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IN THE SUPREME COURT OF THE STATE OF ARIZONA

PETITION TO AMEND THE RULES OF CRIMINAL PROCEDURE , RULE 1.4	Supreme Court No. R-09 ___

Pursuant to Rule 28 of the Rules of the Arizona Supreme Court, the Hon. Dennis Lusk, petitions the Supreme Court to amend the Rules of Procedure Criminal Procedure, Rule 1.4, as set forth in Appendix A. The petition is the result of an interpretation of the rule in *Hornbeck v. Lusk and the Pinal County Attorney's Office (RPI),* 217 Ariz. 581, 177 P3d 323, where Division 2 held that in a justice court, the "presiding judge" is the presiding justice of the peace of the county.

It is submitted that the original intent of the rule is that in a one judge court, which includes a justice court, that judge is the presiding judge of that court. The office of justice of the peace is an elected constitutional office and there is only one justice of the peace authorized to sit in a justice court, together with appointed *pro tems*.

The interpretation has created serious administrative problems. Once a 10.2 notice is filed the matter must be referred to the presiding justice of the peace. Typically this creates a 2-week delay pending reassignment before any activity on the case may occur. It is especially problematic when an attorney appears for pretrial, requests a continuance or wishes to enter a plea and the assigned judge is not at the court. It may take an hour or more to reach the assigned judge telephonically. If the judge can be reached, they could authorize a continuance or set for a hearing date when the assigned judge will be in the court to take the change of plea. The result is a substantial delay in case processing.

The enactment of A.R.S. § 22-103 by the legislature was the result of an administrative order eliminating the presiding JP position in Maricopa County on June 11, 2002. The interpretation by Division 2 of this statute in conjunction with Administrative Order 2005-22 created a consequence that was not expressly intended in either. The petitions proposed change would restore the original intent of the rule and allow the justice of the peace to perform administrative functions pursuant to Rule 10.6.

        DATED this the 9th day of January, 2009.

                                        / S / *Dennis Lusk*

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                                        Judge Dennis Lusk
                                        Justice of the Peace

APPENDIX A

Rules of Criminal Procedure

Rule 1.4. Definitions

Whenever they appear in these rules the terms below shall carry the following meaning:

a.   **Presiding Judge.** For the Superior Court: The judge, in counties having only one Superior Court judge. In other counties, the judge designated by the Supreme Court as presiding judge, or another judge appointed by the presiding judge regularly to handle a particular duty. For other courts: the judge OR JUSTICE OF THE PEACE, or, in courts having more than one judge, the judge designated as presiding judge by the appropriate authority. The presiding judge for the Superior Court is the presiding judge of the county.