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7 **IN THE SUPREME COURT**

8 **STATE OF ARIZONA**

9 **Petition to Amend the Rules of**
10 **Procedure for Eviction Actions**

Supreme Court No. R-16-0022

11 **COMMENTS IN SUPPORT OF**
12 **PETITION TO AMEND THE RULES**
13 **OF PROCEDURE FOR EVICTION**
14 **ACTIONS**

15 Pursuant to Rule 28 of the Rules of the Supreme Court, the William E. Morris
16 Institute for Justice (“Institute”), DNA People’s Legal Services (“DNA”) and Southern
17 Arizona Legal Aid (“SALA”) submit these comments in support of the Petition to Amend
18 the Rules of Procedure for Eviction Actions by adding a change of judge rule, as Rule
19 9(c). The Petition was filed by the State Bar of Arizona and would permit a change of
20 judge as a matter of right and for cause in eviction actions in justice court. The proposed
21 rule is patterned after Rule 133(d) of the Justice Court Rules of Civil Procedure that
22 permits a change of judge in other civil cases heard by the justice court.

23 As discussed in the Petition, eviction cases in justice court are the only civil cases
24 in justice or superior courts without a change of judge rule. The legal services
25 community thinks Arizona courts should provide an opportunity for a change judge as a
26 matter of right in all cases as a matter of fundamental fairness. Thus, this Petition raises
27 issues of access to justice and is a high priority for the legal services community. To
28 address concerns previously raised and to provide the justice courts time to obtain data on
what effect, if any, this proposal may have on justice court administration, the State Bar
proposed a one-year limit on the rule change. In support of the Petition and the one year

1 time limit, the Institute, DNA and SALA state the following:

2 **I. Statements of Interest**

3 The Institute is a non-profit public interest program that works on issues of
4 importance to low-income Arizonans. The rights of tenants in eviction cases is such an
5 issue. In 2005, the Institute published a study of eviction cases in Maricopa County:
6 “Injustice In No Time: The Experience of Tenants in Maricopa County Justice Courts”
7 found at morrisinstituteforjustice.org.

8 DNA and SALA are federally funded civil legal services program for low-income
9 Arizonans. The legal services programs represent tenants in eviction actions throughout
10 the state. They typically are the only attorneys who represent tenants in justice court.
11 Legal services attorneys understand the significant impact evictions can have on low-
12 income persons. They also understand the public perception of unfairness when a litigant
13 cannot remove his or her case from a judge they think is unfair. This Petition addresses
14 that public perception.

15 **II. Background to the Proposed Rule Amendment**

16 In 2008, the Arizona State Bar submitted a Petition for the Rules of Procedure for
17 Eviction Actions, Supreme Court Number R-07-0023. The proposed rules were the
18 product of the State Bar Landlord/Tenant Task Force appointed by the State Bar
19 President. Attorney Katz of the Institute served on the Task Force as did CLS attorneys.
20 The Task Force members included Justices and attorneys representing tenants and
21 landlords. Included in the petition was a proposed rule for a change of judge for eviction
22 cases in justice court, Rule 11(e). The final rules adopted by the Court and effective
23 January 1, 2009, did not contain a change of judge rule for evictions in justice court.
24 Rule 1 of the Rules of Procedure for Eviction Actions provides that Rule 42(f) of the
25 Arizona Rules of Civil Procedure applies to evictions in superior court. The change of
26 judge provision in Rule 42(f) permits changes of judge as a matter of right and for cause.

27 In 2012, the State Bar Petitioned for Approval of the Justice Court Rules of Civil
28 Procedure. Included in the proposed rules was a change of judge rule, Rule 133(d). The

1 Court approved the Justice Court Rules of Civil Procedure. Rule 133(d) provides for a
2 change of judge as a matter of right and for a change of judge if the party believes the
3 party will not have a fair and impartial trial before the justice. The Justice Court Rules of
4 Civil Procedure do not apply to evictions, Rule 101(b), because the eviction rules were
5 promulgated previously. The Justice Court Rules were effective January 1, 2013.

