

I.

THE RULES GOVERNING SMALL CLAIMS MUST ALLOW FOR DELAY REQUESTS, TRANSFER REQUESTS, VOLUNTARY DISMISSALS, AND DEFAULTS

The suggested language (“A motion for change of venue and a motion to vacate a judgment are the only motions allowed”), while mirroring statutory language, is too restrictive given other provisions in the existing rules. Parties to small claims cases often file at least seven types of motions or requests.

The Petitioner is correct that the only “motions” authorized by statute are a motion for a change of venue and a motion to vacate a judgment. A.R.S. § 22-505. However, another statute provides a mechanism to transfer a case from small claims to justice court. A.R.S. § 22-504. In addition, parties frequently request that the date scheduled for their small claims hearing be continued. RSCP 12(f). Strictly speaking, there is no statutory authority for a party to request a continuance. Surely the Supreme Court would not want to suggest that there is no right to do so.

In addition, the current rules authorize voluntary dismissals. A plaintiff can voluntarily dismiss a small claims case. RSCP 17(a). Likewise, the parties can stipulate that a case be dismissed. RSCP 17(b).

Finally, the Justice Court Rules of Civil Procedure have long recognized that small claims plaintiffs may request default judgments pursuant to Rule 140, a process not explicitly authorized by statute. JCRCP 1(b); RSCP 7.

Court rules, especially small claims rules, need to be simple and consistent. In order to make it clear that these other motions/requests are authorized, we respectfully request that the suggested language on this point not be adopted.

II.

THE PETITIONER'S SUGGESTED REASONS FOR A SMALL CLAIMS JUDGMENT TO BE SET ASIDE ARE APPROPRIATE

The Petitioner suggests that the current reasons for a small claims judgment to be vacated should be narrowed. RSCP 16(a) lists five categories of reasons a small claims judgment could be vacated. These include:

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 any other reason justifying relief. RSCP 16(a)(4) & (5).

We agree with the Petitioner that this language is so broad that it allows a party essentially to appeal a small claims case. In fact, a fair reading of this language authorizes a party to a small claims case to file a post-hearing motion requesting reconsideration, based on evidence that was not offered at

the hearing, but is now attached to a motion. Doing so is contrary to having a simplified procedure whereby parties can promptly and easily resolve comparatively minor disputes.

The modifications suggested by the Petitioner are sound. However, we hereby suggest alternative language that is consistent with the Petitioner's goals. We also recommend a requirement that a party file a Motion to Vacate a Small Claims Judgment within 60 days of when they receive notice of that judgment. The current rule establishes no deadline and is therefore inconsistent with the objectives of Small Claims Court. RSCP 1.

III.

A PARTY SHOULD BE ABLE TO BE REPRESENTED BY AN ATTORNEY FOR ANY POST-JUDGMENT MATTER

The Petitioners' suggested language, which would remove the reference to an attorney being able to represent someone on a motion to vacate, would not keep someone from hiring an attorney. Whether the motion is filed with or without counsel, a justice of the peace (as opposed to a small claims hearing officer) will be required to rule on the motion. In addition, it is inconsistent and arguably unfair to expressly allow someone to hire an attorney to enforce a judgment, but to try to prevent someone from hiring counsel to seek relief from a judgment. RSCP 18 (Authorizes attorney representation in garnishment proceedings).

CONCLUSION

We respectfully offer these comments for your consideration. We have suggested some alternative language that would meet the Petitioner's aims while also providing for additional clarity and consistency.

RESPECTFULLY SUBMITTED, this 14th day of April 2022.

/s/ Anna Huberman
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Attachment:
Appendix

APPENDIX
(Proposed additions reflected by language in red)

Rule 16. Vacating a Judgment

(a) **Filing a Motion to Vacate Judgment.** 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.~~

(1) The party filing the motion establishes a compelling reason for being unable to appear at the small claims hearing; or

(2) The party filing the motion establishes a lack of personal or subject matter jurisdiction; or

(3) The party filing the motion establishes that the matter in dispute was previously adjudicated.

(b) **Timing.** A Motion to Vacate Judgment must be filed within 60 days of the moving party receiving notice of the judgment within a reasonable time. For reasons (1) and (2), the motion must be filed no more than 6 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 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.~~ 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.~~

(d) **Representation.** An attorney may represent a party on a motion to vacate a judgment.