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North Valley Justice Court
14264 West Tierra Buena Lane
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IN THE SUPREME COURT OF THE STATE OF ARIZONA

In the Matter of:)	Supreme Court
)	No. R-24-0006
PETITION TO AMEND)	
ARIZONA SUPREME COURT)	Comment In Support
RULE 81 (ARIZONA CODE OF)	From Maricopa County
JUDICIAL CONDUCT)	Justice Court Bench
RULE 2.6))	

BACKGROUND

The Professional Standards and Policy Committee of the Justice of the Peace Bench in Maricopa County initially considered this comment. The Bench then voted unanimously to endorse it at a bench meeting on February 14, 2024.

Our Justice Courts hear misdemeanor, residential eviction, and collection cases. Consequently, the overwhelming majority of our cases involve situations where one party is represented by an attorney and the other party is representing themselves. We endorse and recommend the adoption of the proposed amendment.

THE PROPOSED COMMENT PROVIDES ADDITIONAL LEGAL AND ETHICAL AUTHORITY FOR A VITAL FUNCTION JUSTICE COURTS ARE ALREADY ASPIRING TO DO

Every day a courthouse is open, justices of the peace are striking a balance between making sure self-represented litigants are able to present the facts of their case without depriving the other party of the due process and other protections provided by procedural and evidentiary rules.¹ We have had a formal best practice providing guidance in this area since 2015.² One commentator explained this role as a judge being an “active umpire.”³

Perhaps the most common mistakes concern the presentation of evidence. Many mistakenly believe that if they either attach documents to a pleading or e-mail attachments to a court, then the judge will automatically consider those items as evidence in their case. Likewise at trial, nervous self-represented litigants may forget to offer documents or photographs that are on the table in front of them in the courtroom. In such situations, it is completely appropriate

¹ See generally, Bonnie Rose Hough, Laurie D. Zelon, *Self-Represented Litigants: Challenges and Opportunities for Access to Justice*, 47 *Judges’ Journal* 30 (Summer 2008).

² Maricopa County Justice Courts, Best Practices, *Ensuring Access to Justice for Self-Represented Litigants in Civil Cases*, (Aug. 26, 2015) (Best Practice is attached). This Best Practice received the Chief Justice’s 2015 Strategic Agenda Award for Enhancing Professionalism Within Arizona’s Courts.

³ Anna E. Carpenter, Colleen F. Shanahan, Jessica K. Steinberg, Alyx Marks, *Judges in Lawyerless Courts*, 110 *Georgetown L. J.* 509, 520 (2022).

for the judge to explain the process and what needs to happen next. Doing so allows judges to make decisions based on the merits of a case and not because a misunderstanding or a mistake created an incomplete record.

The rationale for judges providing neutral guidance to self-represented litigants remains sound.

From a court or judge's perspective, guidance materials offer three common reasons why judges should serve in an explanatory role. First, a litigant who understands the legal standards, procedural steps, and court processes will, in turn, be more helpful to the judge, for example, by offering facts that help the judge render a decision. Second, psychological research on the concept of procedural justice suggests parties who believe they understand the reasons for a judge's decision will be more likely to accept and follow the decision. And third, a number of guidance sources stress that courts, as institutions, should be articulating the reasons for their decisions systematically to the people who bring their problems to courts for resolution, a principle also rooted in procedural justice research, which suggests that people are more likely to perceive courts and their decisions as legitimate when they understand the bases of those decisions.⁴

⁴ *Id.* at 526.

CONCLUSION

We respectfully request that the proposed amendment to the comment section of Rule 2.6 of the Code of Judicial Conduct be adopted.

RESPECTFULLY SUBMITTED, this 16th day of February 2024.

/s/ Anna Huberman
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Attachment:
Maricopa County Justice Courts Best Practice on Self-Represented Litigants