

Hon. C. Steven McMurry, on behalf of the
Committee on Limited Jurisdiction Courts
C/o Administrative Office of the Courts
1501 W. Washington St., Ste. 410
Phoenix, AZ 85007

IN THE SUPREME COURT

STATE OF ARIZONA

In the Matter of:)	Supreme Court No. R-16-0022
)	
PETITION TO ADOPT RULE 9.1, RULES OF PROCEDURE FOR EVICTION ACTIONS)	Comment from the LJC Opposing the Petition
_____)	

This comment is submitted on behalf of the Committee on Limited Jurisdiction Courts (the “LJC”), which authorized the undersigned committee member at its February 24, 2016 meeting to file a comment in opposition to this rule petition.

I. Introduction. The LJC opposes the proposed amendment because the amendment is impractical and unnecessary. The amendment is not prudent because it would make it difficult for a number of justice courts to comply with statutory requirements and with this Court’s time standards. If adopted, the amendment would likely have an adverse impact upon tenants.

II. The Proposed Rule Amendment Is Impractical and Unnecessary.

Undersigned's courtroom is in a courthouse in central Phoenix. Five justice court precincts share that location, which has a combined clerical area and a corridor of interconnected judicial chambers. In the past five years, these five urban courts have processed approximately 60,000 eviction cases. Each of those five judges will honor a change of judge in an eviction case, even though there is no current rule. No judge wants to hear a case in which his or her objectivity is in question, and in those infrequent cases in which a change of judge might be appropriate, a change of judge will occur without a rule, often at the initiation of the judge. The court accommodates a change of judge request by immediately transferring the matter to one of the other four judges in the building. The receiving judge of a transferred eviction action in the central Phoenix courthouse is typically able to address it quickly, and a change of judge does not result in a delay in this courthouse.

On the other hand, isolated rural courts cannot easily make similar accommodations to fulfill a change of judge request in an eviction action. It may be similarly difficult for stand-alone urban courts to readily accommodate a change of judge request. These courts do not have the luxury of having another judge or judges down the hallway. Court administration in stand-alone urban and rural justice of the peace courts will have to locate and arrange for a new judge. That

could take days, and depending on the location, it might not happen quickly. A change of judge request could quickly gain the perception of an easy way to delay an eviction proceeding.

III. The Proposed Rule Change is Not Prudent. The Arizona Judicial Council has approved a time standard that requires 98% of eviction filings in justice courts to be resolved by a judgment or dismissal within ten days of filing. Unlike some of the other time standards, the eviction standard has not been controversial because it results directly from the requirements of Arizona law. An eviction case must be set for trial no less than six days from the date of filing (A.R.S. § 33-1377 (B).) The court can continue the case for an additional three days (A.R.S. § 12-1177(C).) Thus, legally the court *must* resolve the eviction case within nine days of filing.

If the Court adopts this proposal, resolution of an increased number of eviction actions within nine days will not be possible, at least for isolated rural courts, and most likely for stand-alone urban courts as well. This proposal, if adopted, could make it very difficult for some justice courts to be compliant with Arizona statutory requirements concerning evictions, or could make it difficult for justice courts to meet this Court's time standards for case disposition.

IV. The Proposed Rule Change Will Likely Have An Adverse Impact Upon Tenants. The Petition in this matter is written from a tenant perspective, and

argues that the change it seeks will help tenants. The LJC, however, is convinced that the advocates for the proposed rule change have incorrectly analyzed the dynamics of the situation. The proposed rule change will adversely affect tenants.

It is very rare for a tenant to be represented in an eviction action; representation probably occurs in less than 1% of the cases. An unrepresented or self represented tenant is unlikely to know much about the Rules. Even if the tenant knew about a Rule authorizing a change of judge, the tenant would also need substantial knowledge and sophistication regarding the court system to have a reliable opinion about whether exercising the right to an automatic change of judge was likely to gain the tenant a judge more sympathetic to his situation. It will, therefore, be a very rare situation in which an automatic change of judge will benefit the tenant.

On the other hand, the lawyers representing landlords in eviction proceedings are "frequent flyers" in the court system. They talk to each other, and they all know which judge is perceived to be "pro tenant". They also know the rules. It is far, far more likely that the proposed rule change will be used by these attorneys to remove eviction cases from "pro tenant" judges.

V. Conclusion. The LJC includes justices of the peace from urban and rural jurisdictions across Arizona. The LJC believes that the State Bar may not have consulted any justice of the peace who is a State Bar member, or any attorney who

routinely represents plaintiffs in justice court evictions, prior to filing this rule petition. These stakeholders oppose the proposed rule change. This proposed rule change is unnecessary, impractical, and imprudent. It will have an adverse impact upon tenants. The Court should decline to adopt it.

RESPECTFULLY SUBMITTED this 25th day of April, 2016

By /s/ _____
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Copy of this comment
Emailed this 17 day of
April, 2016 to:

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