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IN THE SUPREME COURT OF THE STATE OF ARIZONA

In the Matter of:)	Supreme Court
)	No. R-19-0018
PETITION TO AMEND)	
RULES OF PROCEDURE)	Response To Proposal
FOR EVICTION ACTIONS)	That Trial Evidence Be
)	Served With Every Residential
)	Eviction Complaint

BACKGROUND

This pleading on the proposed changes to the Rules of Procedure for Eviction Actions (RPEA) is filed on behalf of the Justice of the Peace Bench in Maricopa County. A discussion of it and the proposed rule was held during our March 13, 2019 bench meeting. The majority of the judges voted to file this feedback in response to the proposed rule changes.

I.

THE PROPOSED AMENDMENTS DUPLICATE EXISTING REQUIREMENTS, WILL LEAD TO DISSEMINATION OF CONFIDENTIAL INFORMATION, GENERATE SIGNIFICANT AMOUNTS OF PAPER, AND ARE NOT TARGETED TO SOLVING THE STATED PROBLEM.

Proposed RPEA 5(d)(3) would require, in every case, that a copy of the lease and any addendums be served with the complaint. Proposed RPEA

5(d)(4) would require, in non-payment of rent cases, that an accounting statement (sometimes called the “tenant ledger”) be served with the complaint. Proposed PREA 5(d)(5) would require all trial exhibits to be served with the complaint. Proposed RPEA 5(e) provides for sanctions for noncompliance with the new rules, up to and including dismissal of the residential eviction action. Although the proposed rule amendments do not technically require that these documents be filed with the courts, that appears to be an intent behind the petition.¹ Whatever the intent, an unintended consequence of these amendments is that they would cause tenants’ confidential and personal information to be put on display and widely disseminated.

Residential eviction actions are often served by posting and by mailing. If the lease is added to what must also be posted, personally identifying information (e.g. Social Security numbers, children’s birthdays, etc.) would be available for anyone in the apartment complex walking by a tenant’s door. In addition, including these attachments in court filings, which are public records, will lead to the possible dissemination of confidential and personal information or result in court employees spending

¹ Petition R-19-0018 at page 4, “Since the lease is the contractual basis for the eviction, it is relevant and should be of record in virtually every case. . . . This would be preferable to the practice of simply referring to that data at the hearing by the landlord or the landlord’s attorney.”

extraordinary amounts of time to prevent the dissemination of confidential information.

Requiring that sets of additional documents be served in every residential eviction case, the overwhelming majority of which are undisputed, will generate volumes of sets of documents. One sample lease that is available on-line is six pages with a suggested addendum that is four pages.² The suggested crime free lease addendum is an additional page, the bed bug information is two pages, and documents concerning medical marijuana are an additional three pages.³ The lease suggested by the Arizona Association of Realtors is nine pages long. Its lead-based paint disclosure is two pages and their standard disclosure statement is four pages.

With the possible exception of the tenant ledger, none of these additional sheets of paper would contain new information. The rule petition concedes that Arizona landlords are already required by law to provide tenants with a copy of their lease.⁴ Any required notices would have also been given to the tenant prior to the beginning of any court action.⁵

² Webpage of The Law Offices of Hull, Holliday & Holliday, PLC, Documents, www.doctorevictor.com (last visited Feb 11, 2019)(Firm represents landlords).

³ Id.

⁴ A.R.S. § 33-1331(C).

⁵ Arizona residential evictions are notice driven. With the exception of an immediate eviction, the tenant must be given notice and an opportunity to cure. Prior to filing an eviction action for nonpayment of rent, the landlord must give the tenant a five-day notice. This notice must: (1) state the amount of any unpaid

Arizona is a notice pleading jurisdiction.⁶ However, given the numerous specific items that must be listed in a residential eviction summons and complaint,⁷ arguably Arizona has adopted more of a plausibility standard, where the trial judge is a gatekeeper, making sure only properly pled complaints can move forward.⁸ In part because of this, Arizona tenants receive clear notice of the allegations against them. While tenants often dispute the factual (and sometimes the legal basis) in an eviction complaint, there are likely very few tenants who do not understand why they are facing an eviction.

