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7 IN THE SUPREME COURT

8 STATE OF ARIZONA

9 PETITION TO ADOPT RULES OF
10 SMALL CLAIMS PROCEDURE AND
11 TO MODIFY RULE 101(b) OF THE
12 JUSTICE COURT RULES OF CIVIL
13 PROCEDURE (AMENDED)

Supreme Court No. R-18-0021

**Comments to Amended Petition to
Adopt Rules of Small Claims Procedure
and to Modify Rule 101(b) of the Justice
Court Rules of Civil Procedure**

14 Pursuant to Rule 28 of the Rules of the Supreme Court, Community Legal
15 Services (“CLS”), DNA People’s Legal Services (“DNA”), Southern Arizona Legal Aid
16 (“SALA”) and the William E. Morris Institute for Justice (“Institute”) respectfully submit
17 these comments to the Court concerning the Amended Petition to Adopt Rules of Small
18 Claims Procedure and to Modify Rule 101(b) of the Justice Court Rules of Civil
19 Procedure. While CLS, DNA, SALA and the Institute support the concept of Rules for
20 Small Claims Procedure, we are concerned that the impetus for these rules appears to be
21 the failure of the Justice Courts to meet the arbitrary deadline of resolving 98% of these
22 cases within 180 days of filing. By using this resolution deadline, we have concerns that
23 the proposed rules will make it difficult for many litigants to have their day in court. Our
24 comments are the following:

I. Statement of Interest

25 The Institute is a non-profit program that advocates on behalf of low-income
26 Arizonans. The Institute historically had an interest in the rights of unrepresented
27 litigants in court.

28 CLS, DNA and SALA are federally funded civil legal services program for low-
income Arizonans and provide legal services throughout the state. CLS, DNA and SALA

1 work on issues related to access to the courts for low-income and unrepresented litigants.

2 In July 2017, the Committee on Improving Small Claims Case Processing drafting
3 the small claims rules, sent SALA and the Institute a set of the draft rules relating to the
4 processing of small claims cases and requested our comments. SALA and the Institute
5 submitted comments and the Committee incorporated many of our comments.

6 CLS, DNA, SALA and the Institute support the promulgation of rules for small
7 claims cases and think these will be helpful to unrepresented litigants. We also support
8 that a written answer is not required. In reviewing the Amended Petition, we continue to
9 be concerned that the proposed rules that may not provide litigants adequate time to
10 prepare their cases and in other ways may have unintended consequences.

11 Currently, a small claims case is initiated when a plaintiff files and serves a
12 complaint on a defendant. A.R.S. § 22-513. After service of process, a defendant has 20
13 days to file an answer. A.R.S. § 22-514. Once the answer is filed, a hearing date is set
14 within 60 days of the filing of the answer. A.R.S. § 22-515(A).

15 The Amended Petition proposes to drastically modify Arizona's statutory scheme.
16 Under the Amended Petition, hearings would be set 45-60 days from the date complaints
17 are filed. Rule 7(a). Setting the hearing date on the filing of the complaint, affects all
18 other requirements. Plaintiffs would have up to 20 days from the date the complaint is
19 filed to serve defendants. Rule 7(c). Motions and requests for pre-hearing relief must be
20 filed 10-15 days before the hearing. *See, e.g.*, Rules 10(d), 11, 12(b) and 14(a), (b) and
21 (d). As explained below, under the Amended Petition, many defendants will be hindered
22 or unable to assert their rights. Other concerns we have are explained below.

23 **II. The Proposed Rules Do Not Give Most Defendants Adequate Time to** 24 **Prepare for Hearings**

25 **A. Initial Service and Pleading Requirements**

26 CLS, DNA, SALA and the Institute are concerned that the Amended Petition may
27 seriously compromise the ability of defendants to assert their rights. Under Rule 7(a), the
28 hearing date will be set 45-60 days after the filing of the complaint. Plaintiffs must serve

1 defendants within 20 days of the filing of the complaint. Rule 7(c). This is a very short
2 time period for an unrepresented litigant to effectuate service and is one-sixth the 120
3 days allowed for in Rule 113(i) of the Justice Court Rules of Civil Procedure. There is no
4 discussion in the rules explaining the reason in drafting the rules this unrealistic time
5 period was selected.

