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IN THE ARIZONA SUPREME COURT

In the matter of)	R- 07-0023
)	
PETITION FOR RULES OF)	COMMENT TO PROPOSED RULES
PROCEDURE FOR EVICTION)	RELATED TO EVICTION ACTIONS
ACTIONS)	
_____)	

The Arizona Association of Superior Court Clerks (AASCC) submits the following comments on the petition for Rules of Procedure for Eviction Actions regarding the effect of specific sections of the proposed rules as detailed below. The AASCC supports the work done by the State Bar’s Landlord/Tenant Task Force and its recognition of a need to create rules for eviction cases that are more manageable and effective than the existing rules of civil procedure alone.

Per Arizona Revised Statutes, the superior court shares jurisdiction of Forcible Entry and Detainer (Eviction) actions with the justice courts and has exclusive jurisdiction in eviction cases where a substantial amount of rent is involved or where title to property is in dispute. Removing eviction actions from the rules of civil procedure, however, removes basic filing requirements from the process, such as the formatting of pleadings, and attempts to match justice court and superior court processes where there are significant differences. For example, justice and superior courts have key filing and

fee requirements which are not fully accounted for in the proposed rules. Specific rule sections and recommendations follow:

Rule 1. *Title and Scope of Rules.* With the rules of civil procedure specifically eliminated from eviction actions, the Clerks of the Superior Court lose the formatting requirements of pleadings that are currently in civil rules 10(d) and 5(j). There are no provisions in the proposed rules for page size, margins, spacing, signatures or space to apply the superior court's file stamp on documents. In addition, proposed rule 5(a)(5) allows printing the Residential Eviction Procedures Information Sheet on the back of the summons. Current civil rule 10(d) requires printing only on one side of the page. This requirement is particularly important in clerk's offices that scan paper into an electronic court document repository, where only one side of the paper is scanned.

Rule 5. *Summons and Complaint: Issuance, Content and Service of Process.* The AASCC recommends that the proposed list of items that must be included on the summons be modified. At subsection (1), it is unlikely that most petitioners will know a court's telephone number for entering it on the summons. Some courts have several telephone numbers either published or unpublished, which could contribute to a petitioner's difficulty in properly filing their documents. Subsection (2) requires entry of a trial date and time. In superior court, the petitioner will not have a hearing date prior to filing and therefore cannot enter that information on the summons. Subsection (5), as mentioned above, allows content on both sides of the summons and should be restricted to single-sided, separate pages.

Rule 5(b)(6) requires exact language, font, and placement on the Complaint which would not conform to the formatting requirements of the civil rules of procedure.

Although the value of the language is clear, the proposed rule would be improved by requiring the language to be placed in the center of the first page below the case caption, rather than at the top center of the page, allowing the Clerk of the Superior Court to apply its file stamp, without stamping over the prescribed warning language. Suggested language is included in Appendix A below.

Rule 6. *Service of Pleadings, Other Papers and Orders After Complaint.* The AASCC recommends clarifying that in both justice and superior courts, filings are made with the file counter clerk. Suggested language is included in Appendix A below.

Rule 7. *Answers* and Rule 11. *Initial Appearance and Trial Procedures.* Superior court requires that answers be filed in writing and that applicable fees apply to the answer. Requiring a written answer in superior court aligns eviction cases with other superior court matters and improves the accuracy of the court record. Conforming language appears in the comment to Rule 7 and in Rule 11 in Appendix A, below.

Rule 9. *Motions.* Proposed Rule 9 is one example where borrowing directly from the rules of civil procedure will improve the proposed rules of eviction. As written, the proposed rule would require a minute entry to issue for every motion with a proposed order and for every stipulation filed in a superior court eviction action. Including the language of existing Civil Rule 5(j) in the proposed rule or making reference back to Civil Rule 5(j) will inform parties that they need to provide correctly formatted orders and sufficient copies and envelopes for each party who has entered an appearance in the case. Suggested language is included in Appendix A below.

Rule 10(d). *Disclosure.* The AASCC recommends adding more information to the proposed eviction rules from the rules of civil procedure as they relate to subpoenas.

While the proposed rule directs parties to the civil rules for the requirements of serving a subpoena, the rule can be further improved by directing parties to the civil rules related to the subpoena document, language and formatting contained in Civil Rule 45. Suggested language is included in Appendix A below.

