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FILED
JUL 24 2014
JANET JOHNSON
CLERK SUPREME COURT
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7 Petitioner

BEFORE THE ARIZONA SUPREME COURT

8 PETITION TO AMEND RULE 11)
9 OF THE RULES OF PROCEDURE)
10 FOR EVICTION ACTIONS.)
_____)

Supreme Court No. R-14-0027

11
12 PURSUANT TO Rule 28 of the Rules of the Supreme Court, undersigned
13 petitioner submits the following proposed addition to Rule 11 of the Rules of Procedure
14 for Eviction Actions as set forth in Appendix A hereto.

15 Nonresident landlords are disadvantaged in eviction actions in Arizona because
16 there is no rule or authority which allows them to appear telephonically at eviction
17 hearings. While some courts permit telephonic appearances for nonresident landlords,
18 many do not.

19
20 Counsel for a nonresident landlord can hope that an expedited motion for leave to
21 appear telephonically will be granted but there are no guarantees that the Court will be
22 sympathetic to such motion because there is no rule or statute which authorizes
23 telephonic appearances.

24
25 If the Court denies a nonresident landlord's motion for leave to appear
26 telephonically, the landlord is left to make last-minute travel plans, committing
27 substantial time and money for an appearance which may take no more than a few
28 minutes. Depending on the domicile of the landlord, he may need to commit a full day

1 or more to make the trip to the court house. All the while, there is no way to know
2 whether the tenant will even appear at the hearing. Because of the accelerated nature of
3 the eviction process, a landlord may not know until one or two days prior to the hearing
4 whether the motion for leave to appear telephonically is granted or denied.
5

6 A rule which allows parties or witnesses to appear telephonically if no substantial
7 prejudice would result and if the court finds that, as to such parties or witnesses, they are
8 reasonably prevented from attending the hearing or that attendance in person would result
9 in a burdensome expense would serve the interests of justice. Nonresident landlords and
10 their counsel could file eviction actions with the knowledge and comfort that they
11 won't be put to the inconvenience, expense and hassle of needing to make last minute
12 travel plans and dealing with an upset to their personal and business calendars.
13
14

15 The drafters of the Rules of Family Law Procedure fashioned a rule, similar to
16 that being proposed, which allows for telephonic appearances by parties and witnesses
17 upon a showing that they are "reasonably prevented from attending the hearing" or that
18 "attendance in person at hearing or trial would be a burdensome expense..." *Rule 8[A]*
19 *and [B], Arizona Rules of Family Law Procedure.* The concept adopted for family law
20 cases makes sense in the context of eviction hearings.
21

22 For these reasons, petitioner respectfully requests that this Court amend Rule 11
23 of the Rules of Procedure for Eviction Actions as set forth in Appendix A hereto.
24

25 DATED this 23rd day of July, 2014.

26 LAW OFFICE OF DOUGLAS C. FITZPATRICK

27 By /s/ Douglas C. Fitzpatrick
28 Douglas C. Fitzpatrick
Petitioner

1 An electronic copy filed with
2 the Clerk of the Supreme Court
3 this 23rd day of July, 2014.

4 /s/ Douglas C. Fitzpatrick
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APPENDIX A

Proposed Rule 11[d][3], Rules of Procedure for Eviction Actions

Rule 11[d] [no change in text]

Rule 11[d][1] [no change in text]

Rule 11[d][2] [no change in text]

Rule 11[d][3] Upon request of a party or witness, or on its own motion, and upon a finding that no substantial prejudice will result to any party by allowing telephonic testimony, the court may allow a party or witness to give testimony at any evidentiary hearing telephonically if the court finds that the party or witness is reasonably prevented from attending the hearing or that attendance in person at the hearing would result in a burdensome expense to the party or witness.

Any documents a party wishes to introduce into evidence through a party or witness appearing telephonically shall, where practicable, be provided in advance to the party or witness. Exact duplicates shall be provided to the opposing party with an affirmation on the record by the party introducing same that they are true and correct copies of the documents provided to the party or witness who will be appearing telephonically.

A party intending to have offer telephonic testimony at a hearing shall file a request for same with the filing of that party's complaint or answer as the case may be. Opposition to said request shall be made within two [2] days after service, following which the court may, in its discretion, rule upon said request with or without hearing. Unless otherwise ordered by the court, the party requesting telephonic testimony shall arrange and pay for same.