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North Valley Justice Court
14264 West Tierra Buena Lane
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IN THE SUPREME COURT OF THE STATE OF ARIZONA

In the Matter of:)	Supreme Court
)	No. R-16-0019
PETITION TO AMEND)	
RULE 110 OF THE RULES OF)	Response from Maricopa
THE JUSTICE COURT RULES)	County Justice Court Bench
FOR CIVIL PROCEDURE)	

BACKGROUND

The author of this pleading is a justice of the peace in Maricopa County. He is also the co-chairman of the Best Practices Committee for the Justice Court Bench in for Maricopa County. This response was discussed at a Justice Court Bench Meeting and is filed on behalf of the Justices of the Peace in Maricopa County.

I.

AMENDING THE RULES OF CIVIL PROCEDURE, TO ALLOW A PERSON TO BE NAMED AS A DEFENDANT AFTER A JUDGMENT HAS BEEN SIGNED, VIOLATES TRADITIONAL NOTIONS OF DUE PROCESS.

There is a well recognized procedure for initially naming fictitious defendants in a complaint and then subsequently amending that complaint

after the plaintiff determines that additional defendant's identity.¹ This process contains established deadlines and establishes certain notice requirements designed to give a new party an opportunity to respond and to participate in an ongoing lawsuit.² The current rule, JCRCP 110, is consistent with this structure and with procedural due process, which, at a minimum, requires notice and an opportunity to be heard.³

The proposed rule changes seek to radically alter this process by allowing a person, who was never identified by name in a pleading or in any court document, to suddenly be financially liable for a judgment in a lawsuit that they may have known nothing about. Such a process would be fundamentally unfair. The Petitioner disagrees and notes plaintiffs, who discover only post-judgment the true identity of defendants designated by fictitious placeholders, must pursue "extraordinary – and perhaps unappealing – measures to obtain a judgment against" a new additional party.⁴ Such an argument is not persuasive. Advocates for a new and weakened concept of due process, that would subject people to being added

¹ Ariz.R.Civ.P. 15.

² Ariz.R.Civ.P. 15(c); *Safeway Stores, Inc. v. Ramirez*, 99 Ariz. 372, 379, 409 P.2d 292, 297 (1965) (Discusses personal jurisdiction requirements for fictitiously named defendants).

³ *See generally, Iphar v. Industrial Comm. of Ariz.*, 171 Ariz. 423, 831 P.2d 422 (Ct. App. 1992).

⁴ Petition at 6.

to judgments without notice, must advance a compelling public policy reason for doing so. Convenience of the plaintiff, or a court, is not such a reason.⁵

The Petitioner may argue that unnamed or unknown spouses are not innocent victims because they knew or should have known that if their spouse was named in a lawsuit that was delivered to their residence, they could be liable for any community debts and accordingly need to pay attention to the progress of the case. While that may be true in theory, the reality is that many litigants express surprise and frustration during garnishment hearings after a judge informs them that their earnings can lawfully be garnished to pay a judgment concerning a credit card balance, even though the card was only in their spouse's name and even though the card was only used by their spouse. Basic community property concepts that are understood by judges and by attorneys are often confusing to self-represented litigants. The proposed rule changes assume a baseline understanding of the law that is generally absent among many members of the general public. This Court should not add to any potential puzzlement

⁵ See generally, *Myer v. Kelsey-Hayes Corp.*, 126 Ariz. 165, 613 P.2d 628 (Ct. App. 1980)(Amendment substituting actual defendant for fictitious defendant did not relate back prior to statute of limitations expiration because of a lack of adequate notice). Accord, *Gould v. Tibshraeny*, 21 Ariz.App. 146, 517 P.2d 104 (Ct. App. 1974). Cf. *Ritchie v. Grand Canyon Scenic Rides*, 165 Ariz. 460, 799 P.2d 801 (1990)(Amended complaint added correct corporation).

by requiring trial court judges to explain a process where people must pay judgments in cases that they knew nothing about.

II.

A POSSIBLE ALTERNATE NOTICE PROCEDURE TO ADD A DEFENDANT TO A COMPLAINT COULD BE ADDED TO THE JUSTICE COURT RULES OF CIVIL PROCEDURE

Many of the concerns raised by the Petitioner are valid. It is no doubt difficult to determine whether a defendant or a potential defendant is married, perhaps especially if the case results in a default judgment. It is also maybe not the best use of legal and judicial resources to require every case to strictly follow the amendment requirements of JCRCP 119, given that “Leave to amend must be freely given.”⁶ JCRP 110 could be amended to read as follows:

Rule 110. Starting a Lawsuit; Content of a Complaint

a. Starting (“commencing”) a lawsuit. A lawsuit is started (“commenced”) by filing a complaint with the court. [ARCP 3]

b. Contents of a complaint. A complaint must include:

(1) The proper name of every plaintiff and of every defendant. If a defendant's name is unknown, a complaint may identify the defendant by a fictitious name, and the ~~complaint–defendant's correct name~~ may be ~~amended–~~ added to the lawsuit when the defendant's true name becomes known in either of the following ways:-

⁶ JCRCP 119.

(a) The complaint may be amended in accordance with the requirements of JCRCP 119; or

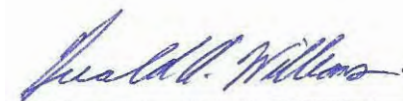
(b) The plaintiff may file a notice with the court indicating that all future pleadings will contain this defendant's correct name. A copy of this notice must be sent by certified mail, return receipt requested, to the additional defendant. This notice must be filed at least twenty (20) days before trial. If no trial date has been set, this notice must be filed prior to judgment.

This paragraph also applies to defendants in a third-party complaint.

CONCLUSION

While we have no objection to the concept of simplifying the procedures to replace fictitious defendants with actual defendants, any such replacement must be done before the trial judge signs the judgment.

RESPECTFULLY SUBMITTED, this 12 day of May 2016.



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