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

9 In the Matter of:

10 Supreme Court No. R-19-

11 **PETITION TO AMEND RULE 5(d)**
12 **AND RULE 10(a), ARIZONA**
13 **RULES OF PROCEDURE FOR**
14 **EVICITION ACTIONS**

15 **PETITION**

16 Pursuant to Rule 28 of the Arizona Rules of Supreme Court, the State Bar of
17 Arizona (the “State Bar”) hereby petitions this Court to amend Rule 5(d) of the Rules
18 of Procedure for Eviction Actions (hereinafter, “Rule(s),” unless otherwise
19 specified) to require that the landlord serve with the complaint specified relevant
20 rental documents. Corresponding and conforming amendments to Rule 10(a) will
21 reflect that certain documents were served with the complaint and that other
22 documents and information may be requested by the party prior to any hearing.
23 Currently, only the notice to vacate is required to be attached to the complaint. The
24 lease and other relevant rental documents on which the eviction is based are not
25 required to be served with the complaint. Finally, the requirement to produce
relevant documents and information is only triggered by a request from one of the

1 parties. Requiring inclusion of these additional documents with the complaint will
2 result in more complete notice to the tenant, a better prepared litigant, and decreasing
3 delay caused by rescheduling.
4

5 **I. Background and Purpose of the Proposed Rule Amendment**

6 **A. Current Rules**

7 In 2008, the Arizona Supreme Court approved the Rules of Procedure for
8 Eviction Actions. Rule 5 concerns the complaint and summons, and the associated
9 pleading and service formalities. Specifically, Rule 5(b)(7) requires:
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11 b. **Complaint.** The complaint shall:

12 ***
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14 (7) State the specific reason for the eviction; that the
15 defendant was served a proper notice to vacate; if
16 applicable; the date the notice was served; and what
17 manner of service was used. A copy of the notice shall be
18 attached as an exhibit to the complaint.

19 ***

20 Rule 10 concerns disclosures, with Rule 10(a) providing that:

21 **Disclosure**

22 a. Upon request, a party shall provide to the other
23 party: 1) a copy of any lease agreement; 2) a list of
24 witnesses and exhibits; 3) if nonpayment of rent is an
25 issue, an accounting of charges and payments for the
preceding six months; and 4) copies of any documents the
party intends to introduce as an exhibit at trial.

1 Thus, when the complaint is filed, the rules only require that the landlord
2 attach a copy of the notice to vacate. The parties typically have entered into a written
3 lease that includes significant contractual terms such as the rate of the rent, any late
4 fees, any concessions provided to the tenant, and applicable rules of conduct. But
5 the Rules do not require the landlord to attach a copy of the lease or payment history
6 ledger to the complaint.
7

8 Although the Arizona Residential Landlord and Tenant Act requires a
9 landlord to give the tenant a copy of the lease, A.R.S. § 33-1321(C), legal services
10 agencies report that many tenants do not receive, or maintain, a copy of their lease.
11 A tenant without a copy of the lease is likely unprepared for appearing at an eviction
12 hearing, and is similarly unlikely to know about procedural disclosure rules. Also,
13 without a ready copy, a *pro bono* or legal aid attorney is hampered in providing
14 immediate assistance.
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17 **B. Landlords Are Not Required to Initially Provide Relevant**
18 **Documents, to the Disadvantage of Tenants**

19 The time frames to act in eviction actions are very short. The initial hearing
20 or trial can take place in as few as two days after the service of the eviction
21 complaint. A.R.S. § 12-1175 (C). Thus, there is limited time for tenants served with
22 an eviction complaint to consult with an attorney and prepare for a hearing or trial.
23 Unless agreed upon by the parties, continuances are usually only for three days.
24
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1 A.R.S. § 12-1177 (C). An appeal must be filed within five calendar days of the
2 judgment. A.R.S. § 12-1179 (A).

