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

10 In the Matter of:

Supreme Court No. R-13-0047

11 **PETITION TO ADOPT RULE 9.1,**  
12 **RULES OF PROCEDURE FOR**  
13 **EVICITION ACTIONS**

14 **REPLY OF**  
15 **THE STATE BAR OF ARIZONA**

16 Pursuant to Rule 28 of the Rules of the Supreme Court, the Legal Services  
17 Committee of the State Bar, through its Board of Governors, submits this Reply to  
18 the Comments of interested parties, and urges this Court to adopt an amendment to  
19 the Rules of Procedure for Eviction Actions by providing for a change of judge both  
20 as a matter of right and for cause in eviction actions in Justice Court. Contrary to  
21 the arguments advanced by the opponents, parity in the exercise of peremptory  
22 challenges to a judicial officer is consistent with both the exigencies of an eviction  
23 action as well as the Arizona Judicial Council's provisional time standards.

24 **I. Peremptory Challenges in Limited Jurisdiction Courts**

25 Following the recommendation of a Task Force appointed by the Bar  
President, the Arizona State Bar's original Petition for the Rules of Procedure for

1 Eviction Actions, Supreme Court Number R-07-0023, included a peremptory  
2 change of judge provision. This Court produced a red-line staff comment at its  
3 summer 2008 rules agenda that limited the change of judge provision to actions filed  
4 in Superior Court, and following additional comments from the Bar and others, in  
5 December 2008 the Court adopted a final rules package, again without the change  
6 of judge provisions for actions filed in Justice Court.<sup>1</sup>

7  
8 In 2012, this Court had a subsequent opportunity to consider peremptory  
9 challenges to judicial officers in its consideration of the Justice Court Rules of Civil  
10 Procedure. Rule 133(d) of those Rules provides for a change of judge as a matter of  
11 right and for a change of judge for cause if a party believes it will not have a fair and  
12 impartial trial before the justice. Notably, however, the Justice Court Rules of Civil  
13 Procedure do not apply to evictions, *see* Rule 101(b), given that this Court already  
14 adopted procedural guidance for eviction actions through its earlier 2008 rule-  
15 making process.

16 Simply put, the Bar asks this Court to re-consider its 2008 decision to preclude  
17 a peremptory challenge for eviction actions in Justice Court in light of its subsequent  
18 decision in 2012 to provide a peremptory right in other civil actions in limited  
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20 <sup>1</sup> Contrary to the assertions by one commentator, neither the Bar nor the Legal  
21 Services Committee “conceded the issue” of the peremptory change of judge  
22 following the staff red-line. The Bar instead argued for its original peremptory  
23 proposal, along with an *alternative*. “To the extent this Court concludes that the  
24 effective and speedy administration of justice, or other authority, precludes the  
25 absolute right to a peremptory notice in an eviction action in justice court, the Bar  
urges consideration of an alternative that would permit peremptory notices in  
consolidated or co-located justice courts where venue is not at stake.” (Bar  
Comments, November 13, 2007, at 2 and Appendices 1 and 2.)

1 jurisdiction courts, and we urge the Court to exercise its discretion in favor of  
2 peremptory challenges for the reasons stated in our Petition.

3  
4 **II. Consistency with the Statutory Scheme and Time Standards**

5 Several commentators have suggested that a change of judge is impractical in  
6 rural areas, and have further inferred a dilatory intent on the part of tenants' rights  
7 advocates. To be clear, the Bar seeks only parity, that is, a peremptory provision  
8 that nonetheless commits attorneys not to exercise their discretion in a blanket  
9 fashion nor for purposes of delay nor to interfere with a court's case management.  
10 And before rejecting a rule based on its effect on rural precincts, this Court should  
11 review the annual statistics on where eviction actions take place and whether they  
12 proceed to trial. Indeed, one commentator contends that rural Justice Courts would  
13 suffer logistical challenges with a rule permitting peremptory challenges.<sup>2</sup> But the  
14 rural precincts hear only a fraction of the approximately 84,000 eviction actions filed  
15 in Justice Courts statewide in each of the past two years, more than 64,000 of which  
16 were filed in Maricopa County each year, and almost 14,000 of which were filed in  
17 Pima County.

18 *See*

19 <http://www.azcourts.gov/statistics/AnnualDataReports/2013DataReport/2013Case>  
20 [ActivitybyCounty.aspx](http://www.azcourts.gov/statistics/AnnualDataReports/2013DataReport/2013Case)

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22  
23 <sup>2</sup> The Petition opponents offer the Duncan Justice Court as one of their examples.  
24 But the Duncan Justice Court received just 8 new eviction actions in the year ending  
25 June 30, 2013, and only 4 in the prior year, and none of those cases proceeded to  
trial. *See* [http://www.azcourts.gov/Portals/39/2013DR/JP\\_Greenlee.pdf#page=5](http://www.azcourts.gov/Portals/39/2013DR/JP_Greenlee.pdf#page=5).

1 and [http://www.azcourts.gov/Portals/39/2013DR/JP\\_Intro.pdf#page=3](http://www.azcourts.gov/Portals/39/2013DR/JP_Intro.pdf#page=3). This leaves  
2 approximately 6,000 evictions throughout the rest of the state, and even as to those  
3 evictions, as the vast majority end in default, this rule affects only that small minority  
4 of tenants who contest the eviction. This Court should not allow heightened concern  
5 for rural precincts to outbalance due process rights of tenants statewide.