Rule 14. *Writs of Restitution.* The AASCC and its front-line clerks take great care in issuing writs. To ensure writs are issued appropriately, the AASCC recommends clarifying the process in court rule. Clarifying the proposed rules places the burden of knowledge on the party and improves the process for issuing writs in eviction cases. The proposed rule allows the clerk to issue a writ if the eviction action has not been stayed. However, the clerk cannot easily, if at all, determine if the action has been stayed. Requiring the party filing the application for writ to verify on the application that the case has not been stayed places the burden of knowledge with the appropriate party.

The Clerks presume that the timeframes in Rule 14 are intended to match the civil rules, where 45 days from entry of judgment is counted in calendar days. Rule 14(b)(1) becomes workable under this presumption by reviewing the date the judgment was entered. However, after 45 days from the entry of the judgment, the clerks would refer the matter to the judicial officer in superior court and process the writ only after an order to do so from the court. These suggestions are reflected in the language in Appendix A below.

Rule 17. *Appeals.* In general, existing statutes and rules regarding the posting and return of bonds in appeals cases are lacking in clear direction for the courts. The AASCC recommends taking advantage of the eviction rules petition to improve the automatic return of posted bonds at the resolution of the case. Many cases reach final adjudication

A copy of this comment has been mailed or delivered this
16th day of May, 2008, to:

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Via electronic filing of comment

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APPENDIX A

Rule 5. Summons and Complaint: Issuance, Content and Service of Process

a. Summons. The summons in an eviction action shall be a document separate from the complaint, shall be issued in accordance with applicable statutory provisions, and shall identify the defendants to the action. If the name of a defendant is unknown, the summons and complaint may name a fictitious defendant and any occupants of the property. The Court shall liberally grant leave to amend the complaint and summons to reflect the true names of defendants if they become known to the plaintiff. The summons shall also include the following:

(1) Name of the court and its street address, AND city; ~~and telephone number;~~

(2) IN JUSTICE COURT CASES, THE ~~D~~date and time set for the trial of the matter;

(3) - (4) [No change in text.]

(5) In residential property actions only, ~~on the back of the summons,~~ ~~or~~ on a separate page served upon the tenant, contain the information contained in the Residential Eviction Procedures Information Sheet substantially in the form included as Appendix A to these Rules.

b. Complaint. The complaint shall:

(1) - (5) [No changes in text.]

(6) State in bold print, capitalized, and underlined at the top center of the first page, BELOW THE CASE CAPTION, **“YOUR LANDLORD IS SUING TO HAVE YOU EVICTED. PLEASE READ CAREFULLY”**;

(7) - (9) [No changes in text.]

Rule 6. Service of Pleadings, Other Papers and Orders After Complaint

a. [No change in text.]

(1) Filing of documents may be made by delivering the documents to the APPROPRIATE JUSTICE COURT OR SUPERIOR COURT FILE COUNTER ~~court clerk, or, in the case of a Justice Court, to the clerk's counter~~ for date stamping.

(2) [No change in text.]

(3) Filing may also be accomplished by prepaid, first class mail to the court, whereupon the date of receipt by the ~~court~~ FILE COUNTER shall be considered the date of filing.

b. – e. [No change in text.]

Rule 7. Answers

On or before the initial return date, the defendant shall answer, indicating whether the defendant admits or denies the allegations of the complaint. If the defendant does not have sufficient information to determine whether or not an allegation of the complaint is true, the defendant shall so state. The defendant's answer shall also state in short and plain terms any defenses the defendant wishes to assert to the plaintiff's claims.

Comment

An answer admits or denies the factual allegations of the complaint, and admits or denies the plaintiff's entitlement to the relief requested in the complaint. In Justice Courts an answer can be made orally, although the best practice would be to put it in writing. ~~and~~ Superior Courts ~~may~~ require ~~it~~ ANSWERS to be in writing. An answer should identify specifically what parts of the complaint are contested or denied, and state the facts that support the denial. An answer that creates a factual dispute with the complaint will require the court to hold a trial to determine which facts are more likely true than not.

Rule 11. Initial Appearance and Trial Procedures

- a. [No change in text.]
- b. Defendant's Plea

(1) If the defendant appears and contests any of the factual or legal allegations in the complaint or desires to offer an explanation, the judge should determine whether there is a basis for a legal defense to the complaint either by reviewing a written answer filed pursuant to Rule 7 or by questioning the defendant in open court. If the court determines that a defense or proper counterclaim may exist, the court shall order a trial on the merits. If the trial is to be continued to a later date, the court may require the defendant to file a written answer IF THE CASE IS IN JUSTICE COURT AND SHALL REQUIRE THE DEFENDANT TO FILE A WRITTEN ANSWER IF THE CASE IS IN SUPERIOR COURT. If the court orders a written answer to be filed, the court should advise the defendant of both the requirement of an answer fee and the defendant's right to apply for a waiver or deferral of the fee.

