From
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We appreciate having the opportunity to comment on the proposed Rules. This opportunity to provide input is a necessary exercise of our responsibilities as judges and certainly reinforces the integrity of the courts and our judicial system.

General Comments:

1. The purpose of the revision of the Rules as directed by Chief Justice White-Berch is to make the rules more understandable, intelligible and applicable to litigants in justice court, the majority of which are *pro se*. We were wondering what, if any, effort was made to distribute the proposed rules to lay people. The inclusion of lay people on the Committee does not equate to independent feedback from a "typical" justice court litigant as the committee members, in positions of statewide leadership, are highly knowledgeable, motivated and likely absorbed the explanation of issues during committee discussions.

2. Essentially, there are three "types" of cases that dominate the courts of limited jurisdiction. There are cases are the collection of debts for non-payment of local bills, such as medical bills, dental bills, community utilities. Secondly, there are cases that arise from disputes between two "acquainted" litigants for implied breach of contracts or for torts. The bulk of the cases of the third "type" arise from bundled debt in which an entity, for example, Midland Funding, purchases the debt for a slight percentage of the obligation and then contracts with a law firm to collect the debt. It should be noted that the two entities (the debt purchaser and the law firm) might be owned by the same entity.

Debt collection cases that arise from bulk purchase and assignment from credit card companies present unique challenges to justice court judges reviewing the claims. The Rules do not appear to address current statewide and nationwide legal conflicts of law. Attached to this memorandum are comprehensive reports from AARP as well the Federal Trade Commission on litigation issues that emerge from assigned debts. The Committee did not appear to specifically address judicial concerns that erupted in the progeny of Midland Funding LLC v Br**e**n**t**, (N.D. Ohio 2009). The attached opinion of Midland Funding LLC v. Loreto, 2012 NY Slip Po 50338 decided on Feb. 23, 2012 is a comprehensive summation of why Arizona is in an excellent position to correct the rules and address gaps in procedures. See also, http://law.justia.com/cases/new-york/other-courts/2012/2012-ny-slip-op-50338-u.html.

Throughout the country, state and federal courts are proactively reviewing the legality of the presumption of the assumption of the legality of the assignment of 25% to 225% interest rates, "robo signatures" for attestation of the authenticity of the debt and cumbersome procedures for Defendants to challenge the legitimacy of purchased debt.

Although hours were spent on the modification of the rules, the time is ill-spent if it only begets future litigation. The failure to recognize that the same problems emerge from the resale of credit card debt debts that emerged from the resale of mortgages generates concern for some justice court judges.

3. While the rules govern procedures for filing the complaint, service and answer, the rules do not demand uniform standards for compliance for judges to

enter a **default judgment**. What documents should a judge uniformly require before entering default? The Rules do not indicate if plaintiffs must furnish the name of signatories on the credit application or the contract for services, the date of the origination of the debt, the date of the discharge or assignment, written, independent verification of the debt other than by the Complaint for an exact amount and verify liquidated damages to enter a default judgment.

We propose that every request for default for a breach of contract for debt require actual evidence, not simply an attorney or litigant affidavit, to enable the judges to substantiate the sums sought for liquated damages.

4. Furthermore, in the case of bundled, purchased debt, there is uncertainty when the plaintiff is entitled to receive pre-judgment interest. The sums in the Complaint may demand up to five years of accrued interest since the obligation was "charged off" by the credit card company. The sums sought from the sale of repossessed cars are often incomprehensible. Again, the Rules do not address what standardized for documentation necessary to establish the proof for liquidated damages from the plaintiff in the case of entry for default or contested judgment. It should also be noted that in Pima County Consolidated Courts, some of the litigants collecting for Midland Fund accounts do not seek any prejudgment interest while other firms demand up to 25% prejudgment interest.

With all due respect, before making decisions on the rules that govern the reality of a jurisdictional court in that that few, if any, of the justices practiced law, please consider the problems we face in resolving 20 to 30 cases each day. Currently judges endorse "signature" files that authorize default judgments without

hearings and without guidance as to the evidence necessary to enter a default judgment.

6. Standards for litigation of homeowners' associations' collections of debt remains in issue. Is the Association entitled to receive prospective sums for assessments due to the Association for future debt? It is a common practice for Homeowner Association attorneys to demand prospective judgments for future assessments. The demand is founded on the presumption that the homeowner will remain in default of annual assessments after the judgment is entered. Justice courts are divided as to whether the judgments should include sums that ***may become due*** to the Association.

7. Other than a reference to the procedures of West Virginia, the Rules do not appear to examine or consider our sister states revised and simplified procedures for resolution of civil claims. In June, 2012, National Judicial College presented a course for judges in courts of limited jurisdiction to learn about comparative civil practices and to compare the many successful judicial systems. I, Judge Anne Segal, participated in this course. For example, in Florida, the defendants are given notice to appear in the same manner as forcible detainer cases. No answer, motions, requests for discovery are filed. Pretrial procedures are minimal and inexpensive. Before these Rules are finalized, many state systems should be evaluated, especially in states in which there has been vigorous appellate review of cases that emerged from the jurisdictional authority of justice court cases.

