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8 **IN THE SUPREME COURT**
9 **STATE OF ARIZONA**

10 In the Matter of:

11 **PETITION TO AMEND THE**
12 **RULES OF PROCEDURE FOR**
13 **EVICITION ACTIONS**

Supreme Court No. R-

PETITION

14 Pursuant to Rule 28 of the Rules of the Arizona Supreme Court, the State Bar
15 of Arizona hereby petitions this Court to adopt an amendment to the Rules of
16 Procedure for Eviction Actions by adding a change of judge rule, as Rule 9(c). The
17 proposed rule would permit for a change of judge as a matter of right and for cause
18 in eviction actions in Justice Court. The proposed rule is similar to Rule 133(d) of
19 the Justice Court Rules of Civil Procedure that permits a change of judge in other
20 civil cases heard by the Justice Court. In support of this Petition, the Legal Services
21 Committee of the State Bar states the following:

22 **I. Statement of Interest**

23 The Legal Services Committee of the State Bar is a standing committee of the
24 State Bar comprised of a broad cross-section of attorneys, including the executive
25 directors of the three legal services programs. The Committee's mission is to work

1 on access to justice issues for low-income Arizonans. The Committee historically
2 has had an interest in the rights of tenants in eviction cases.

3 **II. Background and Purpose of the Proposed Rule Amendment**

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5 In 2008, the State Bar of Arizona submitted a Petition to Amend the Rules of
6 Procedure for Eviction Actions, Supreme Court Number R-07-0023. The proposed
7 rules were the product of the State Bar Landlord/Tenant Task Force appointed by
8 the State Bar President. Members of the Legal Services Committee served on the
9 Task Force. The Task Force members included justices and attorneys representing
10 tenants and landlords. Included in the petition was a proposed rule for a change of
11 judge for eviction cases in Justice Court, rule 11(e). The final rules adopted by the
12 Supreme Court and effective January 1, 2009, did not contain a change of judge rule
13 for evictions in Justice Court.¹

14 In 2012, the State Bar Petitioned for Approval of Justice Court Rules of Civil
15 Procedure. Included in the proposed rules was a change of judge rule. The Court
16 approved the Justice Court Rules of Civil Procedure. Rule 133(d) provides for a
17 change of judge as a matter of right and for a change of judge if the party believes
18 the party will not have a fair and impartial trial before the justice. The Justice Court
19 Rules of Civil Procedure do not apply to evictions. Rule 101(b). These rules were
20 effective January 1, 2013.

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23 ¹ For cases in Superior Court, the change of judge provision in Rule 42(f) of the
24 Arizona Rules of Civil Procedure applies and permits changes of judge as a matter of right
25 and for cause. Specifically, Rule 1 of the Rules of Procedure for Eviction Actions provides
that Rule 42(f) applies to evictions in Superior Court.

1 In 2013, the State Bar of Arizona filed a petition for the change of judge rule
2 using the rule originally proposed in 2008. Supreme Court Number R-13-0047. The
3 Arizona Supreme Court denied the petition. In 2015, the Legal Services Committee
4 of the State Bar again proposed a change of judge rule. This time the rule was
5 patterned after the general Justice Court Change of Judge Rule. The petition
6 submitted by the State Bar of Arizona ultimately had 2 options, one option was the
7 rule proposed by the Legal Services Committee and the other option was submitted
8 by Judge C. Steven McMurry, Presiding Justice of the Peace of Maricopa County.
9 Supreme Court Number R-15-0015. Subsequently, the State Bar of Arizona filed a
10 comment proposing a further modification to both options. The Supreme Court
11 denied the petition.

