed use of the words “object” and “thing” in this rule concerning deposits with the court. The members directed staff to use either word but not both words.

Rule 147(b): Because supplemental proceedings to enforce a judgment are commonly referred to as “judgment debtor exams,” the members suggested inclusion of the common reference in parenthesis after the title of Rule 147(b), as well as verbiage that the debtor’s exam is “concerning the debtor’s income, expenses, and assets.”

**Motion:** A member moved to revise Rule 147(b) as indicated above. The motion received a second and it carried unanimously. **RCiP.LJC 12-023**

**7. Next steps.** The Chair reminded the members that he would be filing an amended petition later this month, and that the Committee would not meet again before the filing date.

**Motion:** A member moved to give the Chair authority to finalize the version of the amended rule petition including proposed rules that the Chair will file with the Court later this month. The motion received a second and it passed unanimously. **RCiP.LJC 12-024**

The Committee will meet again after the next comment period has closed. The date of that meeting will be either June 1 or June 8, 2012, and the Chair will notify the members later about the selection of one of those dates.

**8. Call to the Public; Adjourn.** There was no response to a call to the public. The meeting adjourned at 3:03 p.m.

**ARIZONA SUPREME COURT**  
***Committee on Civil Rules of Procedure in Limited Jurisdiction Courts (“RCiP.LJC”)***

Draft Minutes

June 1, 2012

Members present:

Hon. Paul Julien, Chair  
Hon. Maria Felix  
Hon. Gerald Williams  
Mary Blanco  
David Hameroff  
Stanley Hammerman  
George McKay

Members present by WebEx/conference call:

Hon. Jill Davis  
Hon. Timothy Dickerson  
Veronika Fabian  
Emily Johnston  
Nathan Jones  
David Rosenbaum  
Anthony Young

Members not present:

Hon. Hugh Hegyi  
William Klain

Guests:

Hon. Anne Segal  
Patience Huntwork  
Michael Wrapp  
Lisa Royal  
Sarah De La Rosa  
Kenneth Seidberg  
Theresa Barrett  
Eric Logvin

Staff:

Mark Meltzer  
Julie Graber  
Kymberly Lopez

**1. Call to Order; approval of meeting minutes.** The Chair called the meeting to order at 10:10 a.m. The Chair welcomed the guests, and introduced Supreme Court staff attorney Patience Huntwork. Ms. Huntwork provided an overview of her role concerning this rule petition pending the Court’s August 29, 2012 rules agenda. The members then reviewed the minutes of the April 13, 2012 committee meeting.

**Motion:** A member made a motion to approve the April 13, 2012 meeting minutes, the motion received a second, and the motion carried unanimously. **RCiP.LJC 12-025**

**2. Summary of recent comments.** Two formal comments, one from the State Bar and the other from the William E. Morris Institute for Justice (the “*Morris Institute*,” through its counsel, Ellen Sue Katz) were posted on the Court’s Rules Forum during the second comment period. The Chair referred to the comment by the Bar, which “*fully supports*” the amended rule petition, and additionally noted the compliments paid to this committee by the Board of Governors at its May 18 meeting. Staff also received several informal comments during the second comment period. The Chair provided an overview of the formal and informal comments, most of which were identified in a memo dated June 1, 2012 that staff prepared for today’s meeting. The Chair also thanked RCiP.LJC members who had submitted comments. He noted that RCiP.LJC has an

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opportunity to file a reply to the comments by the June 29 deadline. The members then proceeded to discuss the issues raised by the formal and informal comments.

**3. Morris' May 4, 2012 comment on oral answers.** The Morris Institute noted A.R.S. § 22-215, which provides in part that pleadings in justice court “*may be oral, except as otherwise provided by law....*” This comment suggested that a change to the summons in the JCRCP was necessary to advise defendants that a written answer is not always required. Staff’s memo recited that this issue had been discussed at RCiP.LJC’s April 20, 2011 meeting, at which time the members noted that while the statute allows oral pleadings, the superior court rules “*and Rule 10 in particular appear to require that pleadings be written.*” The justice court representatives on the committee reported that in civil actions, as distinguished from eviction actions, the practice of filing an oral answer is non-existent. One judge noted that the filing of an oral answer in civil cases would be a “*practical impossibility.*” Another member suggested that the present draft of the JCRCP does not conflict with the statute, and that a provision for oral answers in the JCRCP would “*create havoc.*” Judge Segal added that Florida utilizes oral answers, but that they would be impractical in Arizona civil cases.

