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IN THE SUPREME COURT
STATE OF ARIZONA

PETITION TO ADOPT RULES OF
SMALL CLAIMS PROCEDURE AND
TO MODIFY RULE 101(b) OF THE
JUSTICE COURT RULES OF CIVIL
PROCEDURE (SECOND AMENDED)

Supreme Court No. R-18-0021

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

Pursuant to Rule 28 of the Rules of the Supreme Court, Community Legal Services (“CLS”), DNA People’s Legal Services (“DNA”), Southern Arizona Legal Aid (“SALA”) and the William E. Morris Institute for Justice (“Institute”) respectfully submit these comments to the Court concerning the Second Amended Petition to Adopt Rules of Small Claims Procedure and to Modify Rule 101(b) of the Justice Court Rules of Civil Procedure. CLS, DNA, SALA and the Institute previously filed comments to a set of draft rules and to the Amended Petition. We support the proposal for Rules for Small Claims Procedure but remain concerned that the proposed rules will make it difficult for many litigants to have their day in court.

I. Statement of Interest

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

CLS, DNA and SALA are federally funded civil legal services programs for low-income Arizonans and provide legal services throughout the state. CLS, DNA and SALA work on issues related to access to the courts for low-income and unrepresented litigants.

1 In July 2017, the Committee on Improving Small Claims Case Processing
2 (“Committee”) sent SALA and the Institute a set of the draft rules relating to the
3 processing of small claims cases and requested our comments. SALA and the Institute
4 submitted comments, and the Committee incorporated many of these comments into the
5 Amended Petition. CLS, DNA, SALA and the Institute also submitted comments to the
6 Amended Petition.

7 In reviewing the Second Amended Petition, we continue to be concerned that the
8 proposed rules may not provide litigants adequate time to prepare their cases and in other
9 ways may have unintended consequences. We provide feedback on the Small Claims
10 Pilot Program, reiterate many concerns previously discussed in our comments to the
11 Amended Petition, and highlight new concerns to proposals in the Second Amended
12 Petition.

13 The primary focus of the rules is to set a hearing date at the time the complaint is
14 filed in order to process these cases within a certain time frame. While we do not opine
15 whether this is a good practice, we are concerned that the hearing date in the proposed
16 rules is not set far out enough to allow for the parties to have their day in court. These
17 are unrepresented litigants who may not be familiar with the court’s practices and the
18 requirements of litigation.

19 **II. Small Claims Pilot Program**

20 The Second Amended Petition includes the outcomes to date of the Small Claims
21 Pilot Program that began on January 10, 2018 and took place in four participating courts.
22 Second Amended Petition at 11–14. The program was able to identify issues with the
23 proposed rules, but the data compiled by the Committee is unclear. In the Second
24 Amended Petition, the Committee discusses the findings in terms of average time to
25 disposition a case, but never fully explains how many cases fall below or above that
26 average or the range of the disposition dates except to state that all dispositions were
27 under 113 days from date of filing. For instance, the Committee explains that “the
28 average time to disposition in each court ... ranges from 54-67 days,” and uses this data

1 as justification for its proposed timeframe for case adjudication, but many cases would
2 fall well outside that range. *Id.* at 12. Without exact numbers, we cannot be sure of the
3 program's outcome.

4 The use of averages in the pilot program only confirms that the Committee's
5 primary motivation behind the adoption of these rules solely revolves around disposition
6 time and not access to justice. The Committee submits several charts to show that the
7 overall time standards were that 100% of the cases were dispositioned within 180 days.
8 Appendix A, 1-4. As explained in our comments that follow, we think this result could
9 be reached without the restrictive time frames in the proposed rules. Significantly, two of
10 the pilot courts "reported that processing small claims cases in the manner set forth in the
11 pilot rules is not sustainable long-term due to the large resource draw required for the
12 courts' larger small claims caseloads." *Id.* at 12.¹ The Committee conceded that setting
13 the hearing at the time of filing of the complaint would require an increase in hearing
14 officers to hear the cases. *Id.* The two pilot justice courts in Maricopa County each had
15 to hire a part-time clerk to support the pilot.² Based on the justice courts' own
16 experiences, the timeframes proposed in the Second Amended Complaint appear
17 unreasonable for the justices or hearing officers, administrative staff, and the litigants.

18 **III. The Proposed Rules Continue to Not Give Litigants Adequate Time**

19 While the Committee has made revisions to the proposed rules in the Second
20 Amended Petition, we continue to be concerned that the parties' rights to be heard may
21 be disadvantaged by these rules.

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25 ¹ In recognition of the unsustainability of the proposed rules, the Second Amended
26 Petition increases the time to submit proof of service to 30 days, Rule 8(b)(1), and allows
27 for dismissal of the complaint if there is no proof of service at 60 days. Rule 8(d). These
modest changes will have no impact on the unsustainability concerns.