(2) The defendant shall not be required to answer until the initial appearance. At the initial appearance, if the trial is not continued, AND THE CASE IS IN A JUSTICE COURT, the defendant may file an oral answer on the record. No answer fee shall be required for an oral answer IN JUSTICE COURT.

- c. – f. [No change in text.]

Rule 9. Motions

a. – h. [No change in text.]

i. All written motions shall be considered without oral argument unless specifically requested by either party or ordered by the court. All motions requesting an order for relief filed with the Superior Court shall be copied to the assigned judge, accompanied by a proposed order, WHICH SHALL COMPLY WITH THE FORMATTING REQUIREMENTS OF RULE 5(j) OF THE ARIZONA RULES OF CIVIL PROCEDURE.

10. Disclosure

a. – c. [No change in text.]

d. Any party may request the issuance of a subpoena by the Court to compel testimony and/or the production of documents. The person subpoenaed may object to the subpoena. The court may quash a subpoena upon good cause shown. Failure to comply with a subpoena may constitute contempt of court. Subpoenas shall **COMPLY WITH RULE 45 OF THE ARIZONA RULES OF CIVIL PROCEDURE AND SHALL** be served upon the subject person pursuant to Rule 4.1 and 4.2 of the Arizona Rules of Civil Procedure.

Rule 14. Writs of Restitution. The court shall promptly issue a writ of restitution upon timely application of a party entitled to it if the application is accompanied by the appropriate fee and deposits. The writ of restitution shall direct the constable or the sheriff, as appropriate, to return possession of the premises to the party entitled to possession under the judgment. A judge, justice of the peace, court commissioner, or the clerk of the superior court may issue the writ of restitution if it appears FROM THE PARTY'S APPLICATION that a judgment granting possession has been entered in favor of the party filing the writ and the action has not been stayed.

a. [No change in text.]

b. Time Standards for Writs of Restitution.

(1) Application for Writ. A party who obtains a judgment for possession in an eviction action shall have up to 45 CALENDAR days to apply for a writ of restitution.

(2) Writ Applications after 45 CALENDAR Days. If a party applies for a writ of restitution more than 45 CALENDAR days after the judgment, the party must also explain the reasons for the delay in making the application and shall certify that the tenancy has not been reinstated since the date of the judgment. If it is clear that the tenancy has not been reinstated, the court shall ORDER THE CLERK TO issue the writ. If it appears to the court that the tenancy has or may have been reinstated, the court shall schedule a hearing before granting the application. This hearing shall be scheduled no more than three business days after the application. The court shall attempt to contact the party in possession by telephone to provide notice of the hearing, and the applicant for the writ shall cause a notice of the date, time, place and purpose of the hearing to be delivered to the party in possession either personally or by posting the notice on the main entrance to the premises.

c. [No change in text.]

Rule 17. Appeals

a. General. Appeals from a lower court to the superior court shall be taken in the manner prescribed by A.R.S. § 12-1179 and by the Superior Court Rules of Appellate Procedure. Appeals from superior court shall be governed by A.R.S. § 12-1182 and the Rules of Civil Appellate Procedure. UNLESS OTHERWISE ORDERED BY THE COURT, IN ALL CASES WHERE A COST BOND, RENT BOND OR SUPERSEDEAS BOND IS POSTED WITH THE CLERK OF THE SUPERIOR COURT, THE CLERK SHALL RETURN THE BOND OR ANY REMAINING PORTION OF THE BOND TO THE POSTING PARTY UPON FINAL ADJUDICATION OF THE CASE.

b. – d. [No changes in text.]

Residential Eviction Information Sheet.

Notice. [No changes in text.]

Rent cases. [No changes in text.]

Before Court. Eviction cases move through the court system very quickly. If the tenant disagrees with the landlord's allegations, the tenant is encouraged to file a written answer. The answer form available from the JUSTICE court allows the tenant to admit or deny the allegations and explain his or her position. If the tenant cannot afford to pay the answer fee, he or she may apply for a waiver OR DEFERRAL of that fee. If a tenant believes that the landlord owes him or her money, the tenant may under some circumstances file a counterclaim. The summons states that a trial will occur on the date listed, but due to the high volume of cases, a trial may not occur then. If the tenant fails to appear, and the landlord or his attorney is present, a judgment will probably be entered against the tenant. Tenants can represent themselves or arrange for lawyers to represent them. The court will not provide a lawyer.

At Court. [No changes in text.]

Continuances. [No changes in text.]

After a Judgment. [No changes in text.]

Sources of Additional Information. [No changes in text.]