6 In 2013, the State Bar submitted another petition, R-13-0047, for a change of
7 judge in eviction actions. The Petition proposed the same change of judge language
8 proposed in 2008. The proposed rule change was vetted through the Legal Services
9 Committee of the State Bar, the State Bar Rules Committee and the Board of Governors
10 of the State Bar. There was no public opposition to the proposed rule and it was
11 approved on the consent calendar at the Board of Governor's meeting on October 25,
12 2013. Subsequently, comments were submitted in support and in opposition to the
13 Petition and the Court denied the Petition.

14 In 2015, again, recognizing the need and importance of a change of judge rule for
15 eviction cases, the Legal Services Committee of the State Bar unanimously submitted a
16 Petition for a Change of Judge in Eviction Cases to the Rules Committee of the State Bar.
17 The Rules Committee submitted two proposals to the Board of Governors. The first was
18 the Legal Services Committee's proposal and the second was a proposal by Justice
19 McMurry, Presiding Justice in Maricopa County. The State Bar's Petition, R-15-0015,
20 included both proposals. Subsequently, the State Bar submitted a comment that proposed
21 a further modification to both proposals. The Court denied the Petition.

22 Thus, eviction actions, one of the most common civil cases heard in justice court,¹
23 continue to be the only type of case that has no change of judge rule.² The need and

24
25 ¹ As an example, in 2013 and 2014, there were over 64,000 and 65,000 evictions
26 respectively filed in Maricopa County Justice Courts. <http://www.azcourts.gov/Portals/39/2014DR/JPMaricopa.pdf>.

27 ² In addition to eviction cases, the Justice Court Rules of Civil Procedure do not
28 apply to civil traffic, civil boating, protective orders and injunctions against harassment.
Rule 101(b). These other cases have change of judge rules. Changes of judge are
permitted in orders of protection and injunctions against harassment cases because

1 importance of a change of judge rule in eviction cases continues and the Legal Services
2 Committee of the State Bar again proposed a change of judge rule for evictions in justice
3 court. The proposed rule was vetted by the Rules Committee of the State Bar and the
4 Board of Governors. Maricopa County Justice Gerald Williams spoke against the
5 Petition at the Rules Committee and Justice Steven McMurry spoke against it at the
6 Board of Governor's meeting. A representative from the Legal Services Committee
7 spoke in favor of the Petition. Recognizing the importance of this issue, the State Bar
8 voted again to submit the Petition for a change of judge to the Court.

9 This Petition seeks only parity, that is, a preemptory provision that allows for
10 litigants in eviction cases in justice court to have the same right to change judge as
11 litigants in eviction actions in superior court and litigants in other cases in justice court.
12 Therefore, the Institute, DNA and SALA urge the Court to approve the Petition.

13 **III. The Rule Change is Necessary for Fairness for Litigants in Eviction Cases in**
14 **Justice Court**

15 Eviction cases are very important. Tenants have a property interest in their
16 residences. *Greene v. Lindsey*, 456 U. S. 444, 451-52 (1982). *See also Foundation*
17 *Development Corporation v. Loehmann's*, 163 Ariz. 438, 442, 788 P.2d 1189, 1193
18 (Ariz. 1990) (recognizing common law right of tenant's property interest in rental).
19 Eviction proceedings that deprive tenants of that property must comply with the due
20 process requirements of the 14th Amendment to the United States Constitution. *Greene*,
21 456 U.S. at 455.

22 The plight of low-income tenants and the effect evictions have on their lives has
23 received national attention. Earlier this year, Mathew Desmond, a professor at Harvard
24 published the book *Evicted: Poverty and Profit in the American City* ("Evicted") (2015).