28 ² Alternative Language for Proposed Small Claims Rules, page 4, filed by several
Justices of the Peace on Sept. 25, 2018. ("Alternative Language").

1 **A. Hearing Date, Service of Process and Pleading Requirements**

2 CLS, DNA, SALA and the Institute remain concerned that the proposed rules may
3 seriously compromise the ability of defendants to assert their rights. The Second
4 Amended Petition requires the hearing date be set 60-75 days after the filing of the
5 complaint. Rule 7(a). The Second Amended Petition also requires plaintiffs to file proof
6 of service within 30 days of the complaint filing date. Rule 8(a). A plaintiff who is
7 unable to serve within the initial 30-day period, may file a written request for an
8 additional 30 days. Rule 8(c).

9 **1. Defendants**

10 The problems these rules cause for defendants are obvious. Any defendant served
11 at the end of the initial 30-day period, will be severely restricted in the time she has to
12 respond to the complaint and take other actions if the hearing is set at the 60-day period.
13 These problems are compounded if the plaintiff needs an extension of time to serve and
14 does not serve until on or near the 60th day. In those cases, defendants will have no time
15 to act. This result occurs because the time to file several motions is set from the date of
16 the hearing, and not from the date of service.

17 As examples, the following pre-trial motions and requests must be filed 15 days
18 prior to the hearing:

- 19 1. Motion to change venue to another precinct. Rule 12. Plaintiff has
20 10 days to respond.
- 21 2. Request to reschedule the matter to another date. Rule 15(b).
22 (Emergency requests within 15 days of the hearing can be filed but
23 will be granted only if good cause is shown for not filing earlier.)
- 24 3. Request to appear telephonically. Rule 15(d).
- 25 4. Request that a justice of the peace, rather than a hearing officer
26 decide the case. Rule 15(a).³

27
28 ³ Some of the proposed deadlines are shorter than those in the small claims statute,
A.R.S. § 22-501 *et seq.* As examples, in the statute, a party may object to the hearing

1 A defendant served on or near the 30th day may be precluded from filing the
2 above pre-trial motions and requests because they must be filed 15 days prior to the small
3 claims hearing. These are unrepresented litigants who may have no or little familiarity
4 with judicial requirements and defendants served later may not have time to perform the
5 actions necessary to prepare for a hearing. Any hearing set at 60 days will severely
6 restrict a defendant in having the time to adequately investigate the matter, obtain
7 documents, speak to witnesses, perform legal research or obtain legal assistance and
8 make decisions about the case.

9 In another example, the proposed rules require that counterclaims must be filed 20
10 days after service. Rule 11 (b). A defendant served close to the hearing date will not
11 have sufficient time to prepare and file a counterclaim. Similarly, a request to transfer
12 the case to justice court must be filed 10 days prior to the hearing. Rule 13(b). The later
13 served defendant may not have sufficient time to request a transfer of the case from the
14 small claims division to the regular justice court and, thus, will have waived their right to
15 transfer the case, have the case heard by a jury or file an appeal. *See* A.R.S. §§ 22-504,
16 518 and 519. While the rules allow for the defendant to request more time “to prepare or
17 properly exercise their rights,” Rule 15(f), the drafting of the rules should avoid making
18 this an almost uniform need. The lack of a meaningful opportunity to obtain a
19 continuance, Rule 15(f), or appear telephonically at the hearing, Rule 15(b), could result
20 in the court awarding judgment in favor of the plaintiff in the defendant’s absence.

21 **2. Plaintiffs**

22 CLS, DNA, SALA and the Institute are similarly concerned that the proposed
23 rules severely limit the rights of plaintiffs. As an example, defendants must file a
24 counterclaim within 20 days of service of the summons, complaint, and notice. Rule
25 11(b). For a hearing set at 60 days from the filing of the complaint, a defendant served

26 officer “prior to the date of the hearing,” A.R.S. § 22-506(G), and there is no deadline to
27 request a continuance of the hearing, A.R.S. § 22-515(C). We suggest that the small
28 claims rules follow the statute where the statute has more generous or no deadlines for
filing requests and motions.

1 on the 30th day can file a counterclaim 10 days before the hearing (20 days after service).
2 This leaves the unrepresented plaintiff very little time to review the counterclaim and
3 prepare accordingly. Similarly, a defendant may file a motion to change venue 15 days
4 before the hearing and a plaintiff has 10 days to file a response to a motion to change
5 venue. Rule 12. The rules fail to build in sufficient time for the response to be filed and
6 ruled upon before the hearing. Thus, many litigants will have to appear for a hearing
7 when a change of venue will be granted but not in sufficient time to let the parties know
8 prior to coming to court.