While serving approximately ten additional pages with each case may not sound like much of an issue, justice courts in Maricopa County hear

rent and any other amount due; (2) notify the tenant of the landlord's intent to terminate the lease if the amount due is not received within five days after the notice is given to the tenant, and (3) inform the tenant that if the amount due is not paid, that the tenant must then surrender possession of the residence. A.R.S. § 33-1368(B). If the landlord alleges a material noncompliance with the rental agreement (e.g. unauthorized pets or people), then the landlord must give a ten-day cure notice. The notice is required to state the acts or omissions that constitute the breach and is required to state that if the breach is not remedied within ten days, then the rental agreement will terminate. A.R.S. § 33-1368(A). A case that does not have the required notice would be dismissed.

⁶ Ariz.R.Civ.P. 8(a); JCRCP 110(b); *Cullen v. Auto-Owners Insurance Co.*, 218 Ariz. 417, 189 P.3d 344, (2008) (“We granted review to dispel any confusion as to whether Arizona has abandoned the notice pleading standard ...”).

⁷ RPEA 5.

⁸ Rather than merely require the trial judge to apply the law to the facts, RPEA 13(a) contains a list of things the judge is required to do in each case. *See also*, Mitchell Turbenson, *Negative Implications of State Law Entrenchment in Federal Courts*, 57 Ariz. L. Rev. 849 (2015) (Discusses notice pleading vs. plausibility standards); Christopher M. Fairman, *The Myth of Notice Pleading*, 45 Ariz. L. Rev. 987 (2003).

approximately 6,000 residential eviction cases each month.⁹ If the proposed rules are adopted, just in Maricopa County, an additional 720,000 sheets or more of paper would need to be generated and to be served annually. Since nearly every case is prepared as if it will be served by posting and mailing, that figure actually doubles. In short, if the proposed amendments are adopted, then it will be a mandate to generate over 1.4 million sheets of paper annually in Maricopa County alone.

The stated basis for this rule change is that tenants often do not bring the required documents with them when they meet with legal aid attorneys. We have no doubt that this could be a significant problem if the tenant does not have this information and it would be material to the case. Any such problem is made more critical by the short time standards for residential eviction actions in Arizona. However, the recommended solution for a few tenants being unprepared for their legal appointments (which occurs in perhaps less than 5% of the cases) is for 100% of the tenants to be served a second copy of their lease and any notices and the potential dissemination of confidential and personal information. Rather than the

⁹ In FY 2019, though December, justice courts in Maricopa County heard 38,091 residential eviction cases. E-mail from David Marquez, Maricopa County Justice Courts Management Analyst, December 2018 Reports and Spreadsheets (Jan. 30, 2019 at 1:02 p.m.).

proposed RPEA 5, there are better alternatives. First, language similar to the following could be added as part of the REIS:¹⁰

If you meet with an attorney, it is very important that you bring a copy of your lease, any notices you have received, and a copy of any notices you have been sent.

Second, RPEA 5(d) could be amended to require that the complaint inform tenants how they can request information. For example, a new RPEA 5(d)(3) could be created and could read as follows under “Additional Requirements for Complaint:”

A clear and concise statement of the disclosure items that are available upon request pursuant to Rule 10(a) and how, where, and when the defendant may request and obtain those items prior to the initial appearance and trial.

In addition, rather than the proposed and unclear language regarding sanctions for a plaintiff’s failure to comply, a sentence can be added to Rule 11(c) which contains a clear and direct remedy for a failure to comply:

If the defendant has requested disclosure prior to the initial appearance and the plaintiff has failed to comply by the time of the initial appearance, the court shall order a continuance of any trial unless both parties agree to proceed to trial on the date of the initial appearance.

¹⁰ The Residential Eviction Information Sheet (REIS) is designed to explain the eviction process to tenants and their rights during it. RPEA, Appendix A. It is already required to be served with the summons and complaint. RPEA 5(a)(5).