25 pursuant to Rule 1 of the Arizona Rules of Protective Order Procedure, the Arizona Rules
26 of Civil Procedure apply to those cases. Thus, as relevant here, Rule 42(f) applies to
27 those cases, as well. For civil traffic and boating cases, Rule 7 of the Rules of Procedure
28 in Civil Traffic and Civil Boating Violation Cases provides that a change of judge as a
matter of right does not apply in these cases except for cases consolidated with a criminal
matter.

1 Professor Desmond lived in a low-income residential part of Milwaukee for almost two
2 years and observed the interaction of low-income tenants and eviction actions. He
3 documented the resulting loss of shelter and increased social and economic instability.

4 Others also have written about this problem. It is well recognized that for low-
5 income persons, an eviction action may threaten their only means of shelter. *See, e.g.,*
6 Chester Hartman and David Robinson, *Evictions: The Hidden Housing Problem*, Housing
7 Policy Debate, Vol. 14, Issue 4 (2003) found at [http://content.knowledgeplex.org/kp2/](http://content.knowledgeplex.org/kp2/cache/kp/10950.pdf)
8 [cache/kp/10950.pdf](http://content.knowledgeplex.org/kp2/cache/kp/10950.pdf). The inability to find other housing on short notice can lead to the
9 disruption of children's education, interruption of employment, dislocation from health
10 care providers, loss of personal belongings and homelessness. In addition, the eviction
11 process may lead to monetary judgments. The result of an eviction may be that a family
12 is living in a car. The effects of an eviction can go beyond the immediate situation and
13 linger long term as an eviction on a tenant's record may make it harder to obtain
14 subsidized housing or a housing voucher in the future. Thus, the consequences of eviction
15 cases make them very important to tenants and especially low-income tenants, who often
16 lack back-up resources. The importance of these cases and the property interest at stake
17 certainly is undercut by not allowing a change of judge.

18 Although eviction cases have shorter statutory time frames than some of the other
19 civil cases heard in justice court, these time frames are not a sufficient reason to deny the
20 litigants a right to change judge. If a tenant or a landlord believes that he or she cannot
21 get a fair trial before a justice, then they should be allowed as other litigants are, to
22 request a change of judge. The change of judge requests can be handled like other
23 continuances for cause. As an example, the common practice in many Justice Courts is
24 that if a tenant appears on the court date noted in the summons and has a defense, the
25 case is continued to another date for a trial. *See* Rule 11(c) of the Rules of Procedure for
26 Eviction Actions (continuances may be granted "on the request of a party for good cause
27 shown or to accommodate the demands of the court's calendar"); Arizona Residential
28 Landlord and Tenant Act, A.R.S. § 33-1377(C). These continuances are usually granted

1 to accommodate landlords who typically do not bring witnesses to court on the initial trial
2 date. Whatever the undersigned may think of this process, the same or similar practice
3 could apply to a change of judge request.

4 The following examples highlight the fundamental unfairness of not having a
5 change of judge for eviction cases in justice court. Using Maricopa County as an
6 example, if a person lives in the Encanto Precinct, all the cases against them will be
7 assigned to the one Encanto Justice of the Peace. If a resident in the Encanto Precinct is
8 sued on a credit card debt, the person appears before the Encanto Justice and that justice
9 resolves the case. The defendant may think he or she was not treated fairly by the justice.
10 If the person is sued again on another credit card debt 10 months later and still lives in the
11 Encanto Precinct, his or her case will be assigned to the same justice. In this situation,
12 the person can request a change of judge under Rule 133(d) of the Justice Court Rules of
13 Civil Procedure. If the person is served an eviction action, he or she cannot request a
14 change of judge. This differential treatment is unfair and undercuts the public's
15 confidence in our judicial system.