12 The Legal Services Committee continues to recognize the need and
13 importance of a change of judge rule in eviction cases. While somewhat unusual,
14 the Committee again proposes a rule change for eviction cases. Eviction actions,
15 one of the most common civil cases heard in Justice Court, continue to be the only
16 type of case that has no change of judge rule.² Petitioner submits the proposed
17 change of judge rule for consideration by the Court so that litigants in eviction cases,
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19 ² In addition to eviction cases, the Justice Court Rules of Civil Procedure do not apply
20 to civil traffic, civil boating, protective orders and injunctions against harassment. Rule
21 101(b). These other cases have change of judge rules. Changes of judge are permitted in
22 orders of protection and injunctions against harassment cases because pursuant to Rule
23 1(A)(2) of the Arizona Rules of Protective Order Procedure, the Arizona Rules of Civil
24 Procedure apply to those cases, unless specifically inconsistent with the rules. Thus, as
25 relevant here, Rule 42(f) applies to those cases, as well. For civil traffic and boating cases,
Rule 7 of the Rules of Procedure in Civil Traffic and Civil Boating Violation Cases
provides that a change of judge as a matter of right does not apply in these cases except for
cases consolidated with a criminal matter.

1 like all other litigants in civil cases heard in Justice Court and eviction litigants in
2 Superior Court, have the right to a change of judge.

3 **III. Proposed Rule Amendment**

4 The proposed rule, Rule 9(c) is:

5 Rule 9(c): Motion for Change of Judge:

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7 For purposes of this subsection, a lawsuit has only two sides. A
8 party or a side, if there is more than one plaintiff or one defendant in a
9 lawsuit, may request a change of judge as a matter of right orally or in
10 writing. The party or side must request a change of judge as a matter
11 of right in the precinct where the lawsuit is pending. The request must
12 state that the party or side has not previously requested a change of
13 judge in this lawsuit, that the party or side has not waived the party's
14 right to change of judge, and that the request is timely. A request is
15 timely if it is made prior to or at the time of the first court appearance
16 or upon reassignment of the matter to a new judge for trial. A party
waives a right to a change of judge if the judge has ruled on any
contested motion or issue, or if the trial has started. When a proper and
timely request for a change of judge as a matter of right is orally
requested or filed, the court must transfer the lawsuit to a new judge
within the county for further proceedings.

17 If a party believes that the party will not have a fair and impartial
18 trial before a justice of the peace, then the party must proceed as
19 provided in Arizona Revised Statutes § 22-204, except that any request
20 must be made by the date of the first court appearance and five days'
notice is not required.

21 Renumber to conform.

22 The first paragraph on change of judge as a matter of right is taken from
23 current Justice Court Rule 133(d) with minor edits to reflect the practice in Justice
24 Court. Similarly, the second paragraph concerning change of judge for cause is
25 taken from the last sentence in Rule 133(d) but with modifications to reflect the

1 practice in Justice Court and changes subsequently made to A.R.S. § 22-204 in
2 2013.

3 **IV. Explanation of Need for Proposed Rule**

4 Tenants have a property interest in their residences. *Greene v. Lindsey*, 456
5 U. S. 444, 451-52 (1982). *See also Foundation Development Corporation v.*
6 *Loehmann's*, 163 Ariz. 438, 442, 788 P.2d 1189, 1193 (Ariz. 1990) (recognizing
7 common law right of tenant's property interest in rental). Eviction proceedings that
8 deprive tenants of that property must comply with the due process requirements of
9 the 14th Amendment to the United States Constitution. *Greene*, 456 U.S. at 455.
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11 For low-income persons, an eviction action may threaten their only means of
12 shelter. *See, e.g.,* Chester Hartman and David Robinson, *Evictions: The Hidden*
13 *Housing Problem*, Housing Policy Debate, Vol. 14, Issue 4 (2003) found at
14 <http://content.knowledgeplex.org/kp2/cache/kp/10950.pdf>. The inability to find
15 other housing on short notice can lead to the disruption of children's education,
16 interruption of employment, dislocation from health care providers, loss of personal
17 belongings and homelessness. In addition, the eviction process may lead to
18 monetary judgments. These monetary judgments make it difficult for tenants to
19 secure new rental housing. Thus, the consequences of eviction cases make them
20 very important to tenants and especially low-income tenants, who often lack back-
21 up resources. The result of an eviction may be that a family is living in a car. The
22 importance of these cases and the property interest at stake certainly is undercut by
23 not allowing a change of judge.

