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IN THE SUPREME COURT

STATE OF ARIZONA

PETITION TO AMEND RULE FORM 5,) No. R-21-
ARIZONA RULES OF CRIMINAL)
PROCEDURE, TO ADD FOR LIMITED)
JURISDICTION COURT USE,) Expedited Consideration and
FORM 5(c), DEFENDANT’S FINANCIAL) Expedited Adoption Requested
STATEMENT AND REQUEST FOR)
COURT-APPOINTED ATTORNEY)

Pursuant to Rule 28, Rules of the Supreme Court, Petitioner requests the Court to amend Form 5, Arizona Rules of Criminal Procedure, by adding for Limited Jurisdiction Court (LJC) use, the proposed Form 5(c), *Defendant’s Financial Statement and Request for A Court-Appointed Attorney* (attached as Appendix A).

Petitioner requests the Court's expedited adoption of this petition on an emergency interim basis to allow for immediate use of the proposed Form, and expedited comment and final adoption of the proposed amendment in order to provide immediate and prospective long-term relief with the processing of applications for court-appointed attorneys and their review by LJC judges. As explained further below, current Form 5(a) (attached as Appendix B) often requires significant time for defendants to complete in the courtroom or requires a return to court, resulting in delays in the application and review process. This problem is especially consequential with the current state of the economy, which is presenting increased financial challenges, and thus indigency, for many LJC defendants. This in turn is leading to an increased volume of applications for court-appointed attorneys in LJC cases, thus contributing to further case delays already experienced, in part, by the consequences of COVID-19.

(i). Need for Rule Amendment.

Form 5(a) is four pages long and has three sections that call for detailed amounts to be totaled in each section. The Form asks for inconsequential financial details that defendants do not have readily available to them. These financial details are routinely not independently relied upon by LJC judges in making subjective attorney appointment and contribution decisions. This required detail often delays completion of the Form by defendants who are completing the Form in the

courtroom and having to confirm the information under oath. Form 5(a), under the INCOME section, for example, asks for monthly payroll deductions rather than simply asking for total monthly take-home pay. Under EXPENSES, for example, the Form asks for total cost of food; union dues; medical care costs; motor vehicle insurance, maintenance and gas; and charge account payments rather than simply asking for total monthly expenses.

Typically, an LJC judge needs only a defendant's approximate total monthly expenses compared to approximate monthly net income and approximate value of liquid assets to make an informed decision about indigency and financial ability to afford an attorney. Requiring the additional detailed listings often significantly delays the application and review process. Defendants are understandably reluctant to sign under oath without verifying detailed information, which may require phone calls and checking bank records, billing statements and pay stubs. The proposed FORM 5(c) provides a simplified one-page application option for LJC defendants, with check-box options and abbreviated financial summaries, which also does not require a math calculator to complete, this allows a defendant to expeditiously complete the form in the courtroom without further delay.

(ii). Proposed Alternative Form 5(c) has been peer reviewed

The proposed amendment was created by a subcommittee of the LJC Committee, specifically formed to address the issues raised by this Petition. This subcommittee,

consisting of judges from various jurisdiction in the state, including Pima, Pinal and Maricopa Counties, further inquired of judicial colleagues who have uniformly expressed support for a simplified form. The Petition has been formally reviewed and is supported by the LJC Committee as well as by a conference of the Maricopa County LJC Presiding Judges.

(iii). Proposed Changes to Current Rule Forms

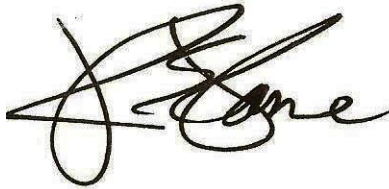
The proposed rule amendment would not change current Rule Forms 5(a) and 5(b). The new Form 5(c) would be added to the rule forms only as an approved combined alternative to Forms 5(a) and 5(b) for LJC use. Anecdotally, some courts have created abbreviated financial forms for use within their jurisdictions as a practical substitute for Form 5(a), to address the concerns raised herein. In such cases, these courts have had to discontinue use of such forms after being advised by the Administrative Office of the Courts that such forms constitute non-conforming use of the rules forms and would not meet operational review standards.

Conclusion

Petitioner accordingly requests the Court to adopt the proposed amendment to Rule Form 5 by adding the Form 5(c) for LJC use. Petitioner asks the Court to adopt this amendment on an expedited emergency interim basis and prescribe an

appropriate interim effective date and invite later public comment before consideration of final formal adoption.

RESPECTFULLY SUBMITTED this 28th day of May 2021.



