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7 **IN THE SUPREME COURT**
8 **STATE OF ARIZONA**

9 In the Matter of:

Supreme Court No. R-17-

10 **PETITION TO AMEND THE**
11 **RULES OF PROCEDURE FOR**
12 **EVICITION ACTIONS**

PETITION

13 Pursuant to Rule 28 of the Arizona Rules of Supreme Court, the State Bar of
14 Arizona ("State Bar") respectfully petitions this Court to adopt an amendment to the
15 Rules of Procedure for Eviction Actions by adding a rule on how to compute time
16 periods as Rule 3(c) and (d) and by deleting Rule 5(e) on the computation of time
17 for service of the summons and complaint, as that section would be subsumed under
18 the proposed rule. The proposed rule would follow in general, the state statutes,
19 A.R.S. §§ 1-243(a) and 1-303(A), on computation of time. The proposed rule differs
20 from Rule 115 of the Justice Court Rules of Civil Procedure concerning computation
21 of time that specifies how time is computed for other civil cases heard by the Justice
22 Courts, in that it does not differentiate for time periods less than 11 days or have a
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1 provision on e-mail and mail. *See* Rule 115(a) (2) and (3). In support of this Petition,
2 the State Bar states the following:

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4 **I. Statement of Interest**

5 The Legal Services Committee of the State Bar, the initial proponent of this
6 Petition, is a standing committee of the State Bar comprising a broad cross-section
7 of attorneys, including staff from the legal services programs. The Committee's
8 mission is to work on access to justice issues for low-income Arizonans. The
9 Committee historically has had an interest in the rights of tenants in eviction cases.
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12 **II. Background and Purpose of the Proposed Rule Amendment**

13 In 2008, the Arizona Supreme Court approved the Rules of Procedure for
14 Eviction Actions. The rules have limited information on how to compute time. Rule
15 3 pertains to computation of time in general, but there is nothing in that rule about
16 how to compute time periods. Rule 3(a) states that unless otherwise stated, the days
17 are calendar days. In subsection (b), the rule explains how to extend the time for
18 doing an act. Rule 5(e) pertains to service of the summons and complaint, and
19 provides that the date of service is not counted for the computation of time for service
20 of the complaint and summons. There are no other references to computing time in
21 the eviction rules.
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25 In 2012, the Arizona Supreme Court approved the Justice Court Rules of Civil

1 Procedure. Because the rules for eviction actions were already in place, the Justice
2 Court Rules of Civil Procedure do not apply to evictions. Rule 101(b). Rule 115 of
3 the Justice Court Rules includes the “basic rules” on how to count time periods in
4 subsection a and provides for additional time for mail or e-mail in subsection (b).
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6 Similarly, the Federal Rules of Civil Procedure, Rule 6(a)(1)(A), and the
7 Arizona Rules of Civil Procedure, Rule 6(a), provide detail on how to compute time.
8 Each of these rules provides that in calculating the time period allowed by rule, order
9 of court, or statute, the day of the act or default from which the designated time
10 period begins to run is not included. Justice Court Rule 115(a)(1); Federal Court
11 Rule 6(a)(1)(A); Arizona Rules of Civil Procedure 6(a). The proposed rule
12 amendment would add this clarification to the eviction court rules as Rule 3(c).
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15 Similarly, each rule provides that if the last day of the time period is a
16 Saturday, Sunday or legal holiday, that the time period runs until the next day that is
17 not a Saturday, Sunday or legal holiday. Justice Court Rule 115(a) (3); Federal Court
18 Rule 6(a)(1)(C); Arizona Rules of Civil Procedure 6(a). The proposed rule would
19 add this clarification to the eviction rules as Rule 3(d).
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1 Eviction actions, one of the most common civil cases heard in Justice Court,
2 are the only type of case that does not specify how to compute time.¹ Petitioner
3 submits the proposed rule for consideration by the Court so that litigants in eviction
4 cases, like all other litigants in civil cases heard in Justice Court and Superior Court,
5 will have clarification on how to compute time.
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7 **III. Proposed Rule Amendment**

8 **Proposed Eviction Rule 3(c) and (d) – How to Calculate Time**

9 **New:** Rule 3(c) and (d)

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11 (c) *Day of the act or default.* In calculating any period of time specified or
12 allowed by these rules, by any local rules, by order of a court, or by any
13 applicable statute, the day of the act or default from which the designated
14 period of time begins to run is not included.
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18 ¹ In addition to eviction cases, the Justice Court Rules of Civil Procedure do not
19 apply to civil traffic, civil boating, protective orders and injunctions against
20 harassment. Rule 101(b). These other cases have a rule on computing time.
21 Computation of time is addressed in orders of protection and injunctions against
22 harassment cases because pursuant to Rule 1(A)(2) of the Arizona Rules of
23 Protective Order Procedure, the Arizona Rules of Civil Procedure apply to those
24 cases, unless specifically inconsistent with the rules. Thus, as relevant here, Rule
25 6(a) applies to those cases, as well. For civil traffic and boating cases, Rule 2 (h) of
the Rules of Procedure in Civil Traffic and Civil Boating Violation Cases defines
how to compute the time limits and specifically excludes the day of the act or event
from which the designated time period begins to run and does not include the last
day if the day is a Saturday, Sunday or a day when the court is closed.