**Motion:** A member moved to keep the current provisions of the draft JCRCP that require a written answer, and without adding a rule for oral answers. The motion received a second and it passed unanimously. **RCiP.LJC 12-026**

**4. Morris' May 4, 2012 comment on summons: fee waivers.** The Morris Institute comment pointed out that while the form of summons in the JCRCP states that the answering defendant is required to pay a filing fee, there is no mention in the summons of fee waivers or deferrals. Staff’s memo noted that neither the superior court rules nor A.R.S. § 12-302 require that the summons include information about fee waivers or deferrals, and that, like the Residential Eviction Information Sheet under the RPEA, the Notice to Defendant in the JCRCP does include this information. Ms. Fabian said that there is no harm in mentioning fee waivers or deferrals in the justice court summons, and Mr. Jones added that while there is no mention of waivers in other summons forms, this committee is writing new rules and it can add new requirements. One member expressed concern about increasing the length of the summons, but the members agreed to add this information as long as it did not increase the length of the summons. Staff indicated that he could probably add the information while keeping the summons on a single page.

**Motion:** A member moved to add information about fee waivers and deferrals in the summons. The motion received a second and it passed unanimously. **RCiP.LJC 12-027**

**5. Morris' May 4, 2012 comment on summons: reasonable accommodations.** The Morris Institute comment noted that the summons form contained a notice that requests for reasonable accommodations for persons with disabilities must be made to the court “*at least three working days in advance of a court proceeding.*” This language came from Rule 4(b), Ariz. R. Civ. P. The Morris Institute recommended that the time should be commensurate with what is contained in the RPEA, which requires that requests for reasonable accommodations be made “*as soon as possible.*” One member gave an example that in his court, there are no on-site sign language

interpreters, and the “*as soon as possible*” language may incorrectly lead the public to believe that no lead-time is necessary for the court to respond to an accommodation request. Another member, who also served on the State Bar of Arizona Task Force on Persons with Disabilities, supported the Morris Institute comment, and made a motion to that effect.

**Motion:** A member moved to change the language in the summons form from “*at least three working days in advance of a scheduled court proceeding*” to “*as soon as possible.*” The motion received a second and it passed unanimously. **RCiP.LJC 12-028**

**6. Morris’ May 4, 2012 comment on summons: cost of using AZ TurboCourt.** Another comment by the Morris Institute noted that the summons form advises a defendant that an answer can be prepared on AZ TurboCourt, but the summons does not inform the defendant of the additional cost of using AZ TurboCourt, and that the Court should “*expeditiously resolve*” the lack of a fee waiver and deferral process on AZ TurboCourt. Staff noted that there is no functionality on AZ TurboCourt now for direct electronic filing of documents in justice court civil cases. Staff also outlined the structure provided by A.O. 2011-140 concerning the filing of documents in the superior court by a party who has requested a fee waiver or deferral.

One member felt that the JCRCP should not address this issue because it may be the subject of a future administrative order. Another member, however, believed that the summons should at least be amended to advise of the additional fee for using AZ TurboCourt. Ms. Huntwork suggested removal of the word “*electronically*” from the summons form because it is too restrictive, and perhaps the word “*form*” should be removed as well because an answer can be in letter format or on any piece of paper. A judge added that justice courts usually accept answers that do not comply with the formatting requirements of the rules.

**Motion:** A member moved to add to the summons advice that there is an additional fee for using AZ TurboCourt. The motion received a second and it passed unanimously. **RCiP.LJC 12-029**

**7. Comments to the State Bar Board of Governors Rules Committee from Judges Segal and Ward.** The members considered a written comment provided to the Rules Committee by Judges Segal and Ward, most of which concerned issues in assigned debt and other collection cases. As to those matters, Mr. Rosenbaum noted that the comments concern issues discussed by RCiP.LJC during prior meetings, which the committee has already resolved. Judge Segal, who was present, acknowledged that she was not requesting specific action on those items, but she wished address the committee on another subject, statewide mandatory mediation.