Kevin Kane
Presiding Judge, Tempe Municipal Court
LJC Forms Subcommittee Chair

/s/ Brett Eisele

Brett Eisele
Justice of the Peace, Precinct 3
Central Pinal Justice Court
Member of LJC



Laine McDonald
Town Magistrate, Town of Marana
Member of LJC

APPENDIX A

(Name of Appropriate Court)

STATE OF ARIZONA, Plaintiff

Case Number: _____

vs.

DEFENDANT'S FINANCIAL STATEMENT AND REQUEST FOR COURT-APPOINTED ATTORNEY (LIMITED JURISDICTION)

Defendant

By answering the questions below, you are telling the Court you cannot afford an attorney and to consider your financial circumstances in determining whether you qualify for a court-appointed attorney in this case at a reduced cost or no cost to you. You are answering these questions under penalty of perjury and you may be held in contempt of court if you do not answer truthfully, or if you fail to notify the Court of any material improvement in your financial circumstances while your case is pending.

1. What is your marital status? Single Married Partnered Separated Divorced
2. How many other people do you support financially? ____ List age and relationship to you and check those living with you:
 _____ _____ _____ _____
 _____ _____ _____ _____
3. Do you have a job? Yes No. If yes, what do you do and for how long? If no, when did you last work and what did you do? _____
4. What is your approximate monthly take-home pay? \$ _____
5. Do you have income from the following sources? social security disability unemployment
 spousal or child support investments other: _____
 - What is your approximate total monthly income from these sources? \$ _____
 - What is your spouse's approximate total monthly income from all sources? \$ _____
6. Do you own a house? Yes No.
 - If yes, what is the approximate value? \$ _____
 - Approximately how much do you owe on the house? \$ _____
7. Do you have any bank or retirement accounts? Yes No.
 - If yes, what is the approximate total balance of the accounts? \$ _____
8. Do you have any outstanding loans? Yes No.
 - If yes, what type of loans: _____
 - What is the approximate balance owed? \$ _____
9. What are your total approximate monthly expenses? \$ _____
10. How much can you afford to contribute to the cost of an attorney to represent you:
Monthly attorney contribution: \$ _____
Total attorney contribution: \$ _____
11. Any other information about your financial circumstances you want to share: _____

I declare under penalty of perjury that I have read the above statements and to the best of my knowledge and belief these statements are true and correct.

Date

Signature of Defendant

APPENDIX B

Form 5(a). Defendant's Financial Statement
 Arizona Revised Statutes Annotated
 Rules of Criminal Procedure
 Effective: September 1, 2019

Arizona Revised Statutes Annotated
 Rules of Criminal Procedure (Refs & Annos)
 IX. Miscellaneous
 Rule 41. Forms
 Forms

Effective: September 1, 2019

16A.A.R.S. Rules Crim.Proc., Form 5(a)

Form 5(a). Defendant's Financial Statement

Currentness

_____ COURT _____	_____ County, Arizona _____
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STATE OF ARIZONA Plaintiff	[CASE/COMPLAINT NO.]	
-vs-		DEFENDANT'S FINANCIAL STATEMENT
		(Confidential)
Defendant (FIRST, MI, LAST)		

INSTRUCTIONS TO THE DEFENDANT: You are to answer the following questions so the Judge can decide whether to appoint an attorney to represent you and/or, if a bond is required, how much it should be, or any other matter relating to indigence. Use care in filling in your answers. If you need more space for any answer, note such and write on the back of the page. If you knowingly give false or misleading information, you may be punished for contempt of court or subjected to prosecution for fraud or perjury.

1. Full name: _____
2. Check the appropriate box: Single Married, living w/ spouse Married but separated Divorced Widowed Partnered
3. In addition to yourself, how many other adults do you support? _____ How many children? _____

INCOME:

4. List below in Column 1 the money that you are paid or receive each month. If you are married and are living with your spouse, list below in Column 2 the money that your spouse is paid or receives each month. If you are separated, divorced, widowed, partnered or single, leave Column 2 blank.