The Maricopa County Justice Court Bench respectfully suggests that our targeted modifications are better than the proposed rule changes presently being considered. Our suggested changes are designed to solve the stated problem and do not have the potential for dissemination of confidential information or have a negative environmental impact. Additionally, by focusing only the cases denoted in the stated problem and not every eviction case, any increased cost will be minimalized.

II.
**ALTHOUGH IT IS NOT WITHIN THE SCOPE OF THE ORIGINAL
PETITION, WE SUGGEST THAT A DIFFERENT PORTION OF
RULE 5 BE CLARIFIED**

We recently discovered that there was a misunderstanding concerning the application of the “pay and stay” provisions of Arizona landlord and tenant law. To eliminate any potential confusion, we request that RPEA 5(1) be amended as follows:

(1) If the action is based solely on nonpayment of rent, contains a request for monetary damages and involves a residential property or mobile home space, the complaint must also state that the ~~defendant may contact the~~ plaintiff ~~or plaintiff's attorney and may~~ must reinstate the lease agreement and dismiss ~~cause~~ the eviction action ~~to be dismissed~~ if, prior to the entry of judgment, the defendant contacts the plaintiff or plaintiff's attorney and pays all rents due, any reasonable late fees due that are provided for under a written lease agreement, and any court costs and attorney fees the plaintiff has incurred as of the date the payment is made.

CONCLUSION

The proposed rule changes mandate that excessive amounts of paper, containing confidential and personal information, be created and distributed in a time where courts are trying to move away from a reliance on paper documents. The potential benefits are substantially outweighed by the obvious burdens. We respectfully request that the proposed amendment be rejected and that our alternatives be adopted instead.

RESPECTFULLY SUBMITTED, this 14th day of March 2019.

/s/ Keith Russell
Presiding Justice of the Peace
Maricopa County Justice Court Administration
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Phoenix, AZ 85004

Copy Mailed To:

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Appendix

(Please note: deletions are reflected by ~~strikethrough~~ 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) If the action is based solely on non-payment of rent, contains a request for monetary damages and involves a residential property or mobile home space, the complaint must also state that the ~~defendant may contact the plaintiff or plaintiff's attorney and may~~ must reinstate the lease agreement and ~~dismiss~~ cause the eviction action ~~to be dismissed~~ if, prior to the entry of judgment, the defendant contacts the plaintiff or plaintiff's attorney and pays all rents due, any reasonable late fees due that are provided for under a written lease agreement, and any court costs and attorney fees the plaintiff has incurred as of the date the payment is made.

(2) If the complaint seeks a judgment for reasons permitted by law other than the nonpayment of rent, the complaint shall state the reason for the termination of the tenancy with specific facts, including the date, place and circumstances of the reason for termination, ~~so the tenant has an opportunity to prepare a defense.~~

(3) A clear and concise statement of the disclosure items that are available upon request pursuant to Rule 10(a) and how, where, and when the defendant may request and obtain those items prior to the initial appearance and trial.

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

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

Rule 10. Disclosure.

a. Upon request, a party shall provide to the other party: 1) a copy of any lease agreement and relevant addenda; 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~~ exhibits (including any electronically stored information) the party intends to introduce as an exhibit at trial.

Rule 11. Initial Appearance and Trial Procedures.

a. In General. [No change in text]

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

c. Continuances. Whenever possible, the trial should be held on the initial return date. The court may order the continuance of a trial date by up to three court days in justice court or ~~ten~~ five days in superior court on the request of a party for good cause shown or to accommodate the demands of the court's calendar, but the court nevertheless shall give priority to hearing and resolving alleged “immediate and irreparable” evictions. If the defendant has requested disclosure prior to the initial appearance and the plaintiff has failed to comply by the time of the initial appearance, the court shall order a continuance of any trial unless both parties agree to proceed to trial on the date of the initial appearance. No continuance of more than three court days in justice courts or ~~ten~~ five days in superior courts may be ordered unless both parties are in agreement.

d. Trial Settings. [No change in text]

e. Pleading Requirement. [No change in text]