

From: [Olm, Nick](#)
To: [Graber, Julie](#)
Subject: FW: Access to Justice Commission and the rule change on stipulated judgments.
Date: Tuesday, July 05, 2016 3:54:08 PM
Attachments: [Proposed Amended Rule 13.docx](#)
[ATT00001.htm](#)

Here is the proposed rule petition amendment regarding stipulations in eviction actions.

From: Winthrop, Lawrence F. [mailto:LWinthrop@appeals.az.gov]
Sent: Thursday, June 23, 2016 9:52 AM
To: Barrett, Theresa <TBarrett@courts.az.gov>; Sekardi, Kathy <ksekardi@courts.az.gov>; Olm, Nick <nolm@courts.az.gov>
Subject: Fwd: Access to Justice Commission and the rule change on stipulated judgments.

Lawrence F. Winthrop
Judge
Arizona Court of Appeals, Div. One
(602) 542-1430
lwinthrop@appeals.az.gov

Begin forwarded message:

From: ellen sue katz <eskatz@qwestoffice.net>
Date: June 23, 2016 at 9:44:03 AM MST
To: "'Winthrop, Lawrence F.'" <LWinthrop@appeals.az.gov>
Subject: Access to Justice Commission and the rule change on stipulated judgments.

Judge Winthrop:

Here is an e-mail that I sent to mike Baumstark. He and I have discussed the problems with stipulated judgments in eviction cases. As you may recall, Pam Bridge presented on this issue at the A to J Commission meeting in November 2015.

Is the eviction subgroup going to meet? If not, what is the process for me to get this stipulation before the Commission for discussion?

Ellen Katz
William E. Morris Institute for Justice
3707 North 7th Street, Suite 220
Phoenix, Arizona 85014
Phone: 602-252-3432
Fax: 602-257-8138

From: ellen sue katz [<mailto:eskatz@qwestoffice.net>]

Sent: Thursday, June 23, 2016 9:40 AM

To: 'Baumstark, Mike' <MBaumstark@courts.az.gov>

Subject: Access to Justice Commission and the rule change on stipulated judgments.

Is the eviction subgroup going to reconvene and discuss the rule change on stipulated judgments? The next Commission meeting is in August and I had expected the subgroup to meet soon. As I have discussed with you, this is a very important issue for legal services. Pam Bridge presented on this issue at the Commission meeting in November 2015. We drafted a proposed rule change. Here it is. We are open to some revisions, if appropriate. Below is an e-mail I received about this issue. It blew up a few weeks ago in the Maricopa County Central Justice Courts.

A young woman (probably 18ish) came up to our table asking about her nonpayment of rent case. The law clerks did not give her legal advice but gave her the sheet about possible defenses for nonpayment of rent. A few minutes later, attorney CW called her out of court and had a discussion with her right in front of the law students and me.

1) He did not address himself as the landlord's attorney. When she asked half way through the conversation, he finally told her that he was the landlord's attorney. As you are aware, that is an ethical violation.

2) He asked her quickly if she owed the rent. She said she did. So, he told her to sign "the document" and that she could work it out with her landlord. He said this would keep her from going through the trouble of a trial and appeal. He never told her that the document was a stipulated judgment. He never told her that she was going to have to leave. In fact, he told her that she could work it out. He never even gave her time to read the stipulated judgment before she signed it.

3) The young woman then came up to the table happy. She said that it was just about her owing rent and she wasn't going to be evicted. I proceeded to inform her that she had signed a stipulated judgment and explained to her what that meant. The woman was mortified and completely shocked. She asked me what she could do and I again told her although I couldn't represent her, she should immediately go inside the courtroom and explain to the clerk and to the judge (it was West McDowell) what happened.

4) She came out again and told me that the judge was on the bench and she thought it was too late. Before I could explain, CW started talking with her again. He told her that she didn't have to worry about it and everything is negotiable. Again, all of the law students and I heard everything. Not only did he not explain the stipulated judgment but he gave her the impression the landlord would negotiate with her even though clearly, he did not have that authority from the landlord to make such a statement.

This is a clear example of why stipulated judgments must not be accepted unless the tenant is present before the judge.

Ellen Katz

William E. Morris Institute for Justice

3707 North 7th Street, Suite 220

Phoenix, Arizona 85014

Phone: 602-252-3432

Fax: 602-257-8138

Proposed Amended Rule

RULES OF PROCEDURE FOR EVICTION ACTIONS

Rule 13. Entry of Judgment and Relief Granted

b. Forms of Judgment.

(4) Stipulated Judgments. The court may accept a stipulated judgment, ~~but~~ only ~~if~~ **WHEN THE COURT FINDS ALL THE FOLLOWING:**

- a. **BOTH PARTIES OR THEIR ATTORNEYS PERSONALLY APPEAR BEFORE THE COURT;**
- b. The court determines that the conditions of Rule 13(a)(1)-(2) have been satisfied and the form to which the defendant stipulated contains the following warning:

Read carefully! By signing below, you are consenting to the terms of a judgment against you. You may be evicted as a result of this judgment, the judgment may appear on your credit report, and you may NOT stay at the rental property, even if the amount of the judgment is paid in full, without your landlord's express consent.

- c. **THE COURT DETERMINES THAT THE PARTIES UNDERSTAND THE TERMS IN THE DOCUMENT THEY SIGNED.**

The amounts awarded in the judgment must be consistent with the amounts sought in the complaint, although the judgment may also include additional rent, late charges, fees and other amounts that have accrued since the filing of the complaint, if appropriate. Notwithstanding Rule 13(c)(2), **IF ALL THE REQUIREMENTS FOR A STIPULATED JUDGMENT ARE MET, INCLUDING** ~~if~~ all parties or their attorneys personally appear before the court and the addition is reasonable, the court may award an amount for damages or categories of relief not specifically stated in the complaint.