24 Although eviction cases have shorter statutory time frames than some of the
25 other civil cases heard in Justice Court, these time frames are not a sufficient reason

1 to deny litigants a right to change judge. If a tenant or a landlord believes that he
2 or she cannot get a fair trial before a justice, then they should be allowed as other
3 litigants are, to request a change of judge. The change of judge requests can be
4 handled like other continuances for cause. As an example, the common practice in
5 many Justice Courts is that if a tenant appears on the court date noted in the summons
6 and has a defense, the case is continued to another date for a trial. See Rule 11(c) of
7 the Rules of Procedure for Eviction Actions (continuances may be granted “on the
8 request of a party for good cause shown or to accommodate the demands of the
9 court’s calendar”); Arizona Residential Landlord and Tenant Act, A.R.S. § 33-
10 1377(C). The same or similar practice could apply to a change of judge request.

11 The following examples highlight the fundamental unfairness of not having a
12 change of judge for eviction cases in justice court. Using Maricopa County as an
13 example, if a person lives in the Encanto Precinct, all the cases against them will be
14 assigned to the one Encanto Justice of the Peace. If a resident in the Encanto Precinct
15 is sued on a credit card debt, the person appears before the Encanto Justice and that
16 Justice resolves the case. The defendant may think he or she was not treated fairly
17 by the Justice. If the person is sued again on another credit card debt 10 months later
18 and still lives in the Encanto Precinct, his or her case will be assigned to the same
19 Justice. In this situation, the person can request a change of judge under Rule 133(d)
20 of the Justice Court Rules of Civil Procedure. If the person is served an eviction
21 action, he or she cannot request a change of judge. This differential treatment is
22 unfair and undercuts the public’s confidence in our judicial system.

23
24 Second, until recently, several prominent landlord attorneys served as Justices
25 of the Peace *Pro Tempore* in Maricopa County on eviction calendars. While legal

1 services was told this practice ceased after ethical concerns were raised, in a recent
2 case, a landlord attorney served as a Justice of the Peace *Pro Tempore* on an eviction
3 calendar. Consider the case of a legal services attorney who comes to court to
4 represent a tenant in an eviction case and finds a Justice of the Peace *Pro Tempore*
5 whose legal practice is primarily representing landlords and property management
6 companies. The legal services attorney may not think his or her client can get a fair
7 trial before the Justice. Should the legal services attorney have to try the case before
8 a Justice *Pro Tempore* he or she thinks is unfair? If there is no change of judge rule,
9 they will.

10
11 Finally, take the case of a tenant who files an appeal of the eviction judgment.
12 If the tenant wins the appeal, with no change of judge rule, on remand this case
13 would go back to the same justice. Rule 42 (f)(1)(E) of the Rules of Civil Procedure
14 recognizes the inherent problem this may create and provides that when on remand
15 a new trial is ordered, “then all rights to change of judge are renewed and no event
16 connected with the first trial shall constitute a waiver.” Certainly, the same reasons
17 behind Rule 42 (f)(1) (E) apply in the eviction context.

18 The reality is that vast majority of tenants who lose their eviction case do not
19 have an attorney or the resources to file an appeal. For these tenants, the initial trial
20 is their only opportunity for relief. For all these reasons, the legal services
21 community continues to request a change of judge rule in eviction cases.

22 **V. Consistency with the Statutory Scheme and Time Standards**

23 Objections to the change of judge rule petition previously in 2014 and 2015
24 suggested that a change of judge is impractical in rural areas and inferred a dilatory
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1 intent on the part of tenants' rights advocates. To be clear, the State Bar of Arizona
2 seeks only parity, that is, a peremptory provision that allows for litigants in eviction
3 cases in Justice Court to have the same right to change judge as litigants in eviction
4 actions in Superior Court and litigants in other cases in Justice Court.