6 Using the example of a hearing set 45 days out, the plaintiff must serve the
7 defendant by the 20th day. These are unrepresented litigants who may have no or little
8 familiarity with judicial requirements. Defendants served on or near the 20th day may not
9 have time to perform the actions necessary to prepare for a hearing, such as to gather
10 documents, interview witnesses, and perform legal research or obtain legal assistance.
11 The proposed rules require that counterclaims must be filed 10 days before a hearing,
12 Rule 10 (d). Similarly, a request to transfer the case to justice court must be filed 10 days
13 prior to the hearing. Rule 12(b). A defendant served on the 20th day has only 15 days to
14 prepare and file a counterclaim and may be unable to do so in the short time allotted.
15 Similarly, the later served defendant may not have sufficient time to request a transfer of
16 the case from the small claims division to the regular justice court and thus, will have
17 waived their right to transfer the case, have the case heard by a jury or file an appeal. *See*
18 A.R.S. §§ 22-504, 518 and 519.

19 The following pre-trial motions and requests must be filed 15 days prior to the
20 hearing and present even shorter time periods for defendants to act after service:

- 21 1. Motion to change venue to another precinct. Rule 11.
- 22 2. Request to reschedule the matter to another date. Rule 14(b).
23 (Emergency requests within 15 days of the hearing can be filed but
24 will be granted only if good cause is shown for not filing earlier.)
- 25 3. Request to appear telephonically. Rule 14(d).
- 26 4. Request that a justice of the peace, rather than a hearing officer
27 decide the case. Rule 14(a).

1 5. Request an interpreter or a “special” accommodation. Rule 15.¹
2 Continuing with our example, a defendant served on or near the 20th day may be
3 precluded from filing the above pre-trial motions and requests because they must be filed
4 15 days prior to the small claims hearing, or by the 10th day after service.

5 The allowance for 20 days to complete service of the complaint and the triggering
6 of hearings set by the 45th day after the complaint is filed, combine to create a court
7 process that may have unintended consequences for defendants. The lack of an
8 opportunity to obtain a continuance or appear telephonically at the hearing could result in
9 the court awarding judgment in favor of the plaintiff in the defendant’s absence. Rule
10 14(c)(2).

11 Suggested Change: To address the lack of time for defendants to act in the
12 proposed rules, we suggest that all hearings be set at least 100 days from the filing of the
13 complaint and that service of the complaint be required at least 50 days before the
14 hearing date.

15 **B. Extensions of Time to Serve the Complaint**

16 Rule 7(e) allows the plaintiff to request an extension of time to serve the complaint
17 if the complaint is not served within 20 days of the date of filing the complaint. To
18 obtain an extension, the plaintiff must contact the court prior to the hearing date or appear
19 at the hearing and request the continuance. Rule 7(e)(1). For the request made at or
20 prior to the hearing, the court may require the plaintiff to “complete service by a date that
21 is at least 20 days from the date of the new hearing.” Rule 7(e)(1). In these situations,
22 the court is to continue the hearing “no more” than 30 days. Rule 7(e)(2). The problem
23 here is that the hearing will be continued only for 30 days and service must be at least 20
24 days before the hearing. Thus, in this circumstance, the unrepresented defendants will

25 ¹ Some of the proposed deadlines are shorter than those in the small claims statute,
26 A.R.S. § 22-501 *et seq.* As examples, in the statute, a party may object to the hearing
27 officer “prior to the date of the hearing,” A.R.S. § 22-506(G), and there is no deadline to
28 request a continuance of the hearing, A.R.S. § 22-515(C). We suggest that the small
claims rules follow the statute where the statute has more generous or no deadlines for
filing requests and motions.

1 have no time to do such actions as gather documents, interview witnesses, perform legal
2 research or obtain legal assistance, file any of the requests or motions noted above and
3 prepare for a hearing. As an example, a defendant served 20 days prior to the new
4 hearing date will have 5 days to file the motions and requests that require action 15 days
5 prior to the hearing and will only have 10 days to act for those actions that must occur 10
6 days prior to the hearing.

7 Suggested Change: CLS, DNA, SALA and the Institute suggest that for a request
8 for an extension of time to serve the complaint, the date for the new hearing be set at least
9 100 days out, with service of the complaint required at least 50 days prior to the hearing.

10 **C. Limited Option for Defendants to Request More Time**

11 The proposed rules provide one option for a defendant who has insufficient time to
12 prepare his or her case. Rule 14(f) provides that if the plaintiff serves the defendant
13 within 20 days of the complaint filing date, but the defendant does not think he or she has
14 adequate time to prepare or to exercise their rights, the defendant must appear at the
15 hearing and ask for a continuance. If the court finds the defendant's rights have been
16 harmed by the amount of time to respond, a continuance will be granted. Our concerns
17 are twofold. First, any option to request more time to prepare should apply to all
18 defendants, including those served outside the 20-day period after filing a complaint,
19 such as defendants served after an extension of time to serve the complaint. Under the
20 proposed rules these defendants encounter the same restricted time periods in which to
21 act, yet have no option to request additional time to prepare.² Second, because in many
22 situations as explained above, under the proposed rules a defendant's rights will be
23 infringed upon, CLS, DNA, SALA and the Institute suggest again that service of the
24 complaint occur 50 days prior to the hearing date. This will allow adequate time for the
25 unrepresented litigants to take the necessary steps to protect their interests and should
26 reduce the need for continuances.