**Motion:** A member made a motion to thank Judge Segal and Judge Ward for providing comments, but to not adopt their suggested changes, except for mandatory statewide mediation, which will be considered as a separate item. The motion received a second and it passed unanimously. **RCiP.LJC 12-030**

**8. Comment by Judge Segal: statewide mandatory mediation.** The Chair then invited Judge Segal to address the committee concerning her proposal for statewide mandatory mediation. Judge Segal stated that defendants who file an answer want their day in court, but often the plaintiff files a motion for summary disposition and a defendant never has that opportunity. She believes that every defendant who files an answer should have a day in court via a clear, comprehensible, and quick mediation. Under her proposal, a case would go to mediation thirty days after the defendant files an answer. If the plaintiff does not appear, the case is dismissed, and if the defendant does not appear, judgment is entered. Attorneys can appear by telephone. Dispositive motions are held in abeyance pending the mediation. Third year law students can serve as mediators. She would like the program to be statewide to promote uniformity and predictability.

Prior to leaving the meeting, Mr. Rosenbaum agreed that the proposal has merit, but said there is insufficient time to discuss the proposal fully or to ask for public comment, and that the proposal in any event is consistent with what the draft rules already allow. Judge Dickerson added that the issue of mandatory mediation could take considerable time to study, and that he would need to discuss it with the ADR administrator in Cochise County. He noted that such a program could overwhelm the resources Cochise County has available for ADR. He recommended that Judge Segal present her proposal at the Judicial Conference, at a conference of the Justice of the Peace Association, and to the Committee on Limited Jurisdiction Courts. He also believes that self-represented litigants, who typically appear only on a single case, are unaffected if the mediation process is different statewide. Other members made the following comments:

- Judge Williams stated that hundreds of collection cases are filed monthly in his precinct, many of which are not candidates for mediation, and he prefers to set a case for mediation only following a pretrial conference.
- Judge Felix reminded the members that this committee previously considered mandatory mediation, but the justice court rules made mediation optional because of local differences in resources and case management.
- Mr. Hammerman stated that he supports mediation, but a defendant who files an answer that admits a debt should not be able to delay a judgment merely to mediate. He also said many cases are amenable to settlement without a mediation procedure.
- Mr. Jones stated that in Coconino County, the only mediated cases are those in which there are genuine disputes and tenable positions. He also noted that under Rule 74, Ariz. R. Civ. P, arbitration proceedings are stayed pending disposition of a motion for summary judgment, and by analogy, the court should stay mediation pending a dispositive motion rather than vice versa.
- Ms. Fabian responded that in debt collection cases, the issue is not just whether a debt is due, but how it might be paid, and mediation is useful for getting parties to agree to payment terms.
- Ms. Blanco stated that it would be logistically difficult in her precinct to schedule mediations within thirty days.

- Ms. Johnston suggested that a self-represented litigant seeking a day in court might wish to appear before a judge rather than a volunteer mediator.
- Mr. Young added that making mediation mandatory might impose an unfunded mandate.
- Mr. Hameroff said that he attempts to settle cases from the inception. He supports Judge Williams' process of having a pretrial conference before mediation. In his experience, a number of mediators fail to comprehend the nuances of a collections case and, for example, allow mediation on an admitted debt case to conclude without a stipulated judgment.
- Judge Davis suggested that mediation not be mandatory but occur only upon request of the parties, or on order of the court.

**Motion:** Judge Dickerson made a motion expressing appreciation for Judge Segal's proposal regarding statewide mandatory mediation, but that the committee not disturb Rule 130, which presently provides for an optional mediation conference. The motion received a second and passed 10 ayes and 2 nays. **RCiP.LJC 12-031**

**Motion:** Ms. Fabian made a motion that this committee recommend establishment of a new and separate committee to consider statewide mandatory mediation for civil cases in justice court. The motion received a second and it passed unanimously. **RCiP.LJC 12-032** Note: Mr. Hameroff would like to serve on that committee if one is established.

Further note: The Chair before proceeding to the next item indicated that Anne Ronan's memo to the Rules Committee was informational only and did not require discussion.

**9. House Bill 2664.** HB 2664, relating to credit card agreements, was approved by the Governor on May 9, 2012. The members considered this legislation, including the manner of proof that is specified in A.R.S. § 44-7804.