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6 Moreover, the annual statistics on where eviction actions take place show the
7 limited impact this rule will have on Justice Court administration. The rural precincts
8 heard only a fraction of the approximately 86,000 eviction actions filed in Justice
9 Courts statewide in 2014. More than 66,000 evictions were filed in Maricopa
10 County and another 14,000 were filed in Pima County.

11 <http://www.azcourts.gov/Portals/39/2014DR/JPMaricopa.pdf>;

12 <https://www.azcourts.gov/Portals/39/2014DR/JPPima.pdf>;

13 <http://www.azcourts.gov/statistics/AnnualDataReports/2014DataReport/2014Case>

14 [ActivitybyCounty.aspx](#)³ This leaves approximately 6,000 evictions throughout the
15 rest of the state, and even as to those evictions, the vast majority end in default.
16 Similar filings were reported in 2012 and 2013.⁴ Thus, this rule affects only that
17 small minority of tenants who contest the eviction. This Court should not allow

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19 ³ Opponents of a change of judge rule often offer the Duncan Justice Court as an
20 example where the change of judge would be hard to implement. But the Duncan Justice
21 Court received just 8 new eviction actions in the year ending June 30, 2013, only 4 in the
22 prior year, and none of those cases proceeded to trial. See <http://www.azcourts.gov/Portals/39/2013DR/JPGreenlee.pdf#page=5>. In the year ending June 30, 2014, only 6
23 eviction cases were filed and none went to trial. See <https://www.azcourts.gov/Portals/39/2014DR/JPGreenlee.pdf>. Thus, during this 3 year period, a change of judge rule would
have had no impact on court administration.

24 ⁴ In 2012 and 2013, there were approximately 84,000 evictions filed in justice courts
25 with 78,000 filed in Maricopa and Pima Counties. See <http://www.azcourts.gov/statistics/AnnualDataReports/2013/DataReport/2013CaseActivitybyCounty.aspx>.

1 heightened concern for rural precincts to outbalance due process rights of tenants
2 statewide.

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4 In addition, the speedy timeframes of eviction actions are not as unique as
5 suggested. Changes of judge are permitted in time-sensitive applications for orders
6 of protection and injunctions against harassment in Justice Court. *See* Rule 1(A)(2)
7 of the Arizona Rules of Protective Order Procedure (declaring that the Arizona Rules
8 of Civil Procedure apply to those cases “when not inconsistent with these rules.”)
9 Even in Superior Court, where the change of judge applies in all cases except cases
10 in Tax Court, Ariz. R. Civ. P. 42(f)(1)(A), the exercise of a peremptory challenge to
11 a judicial officer can delay a request for injunctive relief under Ariz. R. Civ. P. 65,
12 particularly in rural counties with limited benches. Courts and administrators can
13 adapt in order to ensure the provision of justice and this Court should not presume
14 prejudicial delay.

15 For similar reasons, a decision by this Court in support of a peremptory
16 judicial challenge is not inconsistent with the provisional “Timing Standards”
17 supported by the Arizona Judicial Council. The Arizona Judicial Council’s
18 Executive Summary recognizes the appropriate balance of the rights of individual
19 litigants against the need for case management tools.

20
21 Case processing standards should complement, rather than
22 supplant, due process considerations. Waiting periods are
23 deliberately built into some court procedures and
24 processes in order to preserve parties’ rights (e.g., to
25 provide adequate notice, to conduct discovery, or to

1 receive service of process).⁵

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3 “Excerpt from the Interim Report and Recommendation of the Arizona Case
4 Processing Standards Steering Committee,” September 30, 2013, available at
5 [http://www.azcourts.gov/Portals/84/MeetingMaterials/2013/October/Tab4AzCaseP](http://www.azcourts.gov/Portals/84/MeetingMaterials/2013/October/Tab4AzCaseProcStand_2_.pdf)
6 [rocStand_2_.pdf](http://www.azcourts.gov/Portals/84/MeetingMaterials/2013/October/Tab4AzCaseProcStand_2_.pdf). The Arizona Supreme Court in Administrative Order No. 2013-
7 95, on November 14, 2013, provisionally adopted the case processing standards “to
8 provide local courts and the Administrative Office of the Courts (“AOC”) with a
9 time standards framework for the development and testing of case management
10 reports.” <http://www.azcourts.gov/Portals/zz/admorder.Order13/2013.95>. These
11 provisional case processing standards should not affect the consideration of the
12 petition.

