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ARIZONA SUPREME COURT

In the matter of:)
)
PETITION TO AMEND RULE 16 OF) Supreme Court No. R-22-0018
ARIZONA RULES OF SMALL CLAIMS)
PROCEDURE) COMMENT
_____)

Pursuant to Rule 28 of the Rules of the Supreme Court, David K. Byers, Director, Administrative Office of the Courts (“Commentor”), respectfully files this Comment to recommend alternative verbiage, as set forth in the Appendix of this Comment, to clarify the proposed amendment to Rule 16 of the Arizona Rules of Small Claims Procedure.

I. Background

Administrative Order 2016-115 established the Committee on Improving Small Claims Case Processing to develop recommendations, including proposed rule changes to help reduce the time to resolve small claim cases in Arizona’s justice of the peace courts. The committee was comprised of several sitting justices of the peace, court administrators, and one public member, who is also a small claims

hearing officer, Mr. Michael T. Hellon (“Petitioner”). Through the work of this committee, rule petition R-18-0021 was filed proposing that a new rule set be adopted for small claims cases. This Court adopted the proposed rules in August 2019, and they became effective on January 1, 2020.

One objective of the committee was to make the small claims process more comprehensible and accessible to self-represented litigants. This group of litigants is distinguishable from the majority of litigants in federal or superior courts who are typically represented by attorneys, thus requiring the use of more simplified language, less “legal jargon,” and limited cross-references to other rules of court and the Arizona Revised Statutes (A.R.S.).

Another objective was to address the substantial underperformance relative to the time it was taking to dispose of small claims cases. Specifically, in 2015, most of Arizona’s justice courts were not meeting the three tiers of the adopted time standards for small claims cases. As a result of the committee’s work and the newly adopted small claims rules, there has been a substantial improvement in compliance with the adopted time standards and the time it takes to dispose small claims cases. Specifically, statewide time to disposition from FY2017 to FY2021 improved as follows:

- Tier 1 (75% within 100 days) went from 42% to 79%;
- Tier 2 (90% within 150 days) went from 73% to 90%; and

- Tier 3 (98% within 180 days) went from 80% to 92% .

II. Petitioner’s Proposed Amendments

Petitioner proposes amendments to Small Claims Rule 16 (“Vacating a Judgment”). Petitioner has indicated that the purpose of these proposed amendments is to clarify the rule related to vacating a judgment and bring the rule into conformance with A.R.S. §§ 22-512 and 22-519, and to honor the spirit and intent of A.R.S. § 22-501 and A.R.S. § 22-505.

Accordingly, Petitioner proposes replacing the current content of Rule 16(a) (“Filing a Motion to Vacate a Judgment”), which specifies the grounds for filing a motion to vacate a judgment, with the following statement: “A motion for change of venue and a motion to vacate a judgment are the only motions allowed.” As the remaining provisions in Rule 16 deal solely with motions to vacate a judgment, Commentor proposes moving this statement to Rule 1 and creating a new section (e) that mirrors the verbiage in A.R.S. § 22-505(B) related to the types of motions that are permitted in a small claims case.

Petitioner also proposes striking language from Rule 16(b) that provides timeframes for filing a motion to vacate judgment for specified reasons. Striking this language would result in a motion to vacate a judgment being required to be filed “within a reasonable time.” This is extremely broad, subjective, and difficult to interpret, especially for pro per litigants who are not represented by an attorney. As

such, Commentor proposes adding a timeframe of 60 days from entry of judgment to file a motion to vacate a judgment. The Maricopa County Justice Courts has filed a comment proposing the same timeframe but measured from the date the moving party receives notice of the judgment. The date the moving party receives notice of the judgment could be difficult for a court to measure as it pertains to determining the timeliness of a motion to vacate a judgment, so it is Commentor's position that the date of the entry of the judgment is the better measurement point, as it is more readily available, accurate, and reliable.

Petitioner also proposes striking the current verbiage in Rule 16(d) ("Other Powers to Grant Relief") and replacing it with the reasons that a motion to vacate a judgment may be filed, which would include a showing of (1) a valid reason for being unable to appear at the small claims hearing; (2) that the party was not a proper party to the small claims action; or (3) that the subject matter of the judgment had been previously adjudicated. The Maricopa County Justice Courts has filed a comment proposing alternative verbiage, slightly modified from Petitioner's proposed verbiage, and proposes leaving the reasons for vacating a judgment in section (a) instead of moving them to section (d). Commentor concurs with Maricopa's proposed placement and Maricopa's proposed verbiage for reasons (1) and (2). However, Commentor suggests adopting Petitioner's proposed verbiage for

reason (3). The Maricopa County Justice Courts and Commentor agree with Petitioner that the existing section (d) should be stricken.

Lastly, Petitioner proposes striking section (e) (“Representation”), which specifies that an attorney may represent a party on a motion to vacate a judgment. The comment from the Maricopa County Justice Courts proposes retaining this section, and Commentor concurs, as this is consistent with A.R.S. § 22-512(E), which allows a party to employ counsel to pursue a party’s rights and remedies subsequent to the entry of judgment.

III. Conclusion

For the foregoing reasons, Commentor respectfully recommends that if this Court is inclined to amend Rule 16 of the Arizona Rules of Small Claims Procedure, that it adopt the verbiage as set forth in the Appendix of this Comment.

Respectfully submitted this ___ day of ____, 2022.

By /s/ _____
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Appendix

(Additional text is shown by underline, deleted text is shown by ~~strikethrough~~)

Arizona Rules of Small Claims Procedures

Rule 1. Small Claims Lawsuit

(a) – (d) [No change]

(e) Motions. A motion for change of venue and a motion to vacate a judgment are the only motions allowed in a small claims action. These motions must be heard by a justice of the peace.

Rule 16. Vacating a Judgement

(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~~ only if the party filing the motion establishes:

- (1) mistake, inadvertence, surprise, or excusable neglect that they had a compelling reason for being unable to timely file an answer or appear at the small claims hearing;
- (2) fraud, misrepresentation, or other misconduct of an opposing party; a lack of personal or subject matter jurisdiction; or
- (3) the judgment is void; the subject matter of the judgment has been previously adjudicated.
- (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 a judgment must be filed 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 60 days of the entry of judgment.~~

(c) Providing the Motion to the Other Party and Time for Response. The ~~moving~~ party filing the motion 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 who filed the motion 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.~~

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