

1 Patricia A. Sallen, Bar No. 012338  
2 Deputy General Counsel  
3 John Furlong, Bar No. 018356  
4 General Counsel  
5 State Bar of Arizona  
6 4201 N. 24th Street, Suite 100  
7 Phoenix, AZ 85016-6288  
8 (602) 340-7236  
9 [John.Furlong@staff.azbar.org](mailto:John.Furlong@staff.azbar.org)

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**IN THE SUPREME COURT  
STATE OF ARIZONA**

In the Matter of:

Supreme Court No. R-

**PETITION TO AMEND THE  
RULES OF PROCEDURE FOR  
EVICTION ACTIONS**

**PETITION**

Pursuant to Rule 28, Ariz. R. Sup. Ct., the State Bar of Arizona respectfully petitions this Court to adopt a procedure allowing for a change of judge as a matter of right and for cause in eviction actions. After hearing presentations by parties interested in the processing of eviction actions, the State Bar proposes two different rules for the Court's consideration. One is based on the existing Justice Court Rules of Civil Procedure; the other is narrower and perhaps more tailored to the time-sensitive demands of eviction actions.

**Background**

Justice Court eviction actions, one of the most common civil cases heard in Justice Court, are the only type of civil action that has no change-of-judge rule.

1 For eviction cases in Superior Court, the change-of-judge provision in Rule  
2 42(f), Ariz. R. Civ. P., applies and permits change of judge as a matter of right and  
3 for cause. Rule 1, Rules of Procedure for Eviction Actions.

4 For other civil matters in Justice Court, the Justice Court Rules of Civil  
5 Procedure, adopted effective January 1, 2013, include Rule 133(d), which provides  
6 for a change of judge as a matter of right and for a change of judge if the party  
7 believes the party will not have a fair and impartial trial before the justice of the  
8 peace. The Justice Court Rules of Civil Procedure do not apply to evictions. Rule  
9 101(b).

10 Changes of judge are permitted in orders of protection and injunctions against  
11 harassment cases because pursuant to Rule 1(A)(2) of the Arizona Rules of  
12 Protective Order Procedure, the Arizona Rules of Civil Procedure apply to those  
13 cases, unless specifically inconsistent with the rules. Thus, as relevant here, Rule  
14 42(f) applies to those cases, as well. For civil traffic and boating cases, Rule 7 of  
15 the Rules of Procedure in Civil Traffic and Civil Boating Violation Cases provides  
16 that a change of judge as a matter of right does not apply in these cases except for  
17 cases consolidated with a criminal matter.

18 When the State Bar of Arizona proposed the Rules of Procedure for Eviction  
19 Actions in 2008, its petition (R-07-0023) proposed a change-of-judge rule. The  
20 petition was the product of the State Bar Landlord/Tenant Task Force, which  
21 included justices of the peace and attorneys who represent tenants and landlords, as  
22 well as members of the State Bar's Legal Services Committee, whose mission is  
23 working on access-to-justice issues for low-income Arizonans. Despite the  
24 recommendation from this diverse task force, the Court did not include the change-  
25 of-judge rule when it adopted the final eviction-action rules, effective January 1,

1 2009.

2 In 2013, the State Bar submitted another petition (R-13-0047) again proposing  
3 the change-of-judge rule using the rule originally proposed in 2008. This Court  
4 denied the petition.

5 Because of the significance of this issue, the State Bar again presents this issue  
6 for the Court's consideration.

### 7 **Need for Proposed Rule**

8 Tenants have a property interest in their residences. *Greene v. Lindsey*, 456  
9 U. S. 444, 451-52 (1982). *See also Foundation Development Corp. v. Loehmann's*,  
10 163 Ariz. 438, 442, 788 P.2d 1189, 1193 (Ariz. 1990) (recognizing common law  
11 right of tenant's property interest in rental). Eviction proceedings that deprive  
12 tenants of that property must comply with the due process requirements of the 14<sup>th</sup>  
13 Amendment to the United States Constitution. *Greene*, 456 U.S. at 455.

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

21 Although eviction cases have shorter statutory time frames than some of the  
22 other civil cases heard in Justice Court, these time frames are not a sufficient reason  
23 to deny the litigants a right to change judge. If a tenant or a landlord believes that  
24 he or she cannot get a fair trial before a justice, then they should be allowed as other  
25 litigants are, to request a change of judge. The change-of-judge requests can be

1 handled like other continuances for cause. As an example, many Justice Courts  
2 already continue cases to another date for a trial if a tenant appears on the court date  
3 noted in the summons and has a defense. *See* Rule 11(c) of the Rules of Procedure  
4 for Eviction Actions (continuances may be granted “on the request of a party for  
5 good cause shown or to accommodate the demands of the court’s calendar”);  
6 Arizona Residential Landlord and Tenant Act, A.R.S. § 33-1377(C). The same or  
7 similar practice could apply to a change-of-judge request.

### 8 **Consistency with the Statutory Scheme and Time Standards**

9 Objections to the now-denied 2013 change-of-judge rule petition suggested  
10 that a change of judge is impractical in rural areas or in stand-alone Justice Courts.

11 Rural precincts heard only a fraction of the approximately 84,000 eviction  
12 actions filed in Justice Courts statewide in fiscal 2013. More than 64,000 of evictions  
13 were filed in Maricopa County and another 14,000 were filed in Pima County.<sup>1</sup> This  
14 leaves approximately 6,000 evictions throughout the rest of the state, and even as to  
15 those evictions, the vast majority end in default. Thus, this rule affects only that  
16 small minority of tenants who contest the eviction.

