

Hon. Robert Brutinel, Chair
Committee on the Impact of Wireless Mobile Technologies
and Social Media on Court Proceedings
1501 W. Washington St., Suite 410
Phoenix, AZ 85007

IN THE SUPREME COURT

STATE OF ARIZONA

PETITION TO AMEND RULE 47(a)(3),)	
ARIZONA RULES OF CIVIL)	Supreme Court No. R-13-0022
PROCEDURE, AND RULE 18.6(b),)	
ARIZONA RULES OF CRIMINAL)	Petitioner’s Reply
PROCEDURE)	
)	
_____)	

Petitioner respectfully replies to the comment from the State Bar of Arizona, and in response to that comment submits further amendments to Civil Rule 47(a)(3) and Criminal Rule 18.6(b), as shown in the Appendix to this reply. These proposed amendments concern the oath for trial jurors.

I. Background. Petitioner is the Chair of the Committee on the Impact of Wireless Mobile Technologies and Social Media on Court Proceedings (the “Wireless Committee”), which was established by Administrative Order 2012-22. The Wireless Committee presented its report and recommendations to the Arizona

Judicial Council (“AJC”) on December 13, 2012; the AJC approved the Wireless Committee’s request to file a petition proposing amendments to these two rules.

Administrative Order 2012-22 recognized the “unprecedented growth” in the number of hand-held smart devices, laptops, and tablets. The Order described how these mobile and wireless devices “may be accessed nearly anywhere and anytime for email, phone and video calls, text messages, internet browsing, taking pictures and videos, research, blogging, and posting to social media sites.” The Order established the Wireless Committee to address issues arising from use of this advanced technology during court proceedings.

Among the individuals with access to the new technology are those who serve as trial jurors and as prospective trial jurors. A number of appeals from jury verdicts nationwide, and at least two Arizona appeals, have challenged juror misuse of technology. In the future, more Arizona jurors will acquire increasingly sophisticated electronic devices, and there may be a commensurate rise in the number of challenges to trial jurors’ misuse of technology. A juror’s misuse use of technology could result in a mistrial, and could cost the court and litigants substantial amounts of time and money. The Wireless Committee concluded that effective jury admonitions are the most efficient way to prevent this misuse.

Judges have a trio of admonitions, including RAJI (“Recommended Arizona Jury Instruction”) Preliminary Civil 9, RAJI Preliminary Criminal 13, and a third

admonition found in the judges' Bench Book. The Wireless Committee drafted a revised jury admonition, which acknowledges the ubiquitous use of new technology and that updates the existing admonitions. In addition, the revised admonition explains why jurors must not conduct their own research or communicate with others about anything concerning the case. The explanation addresses research and communications in the traditional sense, such as voice conversations and television, as well as methods arising from new technology, such as internet research, blogging, and text messaging. The revised version also reduces legal terminology in the admonition, and uses simpler words with less complex sentence structure, so that citizens who typically serve on juries can more readily understand it.

The Wireless Committee submitted its revised admonition to the State Bar for its consideration in future RAJIs, and provided it to the Judicial College of Arizona for possible inclusion in the Bench Book. Although the current civil and criminal admonitions are different, the Wireless Committee found no justification for any significant distinction, and it proposed an almost identical admonition for use in both case types.

The Wireless Committee initially considered a requirement that jurors sign a written pledge that acknowledges their obligation to follow the admonition. The

Wireless Committee recommended instead that the verbal oath taken by jurors include a reference to the admonition.

II. Content of proposed amendments, comment from the State Bar, and content of revised amendments. Just as the Wireless Committee proposed a virtually identical admonition for civil and criminal cases, it likewise proposed an identical oath for civil and criminal jurors. The current criminal oath served as the model for the Wireless Committee’s proposed oath.

The revision to the jurors’ oath originally proposed by the Wireless Committee rule petition added four words: “...abide by the court’s instructions, comply with the admonition.....” The State Bar’s comment correctly noted that the admonition was itself an instruction, and it suggested the following phrase: “....comply with the court’s instructions, including the admonition....” The Wireless Committee adopted the State Bar’s suggestion, but substituted the word “comply” with a simpler word, “follow.” The proposed oath is therefore:

Do you swear (or affirm) that you will give careful attention to the proceedings, follow the court’s instructions, including the admonition, and render a verdict in accordance with the law and evidence presented to you, so help you God? If a juror affirms, the clause ‘so help you God’ shall be omitted.

III. Consideration of Statutes. During its June 13, 2013 meeting, the Wireless Committee contemplated that the new juror oath might not apply in justice courts because A.R.S. §§ 22-224 and 22-322 prescribe language for the oath

in civil and criminal cases, respectively. Laws 2013, Chapter 212, HB 2459, recently amended the justice court oaths by making them identical to the current oaths in Rules 18.6 and 47(a). This new legislation has an effective date of December 31, 2013.

Superior court rules do not apply in justice court; the Justice Court Rules of Civil Procedure (“JCRCP”) govern those proceedings. See JCRCP Rule 101(d). JCRCP Rule 134, which concerns trials, does not provide a form of juror oath, but instead refers to Title 22, Chapter 2 of the Arizona Revised Statutes, which includes the oath in § 22-224. The proposed amendment to the oath in Civil Rule 47(a) would therefore not affect civil cases in justice courts.

However, if the Court adopts the Wireless Committee’s proposed amendment to Criminal Rule 18.6, that oath would differ from the one prescribed by recently revised § 22-322. The Wireless Committee therefore suggests the addition of a short comment to Rule 18.6. The comment would advise justice courts to use the § 22-322 oath for trial jurors in criminal cases, rather than the oath in Rule 18.6. The Appendix includes proposed language for this comment.

IV. Conclusion. Petitioner requests the adoption of these two amended rules concerning the jurors’ oath, and the adoption of a brief comment to the criminal rule, as shown in the Appendix.

RESPECTFULLY SUBMITTED this 1st day of July 2013

By _____
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Appendix

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Arizona Rules of Civil Procedure:

Rule 47(a). Trial Jury Procedure; List; Striking; Oath

1. [No change]

2. [No change]

3. After the jury is completed, the clerk shall make a list thereof and deliver it to the parties for peremptory challenges. The parties shall exercise their challenges by alternate strikes, beginning with the plaintiff, until the peremptory challenges are exhausted. Failure of a party to exercise a challenge in turn shall operate as a waiver of remaining challenges but shall not deprive the other party of that other party's full number of challenges. The list shall then be delivered to the clerk who shall call the first eight names remaining on the list who shall constitute the trial jury, and to whom an oath or affirmation shall then be administered in substance as follows: ~~“You do solemnly swear (or affirm) that you will well and truly try the issues now on trial and a true verdict render according to the law and the evidence, so help you God.”~~ “Do you swear (or affirm) that you will give careful attention to the proceedings, follow the court's instructions, including the admonition, and render a verdict in accordance with the law and evidence presented to you, so help you God?” If a juror affirms, the clause “so help you God” shall be omitted.

4. [No change]

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Arizona Rules of Criminal Procedure:

Rule 18.6. Preparation of jurors

a. [No change]

b. Oath. Each juror shall take the following oath:

Do you swear (or affirm) that you will give careful attention to the proceedings, ~~abide by~~ follow the court's instructions, including the admonition, and render a

verdict in accordance with the law and evidence presented to you (~~so help you God~~), so help you God?

If a juror affirms, the clause “so help you God” shall be omitted.

c. – f. [No change]

Comment

[Existing comments: No change]

Rule 18.6(b), Comment to the 2013 Amendment

In justice court cases, the court should give jurors the oath prescribed by A.R.S. § 22-322.