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8 **IN THE SUPREME COURT**  
9 **STATE OF ARIZONA**

10 **PETITION TO ADOPT RULE 9.1, RULES**  
11 **OF PROCEDURE FOR EVICTION**  
12 **ACTIONS**

Supreme Court No. R-\_\_ -\_\_

**Petition to Adopt Rule 9.1, Rules of  
Procedure for Eviction Actions**

13 Pursuant to Rule 28 of the Rules of the Supreme Court, the Legal Services  
14 Committee of the State Bar, respectfully petitions this Court to adopt an amendment to  
15 the Rules of Procedure for Eviction Actions by adding a change of judge rule, as Rule  
16 9.1. The proposed rule would permit for a change of judge as a matter of right and for  
17 cause in eviction actions in Justice Court. The proposed rule is comparable to Rule  
18 133(d) of the Justice Court Rules of Civil Procedure that permits a change of judge in  
19 other civil cases heard by the Justice Court. In support of this Petition, the Legal  
20 Services Committee of the State Bar states the following:

21 **I. Statement of Interest**

22 The Legal Services Committee of the State Bar is a standing committee of the  
23 State Bar comprised of a broad cross-section of attorneys, including the executive  
24 directors of the three legal services programs. The Committee's mission is to work on  
25 access to justice issues for low-income Arizonans. The Committee historically has had  
an interest in the rights of tenants in eviction cases.

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1           **II. Background and Purpose of the Proposed Rule Amendment**

2           In 2008, the Arizona State Bar submitted a Petition for the Rules of Procedure  
3 for Eviction Actions, Supreme Court Number R-07-0023. The proposed rules were the  
4 product of the State Bar Landlord/Tenant Task Force appointed by the State Bar  
5 President. Members of the Legal Services Committee served on the Task Force. The  
6 Task Force members included justices and attorneys representing tenants and landlords.  
7 Included in the petition was a proposed rule for a change of judge for eviction cases in  
8 Justice Court, rule 11(e). Many comments were submitted in response to the petition.  
9 Only one commenter objected to the change of judge rule and only to the change of  
10 judge rule as a matter of right. The final rules adopted by the Supreme Court and  
11 effective January 1, 2009, did not contain a change of judge rule for evictions in justice  
12 court.<sup>1</sup>

13           In 2012, the State Bar Petitioned for Approval of Justice Court Rules of Civil  
14 Procedure. Included in the proposed rules was a change of judge rule. The Court  
15 approved the Justice Court Rules of Civil Procedure. Rule 133(d) provides for a change  
16 of judge as a matter of right and for a change of judge if the party believes the party will  
17 not have a fair and impartial trial before the justice. The Justice Court Rules of Civil  
18 Procedure do not apply to evictions. Rule 101(b). These rules were effective January  
19 1, 2013.

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24           <sup>1</sup>       **For cases in Superior Court, the change of judge provision in Rule 42(f)**  
25 **of the Arizona Rules of Civil Procedure applies and permits changes of judge as**  
**a matter of right and for cause. Specifically, Rule 1 of the Rules of Procedure for**  
**Eviction Actions provides that Rule 42(f) applies to evictions in Superior Court.**

1 Thus, eviction actions, one of the most common civil cases heard in Justice  
2 Court, are the only type of cases that have no change of judge rule.<sup>2</sup> Petitioner submits  
3 the proposed change of judge rule from 2008 for consideration by the Court so that  
4 litigants in eviction cases, like all other litigants in civil cases heard in Justice Court,  
5 have the right to a change of judge.

### 6 III. Proposed Rule Amendment

7 The proposed rule, Rule 9.1 is:

#### 8 Rule 9.1 Change of Judge

##### 9 (a) Change as a Matter of Right

- 10 1. Each side is entitled to one change of judge  
11 as a matter of right unless otherwise provided  
12 by local court rules. A party may exercise  
13 this right by giving notice that contains the  
14 name of the judge to be challenged and an  
15 avowal that contains the following:
  - 16 A. That the request is not being made for  
17 the purpose of delay;
  - 18 B. That the request is not being made for  
19 the purpose of interfering with the  
20 reasonable case management  
21 practices of a judge;

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20 <sup>2</sup> In addition to eviction cases, the Justice Court Rules of Civil Procedure  
21 do not apply to civil traffic, civil boating, protective orders and injunctions  
22 against harassment. Rule 101(b). These other cases have change of judge rules.  
23 Changes of judge are permitted in orders of protection and injunctions against  
24 harassment cases because pursuant to Rule 1 of the Arizona Rules of Protective  
25 Order Procedure, the Arizona Rules of Civil Procedure apply to those cases.  
Thus, as relevant here, Rule 42(f) applies to those cases, as well. For civil traffic  
and boating cases, Rule 7 of the Rules of Procedure in Civil Traffic and Civil  
Boating Violation Cases provides that a change of judge as a matter of right  
does not apply in these cases except for cases consolidated with a criminal  
matter.

