

1 Honorable Randall H. Warner
2 Civil Court Presiding Judge
3 Superior Court of Arizona in Maricopa County
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5 Phoenix, AZ 85003
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7 IN THE SUPREME COURT
8 STATE OF ARIZONA

9
10 PETITION TO AMEND RULE 49(a) }
11 OF THE RULES OF CIVIL } Supreme Court No. R-16-____
12 PROCEDURE }
13 _____

14 Pursuant to Rule 28, Rules of the Supreme Court of Arizona, the Presiding
15 Judge of the Civil Court of the Superior Court of Arizona in Maricopa County
16 respectfully petitions this Court to adopt the attached proposed amendment to
17 Rule 49(a) of the Rules of Civil Procedure.

18 In May 2015, Presiding Judge Norman Davis established the Jury
19 Procedures Committee, chaired by Judge Dawn Bergin, to among other things
20 review procedures relating to juror privacy. This proposed rule change arose
21 from the committee’s recommendations.

22 Rule 49(a) provides that when a jury renders a unanimous verdict, the jury
23 foreperson signs the verdict form. When a jury returns a verdict that is not
24 unanimous, but where six or more jurors concur, each concurring juror signs the
25 verdict form. This petition seeks to amend Rule 49(a) to allow jurors to sign the
26 verdict form using their juror number and initials in lieu of a signature. The
27 purpose of the rule change is to protect the identity of jurors from public release.
28

1 Currently, there are rules to protect juror identities. Rule 123, Rules of the
2 Supreme Court of Arizona, which governs public access to judicial records,
3 provides that “[t]he home and work telephone numbers and addresses of jurors,
4 and all other information obtained by special screening questionnaires or in voir
5 dire proceedings that *personally identifies jurors summoned for service*, except
6 the names of jurors on the master jury list, are confidential, unless disclosed in
7 open court or otherwise opened by order of the court.” Arizona Supreme Court
8 Rule 123(e)(10) (emphasis added). Arizona Rule of Civil Procedure 49(f) states:
9 “[w]hen polling a jury at verdict, the judge and clerk shall not identify the
10 individual jurors by name, but shall use other methods or form of identification
11 as may be appropriate to ensure an accurate record of the poll and to
12 accommodate the jurors’ privacy.” Identical language exists in Rule 23.4 of the
13 Arizona Rules of Criminal Procedure.

14 Juror privacy is not protected, however, when the public accesses the jury
15 verdict form. A jury verdict form is considered a “case record” and is therefore
16 available to the public. Arizona Supreme Court Rule 123(d). The signatures on
17 the verdict form identify all jurors who have signed the verdict.

18 Permitting jurors to sign the verdict form using juror numbers and initials
19 provides sufficient evidence that the juror agrees with the verdict while
20 protecting the juror’s privacy. The court of appeals has addressed this issue in
21 the criminal trial setting. In *State v. McIntosh*, 213 Ariz. 579, 146 P.3d 80 (App.
22 2006), a defendant challenged his criminal conviction on the grounds that the
23 jury foreperson had simply written “#7,” the foreperson’s juror number, on the
24 verdict. This was contrary to Ariz. R. Crim. P. 23.1, which states “the verdict of
25 the jury shall be in writing, signed by the foreman.” The court held that the verb
26 “sign” in Rule 23.1 could encompass “a signature, mark or other symbol with
27 the intent to authenticate. . . .” *Id.* at 581, 146 P.3d at 83. The court further found
28 that the 2004 amendment to Rule 23.4 “evidences the supreme court’s intent that

1 jurors' privacy be protected in the polling process," and therefore "it is
2 reasonable to conclude that it further intended to allow a foreperson to sign the
3 verdict in a manner that satisfies the authentication purpose of Rule 23.1(a) yet
4 protects the person's privacy." *Id.*, 146 P.3d at 83. This reasoning arguably
5 applies to Ariz. R. Civ. P. 49(a) in its current form. But the proposed
6 amendment would clarify this issue and provide guidance to judges when
7 instructing jurors on the use of the verdict form.

8 The proposed amendment also changes "foreman" in the current rule to
9 the gender-neutral "foreperson."

10 For the foregoing reasons, the Presiding Judge of the Civil Court of the
11 Superior Court in Maricopa County respectfully requests this Court amend Rule
12 49(a) of the Rules of Civil Procedure, as detailed in Exhibit A, to allow jurors to
13 sign verdict forms with their juror number and initials.

14
15 RESPECTFULLY SUBMITTED this 8th day of January, 2016.

16
17 /s/ Randall H. Warner
18 Hon. Randall H. Warner
19 Civil Court Presiding Judge
20 Superior Court of Arizona, Maricopa County

21
22 Electronic copy filed with
23 the Clerk of the Supreme
24 Court of Arizona this 8th

25 day of January, 2016.
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27
28

Exhibit A
(new language is underlined)

Rules of Civil Procedure

Rule 49(a). Return of a Verdict by Six or More Jurors; Presentation in Court.

When eight jurors have been impaneled to try the action, and if there has been no stipulation as provided in Rule 48 entered in the minutes of the trial as provided by A.R.S. § 21-102, the concurrence of six or more jurors shall be sufficient to render a verdict therein. When the eight jurors unanimously agree upon a verdict, the verdict shall be signed by the ~~foreman and~~ foreperson, either by affixing his or her signature to the verdict or by writing his or her juror number and initials on the verdict. The verdict will then be returned into court. When the jurors do not unanimously agree upon a verdict, but six or more agree, the jurors who agree shall each sign the verdict agreed upon, either by affixing their signature to the verdict or by writing their juror number and initials on the verdict. The jurors shall then notify the court of that fact, and thereupon the jury shall be returned into court and deliver to the court the verdict so signed. The court shall receive and cause the verdict to be read and recorded, and judgment shall be entered thereon.