8. Although this cannot be addressed as a provision of the Rules, it should be considered as a mandate. Many of justice court judges are not attorneys. While

they do an excellent job in responding to the legal concerns of the community, the need for clarity and uniformity of practice is essential. The recognition that judges may be operating from ignorance or intimidation by practicing attorneys should not be ignored. There may not be sufficient foundational knowledge to properly and consistently administer the high volume of civil court filings. With all due respect to the current judicial college, we strongly urge that all justice court judges be mandated to complete no less than eight civil practice CLE hours every year to become and remain familiar with civil practice laws and nuances.

RULE COMMENTS

Rule 111:

A. This rule allows a plaintiff to file as many unrelated claims against a defendant as the plaintiff may have. That says a plaintiff could sue a defendant for negligence in an auto accident, breach of contract in a commercial case and seek compensation for a dog bite, all in the same action. While this may seem an absurd example, nothing in this rule, which appears to be specifically designed to allow debt collectors to purchase and then file multiple claims against defendants, precludes the joining of disparate claims.

B. Apparently, in anticipation of the approval of this rule, in a recently filed case for the collection of three separate credit cards, a defendant responded that while she owed the debt for the MasterCard, her husband incurred the debt to a store before their marriage and the debt for the third card was incurred during their separation. How could she defend herself? Can you imagine a judge trying to fairly assess multiple, different, factually distinct claims in one

case? Can you imagine a pro se litigant trying to do proper disclosure multiple unrelated claims? Can you imagine the confusion in the litigation of a case with counterclaims arising out of the different claims? This rule, which certainly does nothing to achieve the goal of simplification, would allow these labyrinthine results.

This confusing rule should be omitted.

Rule 129—Summary Judgments

A. The rule has added language that appears to tell a defendant he needs to file a response. Such a notice is ineffective for a pro se litigant because it fails to tell a defendant what is legally necessary to include in the response. Typically, defendant repeats the contents of the answer that does not meet the standard for raising valid disputed facts or issues. The inclusion of a form to assist litigants drafting a response is appropriate and useful. There should also be additional language in the Notice (Appendix) to explain default and summary judgment procedures and the requirements.

B. Rule 129C requires a "statement of facts to be supported by material that establishes each fact by admissible evidence." The rule speaks of affidavits, but does not make it clear that the current practice of allowing the affidavit of an attorney is not appropriate to establish facts. This is because the attorney cannot testify in her own case; as such an affidavit is not admissible evidence. This portion of the rule is extremely important because when summary judgment is granted, the defendant is deprived of his day in court and may not understand why. The same standard that applies to the higher court that

reviews the validity of facts for the summary judgment motion should be required in the Justice Court as well.

C. Furthermore, the Court should consider whether affidavits in debt collection cases that consist of a bank clerk examining computer generated records in bundled, assigned debt are sufficient, reliable evidence to authorize a judge to issue summary judgment. We are seeing thousands of the "robo signature" affidavits. Given the conduct of nationwide debt firms that led to the recent class action settlement in the Midland Funding cases, and given the specific types of fraud uncovered in these bundled debt cases, we should require reliable, actual and consist original documentary evidence to substantiate the affidavits.

D. Finally, the summary judgments should not be resolved without a court hearing. Under current practice standards in Pima County, the Plaintiff submits a boilerplate motion and, despite the Defendant's response, judgment is granted in-chambers. This practice denies the Defendant the anticipated "day in court" and permits insufficient proof. By requiring hearings, the Court improves the public perception that people have equal access to court. (It should be noted that attorney fees for unlawful detainers case, that require a court appearance, is typically $125.00 as preparation is minimal.)

Rule 140-Default Judgments

Subsection (e) directs how default judgments may be entered without a hearing. Again, this section addresses the vast majority of the debt collection cases in which the Justice Court judges enter judgments without review or a hearing. The

language in this rule describing the proof necessary to establish the judgment is very cursory.

There needs to be more guidance to those making the rulings as to what is required to establish a claim for liquidated damages and to establish the right to prejudgment interest. One issue is whether there must be negotiated, signed contractual evidence for the claim for accrued interest after the sale of a charged off credit card account to a subsequent buyer. Can courts assess requests for prejudgment interest in these circumstances without actual proof of the right to collect interest? Do other types of consumer collection debt accounts, (consumers know the creditor) such as medical, dental, mechanics bills have to prove a contractual basis for charging interest? How can a default judgment as to a sum certain owed as principle be entered without some documentary proof of how that principle amount was determined? Such proof as the final credit card bill, the actual hospital account ledger, or similar documentation should be required.

Finally, the rule should make it clear that if prejudgment interest is sought, that sum is separate in any judgment from the principal balance owed. There is no right to interest on interest.