16 Moreover, until recently, several prominent landlord attorneys served as Justices
17 of the Peace *Pro Tempore* in Maricopa County. While this practice ceased after ethical
18 concerns were raised, the practice could be reinstated. Consider the case of a legal
19 services attorney who comes to court to represent a tenant in an eviction case and finds a
20 Justice of the Peace *Pro Tempore* whose legal practice is primarily representing landlords
21 and property management companies. The legal services attorney may not think his or
22 her client can get a fair trial before the justice. Should the legal services attorney have to
23 try the case before a Justice *Pro Tempore* he or she thinks is unfair? Unless the Petition
24 is adopted, they will.

25 Finally, take the case of a tenant who files an appeal of the eviction judgment. If
26 the tenant wins the appeal, with no change of judge rule, on remand this case would go
27 back to the same justice. Rule 42(f)(1)(E) of the Rules of Civil Procedure recognizes the
28 inherent problem this situation may create and provides that when on remand a new trial

1 is ordered, “then all rights to change of judge are renewed and no event connected with
2 the first trial shall constitute a waiver.” Certainly, the same reasons behind Rule
3 42(f)(1)(E) apply in the eviction context.

4 The reality is that vast majority of tenants who lose their eviction case do not have
5 an attorney or the resources to file an appeal. For these tenants, the initial trial is their
6 only opportunity for relief. For all these reasons, the Institute, DNA and SALA continue
7 to request a change of judge rule in eviction cases.

8 **IV. Response to Objections by Committee on Limited Jurisdiction Courts**

9 The Committee on Limited Jurisdiction Courts (“LJC”) submitted a comment
10 opposing the petition.³ The LJC opposes the petition for four primary reasons. The LJC
11 claims the amendment is impractical, unnecessary, not prudent and that it will likely have
12 an adverse impact on tenants. As explained below, the Institute, DNA and SALA dispute
13 these claims.⁴

14 For its assertion that the rule is not needed, the LJC claims the central courthouse
15 in Phoenix with five courtrooms will honor a change of judge request because “[n]o
16 judge wants to hear a case in which his or her objectivity is in question.”⁵ The LJC,
17 however, fails to explain how a litigant would even know such a procedure is available.
18 This informal policy referenced by the LJC is unknown to litigants and legal services
19 attorneys and does not extend beyond those courts. Moreover, if it is the case that no
20

21 ³ A law firm that represent landlords also has filed comments in opposition. *See*
22 comments by Williams, Zinman and Parham, PC. The firm’s comments rely heavily on
23 matters in other jurisdictions not relevant to this Petition. They speculate with no data in
24 support concerning what might happen if the Petition is granted and fail to address the
25 current change of judge allowed in other justice court cases or the eviction case statistics.
26 Their comments also claim with no support that this will be a delay tactic by tenants.
27 Finally, their comments fail to explain why a one-year limit does not allow time to see
28 what effect, if any, this Petition would have on justice court administration.

27 ⁴ The Access to Justice Commission reviewed the Petition and the LJC comments
and voted to support the Petition.

28 ⁵ In Pima County, the second largest county, all eviction cases are heard in a
consolidated justice court. www.jp.pima.gov/home/htm.

1 judge wants to hear a case where his or her objectivity is called into question, then the
2 legal services community questions why the LJC is opposed to the petition. As fully
3 explained in the Petition, there is a need for the change of judge procedure for eviction
4 cases in a public rule that extends to all justice courts.

5 For its assertion of impracticality, the LJC claims that “isolated rural courts”
6 cannot “easily” accommodate requests and stand-alone urban courts “may” find it
7 difficult to “readily” accommodate a change of judge request. Before addressing this
8 assertion, it is important to note that from fiscal year 2011 to fiscal year 2015, the number
9 of cases filed in justice courts statewide dropped by almost 120,000 or almost 15%.
10 www.azcourts.gov/Portals/3f/2015annualreport.pdf. Thus, the justice court workload is
11 decreasing at a very fast pace and it is expected that the decrease in cases will continue.
12 The decreasing workload is not mentioned to by the LJC.

