

March 18, 2014

Janet Johnson
Clerk of the Supreme Court
Arizona Supreme Court
1501 W. Washington St., Room 402
Phoenix, AZ 85007

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Re: Comment to Petition R-13-0044

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Dear Ms. Johnson,

I support Petition R-11-0044 to amend ARIZ.R.CIV.P. 67 to eliminate cost bonds. I will share one recent experience that demonstrates the unfairness of this rule.

I represented an individual who suffered severe facial lacerations when he was struck in the face by a man holding a drinking glass. My client, a Chicago resident, worked hard but earned only a modest living.

The assailant—a prominent attorney—was charged with aggravated assault and disorderly conduct. My client was designated as a *victim* in the criminal proceedings. The defendant pled guilty to disorderly conduct in exchange for dismissal of the aggravated assault charge. The court ordered that the defendant pay my client's out-of-pocket medical expenses as restitution, which constituted only a small fraction of the damages he sustained.

After the criminal proceedings concluded, I filed a civil lawsuit on behalf of my client. The defendant was represented by one of his law partners and filed a motion for cost bond pursuant to ARIZ.R.CIV.P. 67. This had no legitimate purpose other than to harass my client and impede his ability to seek justice through the courts.

Over our objection, the court granted the motion and ordered my client—the *victim* in the criminal proceedings—to post a cost bond in the amount of **\$5,000.00**, covering not just taxable costs but projected expert witness fees. My client did not have the financial resources to pay the bond. The requirement that he post a cost bond to protect the affluent attorney who struck him in the face added insult to injury and forced him to settle the case for less than its reasonable value.

ARIZ.R.CIV.P. 67 gives defendants—often insurance companies or the affluent—an unfair advantage and erodes confidence in our legal system and its ability to achieve justice for the most disadvantaged. Cost bonds serve as an armed guard at the courthouse doors, allowing access only to those fortunate enough to own property within the state “out of which the

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Janet Johnson
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March 18, 2014
Page 2

costs could be made by execution sale” or those with enough money to pay the assessment.

The exception contained in subsection (e) does not remedy this inequity. The rule will continue to be used to harass plaintiffs and risks unfair application by the courts. A plaintiff who does not own property in the state will be subject to examination on confidential financial matters—questions that even defendants who cause serious injury do not face until following entry of a judgment. The courts also have been protective of professional expert witnesses, shielding them from financial discovery that could expose bias. How can the courts reasonably demand such personal financial information from people who avail themselves of the courts only because they were harmed and seek redress for their injuries?

Following the Court's decision in Thiele v. City of Phoenix, 232 Ariz. 40, 301 P.3d 206 (Ariz.App. Div. 1 2013), cost bonds will increase in popularity among defendants and will result in a profoundly unfair restriction in access to the courts. It also will burden courts that will be required to conduct hearings on a plaintiff's "inability to give such security" and unnecessarily increase the expense of litigation, contravening ARIZ.R.CIV.P. 1 and its goal of "just, speedy and inexpensive determination of every action."

ARIZ.R.CIV.P. 67 has been and, if it remains in effect, will continue to be abused by defendants to discourage legitimate claims and harass claimants. The rule change proposed by Geoff Trachtenberg, Justin Henry and Richard Plattner solves this problem. I urge its adoption.

Yours Truly,

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Enclosure

cc: Geoffrey M. Trachtenberg, Esq.
Justin Henry, Esq.
Richard S. Plattner, Esq.

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Laws not enforced

cease to be laws.

and rights not

defended may

wither away.

Thomas E. Moriarty