17 In addition, the speedy timeframes of eviction actions are not unique.  
18 Changes of judge are permitted in time-sensitive applications for orders of protection  
19 and injunctions against harassment in Justice Court. *See* Rule 1(A)(2), Arizona  
20 Rules of Protective Order Procedure (declaring that the Arizona Rules of Civil  
21 Procedure apply to those cases “when not inconsistent with these rules”). Even in  
22 Superior Court, where the change of judge applies in all cases except cases in Tax  
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25 <sup>1</sup> See <http://www.azcourts.gov/statistics/AnnualDataReports/2013DataReport.aspx>  
for case activity reports for limited jurisdiction courts.

1 Court, Rule 42(f)(1)(A), Ariz. R. Civ. P., the exercise of a peremptory challenge to  
2 a judicial officer can delay a request for injunctive relief under Rule 65, Ariz. R. Civ.  
3 P., particularly in rural counties with limited benches.

4 A peremptory judicial challenge also would not be inconsistent with case-  
5 processing standards. The provisional resolution standard is to resolve 98 percent of  
6 eviction actions within 10 days.<sup>2</sup> If there is an adverse impact as the result of a  
7 change-of-judge rule, the Court can anticipate that the impact would be relatively  
8 small, given the paucity of eviction trials and the heavy volume of default judgments.

### 9 **Proposals**

10 The State Bar offers two proposes for a change-of-judge rule in eviction  
11 actions in Justice Court.

#### 12 **1. Proposal One: Add new Rule 9(c) allowing for change of judge as a** 13 **matter of right**

14 This proposal originated with the State Bar's Legal Services Committee,  
15 which is a broad cross-section of attorneys, including the executive directors of the  
16 state's three legal-services programs. It is based on Rule 133(d), Justice Court Rules  
17 of Civil Procedure, which provides for a change of judge as a matter of right and for  
18 a change of judge if the party believes the party will not have a fair and impartial  
19 trial before the justice of the peace:

#### 20 **Rule 9(c): Motion for Change of Judge**

21 For purposes of this subsection, a lawsuit has only two sides. A  
22 party or a side, if there is more than one plaintiff or one defendant in a  
23 lawsuit, may request a change of judge as a matter of right orally or in

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24 <sup>2</sup> See <http://www.azcourts.gov/Portals/22/admorder/Orders13/2013-95.pdf> for  
25 Administrative Order No. 2013-95 setting out provisional case-processing standards  
for courts.

1 writing. The party or side must request a change of judge as a matter  
2 of right in the precinct where the lawsuit is pending. The request must  
3 state that the party or side has not previously requested a change of  
4 judge in this lawsuit, that the party or side has not waived the party's  
5 right to change of judge, and that the request is timely. A request is  
6 timely if it is made prior to or at the time of the first court appearance  
7 or upon reassignment of the matter to a new judge for trial. A party  
8 waives a right to a change of judge if the judge has ruled on any  
contested motion or issue, or if the trial has started. When a proper and  
timely request for a change of judge as a matter of right is orally  
requested or filed, the court must transfer the lawsuit to a new judge  
within the county for further proceedings.

9 If a party believes that the party will not have a fair and impartial  
10 trial before a justice of the peace, then the party must proceed as  
11 provided in Arizona Revised Statutes § 22-204, except that any request  
12 must be made by the date of the first court appearance and five days'  
notice is not required.

13 The remaining subparts of current Rule 9 would be redesignated to conform to this  
14 addition.

15 The first paragraph is taken from current Justice Court Rule 133(d) with minor  
16 changes to reflect the practice in Justice Court. Similarly, the second paragraph  
17 concerning change of judge for cause is taken from the last sentence in Rule 133(d)  
18 but with modifications to reflect the practice in Justice Court and changes  
19 subsequently made to A.R.S. § 22-204 in 2013.

20 **2. Proposal Two: Add new Rule 9.1 allowing for change of judge under**  
21 **certain conditions**

22 This proposal, suggested by Encanto Justice of the Peace C. Steven McMurry,  
23 who also is presiding judge of the Maricopa County Justice Courts, would allow a  
24 litigant to request a change of judge for right only if it would not cause delay:  
25

1 Rule 9.1

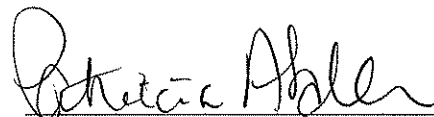
2 If, because other judges are readily available, it can be granted without  
3 causing a day's delay in the proceeding, a single request for a change  
4 of judge as a matter of right shall be granted.

5 While parties could argue about what constitutes "readily available," this  
6 proposal would address concerns about delaying the processing of time-sensitive  
7 cases. The State Bar Board of Governors was advised that this provision would not  
8 cause delay or the inability to comply with case time-processing standards.

9 **Conclusion**

10 The State Bar requests that the Court adopt a mechanism so that litigants in  
11 eviction cases, like other litigants in civil cases heard in Justice Court and eviction  
12 litigants in Superior Court, have the right to a change of judge. Toward that end, it  
13 offers two proposals. Either removes the current disparity.

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15 RESPECTFULLY SUBMITTED January 9, 2015.

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18 Patricia A. Sallen  
19 Deputy General Counsel  
20 John Furlong  
21 General Counsel

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23 Clerk of the Arizona Supreme Court  
24 this 9th day of January, 2015.

25 by: 