

1 ELLEN SUE KATZ, AZ Bar. No. 012214
2 WILLIAM E. MORRIS INSTITUTE FOR JUSTICE
3 3707 North Seventh Street, Suite 300
4 Phoenix, AZ 85014
5 (602) 252-3432
6 eskatz@qwestoffice.net

7 IN THE SUPREME COURT

8 STATE OF ARIZONA

9 PETITION TO AMEND RULE 13(b)(4)
10 OF THE PROCEDURE FOR EVICTION
11 ACTIONS

Supreme Court No. R-17-0020

12 **COMMENTS IN SUPPORT OF**
13 **PETITION TO AMEND RULE 13(b)(4)**
14 **OF THE RULES OF PROCEDURE**
15 **FOR EVICTION ACTIONS AND**
16 **PROPOSED AMENDMENT FILED BY**
17 **COMMUNITY LEGAL SERVICES ON**
18 **MAY 31**

19 Pursuant to Rule 28 of the Arizona Rules of the Supreme Court, the William E.
20 Morris Institute for Justice (“Institute”) respectfully submits this comment in support of
21 the petition to adopt an amendment to the Rules of Procedure for Eviction Actions by
22 adding a requirement concerning the acceptance of stipulated judgments as Rule 13(b)(4).
23 The Institute also supports the amendment proposed by Community Legal Services filed
24 on May 31, 2017, but does not support the amendment proposed by the Access to Justice
25 Commission filed on May 1, 2017. The initial petition was proposed in response to well-
26 articulated concerns that unrepresented tenants sign stipulated judgements when the
27 tenants do not understand: the terms of the judgment; that they are giving up their rights
28 to appeal and that they think they still have the option to work something out with the
landlord.

The Institute supports the proposed petition and the amendment proposed by
Community Legal Services (“CLS”). Unfortunately, in response to criticism by the
attorneys who represent landlords, the Access to Justice Commission (“Commission”)
proposed an amendment to the initial petition that the Institute believes sanctions the

1 current practice in Maricopa County Justice Courts without making any of the needed
2 reforms. The amendment proposed by CLS adopts the current practice in some Maricopa
3 County Justice Courts when the landlord is unrepresented and legal services represents
4 the tenant.¹ In those cases, the justices may require that the unrepresented landlord
5 appear in court and the justices question the landlord to ensure the landlord understands
6 the terms in the stipulations. The justices should ensure that unrepresented tenants
7 understand the terms in the stipulations as well. The CLS amended proposal also does
8 not impact the presence of counsel in court when both parties are represented and instead
9 focuses on when one or both parties are unrepresented. This change addresses the
10 concerns raised by private attorneys who represent tenants as there is no need for court
11 supervision when both parties are represented. Finally, the proposal suggest that courts
12 hear stipulated judgments first so that unrepresented parties can leave the court once their
13 case is dispositioned.

14 In support of the Petition and the modification proposed below by CLS, the
15 Institute states the following:

16 **I. Statement of Interest**

17 The Institute is a non-profit program established to advocate and litigate on behalf
18 of the interests of low-income Arizonans. We work closely with the three federally
19 funded legal services programs, other legal advocacy programs and community groups.

20 For the last 13 years, the Institute has had a focus on the rights of tenants in
21 eviction cases. The Director of the Institute was a member of the State Bar Task Force
22 that drafted the original Rules of Procedure for Eviction Actions and has responded to
23 landlord and tenant bills proposed at the state legislature. Some landlord attorneys who
24 filed objections have referenced both the Institute's comments to a state landlord and
25 tenant bill filed in 2007 and to the Institute's support of current Rule 13 in 2009. The
26 Institute's position regarding prior landlord bills at the legislature and to the original Rule

27 ¹ The information about the handling of stipulated judgments where the landlord is
28 unrepresented and the tenant is represented by legal services was provided to the
Institute's Director by CLS staff.

1 13 are not relevant to this petition. The current inquiry is what is known about the use of
2 stipulated judgments with unrepresented tenants and should that matter be addressed. As
3 fully explained by CLS, in the intervening years concerns have been raised about the use
4 of stipulations with unrepresented tenants and this petition and the CLS proposed
5 amendment address those concerns.

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

7 After CLS made a presentation to the Commission concerning problems its staff
8 had observed with stipulated judgments in eviction cases in justice courts, the
9 Commission submitted Petition R-17-0020. The purpose of the petition was to ensure
10 that unrepresented tenants understand the terms of the stipulated judgments they sign. As
11 CLS explained, CLS staff have interviewed numerous tenants who had signed stipulated
12 judgments but did not understand who they were talking to, what they had signed and
13 certainly did not understand that they had to move out and had given up their rights to file
14 an appeal.