1 (d) *Last day*. The last day of the period is included, unless the last day is
2 a Saturday, Sunday or a legal holiday, in which event the period runs until
3 the end of the next day that is not a Saturday, Sunday or a legal holiday.

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5 **Delete:** Rule 5(e). Computation of Time.

6 The date of service shall not be counted when computing time for service
7 of the summons and complaint. The date of the initial appearance shall be
8 counted for that purpose.

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10 New Rule 3(c) and (d) are taken from A.R.S. § 1-243(a). Section 243(a)
11 provides that the last day is not counted if the day is a “holiday.” A.R.S. § 1-301(A)
12 defines the days that are holidays. Every Sunday is included in the definition of
13 holiday. We propose adding that if the last day falls on a Saturday, Sunday, or a
14 “legal” holiday, the day is not included. This is an expansion beyond the defined
15 holidays that include Sunday, but it is more in line with all other rules that do not
16 count the last day if it falls on a Saturday, Sunday or a “legal” holiday. Moreover,
17 the excluded weekends are not days when the justice courts are open to receive court
18 filings. We also propose deleting Rule 5(e) because it appears to exclude only the
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1 date of service from the day on which the time period for act or default begins to
2 run, which is incorrect.²

3 **IV. Explanation of Need for Proposed Rule**

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5 Tenants have a property interest in their residences. *Greene v. Lindsey*, 456
6 U. S. 444, 451-52 (1982); *see also Foundation Development Corporation v.*
7 *Loehmann's*, 163 Ariz. 438, 442, 788 P.2d 1189, 1193 (Ariz. 1990) (recognizing
8 common law right of tenant's property interest in rental). Eviction proceedings that
9 deprive tenants of that property must comply with the due process requirements of
10 the Fourteenth Amendment to the United States Constitution. *Greene*, 456 U.S. at
11 455.
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14 For low-income persons, an eviction action may threaten their only means of
15 shelter. *See, e.g.,* Chester Hartman and David Robinson, *Evictions: The Hidden*
16 *Housing Problem*, Housing Policy Debate, Vol. 14, Issue 4 (2003), <http://content.knowledgeplex.org/kp2/cache/kp/10950.pdf>. The inability to find other housing on
17 short notice can lead to the disruption of children's education, interruption of
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22 ² The State Bar does not propose adding a provision similar to that of Rule 6(a),
23 Ariz. R. Civ. P., or Rule 115(a)(2), Justice Ct. R. Civ. P., stating that if the time
24 period is fewer than 11 days, then intermediate Saturdays, Sundays, and legal
25 holidays are not counted. The Arizona Residential Landlord and Tenant Act and the
Forcible Entry and Detainer Act already refer to calendar days. *See, e.g.,* A.R.S. §
33-1368(H); A.R.S. § 12-1178(C).

1 employment, dislocation from health care providers, loss of personal belongings and
2 homelessness. In addition, the eviction process may lead to monetary judgments.
3 These monetary judgments make it difficult for tenants to secure new rental housing.
4 Thus, the consequences of eviction cases make them very important to tenants and
5 especially low-income tenants, who often lack back-up resources. The result of an
6 eviction may be that a family is living in a car. The importance of these cases and
7 the property interest at stake certainly is undercut by not having a specific rule on
8 how to compute time.
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11 The need for this rule is shown by the following example. Recently, a Justice
12 of the Peace in Maricopa County published some comments on another rule petition.
13 In those comments, the Justice explained a scenario on the service of a 5 day notice
14 by the landlord that rent was owed. The Justice stated that if the 5 day notice was
15 served on day one, and no rent was paid by the fifth day, then the eviction complaint
16 could be filed on day six. Pursuant to A.R.S. § 1-243(a), if a 5 day notice is served
17 on day one, the time period in which the tenant must act (pay the rent) begins on day
18 two and ends on day six. If the tenant did not pay the rent by day six, the landlord
19 could file an eviction on day seven. Given the short time period involved, this means
20 that a tenant has another full day to pay the rent. In this situation, the difference in
21 time is 20%. This additional day can mean all the difference between a tenant being
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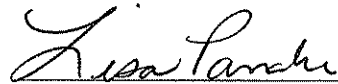
1 evicted and being able to stay in his or rental.

2 For all the above reasons, this clarification should be made.

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4 **CONCLUSION**

5 The proposed rule provides clarity for eviction actions in Justice and Superior
6 Court. Eviction court litigants should have the same information on how to compute
7 time period as other civil litigants in Justice Court and Superior Court. The State
8 Bar respectfully requests that the Court approve this Petition.
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11 RESPECTFULLY SUBMITTED this 9th day of January, 2017.

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15 Lisa M. Panahi
16 Acting General Counsel

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18 Electronic copy filed with the
19 Clerk of the Arizona Supreme Court
20 this 9th day of January, 2017.

21 by: 
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