13 Moreover, the Institute, DNA and SALA think the number of change of judge
14 requests in rural courts will be few as there are a minute number of eviction cases filed in
15 these courts, even fewer cases where the tenant comes to court and an even smaller
16 percentage of those litigants who may seek a change of judge request. One of the courts
17 where it is often claimed that a change of judge request would create problems is the
18 Duncan Justice Court in Greenlee County. A review of the cases filed in that court do not
19 support the LJC’s opposition. As an example, during the prior **3** years ending June 30,
20 2014, a total of only **18** eviction cases were filed in the Duncan Justice Court. None of
21 those cases went to trial. See <http://www.azcourts.gov/Portals/39/2013DR/JPGreenlee.pdf>;
22 www.azcourts.gov/Portals/39/2014DR/JPGreenlee.pdf.⁶ Thus, the proposed rule
23 change would have had no effect on justice court administration in the Duncan Justice
24 Court over that 3-year period. In fact, the Duncan Justice Court had no trials in those
25 years for any case.

27 ⁶ The statistical reports lump all civil cases, including evictions, into one category
28 for trials. Thus, we can only tell that there were no trials for eviction cases when there
were no trials at all.

1 Other rural courts throughout the state present similar statistics. In the Safford
2 Justice Court in Graham County, in 2014, 58 evictions were filed and none went to trial.
3 <http://www.azcourts.gov/Portals/39/2014DR/JPGraham.pdf#page=5>. In Quartzsite
4 Justice Court in La Paz County, 20 evictions were filed in 2013 and none went to trial.
5 <http://www.azcourts.gov/Portals/39/2014DR/JPLaPaz.pdf#page=5>. In Lake Havasu
6 Justice Court in Mohave County, 172 evictions were filed in 2014 and none went to trial.
7 <http://www.azcourts.gov/Portals/39/2014DR/JPMohave.pdf>. Finally, in Pinetop/Lakeside
8 Justice Court in Navajo County, 52 evictions were filed in 2013 and 2014 and none went
9 to trial. <http://www.azcourts.gov/Portals/39/2014DR/JPNavajo.pdf#page=7>.

10 While the number of evictions filed in urban courts may be higher, given the large
11 number of default judgments in eviction cases, the change of judge requests should not
12 significantly impact the justice court administration. Significantly, the LJC fails to
13 provide any information on how many change of judge requests are filed in rural or
14 stand-alone urban courts for other types of cases. The LJC presents no data in support of
15 their assertions and instead relies on speculation. To address this speculation, the State
16 Bar Petition has suggested a one-year limit on the rule change to see if the rule change, in
17 fact, presents widespread administrative issues. If the rule change is promulgated on a
18 one-year basis, this will give the LJC sufficient time to document any actual widespread
19 administrative issues. If such evidence is produced, then the Legal Services Committee
20 of the State Bar and the Court can address those matters. Significantly, the LJC did not
21 mention, let alone address the proposed one-year limitation and explain why it is not an
22 appropriate alternative.

23 The LJC also claims the amendment is not “prudent.” The LJC cites to the
24 Arizona Judicial Council resolution standard and claims it will not be possible to meet
25 this standard in “isolated rural courts” and “most likely” in stand-alone urban courts.⁷
26 The LJC provides only speculation on impact and, again, provides no data in support. As
27 noted above, the one-year limit on the rule change will give the justice courts time to

28 ⁷ In section V below, we address these issues in more detail.

1 provide this data. Moreover, as explained in the Petition, the case processing standards
2 are intended to provide the courts with a framework for the development and testing of
3 case management reports and are intended to compliment, not supplant due process
4 considerations. These standards are not set in stone, should be able to accommodate the
5 change of judge requests and can be tweaked if necessary. The one-year limit will
6 provide everyone an opportunity to see what effect, if any, the change of judge rule has
7 on processing standards and judicial administration.