3
4 Legal services agencies estimate that a very small percentage of tenants are
5 represented by an attorney. In contrast to the unrepresented tenant, the vast majority
6 of landlords are represented by attorneys. The timing of the filing of the eviction
7 action is totally in the control of the landlord. Case development and documentation,
8 under Rule 4, requires the landlord's counsel to "ensure their pleadings are accurate
9 and well-grounded in fact and law." This preparation, undoubtedly, results in the
10 ready availability of documents to counter the complaint.
11

12 Since the lease is the contractual basis for the eviction, it is relevant and should
13 be of record in virtually every case. Similarly, since the dates, manner of payment,
14 and amounts of rental payments may be at issue, those accounting records should
15 also be available pre-hearing and introduced into evidence. This would be preferable
16 to the practice of simply referring to that data at the hearing by the landlord or the
17 landlord's attorney. For cases where the landlord claims a violation of the lease or
18 a history of rent default, a tenant without the lease or other documents the landlord
19 intends to introduce at the hearing, can result in delay and a scheduling burden to the
20 court.
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24 From an access to justice perspective, an unrepresented tenant is at a
25 disadvantage. At risk is the loss of residence and monetary judgment, in contrast to

1 an additional administrative requirement for the landlord. This proposed rule
2 attempts to level this presentation of evidence and ensure that all parties and the
3 court know what is at issue and are prepared for the eviction hearing.
4

5 **II. Explanation of Need for Proposed Rule**

6 **A. Evictions Cases Are Important**

7 Tenants have a property interest in their residences, which requires that
8 eviction proceedings comport with 14th Amendment due process guarantees. *Greene*
9 *v. Lindsey*, 456 U. S. 444, 451-52 (1982). Moreover, tenants also have a property
10 interest in their subsidized housing benefits because they are in the class of persons
11 the program is intended to benefit. *Ressler v. Pierce*, 692 F.2d 1212, 1215, (9th Cir.
12 1982). The plight of low-income tenants and the effect evictions have on their lives
13 has received national attention in contemporary articles. The effects of an eviction
14 are far reaching, with the inability to find other housing on short notice leading to
15 the disruption of children's education, interruption of employment, dislocation from
16 health care providers, loss of personal belongings, and homelessness. In addition,
17 the eviction process may lead to monetary judgments and writs of restitution. Thus,
18 the consequences of eviction cases make these actions very important to tenants and
19 especially low-income tenants, who often lack back-up resources. Additionally, the
20 consequences for tenants evicted from subsidized housing may mean that the tenant
21 can never again live in subsidized housing.
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1 Electronic copy filed with the
2 Clerk of the Supreme Court of Arizona
3 this 10th day of January, 2019.

4 by: 

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Appendix

(Please note: deletions are reflected by ~~strike through~~ and additions are reflected by underline.)

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

a. Summons. [No change in text]

b. Complaint. [No change in text]

c. Complaint for Monetary Damages. [No change in text]

d. Additional Requirements for Complaint.

(1) [No change in text]

(2) [No change in text]

(3) A copy of any lease and any addendums shall be served with the complaint.

(4) If the action is based on non-payment of rent, a copy of the accounting of charges and payments for the preceding six months shall be served with the complaint.

(5) If the complaint seeks a judgment for reasons other than the non-payment of rent, the documents and exhibits the plaintiff intends to present or reply upon at the trial shall be served with the complaint.

e. Sanctions for Incomplete Complaint. If plaintiff fails to comply with subsections b, c or d of this rule without good cause, the court may take appropriate action, including granting a continuance, excluding evidence not disclosed, and sanctioning plaintiff up to and including dismissal of the complaint.

ef. Service of Process. [No change in text]

fg. Failure to Obtain Service. [No change in text]

Rule 10. Disclosure.

a. Upon request, a party shall provide to the other party prior to the hearing or trial:
1) ~~a copy of any lease agreement;~~ 2) ~~a list of witnesses and exhibits;~~ 3) ~~if nonpayment of rent is an issue, an accounting of charges and payments for the preceding six months;~~ and 4) copies of any documents the party intends to introduce as an exhibit at trial, that were not attached to the complaint as required by Rule 5(d).