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IN THE SUPREME COURT
STATE OF ARIZONA

In the Matter of:
PETITION TO AMEND
RULE 16 OF ARIZONA RULES OF
SMALL CLAIMS PROCEDURE

Pursuant to Rule 28, Rules of the Supreme Court, Michael T. Hellon respectfully petitions this court to adopt amendments to Rule 16 of the Arizona Rules of Small Claims Procedures, governing the vacating of a judgment, as proposed below.

I. Background and Purpose of the Proposed Amendments

During the period 2017 through June of 2019, the Arizona Rules of Small Claims Procedure were studied at length by the Committee on Improving Small Claims Case Processing, chaired by the Honorable Steven McMurry, which was established by Arizona Supreme court order 2016-115, dated November 2, 2016. The petitioner served on that committee. The committee recommended substantial changes to those rules, primarily addressing the length of time it took to resolve small claims cases. Those recommended changes were subsequently approved by the Arizona Judicial Council, of which the petitioner is also a member, and ultimately approved by the Court in order R-18-0021, dated August 27, 2019.

Rule 16, as set forth in the attachment to R-18-0021, does not reflect the view of the majority of the members of the reviewing committee, as recalled by the petitioner. As Rule 16 now reads, in the opinion of the petitioner, it is not in conformance with A.R.S. 22- 512, and not in conformance with A.R.S. 22-519. Further, it is not consistent with the spirit and intent of A.R.S. 22-501 and A.R.S. 22-505.

It is the purpose of these proposed rule amendments to clarify the rule relating to the vacating of a judgment and to bring the rule into conformance with A.R.S. 22-512 and A.R.S. 22-519; and to honor the spirit and intent of A.R.S. 22-501 and A.R.S. 22-505.

A.R.S. 22-512 (B) (7) states: "*An attorney-at-law shall not appear or take any part in the filing or prosecution or defense of any matter designated as a small claim.*" Rule 16 (e) is not consistent with that provision. It also is at odds with the clear intent of A.R.S. 22-501, which establishes the small claims division for the purpose of allowing " . . . *the inexpensive, speedy and informal resolutions of small claims.*"

A.R.S. 22-519 states, “*There shall be no appeal in a small claims procedure and the decision of the hearing officer or justice of the peace shall be final and binding on both parties* (emphasis added). Both Rule (16 (a) and Rule 16 (e) A.R.S. 22-519.

A reasonable reading of A.R.S. 22-505 would limit a motion to vacate only to very specific procedural issues. Expanding it to include the language of Rule 16 (a), would, in effect void A.R.S. 22-519. The legislature cannot have intended that result.

As set forth above, A.R.S. 22-501, establishes the small claims division for the purpose of allowing “ . . . *the inexpensive, speedy and informal resolutions of small claims* (emphasis added). The totality of Rule 16, as it now reads, is not consistent with the clear intent of this statute.

II Contents of the Proposed Rule Amendment

Rule 16. Vacating a Judgment

- (a) **Filing a Motion to Vacate a Judgment.** A MOTION FOR CHANGE OF VENUE AND A MOTION TO VACATE A JUDGMENT ARE THE ONLY MOTIONS ALLOWED. ~~Any party can file a motion with the court asking to be relieved from judgment. The motion does not affect the finality of the judgment or suspend operation of the judgment. The court may relieve a party from a judgment for the following reasons:~~
- ~~(1) mistake, inadvertence, surprise, or excusable neglect;~~
 - ~~(2) fraud, misrepresentation, or other misconduct of an opposing party;~~
 - ~~(3) the judgment is void;~~
 - ~~(4) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or~~
 - ~~(5) any other reason justifying relief.~~
- (b) **Timing.** A motion to vacate must be filed within a reasonable time. ~~For reasons (1) and (2), the motion must be filed no more than six months after the entry of the judgment or date of the proceeding, whichever is later~~
- (c) **Providing the Motion to the Other Party and Time for Response.** The moving party must deliver a copy of the motion to the other party on the date of the filing. The other party has 15 days to file a written response and must deliver a copy of the response to the moving party on the date the response is filed.
- (d) **Other Powers to Grant Relief.** A MOTION TO VACATE A JUDGMENT MAY BE GRANTED ONLY UNDER THE FOLLOWING CONDITIONS ~~This rule does not limit the court's power to:~~
- ~~(1) entertain an independent action to relieve a party from a judgment; or~~
 - ~~(2) set aside a judgment for fraud on the court.~~

- (1) THE PARTY FILING THE MOTION CAN SHOW THAT HE OR SHE HAD A VALID REASON FOR BEING UNABLE TO APPEAR AT THE SMALL CLAIMS HEARING.
- (2) THE PARTY FILING THE MOTION CAN SHOW THAT HE OR SHE WAS NOT A PROPER PARTY TO BE INVOLVED IN THE SMALL CLAIMS ACTION.
- (3) THE PARTY FILING THE PETITION CAN SHOW THAT THE SUBJECT MATTER OF THE JUDGMENT HAD BEEN PREVIOUSLY ADJUDICATED.

~~(e) Representation. An attorney may represent a party on a motion to vacate a judgment.~~

III. VETTING

This proposal is primarily based upon the petitioner's thirty-one years of experience as a small claims hearing officer and seventeen years teaching small claims procedures for the Arizona Judicial College. It has, however, been discussed at length with Paul Julien Judicial Education Officer with the Education Services Division of the Administrative Office of the Arizona Supreme Court.

RESPECTFULLY SUBMITTED THIS 11th DAY OF January, 2022

By /s/ Michael T. Hellon
Michael T. Hellon