8 Even if the processing standards are relevant to this Petition, the LJC fails to
9 discuss or distinguish a similar time limit requirement in the change of venue statute.
10 The LJC fails to distinguish or even explain the impact that the timeliness requirements in
11 the change of venue statute has on court administration. Pursuant to A.R.S. § 22-205(B),
12 when there is the transfer of a case for the disqualification of a justice:

13 **B. The order of transfer** shall state the reason for the
14 transfer and the name of the justice court to which the transfer
15 is made, and **shall require the parties and witnesses to**
16 **appear before the justice court named in the order, not**
17 **less than two nor more than five days after its date.**
(emphasis added).

18 The justice courts have not asserted that the time requirements for processing the change
19 of venue order are not attainable. Thus, there already is a process in place throughout all
20 the justice courts to handle the change of venue requests. If the justice courts are able to
21 meet these similar deadlines, then the change of judge transfers also should be handled
22 administratively without problems.

23 Finally, the LJC claims the amendment “will likely” have an adverse impact on
24 tenants. The LJC claims that tenants are unrepresented 99% of the time and will not
25 know about this rule, and if a tenant did know about the rule, he or she would not have
26 the “knowledge” and “sophistication” to use it. The legal services community knows of
27 no other situation where such a claim is considered a valid reason to not promulgate a
28 procedural rule. Certainly it was not a valid reason to not have change of judge

1 provisions in Rule 42 of the Rules of Civil Procedure or Rule 133 of the Justice Court
2 Rules of Procedure. It is not a valid reason in this case either. This rule simply brings
3 parity to eviction cases with other civil cases heard in justice court and eviction cases
4 (and all other civil cases) heard in superior court that have a change of judge rule.

5 The LJC also suggests that some landlord attorneys will use the rule more than
6 tenants. This claim, as well, is speculation. The claim also appears to go against the
7 landlords' interests for the speediest resolution of cases because the LJC speculates that
8 the change of judge request could "gain the perception of an easy way to delay" the
9 proceedings.

10 Moreover, the LJC states that no justice of the peace or landlord attorney was
11 consulted about this rule change before the petition was filed and they oppose the rule
12 change. This claim is not correct. The LJC comments were submitted by Maricopa
13 County Justice Steven McMurry. As explained in section II above, Justice McMurry
14 attended the Board of Governors meeting where this petition was discussed and voted
15 upon and provided testimony in opposition to the petition. In addition, Maricopa County
16 Justice Gerald Williams attended the State Bar Rules Committee meeting and provided
17 testimony against the rule change and submitted a letter written by Justice McMurry.
18 The record is clear that this Petition was fully vetted at the State Bar.

19 **V. Consistency with Statutory Scheme and Time Standards**

20 Opposition to a change of judge in eviction cases often refer to the statutory
21 scheme and case processing recommendations. In this section, we provide a more
22 detailed explanation how this Petition is consistent with both.

23 First, the rural courts hear a very small number of evictions. The annual statistics
24 on where eviction actions take place show the limited impact this rule will have on
25 Justice Court administration. The rural precincts heard only a fraction of the
26 approximately 86,000 eviction actions filed in Justice Courts statewide in 2014, the last
27 year data is available. More than 66,000 of evictions were filed in Maricopa County in
28 2014 and another 14,000 were filed in Pima County. See <http://www.azcourts.gov/>

1 Portals/39/2014DR/JPMaricopa.pdf; <https://www.azcourts.gov/Portals/39/2014DR/JP>
2 Pima.pdf; <http://www.azcourts.gov/statistics/AnnualDataReports/2014DataReport/2014>
3 CaseActivitybyCounty.aspx.⁸ Pima County has a consolidated justice court complex
4 with all justice courts in one location. This leaves approximately 6,000 evictions
5 throughout the rest of the state. Similar filings were reported in 2012 and 2013.⁹ Even as
6 to those evictions, the vast majority end in default. Thus, this rule affects only that even
7 smaller percentage of tenants who contest the eviction. This Court should not allow
8 heightened and exaggerated concern for rural precincts to outbalance due process rights
9 of all tenants statewide.