**Motion:** Mr. Jones made a motion to confirm that no amendments or revisions to the JCRCP are necessary in response to HB 2664. The motion received a second and it passed unanimously. **RCiP.LJC 12-033**

**10. Orders to show cause.** Ms. Blanco noted a possible oversight in omitting within the JCRCP a correlate to Ariz. R. Civ. P. Rule 6(d) concerning the issuance and service of an order to show cause. JCRCP Rule 147 has the title, "*Enforcement of a judgment or order.*" Staff proposed a new provision in that rule, Rule 147(d), modeled on Rule 6(d). The members discussed the use of orders to show cause in justice courts, and how a proposed rule would interact with A.R.S. §§ 12-1593 and 12-1598.13 (contempt proceedings in garnishment cases.) Some members expressed concern about the potential for misuse of orders to show cause in justice court.

**Motion:** A member made a motion not to add an additional provision to the current version of the JCRCP to provide for orders to show cause. The motion received a second but it did not pass, 4 ayes and 8 nays. **RCiP.LJC 12-034**

**Motion:** A member then made a motion to adopt Rule 147(d), but using only a portion of staff's proposed text to address service of an OSC. The text is as follows: "*An order to show cause must be served by the party requesting the order as required by Rule 113, unless it will be served on a party who has already appeared in the lawsuit, in which case the order must be served as required by Rule 120.*" The motion received a second and it passed unanimously. **RCiP.LJC 12-034**

**11. Morris' May 29, 2012 comment: Rule 110(b).** Rule 110(b) concerns the content of a complaint. This comment recommended adding additional requirements for a complaint in a consumer debt case. The comment requested that the rule require allegations in the complaint of the redacted account number, date of last payment, and date of default. The comment also requested that the name of the original creditor not only be in the body of the complaint, as the draft rules currently provide, but that it also appear in the caption of the complaint. As to the latter recommendation, the consensus of the members was that this might suggest that the original creditor was a party to the lawsuit, but if the original creditor has sold the debt, the original creditor is no longer a party. As to the former recommendation, the members noted that their workgroup considered these matters, after which the workgroup reached a compromise; and the matters were also discussed extensively by the full committee previously and after Ms. Katz' prior recommendations to the State Bar.

**Motion:** A member made a motion of appreciation of Ms. Katz' comment, but that RCiP.LJC would abide by its previous compromises on these issues. The motion received a second and it passed unanimously. **RCiP.LJC 12-034**

The May 29 comment from the Morris Institute also proposed adding a new subsection (b)(6), which would require in consumer debt cases that specified documents be attached to the complaint, including an original contract and evidence of any assignment. The members agreed that the time to prove the case is after filing the complaint rather than at the time of filing; that original contracts concerning consumer debts may not be available in the electronic age; and that attaching documents to pleadings would create additional resource requirements for justice court staff.

**Motion:** A member again made a motion of appreciation for Ms. Katz' comment, but that RCiP.LJC decline to make the suggested changes. The motion received a second and it passed unanimously. **RCiP.LJC 12-034**

**12. Morris' May 29, 2012 comment: Rule 140.** This comment proposed adding to Rule 140, the rule concerning default, specific determinations that a judge must make before entry of a default judgment in a consumer debt collection case. These specified determinations would include assuring that service of process was proper, that a proper foundation exists for documentary evidence and affidavits, and that the plaintiff's proof is sufficient to support the claimed amount. One member presumed that a judge already does these things. Judge Williams added that he would modify the terms of a proposed judgment as appropriate in light of the offered proof, and that he would do this in any case, and not just in a consumer debt case.

Other members commented that the nature of the proposed provision was evidentiary rather than procedural. Judge Dickerson suggested that the committee not adopt the proposal because it essentially tells a judge to follow the existing law.

