

1 Judge John Kennedy
Mayer Justice Court
2 12840 Central Avenue
P.O. Box 245
3 Mayer, Arizona 86333
(928) 771-3355

4 **BEFORE THE SUPREME COURT OF**
5 **THE STATE OF ARIZONA**

6 In the Matter of

Supreme Court No. R-09-0006

7 PETITION TO AMEND THE RULES
8 OF CRIMINAL PROCEDURE,
9 RULE 1.4

**Comment in Support to Petition
No. R-09-0006 to Amend Rule 1.4,
Arizona Rules of Criminal
Procedure**

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11 This amendment should be granted for the following reasons. First, the
12 purpose of Criminal Rule 10.2, Change of Judge is peremptory. An exercise of
13 this right by a party need not be supported by any reason and cannot be denied or
14 subject to any scrutiny, unlike Crim. Rule 10.1, Change of Judge For Cause
15 which mandates a hearing to determine the validity of the basis. The purpose of
16 Crim. Rule 10.2 is not to allow parties to “shop” for a judge of their preference.

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18 Second, the inadvertent result of the *Hornbeck* decision cited in the petition
19 creates completely unequal application of Crim. Rule 10.2 across the state and
20 significant unnecessary work and cost especially in rural counties with more than

1 one justice court. In two superior courts and the numerous single judge
2 magistrate courts around the state notices under Rule 10.2 do not have to be sent
3 to another judge for reassignment. In the counties now affected by *Hornbeck*, the
4 presiding justice of the peace is most likely going to call the staff of the court
5 where the notice was filed to find out which pro tem or visiting judge will next be
6 available. Making the reassignments random from a revolving list will routinely
7 result in two or more pro tems traveling and appearing in the same court to hear
8 multiple matters that could have been heard by one. Especially in the rural
9 counties, it is not uncommon that visiting or pro tem judges travel 30 to 60 miles
10 one way to outlying courts.

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12 In conclusion, the current financial situation arguably is hitting the rural
13 counties harder anyway due to travel and the associated extra time. Granting this
14 amendment would eliminate the additional administrative time and cost to
15 minimize inefficient appointments, save judicial resources of pro tems and
16 presiding justices of the peace, and make the reassignment of cases where a
17 notice has been filed consistent with the application of Crim. Rule 10.2 across the
18 state.

19 **Conclusion**

20 Thus, for the foregoing reasons, I support the proposed rule change.

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RESPECTFULLY SUBMITTED this 20th day of May 2009.

/S/ John Kennedy

Judge John Kennedy
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Filed electronically with the
Clerk of the Supreme Court of Arizona
this 20th day of May, 2009.