27
28 ² This request is separate from the request to reschedule the hearing that must be in writing, for good cause and filed 15 days before the hearing. Rule 14(b).

1 In summation, to alleviate the risk of harm to defendants who want their day in
2 court, we suggest that the proposed rules be amended so that any service of process
3 deadlines for the complaint and the setting of hearing dates allow defendants an adequate
4 and minimum time to prepare his or her case. These recommendations support the
5 Amended Petition's goals. The small claims case processing time is shortened, and
6 hearings are set upon the filing of a complaint. Time limits are established for service
7 and pre-trial requests that do not operate to bar relief. Efficient court administration is
8 promoted, and defendants are afforded an adequate and minimum time to prepare for
9 hearings.

10 **III. Other Issues Concerning Lack of Amendments to Pleadings, Failure to**
11 **Require Evidence to be Submitted to Other Party, Information Disclosures,**
12 **Conduct of Hearings, No Provision for Subpoenas and Requests for**
13 **Reasonable Accommodations and Interpreters**

14 **A. Lack of Amendments to Pleadings**

15 The proposed rules do not allow plaintiffs to make amendments to complaints.
16 Rule 6(c). Instead plaintiffs may dismiss and re-file a new lawsuit. The failure to allow
17 amendments may create a hardship to plaintiffs who run up against the statute of
18 limitations. CLS, DNA, SALA and the Institute suggest an amendment process is needed
19 for plaintiffs to amend their pleadings when appropriate. The Institute proposes the Court
20 consider a more flexible approach and allow amendments to complaints for "good
21 cause."

22 **B. Failure to Require Evidence to be Submitted to the Other Party**

23 Although Rule 8 is entitled "Providing Documents to the Other Party After
24 Service of the Summons, Complaint and Notice," the rule fails to require each party to
25 give the evidence they intend to use at the hearing to the other party before the hearing.
26 This requirement should be added to the rule.³

27 ³ Rule 14(d) requires a person requesting to appear by telephone to attach the
28 evidence they want to submit at the hearing to the request. There is no corresponding
requirement for the other party to submit their evidence to the party who wants to appear
telephonically.

1 **C. Information Disclosure**

2 The Rules provide that “[a]ll parties should provide the court with a physical
3 address, email address, and phone number” so that the court can communicate with them.
4 Rule 3. The Rule is problematic. Some persons may not have these contacts or do not
5 wish to disclose this information. For instance, a homeless person may not have a
6 physical address; a victim of domestic or other violence may wish to protect her contact
7 information and has the right to keep this information confidential; a low-income person
8 may not have a phone; and a limited English speaking person may not be able to use
9 email. For persons with disabilities, there may be accessibility and technological
10 barriers.

11 While CLS, DNA, SALA and the Institute understand the need for court personnel
12 to remain in communication with parties, we request that the Court mend the rules to
13 allow litigants to provide personal contact information in alternate formats and by
14 alternate methods and to keep their information confidential.

15 **D. Conduct of Hearings/Telephone Appearances**

16 In Rule 14(e), CLS, DNA, SALA and the Institute suggest that the rules
17 specifically allow for the parties to object to documentary and witness evidence the other
18 party wants to use at the hearing. In addition, parties should be allowed to ask questions
19 of each other and any witnesses, but as currently drafted, the rule only makes this
20 discretionary with the justice of the peace or hearing officer.

21 Finally, Rule 14(d) provides for a party to appear by telephone “if the court allows
22 telephonic appearances.” If telephonic appearances are limited to those requests showing
23 good cause, then the rule should apply to all courts and not make this discretionary with
24 the courts.

25 **E. Failure to Have a Rule for Subpoenas**

26 Although the list of small claims form documents the parties are required to use
27 includes a subpoena, Rule 21(c)(10), the proposed rules have no provision or process for
28 requesting a subpoena for witness testimony or for the production of documents. A rule

1 should be included to explain to litigants the steps to take to get a subpoena issued.