6  
7 In addition, the speedy timeframes of eviction actions are not as unique as the  
8 commentators in opposition would suggest. Changes of judge are permitted in time-  
9 sensitive applications for orders of protection and injunctions against harassment in  
10 Justice Court. *See* Rule 1(a)(2) of the Arizona Rules of Protective Order Procedure  
11 (declaring that the Arizona Rules of Civil Procedure apply to those cases “when not  
12 inconsistent with these rules.”) Even in Superior Court, where the change of judge  
13 applies in all cases except cases in Tax Court, Ariz. R. Civ. P. 42(f)(1)(A), the  
14 exercise of a peremptory challenge to a judicial officer can delay a request for  
15 injunctive relief under Ariz. R. Civ. P. 65, particularly in rural counties with limited  
16 benches. Courts and administrators can adapt in order to ensure the provision of  
17 justice, and absent recitation by the Petition opponents of actual delinquencies, this  
18 Court should not presume prejudicial delay.<sup>3</sup>

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20  
21 <sup>3</sup> In marked contrast, one alternative proposed by the Petition opponents (that is,  
22 using a statutory for-cause venue challenge) would likely result in a delay  
23 inconsistent with the statutory scheme. A.R.S. § 22-204, as amended in 2013,  
24 permits a party in Justice Court to seek a for-cause venue change on grounds of  
25 prejudice. But given that the venue provision requires five days’ notice to the non-  
moving party, this venue provision may well be inconsistent with the prompt trial  
provisions of the Arizona Residential Landlord and Tenant Act. And regardless, the  
statute on its face does not address change of judge challenges.

1 For similar reasons, a decision by this Court in support of a peremptory  
2 judicial challenge is not inconsistent with the provisional “Timing Standards”  
3 supported by the Arizona Judicial Council. The Arizona Judicial Council’s  
4 Executive Summary recognizes the appropriate balance of the rights of individual  
5 litigants against the need for case management tools.

6 Case processing standards should complement, rather than  
7 supplant, due process considerations. Waiting periods are  
8 deliberately built into some court procedures and processes in  
9 order to preserve parties’ rights (e.g., to provide adequate  
10 notice, to conduct discovery, or to receive service of process).<sup>4</sup>  
11 Case processing standards should not override such  
12 protections but should guide the courts in the fair and timely  
13 disposition of cases.

14 “Excerpt from the Interim Report and Recommendations of the Arizona Case  
15 Processing Standards Steering Committee”, September 30, 2013, available at  
16 [http://www.azcourts.gov/Portals/84/MeetingMaterials/2013/October/Tab4AzCaseP  
18 rocStand\\_2\\_.pdf](http://www.azcourts.gov/Portals/84/MeetingMaterials/2013/October/Tab4AzCaseP<br/>17 rocStand_2_.pdf).

19 To the extent the Court is concerned that the change of judge provision *might*  
20 have a negative impact on compliance with the provisional 98% standard, it has two  
21 options that would be consistent with the proposal in the Petition. First, the  
22 provisional standard could be lowered to account for due process rights. In the  
23 alternative, the Court could restore the peremptory challenge in eviction actions in

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24 <sup>4</sup> We would add, in the eviction context, the right to a three-day continuance in  
25 Justice Court. See Rule 11(c) of the Rules of Procedure for Eviction Actions  
(continuances may be granted “on the request of a party for good cause shown or to  
accommodate the demands of the court’s calendar”) and the Arizona Residential  
Landlord and Tenant Act, A.R.S. § 33-1377(C); see also A.R.S. § 12-1177(C)  
(permitting up to three days for a continuance in Justice Court actions).

1 Justice Court *with a sunset clause*, which would permit the stakeholders to fully  
2 assess whether, and to what extent, judicial challenges truly impact the case  
3 management standards.

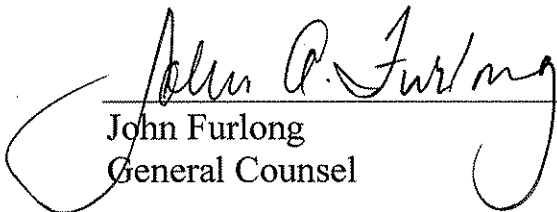
4  
5 Whether the provisional resolution standard to resolve 98% of eviction actions  
6 within 10 days will be affected by the proposed rule is speculative. If there is an  
7 adverse impact, the Court can anticipate that the impact would be relatively small,  
8 given the paucity of eviction trials and the heavy volume of default judgments. The  
9 Bar supports the efforts of the Judicial Council to move cases forward faster for the  
10 benefit of the litigants and the justice system as a whole, but those efforts can and  
11 should take into account the substantive rights of the individual litigants as well.  
12 The proposed rule does that for eviction litigants.

### 13 CONCLUSION

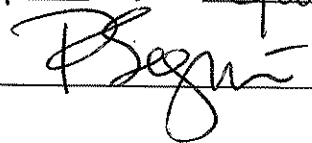
14 The proposed rule removes the disparity of a lack of change of judge rule for  
15 eviction actions in Justice Court. Eviction court litigants should have the same right  
16 to a change of judge as a matter of right and for cause as other civil litigants in Justice  
17 Court and Superior Court.

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

19  
20 RESPECTFULLY SUBMITTED this 18<sup>th</sup> day of JUNE, 2014.

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25 John Furlong  
General Counsel

1 Electronic copy filed with the  
2 Clerk of the Arizona Supreme Court  
3 this 18<sup>th</sup> day of June, 2014.

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