**Motion:** A member moved to adopt that portion of the proposal that would require that an affidavit show personal knowledge. The motion received a second but it did not pass, 3 ayes and 9 nays. **RCiP.LJC 12-035**

**Motion:** The member then moved to adopt the requirements that the judge determine that service was proper, and determine that plaintiff is entitled to the amount claimed. The motion received a second but did not pass, 3 ayes and 9 nays. **RCiP.LJC 12-036**

**Motion:** A member then made a motion of appreciation to Ms. Katz for her input, but that RCiP.LJC decline to incorporate these recommendations concerning Rule 140. The motion received a second and it passed, 9 ayes and 3 nays. **RCiP.LJC 12-037**

**12. Morris' May 29, 2012 comment: "universal concerns."** The Morris Institute comment included a section of "*universal concerns*" as follows:

(a) Readability and time: The comment indicated that the proposed rules were at a tenth grade reading level, and it recommended reducing the readability level. Staff related a recent conversation with Ms. Katz where staff invited, and Ms. Katz offered, to make certain rules more readable, but this was not possible in the time prior to the meeting and Ms. Katz had asked the members to consider a request to the Court to extend the comment period or to defer consideration of the rule petition. Another comment suggested extending the time period for any action required under these rules to a minimum of ten days.

**Motion:** A member made a motion to decline adoption of either of these comments. The motion received a second and it passed, 10 ayes, 1 nay, and 1 abstention. **RCiP.LJC 12-038**

(b) Order and numbering: The comment recommended further review of the order and numbering system of the rules in light of their deviation from the superior court rules. The members agreed that they discussed these items at great length during prior meetings.

**Motion:** In light of the committee's previous and extensive discussion of these items, a member moved to take no further action on this recommendation. The motion received a second and it passed unanimously. **RCiP.LJC 12-039**

(c) Notices: The comment supported the notices that are required under the JCRCP, and suggested additional notices.

**Motion:** A member agreed with the comment's observation that the notices are a good idea, but in light of the lack of specification for additional notices, the member moved

that no further action was required. The motion received a second and it passed unanimously. **RCiP.LJC 12-040**

**13. Rule 133: trial date.** Ms. Blanco noted that Rule 133(b) presently provides, in part, that a demand for a jury trial must be made not more than ten days after the court has set a trial date, whereas A.R.S. § 22-220 provides that a party may demand a jury “*at any time before trial....*”

**Motion:** To assure that this rule is compatible with the statute, a member moved to amend Rule 133(b) to provide that a party must demand a jury before the trial. The motion received a second and it passed unanimously. **RCiP.LJC 12-041**

**14. Rule 128: motion within a pleading.** Ms. Blanco reported that attorneys occasionally file a motion within a pleading, but because the title of the pleading does not mention the motion, it is not properly docketed or calendared. Staff suggested amending Rule 128, which concerns motions, by specifically requiring that a party must file a motion with a separate caption and not as part of a pleading. Although other judges agreed that these filings are an on-going problem, the consensus was to continue to handle them as they are handled now, which is to catch a motion incorporated within a pleading when a party initiates a follow-up contact with the court, or at some later time.

**Motion:** A member moved that no change be made to Rule 128. The motion received a second and it passed unanimously. **RCiP.LJC 12-042**

**15. Rule 133: change of judge or venue.** Ms. Blanco also raised a question about the distinction between a motion to dismiss for improper venue, which is provided by Rule 116(a)(2), and a motion to transfer venue, which is not specifically provided for in the JCRCP. The Chair noted that A.R.S. § 22-204 contemplates a change of venue because there cannot be a fair trial in the precinct, and not because venue is improper. The members further discussed that Rule 133 entwined provisions for a section 22-204 change of venue and another for change of judge. The members agreed that the two processes should be in separate provisions.

**Action item:** The Chair directed staff to separate these two processes in the rules.

Note: Staff noted that the word “*default*” in the “*words and phrases defined or explained*” table refers the user to Rule 140(a), “*when a default judgment may be entered.*” Staff also suggested, and the members agreed, to add a reference to Rule 114(d), entitled “*failure to respond; default.*”

**16. Authority given to the Chair.** The Chair reminded the members of his intention to file a reply concerning the amended rule petition later this month, and the Committee would not meet before then.

**Motion:** A member moved to give the Chair authority and discretion to finalize the version of the reply to the amended rule petition, and to include proposed rules that are

revised consistently with today's meeting. The motion received a second and it passed unanimously. **RCiP.LJC 12-043**

**8. Call to the Public; Adjourn.** The Chair made a call to the public, at which time Mr. Logvin requested a copy of the reply. The meeting then adjourned at 3:00 p.m.

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