10 In addition, the speedy timeframes of eviction actions are not as unique as some
11 have suggested. Changes of judge are permitted in time-sensitive applications for orders
12 of protection and injunctions against harassment in Justice Court. *See* Rule 1(A)(2) of
13 the Arizona Rules of Protective Order Procedure (declaring that the Arizona Rules of
14 Civil Procedure apply to those cases “when not inconsistent with these rules.”) Even in
15 Superior Court, where the change of judge applies in all cases except cases in Tax Court,
16 Ariz. R. Civ. P. 42(f)(1)(A), the exercise of a peremptory challenge to a judicial officer
17 can delay a request for injunctive relief under Ariz. R. Civ. P. 65, particularly in rural
18 counties with limited benches. Courts and administrators have adapted to these rules in
19 order to ensure the provision of justice and this Court should not presume prejudicial
20 delay.

21 For similar reasons, a decision by this Court in support of a peremptory judicial
22 challenge is not inconsistent with the provisional “Timing Standards” supported by the
23 Arizona Judicial Council. The Arizona Judicial Council’s Executive Summary

24 ⁸ The number of evictions filed in Arizona appears very high compared to other
25 states and cities. *See Evicted*, page 345, footnote 5, noting some statistics on eviction
26 filings outside Arizona.

27 ⁹ In 2012 and 2013, there were approximately 84,000 evictions filed in justice
28 courts with 78,000 filed in Maricopa and Pima Counties. *See* [http://www.azcourts.gov/](http://www.azcourts.gov/statistics/AnnualDataReports/2013/DataReport/2013CaseActivitybyCounty.aspx)
[statistics/AnnualDataReports/2013/DataReport/2013CaseActivitybyCounty.aspx](http://www.azcourts.gov/statistics/AnnualDataReports/2013/DataReport/2013CaseActivitybyCounty.aspx).

1 recognizes the appropriate balance of the rights of individual litigants against the need for
2 case management tools.

3 Case processing standards should complement, rather than
4 supplant, due process considerations. Waiting periods are
5 deliberately built into some court procedures and processes in
6 order to preserve parties' rights (e.g., to provide adequate
7 notice, to conduct discovery, or to receive service of
8 process).¹⁰

8 "Excerpt from the Interim Report and Recommendation of the Arizona Case Processing
9 Standards Steering Committee," September 30, 2013, available at [http://www.azcourts.
10 gov/Portals/84/MeetingMaterials/2013/October/Tab4AzCaseProcStand_2_.pdf](http://www.azcourts.gov/Portals/84/MeetingMaterials/2013/October/Tab4AzCaseProcStand_2_.pdf).

11 The Steering Committee on Arizona Case Processing Standards of the Arizona
12 Supreme Court proposed as a "standard" that 98% of evictions be resolved in 10 days.
13 [http://www.az.courts.gov/cscommittees/committeonArizonaCaseProcessingStandards.
14 aspx](http://www.az.courts.gov/cscommittees/committeonArizonaCaseProcessingStandards.aspx). The Arizona Supreme Court in Administrative Order No. 2013-95, on November
15 14, 2013, provisionally adopted the case processing standards "to provide local courts
16 and the Administrative Office of the Courts ("AOC") with a time standards framework
17 for the development and testing of case management reports." [http://www.
18 azcourts.gov/Portals/zz/admorder.Order13/2013.95](http://www.azcourts.gov/Portals/zz/admorder.Order13/2013.95). These provisional case processing
19 standards should not affect the consideration of the petition.