9 **3. Suggested Changes**

10 To address the lack of time for defendants and plaintiffs to act in the proposed
11 rules, we suggest that all hearings be set 125 days from the filing of the complaint ⁴ and
12 that service of the complaint be required at least 60 days before the hearing date. We
13 suggest that all plaintiffs have 60 days to serve the complaint and not be required to
14 request an extension (either orally or in writing) at 30 days if more time is needed.⁵
15 Setting hearings out 125 days will prevent all the problems noted above. Both parties
16 will have sufficient time to file motions and requests and prepare for the hearing. These
17

18 ⁴ Our recommendation is in line with other options presented. The Justices in the
19 Alternative Language recommend a timeline that allows for service of process within 45
20 days, plus 20 days for a defendant to file an answer or request a hearing, and that
21 hearings to be set within 60 days after a defendant responds, which could total 125 days
22 after the filing of a complaint. (Filed Sept. 25, 2018). In addition, the time for an
23 Alternative Dispute Resolution in Rule 14 (60-75 days for the ADR, plus a continuance
24 of 30 days and then the setting of the hearing within 30 days of the ADR) could extend
25 the hearing out to 135 days from the filing of the complaint.

26 ⁵ The Second Amended Petition allows the court to grant plaintiffs a 30-day
27 extension to serve defendants with the summons, complaint, and notice. Rule 8(c). The
28 proposed rule, however, does not require the court to reset the hearing date. Thus a 30-
day extension would run up against the 60-day hearing date and also would not work
with a 75-day hearing date, as the defendant would be served 15 days before the hearing.
We reiterate that using a further out hearing date alleviates all these avoidable pleading
complications. There is no need for plaintiffs to request an extension of time for service,
no need for the court to re-set the hearing date and adequate time for the filing of requests
and responses.

1 recommendations fall well within the small claims case processing standards currently
2 adopted.⁶

3 **IV. Other Issues Including Lack of Amendments to Pleadings, Conduct of**
4 **Hearings, Requests for Reasonable Accommodations and Interpreters, Notice**
5 **to Parties and Information Disclosure**

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

7 The proposed rules do not allow plaintiffs to make amendments to complaints, or
8 defendants to amend counterclaims. Rules 6(c), 11(d). The failure to allow amendments
9 may create hardships to plaintiffs and defendants who run up against the statute of
10 limitations or other court deadlines. CLS, DNA, SALA and the Institute objected to this
11 proposal in the Amended Petition and suggested that amendments to pleadings be
12 permitted when appropriate. We once again propose the Court consider a more flexible
13 approach and allow amendments for “good cause.”⁷

14 **B. Conduct of Hearings/Telephone Appearances**

15 Proposed Rule 15 governs how small claims hearings are to be conducted, and
16 provides that the “[t]he justice of the peace or hearing officer will consider testimony
17 from the parties and witnesses, will consider any documents, and will decide the claim
18 and any counterclaims.” Rule 15(e). The rules, however, fail to allow the parties to
19 object to documentary and witness evidence the other party wants to use at the hearing,
20 and only allow the parties to ask questions of each other and any witness under the
21 discretion of the justice or hearing officer. *Id.* CLS, DNA, SALA and the Institute
22 reiterate their suggestion to allow parties to object to evidence and testimony and to allow
23 them to ask witnesses and the other party questions.

24 Rule 15 also provides that a party may appear by telephone “if the court allows

25 ⁶ Current disposition standards require justice courts to dispose of 75% of small
26 claims cases within 100 days, 90% of cases within 150 days, and 98% of cases within
27 180 days. Second Amended Petition, page 2.

28 ⁷ The Alternative Language proposal the Justices filed on September 25, 2018, also
recommends allowing for amendments to complaints and counterclaims, page 11.

1 telephonic appearances.” Rule 15(d). We continue to recommend that *all* courts allow
2 for telephonic appearances, and that this not be discretionary with each court.