13 The provisional resolution standard is to resolve 98% of eviction actions
14 within 10 days. <http://www.azcourts.gov/Portals/22/admorders/Orders13/2013-95>.
15 Whether this provisional standard will be affected by the proposed rule is
16 speculative. If there is an adverse impact, the Court can anticipate that the impact
17 would be relatively small, given the paucity of eviction trials and the heavy volume
18 of default judgments.⁶ Using the provisional standard that 2% of the evictions would
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21 ⁵ We would add, in the eviction context, the right to a three-day continuance in Justice
22 Court. *See* Rule 11(c) of the Rules of Procedure for Eviction Actions (continuances may
23 be granted “on the request of a party for good cause shown or to accommodate the demands
24 of the court’s calendar”) and the Arizona Residential Landlord and Tenant Act, A.R.S. §
25 33-1377(C); *see also* A.R.S. § 12-1177(C) (permitting up to three days for a continuance
in Justice Court actions).

⁶ In addition, it is not the case that currently all eviction trials occur within the three
day time frame for continuances in A.R.S. § 12-1177(C). Either party can request a trial
by jury (Rule 12 of the Rules of Procedure for Eviction Actions) and file motions,

1 not be resolved within 10 days, for the 86,000 evictions filed in 2014 that would be
2 1,720 cases. The Committee sincerely doubts that the change of judge rule would
3 impact this number of cases. The State Bar of Arizona supports the efforts of the
4 Judicial Council to move cases forward faster for the benefit of the litigants and the
5 justice system as a whole, but those efforts can and should take into account the
6 substantive rights of the individual litigants as well. The proposed rule does that for
7 eviction litigants.

8 **CONCLUSION**

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10 The State Bar of Arizona submits this petition again because of the importance
11 of this issue. The proposed rule removes the disparity of a lack of change of judge
12 rule for eviction actions in Justice Court. Eviction court litigants should have the
13 same right to a change of judge as a matter of right and for cause as other civil
14 litigants in Justice Court and Superior Court.

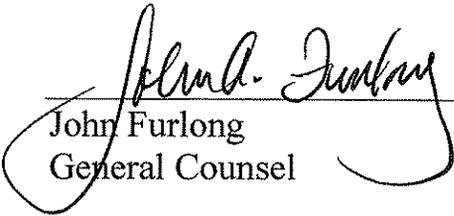
15 Finally, if the Court has concerns about the effect the rule change will have
16 on justice court administration, as an alternative, the State Bar of Arizona proposes
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20 including motions to amend, for judgment on the pleadings, to dismiss, for
21 reconsideration and other appropriate motions with a reasonable opportunity to respond
22 before a ruling by the court (Rule 9 of the Rules of Procedure for Eviction Actions). The
23 parties also can request disclosure of evidence, taking of depositions, production of
24 documents, inspection of the property and issuance of subpoenas (Rule 10 of the Rules of
25 Procedure for Eviction Actions). While jury trials, discovery and motion practice are not
common, they are allowed and all of the justice courts accommodate these requests, even
those in the rural counties. There is no reason that a request for a change of judge similarly
cannot be accommodated.

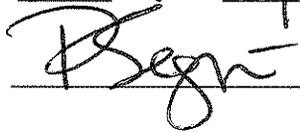
1 an approval period of one year. A limited approval period will give all sides
2 sufficient time to see what effects, if any, the rule change has on court administration.

3 For all these reasons, Petitioner requests the Court approve this petition.

4 RESPECTFULLY SUBMITTED this 8th day of January, 2016.
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9 John Furlong
General Counsel

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12 Electronic copy filed with the
13 Clerk of the Arizona Supreme Court
14 this 8th day of January, 2016.

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