20 The provisional resolution standard is to resolve 98% of eviction actions within 10
21 days. <http://www.azcourts.gov/Portals/22/admorders/Orders13/2013-95>. Whether this
22 provisional standard will be affected by the proposed rule is speculative. If there is an
23 adverse impact, the Court can anticipate that the impact would be relatively small, given
24 the paucity of eviction trials and the heavy volume of default judgments.¹¹ Using the

25
26 ¹⁰ We would add that in the eviction context, that all of these litigation activities are
27 allowed in eviction cases. *See, e.g.*, Rules 9, 10 and 12 of the Rules of Procedure for
28 Eviction Actions.

¹¹ In addition, it is not the case that currently all eviction trials occur within the three-
day time frame for continuances in A.R.S. § 12-1177(C). Either party can request a trial

1 provisional standard that 2% of the evictions would not be resolved within 10 days, for
2 the 86,000 evictions filed in 2014 that would be 1,720 cases. The Institute, DNA and
3 SALA sincerely doubt that the change of judge rule would impact anything close to this
4 number of cases.

5 Any impact on the processing standards can be expected to be relatively small,
6 given the paucity of eviction trials and the heavy volume of default judgments. The
7 Institute, DNA and SALA support the efforts of the Judicial Council to move cases
8 forward faster for the benefit of the litigants and the justice system as a whole, but those
9 efforts can and should take into account the substantive rights of the individual litigants
10 as well.

11 In addition, although A.R.S. § 33-1377 sets the timeframe for filing a complaint,
12 serving the summons, the initial court date and continuances, these timeframes do not
13 require that a case be resolved within any certain number of days. It is a misreading of
14 A.R.S. § 33-1377 to claim that an eviction “must” be resolved in 9 days. One need only
15 look to the Rules of Procedure for Eviction Actions to see that the parties may file
16 motions (rule 9), request disclosures and discovery (rule 10) and request a jury trial (rule
17 12). While many evictions are resolved rather quickly, administrative case management
18 provisions should not trump fundamental fairness and due process.

19 Finally, as noted previously, if the Court has concerns about the effect the
20 proposal will have on justice court administration, we respectfully request that the Court
21

22 by jury (Rule 12 of the Rules of Procedure for Eviction Actions) and file motions,
23 including motions to amend, for judgment on the pleadings, to dismiss, for
24 reconsideration and other appropriate motions with a reasonable opportunity to respond
25 before a ruling by the court (Rule 9 of the Rules of Procedure for Eviction Actions). The
26 parties also can request disclosure of evidence, taking of depositions, production of
27 documents, inspection of the property and issuance of subpoenas (Rule 10 of the Rules
28 of Procedure for Eviction Actions). While jury trials, discovery and motion practice are
not common, they are allowed and all of the justice courts accommodate these requests,
even those in the rural counties. There is no reason that a request for a change of judge
similarly cannot be accommodated.

1 approve the rule change for one year. Such a limited time period, will give all sides of
2 this issue, sufficient time to see the effects, if any, on court administration.

3 **Conclusion**

4 For all the above reasons, the Institute, DNA and SALA request that the Court
5 approve the petition that removes the disparity caused by a lack of change of judge rule
6 for eviction actions in Justice Court. Eviction court litigants should have the same right
7 to a change of judge as a matter of right and for cause as other civil litigants in Justice
8 Court and Superior Court.

9 In addition, if the Court has concerns about the effect the proposal will have on
10 justice court administration, we respectfully request that the Court approve the rule
11 change for only one year. Such a limited time period, will give all sides of this issue,
12 sufficient time to see the effects, if any, on court administration. That time period will
13 provide sufficient time for the justice courts to collect data on the number of change of
14 judge requests, where these requests arise and the effects, if any, the requests have on
15 judicial administration. This process also will address the issue of fundamental fairness
16 for litigants in eviction cases and access to justice.

17 Respectfully submitted this 20th day of May 2016.

18 WILLIAM E. MORRIS INSTITUTE FOR
19 JUSTICE

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25 Electronic copy filed with the Clerk
26 of the Supreme Court of Arizona this
27 20th day of May 2016
28

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2 mailed to:

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By /s/ Ellen Sue Katz