15 This petition is an attempt to address the well-articulated problem. The landlord
16 bar opposes the petition. In response to the landlord opposition, the Commission
17 proposed a modified rule on May 1. With all due respect, the Institute suggests that the
18 Commission's modified petition simply codifies the current practice in Maricopa County
19 Justice Courts without the needed reforms.

20 **III. CLS Modified Proposal filed on May 31, 2017**

21 The Institute joins CLS and requests that Rule 13 of the Rules of Procedure for
22 Eviction Actions be modified as follows:

23 (4) Stipulated Judgments.

24 A. The court may accept a stipulated judgment, ~~but~~ only
25 if when the court finds one of the following conditions
26 is met:

27 1. When both parties are represented by attorneys
28 and both attorneys sign the stipulation, or

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2. When one or both parties is unrepresented and the unrepresented party/parties appear before the court and court determines the unrepresented party/parties understand the document signed, or

3. The court determines that because of distance or other circumstances, the unrepresented party cannot personally appear before the court and good cause exists and it is in the interest of justice to proceed.

B. In addition, the court may accept a stipulated judgment when the court determines the conditions of Rule 13(a)(1)-(2) have been satisfied and the form to which the defendant stipulated contains the following warning and the defendant has signed the warning language:

Read carefully! WARNING!

1. The plaintiff's representative is not a court employee.

2. By signing below, you are consenting to the terms of a judgment against you and the landlord will now be able to evict you.

3. You may be evicted as a result of this judgment have your wages garnished and, the judgment may appear on your credit report,

4. You may lose your right to subsidized housing, and

5. 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 unless you get the agreement in writing or get a new written rental agreement with your landlord.

C. The court should call cases with stipulated judgments first so that any unrepresented party can leave the court without delay.

Subsection (1) addresses the situation where both parties are represented and the stipulation does not require judicial inquiry of the parties. Subsection (2) reflects that the

1 court should ensure the unrepresented party/parties understand the stipulation. Subsection
2 (3) allows for an unrepresented party to not appear before the court in limited
3 circumstances. Section B is in the current rule and should remain. Finally, in Section C,
4 to facilitate unrepresented litigants appearing before the court, the courts should be
5 encouraged to hear stipulated judgment cases first. The warning is the one proposed by
6 the Commission on May 1.

7 As will be discussed below, this proposal codifies the practice in some Maricopa
8 County Justice Courts where justices require *unrepresented landlords* to appear in court
9 when the tenant is represented by legal services. It also codifies the practice in Pima
10 County Justice Courts that unrepresented tenants appear in court for entry of a stipulated
11 judgment.² Admittedly, this proposal will change the practice in Maricopa County
12 Justice Courts. As explained below, the change is warranted.

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

14 Tenants have a property interest in their residences. *Green v. Lindsey*, 456 U.S.
15 444, 451-52 (1982). *See also Foundation Development Corporation v. Loehmann's*, 163
16 Ariz. 438, 442, 788 P.2d 1189, 1193 (Ariz. 1990) (recognizing common law right of
17 tenant's property interest in rental). Eviction proceedings that deprive tenants of that
18 property must comply with the due process requirements of the 14th Amendment to the
19 United States Constitution. *Greene*, 456 U.S. at 455.

20 For low-income persons, an eviction case threatens their only means of shelter.
21 The inability to find other housing on short notice can lead to the disruption of children's
22 education, interruption of employment, dislocation from health care providers, loss of
23 personal belongings and homelessness. In addition, the eviction process may lead to
24 monetary judgments. Thus, the consequences of eviction cases make them very
25 important to tenants and the community at large who may be called upon to assist the
26 displaced tenants.

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28 ² The Institute's understanding is that outside Pima and Maricopa Counties stipulated judgments are rarely used and are not a concern.

1 While private attorneys who represent tenants often do negotiate more favorable
2 terms in stipulations, CLS reports that they rarely see an unrepresented tenant who has
3 received any additional consideration for signing the waiver of their right to file a motion
4 to reconsider or right to appeal.

5 Legal services identified the use of stipulated judgments in eviction cases as one
6 of its major concerns. They documented that numerous tenants came to the legal services
7 office with signed stipulated judgments. The tenants reported that they did not
8 understand:

- 9 1. The terms of the stipulation;
- 10 2. They had waived their right to file a motion to reconsider or an appeal; and
- 11 3. Their landlord did not need to work out the eviction with them.