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C. That the request is not being made to remove a judge for reasons of race, gender or religious affiliation; and

D. That the request is not being made for the purpose of using this rule against a particular judge in a blanket fashion by either a law firm, legal organization or landlord.

Notice under this section may be given orally or in writing in justice court, or in writing in the superior court.

2. The notice for change of judge as a matter of right must be filed on or before the date of the first court appearance with the judge in question; otherwise, it may be denied as being untimely.

3. If a timely notice for change of judge as a matter of right is filed against a justice of the peace, the case shall immediately be transferred to another justice of the peace located in the same building or in an adjoining justice court precinct. If the justice court receiving the transfer is located in the same building or is sufficiently close to the transferring court to enable prompt transfer, then every effort will be made by the receiving justice court to hear the case on the same date it was originally scheduled.

(b) Change for Cause

1. A party may challenge a judge for cause either by filing a written motion verified by affidavit of the moving party, or by oral avowal, that specifically alleges the grounds for challenge. A party who makes an oral challenge for cause must, not later than the close of business the following day, file a written motion with the court that is verified

1 by affidavit that specifically alleges the  
2 grounds for challenge for cause.

- 3 2. If a challenge for cause is filed against a  
4 justice of the peace, a copy of all relevant  
5 documents shall be immediately transmitted  
6 to the presiding justice of the peace for the  
7 county. The presiding justice of the peace  
8 shall make a decision on the challenge by the  
9 close of business on the next business day  
10 and shall either transfer the case to an  
11 adjoining justice court precinct or return it to  
12 the original judge.

#### 13 **IV. Explanation of Need for Proposed Rule**

14 Tenants have a property interest in their residences. *Greene v. Lindsey*, 456 U. S.  
15 444, 451-52 (1982). *See also Foundation Development Corporation v. Loehmann's*,  
16 163 Ariz. 438, 442, 788 P.2d 1189, 1193 (Ariz. 1990) (recognizing common law right  
17 of tenant's property interest in rental). Eviction proceedings that deprive tenants of that  
18 property must comply with the due process requirements of the 14<sup>th</sup> Amendment to the  
19 United States Constitution. *Greene*, 456 U.S. at 455.

20 For low-income persons, an eviction case threatens their only means of shelter.  
21 The inability to find other housing on short notice can lead to the disruption of  
22 children's education, interruption of employment, dislocation from health care  
23 providers, loss of personal belongings and homelessness. In addition, the eviction  
24 process may lead to monetary judgments. Thus, the consequences of eviction cases  
25 make them very important to tenants and the community at large who may be called  
upon to assist the displaced tenants.

Eviction cases have shorter statutory time frames than some of the other civil  
cases heard in justice court, but these time frames are not a sufficient reason to deny the  
litigants a right to change judge. If a tenant or a landlord believes that he or she cannot

1 get a fair trial before a justice, then they should be allowed as other litigants are, to  
2 request a change of judge. The change of judge requests can be handled like other  
3 continuances for cause. As an example, the common practice in many justice courts is  
4 that if a tenant appears on the court date noted in the summons and has a defense, the  
5 case is continued to another date for a trial. See Rule 11(c) of the Rules of Procedure  
6 for Eviction Actions (continuances may be granted "on the request of a party for good  
7 cause shown or to accommodate the demands of the court's calendar"); Arizona  
8 Residential Landlord and Tenant Act, A.R.S. § 33-1377(C). The same or similar  
9 practice could apply to a change of judge request.

10 **CONCLUSION**

11 The proposed rule removes the disparity of a lack of change of judge rule for  
12 eviction actions in justice court. Eviction court litigants should have the same right to a  
13 change of judge as a matter of right and for cause as other civil litigants in Justice Court  
14 and Superior Court. If a litigant in an eviction case does not think he or she can receive  
15 a fair hearing before a justice, the litigant should have the right like all other Justice  
16 Court litigants to request a change of judge either as a matter of right or upon the proper  
17 showing for cause.

18 For all these reasons, Petitioner requests the Court approve this petition.

19 Respectfully submitted this 25<sup>th</sup> day of October 2013.

20  
21 By  \_\_\_\_\_

John A. Furlong  
General Counsel

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Electronic copy filed with the Clerk  
of the Supreme Court of Arizona this  
25<sup>th</sup> day of October, 2013.

By: Kathleen A. Lundgren