3 **C. Requests for Reasonable Accommodations and Interpreters**

4 The Second Amended Petition did not change the requirement that requests for
5 interpreter services or reasonable accommodations “should” be made 15 days prior to the
6 hearing. Rule 16. As CLS, DNA, SALA and the Institute explained in prior comments,
7 requests this far in advance of the hearing may not be possible and such a time frame may
8 deter litigants from making these requests. Courts must grant these requests at all times
9 under Title VI of the Civil Rights Act, 42 U.S.C. § 2000d (language services) and the
10 Americans with Disabilities Amendment Act of 2008, 42 U.S.C. § 12101 *et seq.*, § 12131
11 *et seq.* (reasonable accommodations), and, as such, suggested deadlines are not
12 appropriate or lawful. We know of no other court rules or practices that are so restrictive.
13 As an example, the Rules of Procedure for Eviction Actions require a summons to
14 include a disclosure that notifies parties that “[r]equests for reasonable accommodations
15 for persons with disabilities should be made to the court as soon as possible.” Rule
16 5(a)(4). Significantly, the subpoena form developed for the Small Claims Pilot Project
17 includes language that mirrors our recommendation: “Requests for reasonable
18 accommodations for persons with disabilities should be made to the court as soon as
19 possible” and “If an interpreter is needed, please contact the court listed above to request
20 an interpreter be provided.” Small Claims Pilot Project Subpoena Form, *available at*
21 <http://justicecourts.maricopa.gov/Forms/pilot.aspx>. We approve of this language and we
22 continue to recommend that the small claims rules be amended to mirror federal
23 requirements and state that requests for reasonable accommodations and interpreters
24 should be made as soon as practicable.

25 **D. Information Disclosure**

26 The proposed rules provide that “[a]ll parties should provide the court with a
27 physical address, email address, and phone number, if available” so the court can
28 communicate with them. Rule 3. CLS, DNA, SALA and the Institute objected to a prior

1 version of the rule and requested that the Court allow litigants to provide personal contact
2 information in alternate formats, by alternate methods, and to keep their information
3 confidential. Our concerns remain, and we repeat our recommendations. The rule should
4 allow for those persons who may not wish to publicly disclose their personal contact
5 (such as a victim of domestic violence) to keep their information confidential and to
6 allow litigants to provide personal contact information in alternate formats and by
7 alternative methods and information.

8 **E. Failure to Have a Rule or Instruction for How to Issue a Subpoena**

9 Despite making a subpoena form available to small claims court litigants, the
10 proposed rules continue to have no provision or instructions that explains the process for
11 requesting a subpoena for witness testimony or for the production of documents. CLS,
12 DNA, SALA and the Institute renew their previous objection to this omission and
13 recommend that the rules include a provision to explain to litigants the necessary steps to
14 get a subpoena issued.

15 **V. Exempting Some Courts from the Rules**

16 Rule 21 (formally Rule 20) remains unchanged and exempts the Pima County
17 Consolidated Justice Courts (“PCCJC”) from implementing the rules. CLS, DNA, SALA
18 and the Institute reiterate that if adopted, the rules should apply to all courts hearing small
19 claims cases in Arizona. We are unaware of any rules of procedure that exempt a court
20 from their application because the objecting court does not agree with the procedures.
21 *See, e.g.*, Rule 1 of the Rules of Procedure for Eviction Actions (“These rules shall
22 govern the procedure in the superior courts and justice courts involving forcible and
23 special detainer actions, which are jointly referred to in these rules as ‘eviction
24 actions.’”); Rule 101 of the Justice Court Rules of Civil Procedure (“These rules apply to
25 civil lawsuits in justice courts in Arizona.”); Rule 1 of the Rules of Civil Procedure
26 (“These rules govern the procedures in all civil actions and proceedings in the superior
27 court of Arizona . . .”).
28

1 Even if this Court were to allow PCCJC to be exempt from setting a hearing date
2 when the complaint is filed as provided for in Rule 7(a), which appears to be their
3 primary concern, there is no reason that the PCCJC should be exempt from the other
4 rules. If there is an exemption, we suggest that the Court modify the last sentence in Rule
5 21 as follows:

6 An exception to these rules shall apply only to the setting of a
7 hearing in Rules 7 and 14 (a) and (b).

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

10 **VI. Notice to Parties**

11 While CLS, DNA, SALA and the Institute support the concept of a notice to the
12 parties, we renew prior objections to the Notice to the Plaintiff and Defendant. The font
13 remains too small, and there should be language that makes it clear the party *must* file a
14 request to transfer the case to justice court, if the party wants the right to appeal, or any of
15 the other rights not available in small claims cases. We strongly recommend inclusion of
16 the following language after paragraph 4 in bold: **“If defendant wants any of the above
17 rights, you must file a request to transfer the case to the regular civil division of the
18 justice court at least 10 days prior to the hearing date.”** We also again suggest that
19 the notice explain the benefits of attending the hearing.

20 **Conclusion**

21 For all the above reasons, CLS, DNA, SALA and the Institute request that the
22 Court approve the Second Amended Petition with the recommendations explained above.
23 Without the above requested changes, the rules will negatively impact the rights and
24 plaintiffs and defendants to have their day in small claims court.

25 Respectfully submitted this 19th day of October 2018.

26 COMMUNITY LEGAL SERVICES

27 DNA PEOPLE’S LEGAL SERVICES

28 SOUTHERN ARIZONA LEGAL AID

WILLIAM E. MORRIS INSTITUTE FOR JUSTICE

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Clerk of the Supreme Court of Arizona
this 19th day of October 2018.

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