12 In many of these cases, because in the stipulation the tenant waived her right in to
13 file a motion to reconsider or to appeal, the tenant was in a worse position than if she had
14 either not come to court at all or appeared before the justice without agreeing to the
15 stipulation. In neither case would the tenant have lost her right to file a motion to
16 reconsider or an appeal. This is very important, because as noted above, CLS reports that
17 in the stipulations they have reviewed, the tenant is rarely getting any consideration for
18 the waiver.

19 This must lead to the question of what information the landlord attorney is giving
20 the tenant. Does anyone think a tenant would sign a stipulation *with* a waiver where they
21 are not given additional time to stay in the rental or a reduction in their rent if they had
22 been told: “In this stipulation you are giving up your right to appeal or to file a motion to
23 reconsider. If you do not sign the stipulation, you would get the same judgment without
24 the waiver if you went before the judge or chose to just leave court now and not appear
25 before the judge.”³ Thus, the issue is not simply what the landlord attorney may tell the

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27 ³ The issue is not that the landlord attorneys are being asked to give unrepresented
28 tenants “legal advice.” Rather, an unrepresented tenant should understand the stipulation
and how it compares to the judgment a court would enter. Rule 42 of the Rules of the
Supreme Court, E.R. 4.3, provides that in dealing with an unrepresented party, the lawyer

1 unrepresented tenant but what they do not tell the tenant. CLS reports that it is also
2 common for the unrepresented tenant who has signed a stipulation to have been told (or
3 understood) that they should contact the landlord and see if they can work out an
4 arrangement for them to stay in the rental. The “you can try to work it out” language is a
5 false hope. Once the stipulated judgment is signed the landlord has no obligation to try to
6 work anything out with the tenant and the tenant may use precious time trying to contact
7 the landlord when what they need to do is make arrangements to move.

8 The landlord attorneys want to continue their current practices. The current court
9 practices are set for the convenience of the landlord attorneys. As an example, it is
10 typical court practice in Maricopa County for the cases where landlord attorneys are
11 present to be heard first. The amended proposal suggests that the courts call the
12 stipulated judgment cases first so that the tenants who have missed work can have their
13 cases heard quickly and then leave. This would address the situation where tenants do
14 not want to wait until the end of the call for their cases to be heard. This process would
15 not inconvenience any landlord attorney or cause them to incur additional fees for their
16 clients. Historically, in Maricopa County the justice courts set eviction calendars with
17 many evictions on the call and most landlord attorneys have several cases on the
18 calendar. Thus, no additional attorneys’ fees are incurred if a stipulated judgment is
19 reviewed by the court and if those cases are heard first. In addition, this process will
20 have a minimal impact on the court calendars. The courts certainly should be able to
21 interview the 0-3 unrepresented tenants each calendar call who may have been
22 approached to sign a stipulated judgment and determine whether the tenants understand
23 the stipulated judgment. As noted previously, this is the practice in Pima County Justice
24 Courts. The courts should not see this proposal as a burden on them. Ensuring fairness is
25 the obligation of the courts.

26 Finally, the proposed amendment does have an exception for cases where travel to
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28 shall not state or imply that the lawyer is disinterested and shall correct any
misunderstanding of the lawyer’s role.

1 the court is impractical or other circumstances justify the court not ensuring that the
2 unrepresented parties understand the stipulation.

3 The proposed amendment is a step for access to justice for unrepresented tenants.
4 It is being proposed by legal services attorneys who have no financial interest in these
5 cases and only seek to ensure that the eviction process is fair to unrepresented tenants. If
6 the Court adopts the proposed amendment, the landlord bar in Maricopa County will
7 decide if they want to continue to use stipulated judgments with unrepresented tenants.
8 The Institute suspects that if the landlord bar sees it is in their clients' interest to do so,
9 they will.

10 **Conclusion**

11 The petition and the CLS proposed amendment address a major access to justice
12 issue for unrepresented tenants identified by legal services. For all the reasons stated
13 above, the Institute requests the Court approve the petition with the CLS amendment filed
14 on May 31, 2017 and not approve the Commission amendment filed on May 1.

15 Respectfully submitted this 31st day of May 2017.

16 WILLIAM E. MORRIS INSTITUTE FOR JUSTICE

17
18 By /s/ Ellen Sue Katz

19 Ellen Sue Katz
20 William E. Morris Institute for Justice
21 3707 North Seventh Street, Suite 300
Phoenix, Arizona 85014

22 Original electronically filed with the
23 Clerk of the Supreme Court of Arizona
this 31st day of May 2017

24 Copy of the foregoing emailed this 31st day
25 of May 2017, to:

26 Honorable Lawrence Winthrop
27 Chair of the Access to Justice Commission

28 By: /s/ Ellen Sue Katz