		Column 1 Amount paid to Me Monthly	Column 2 Amount paid to Spouse Monthly
a.	Wages, Salaries, Self Employment Income	\$ _____	\$ _____
b.	Payroll deductions	\$ _____	\$ _____
c.	Unemployment compensation	\$ _____	\$ _____
d.	Welfare benefits	\$ _____	\$ _____
e.	Disability benefits	\$ _____	\$ _____
f.	Veteran's benefits	\$ _____	\$ _____
g.	Social Security benefits	\$ _____	\$ _____
h.	Worker's compensation	\$ _____	\$ _____
i.	Accident benefits	\$ _____	\$ _____
j.	Retirement benefits	\$ _____	\$ _____
k.	Allotment checks	\$ _____	\$ _____
l.	Interest	\$ _____	\$ _____
m.	Dividends	\$ _____	\$ _____

n.	Child support received	\$ _____	\$ _____
o.	Alimony or maintenance received	\$ _____	\$ _____
p.	Total of any other income received	\$ _____	\$ _____
	Source: _____		
	TOTAL MONTHLY INCOME:	\$ _____	\$ _____

ASSETS:

5. Cash: List below the amounts of cash held or value of:

a.	Cash on you, your spouse, or in your jail property, and at home	\$ _____	
b.	Cash in banks, credit unions, and elsewhere	\$ _____	
c.	Cash owed to you or to your spouse by others	\$ _____	
d.	Stocks and bonds; insurance policy cash values	\$ _____	
e.	Beneficial interest in a trust	\$ _____	

6. Personal Property: List below any valuable personal property you own and have not listed above which is not needed by you or your family for day-to-day living.

a.	Description _____	\$ _____ (value)	\$ _____ (owed)	\$ _____ (net value)
b.	Description _____	\$ _____ (value)	\$ _____ (owed)	\$ _____ (net value)
c.	Description _____	\$ _____ (value)	\$ _____ (owed)	\$ _____ (net value)

7. Auto: Complete the following information about any motor vehicles (e.g.: cars, trucks, trailers, boats, airplanes, motorcycles) that you are buying, that you own, or in which you claim to have an interest.

a.	Make, Year and Model _____	\$ _____ (value)	\$ _____ (owed)	\$ _____ (net value)
b.	Make, Year and Model _____	\$ _____ (value)	\$ _____ (owed)	\$ _____ (net value)

8. Real Estate: Complete the following information about any real property (your home, other land, or buildings) that you are buying, that you own, or in which you claim to have an interest.

a.	Location _____	\$ _____ (value)	\$ _____ (owed)	\$ _____ (net value)
b.	Location _____	\$ _____ (value)	\$ _____ (owed)	\$ _____ (net value)

TOTAL AVAILABLE ASSETS:			\$ _____
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EXPENSES:

9. List below all monthly expenses not already deducted from your pay.

a.	Rent or house payment	\$
b.	Total cost of utilities (water, electric, gas, telephone, trash)	\$
c.	Food	\$
d.	Credit card payments	\$
e.	Installment loan payments	\$
f.	Charge account payments	\$
g.	Motor vehicle payments	\$
h.	Union dues	\$
i.	Medical care costs (doctors, dentists, medicine)	\$
j.	Child support and alimony	\$
k.	Cost of baby-sitter	\$
l.	Motor vehicle insurance, maintenance and gas	\$

10. Do you have any expenses (monthly or otherwise) not shown above? If yes, please list below.

a.		\$
	(how often paid)	(how much)
b.		\$
	(how often paid)	(how much)
c.		\$
	(how often paid)	(how much)

TOTAL MONTHLY EXPENSES:

\$

11. Are any of your expenses past due? If yes, please list below.

a.		\$
	(how often paid)	(how much)
b.		\$
	(how often paid)	(how much)
c.		\$
	(how often paid)	(how much)

12. Do you have an attorney to help you with this case? Yes No

If yes, what is his/her name: _____ If no, are you planning to hire your own attorney? Yes No

13.	Do you want the Court to appoint an attorney (public defender) to help you with this case? <input type="checkbox"/> Yes <input type="checkbox"/> No	
a.	How much can you pay as a down payment for attorney fees?	\$ _____
b.	How much can you pay each month for attorney fees?	\$ _____
14.	Oath under penalty of perjury: I have truthfully and completely given the information in this statement. I have not knowingly concealed, or in any way misrepresented, my financial resources. I am aware that I may be held in contempt of court, or prosecuted for perjury if I have made any false statements or misrepresentation, or concealment, or if I continue to accept the services of a court appointed attorney after my financial condition has materially changed without notifying my court appointed attorney. In any such case, I understand that this application may be used against me.	
I hereby make these representations under PENALTY OF PERJURY:		
Date: _____	Defendant Signature: _____	
Witnessed by: _____	Social Security No.: _____	

Form 5(a)

Credits

Added Sept. 5, 2007, effective Jan. 1, 2008.

16A A. R. S. Rules Crim. Proc., Form 5(a), AZ ST RCRP Form 5(a)

The Code of Judicial Administration is current with amendments received through 1/1/21. All other State Court Rules are current with amendments received through 2/1/21.

END OF DOCUMENT