2 **F. Requests for Reasonable Accommodations and Interpreters**

3 In addition, CLS, DNA, SALA and the Institute object to the rules' requirement
4 that requests for interpreter services or reasonable accommodations "should" be made 15
5 days prior to the hearing. Rule 15. As explained above, requests this far in advance of
6 the hearing may not be possible. In addition, these are requests that the courts must grant
7 under Title VI of the Civil Rights Act (language services) and the Americans with
8 Disabilities Act (reasonable accommodations). The courts are obligated to grant a
9 request for interpreter services or a request for a reasonable accommodation whenever the
10 request is made, and suggested deadlines are not appropriate. The suggested 15-day
11 requirement may mean that persons with limited English proficiency or persons with
12 disabilities may be denied the needed service and effectively denied their day in court or
13 the ability to participate fully in the hearing. It is unlawful for the courts to only provide
14 the requested services and thus, not discriminate against litigants, for those persons who
15 make their requests by a certain time prior to the hearing. The Institute and other
16 advocates have raised this issue in other settings and the justice court summons provides
17 no deadline to request these services. For these requests, CLS, SALA and the Institute
18 request that the rules state that the requests should be made as soon as practicable with no
19 suggested deadlines.

20 **IV. Exempting Some Courts from the Rules**

21 CLS, DNA, SALA and the Institute are concerned that Rule 20 exempts the Pima
22 County Consolidated Justice Courts ("PCCJC") from using the rules. The PCCJC
23 submitted comments to the initial petition and objected to the requirement that the court
24 set a hearing date when the complaint was filed. We think if these rules are a good idea
25 and are adopted, they should apply to all courts. We are not aware of any rules of
26 procedure that exempt a court from their application because the objecting court does not
27 agree with the procedures.

28 If this Court decides to consider an exemption, the exemption should be very

1 limited. If the PCCJC do not want to set a hearing date when the complaint is filed, that
2 is not a reason for the other proposed rules to not apply to the small claims cases heard in
3 their courts. If the primary issue is when the hearing is set, then at most, we request that
4 the Court only consider whether to exempt the PCCJC from those rules that pertain to the
5 setting of the hearing, and not from the other rules. If there is an exemption, we suggest
6 that the Court modify the last sentence in Rule 20 as follows:

7 “An exception to these rules shall apply only to the setting of
8 a hearing in Rules 7(a) and 7(e)(1) and (2).

9 In addition, another provision would need to be added to the rules to explain when the
10 PCCJC would set a hearing.

11 **V. Notice to Parties**

12 CLS, SALA and the Institute have suggestions to improve the notice to the parties.
13 We like the use of a notice but initially note that the font is too small and that some of the
14 words could be changed to be easier to understand. In addition, the notice should be
15 consistent with the warning on the complaint about the right to request transfer of the
16 case to justice court. A.R.S. § 22-504(B). Finally, the explanation in paragraph 4 needs
17 to be clear that if the party wants the right to appeal, or any of the other rights that are not
18 available in small claims cases, the party **must** file a request to transfer the case to justice
19 court. Therefore, we suggest that the notice state affirmatively in bold after the list in
20 paragraph 4: **“If defendant wants any of the above rights, you must file a request to**
21 **transfer the case to the regular civil division of the justice court at least 10 days**
22 **prior to the hearing date.”**

23 We also suggest that paragraph 10 of the notice explain to the parties the benefits
24 of coming to the hearing. If the changes require the notice to be two pages, we think that
25 is fine. If the notice is worth doing, it should be comprehensive and provide helpful
26 information to the litigants.

27 Finally, we have concerns with the wording in paragraph 11 that a defendant who
28 appears telephonically “may be at a disadvantage since all evidence must be submitted to

1 the court before the hearing.” This appears to conflict with Rule 14(d) that any request
2 for a telephonic appearance must contain the parties’ evidence. We suggest that the notice
3 state the following:

4 “Although you may be permitted to appear telephonically for
5 reasons such as no longer ... etc., you must submit your
6 evidence to the court before the hearing.”

7 If the Justice Courts think there are some other disadvantages to appearing by
8 telephone, then those should be specifically stated.

9 **Conclusion**

10 For all the above reasons, CLS, SALA and the Institute request that the Court
11 approve the Amended Petition with our above recommendations. Based on our
12 recommendations, the proposed rules need additional revisions. We understand a second
13 amended petition will be submitted later this year and we hope our recommendations are
14 incorporated into that petition.⁴

15 Respectfully submitted this 31st day of May 2018.

16 COMMUNITY LEGAL SERVICES
17 DNA PEOPLE’S LEGAL SERVICES
18 SOUTHERN ARIZONA LEGAL AID
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27 _____
28 ⁴ We are aware there is a pilot project for these proposed rules in four justice courts.
Given our comments above, we are very concerned about the effect these rules will have
on litigants’ rights to their day in court in those four courts while the pilot is in place.

1 Original electronically filed with the
2 Clerk of the Supreme Court of Arizona
3 this 31st day of May 2018.

4 By: /s/ Ellen Sue Katz
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