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**IN THE SUPREME COURT**

**STATE OF ARIZONA**

In the Matter of:

SUPREME COURT NO. R-19-0018

PETITION TO AMEND RULES 5(d) AND  
RULE 10(a) OF THE ARIZONA RULES OF  
PROCEDURE FOR EVICTION ACTIONS

COMMENT BY ARIZONA  
COMMISSION ON ACCESS TO JUSTICE

**Introduction**

The Arizona Commission on Access to Justice (ACAJ) was established by Administrative Order 2014-83, pursuant to the Court’s 5-year strategic agenda of “Advancing Justice Together: Courts and Communities.” The order specifically directs the ACAJ, among other things, to make recommendations that provide meaningful access to the court system, particularly for those individuals representing themselves in eviction matters. In that regard, the Commission has a standing work

group devoted to evaluating issues that affect self-represented litigants in our limited jurisdiction courts. Members of that work group include court administrators, limited jurisdiction court judges and attorneys representing both the housing industry and tenants.

### **The Proposed Rule Changes**

The proposed Rule changes require a plaintiff to serve (1) a copy of any lease and any addendums with the complaint (proposed Rule 5(d)(3)); (2) if the action is based on non-payment of rent, a copy of the accounting of charges and payments for the preceding six months (proposed Rule 5(d)(4)); and (3) documents and exhibits the plaintiff intends to present or rely upon at the trial, if the complaint seeks a judgment for reasons other than the non-payment of rent (proposed Rule 5(d)(5)). Additionally, the proposed Rule change provides for sanctions for non-compliance without good cause, including granting a continuance, excluding evidence not disclosed, and dismissal of the complaint (proposed Rule 5(e)). Lastly, the proposed Rule change allows a party to request, prior to the hearing or trial, (1) a list of witnesses, and (2) copies of any documents the party intends to introduce as an exhibit at trial that were not attached to the complaint (proposed Rule 10(a)).

## Policy Considerations

Without question, the time parameters surrounding eviction proceedings by statute are accelerated and place a tenant at a substantial disadvantage. Even assuming a tenant has time to seek civil legal aid assistance, those agencies report that many tenants do not receive, or maintain, a copy of their lease, or where the complaint is based upon unpaid rental charges, have ready access to the accounting records of the owner/landlord/property manager as to the subject rental unit. Without immediate access to these documents, a *pro bono* or legal aid attorney is hampered in providing timely assistance. Similarly, tenants who represent themselves in these proceedings are at a significant disadvantage if they have to proceed without timely access to the subject lease provisions and/or a detailed explanation as to why the eviction action has been filed, including how the alleged unpaid rental and other charges have been calculated.

The Commission's work group has reviewed the proposed rule change petition. While all agreed that as a matter of due process a tenant is entitled to have the information called for in the petition, there was no consensus on the mechanism to provide it, either through amending these rules or otherwise.

## **Concerns Identified and Recommendations**

### **on Behalf of Tenants**

- Due process mandates that a defendant be provided with adequate notice of the plaintiff's claim; in this setting that requires access to or a detailed explanation of unpaid rental and other charges. As to other alleged lease violations, the tenant is entitled to timely production of the particulars of the alleged violation, including a description and/or production of the evidence to be produced in support of such allegations;
- Without timely production of the information, tenants are not in a position to negotiate a resolution or be prepared for accelerated proceedings;
- The suggestion that tenants can obtain the information by requesting same from the landlord or property manager is illusory. It is impractical to expect a tenant to timely track down the relevant information from often-unavailable landlords or property managers, particularly in light of the compressed time from service of the complaint to an eviction hearing;

- The proposal to allow a tenant to request a continuance if the information has been requested but not produced is not a practical solution, particularly where a tenant has had to secure limited time off from an employer in order to attend the scheduled hearing, or has to make transportation or child care arrangements;
- At a minimum, a copy of the accounting charges and payments for the preceding six months should be attached to the complaint when the action is based upon non-payment of rent. Any redaction required for that form or explanation would be non-existent or minimal;
- To address concerns raised by the housing industry, proposed Rule 5(d)(3) should be modified to require attachment to the complaint of only those portions of the lease and any addendum that are related to the underlying basis for the proposed eviction;
- There is no practical ability to conduct traditional discovery in an eviction case. As such, proposed Rule 5(d)(5), requiring the owner/landlord to simultaneously produce documents or other materials plaintiff intends

to rely on at the time of trial, is the only way to timely receive those materials and be prepared to meaningfully participate at the hearing.

**Concerns Identified and Recommendations  
by Housing Industry Representatives**

- 85-90 per cent of eviction actions are triggered by non-payment of rent; only a small number of actions are triggered by other alleged lease violations;
- Attaching voluminous and mostly irrelevant information to a non-payment of rent eviction complaint is costly;
- Requiring that the documents be attached to the complaint would mean that such information will often be posted on the tenant's door as part of service of process. The lease and accounting records contain confidential information and providing it without redaction would place the tenant at risk for identity theft, would violate federal law and expose the landlord/owner to potential liability. That information of necessity contains tenant signature(s), may include social security numbers, bank account numbers, prior residential addresses, emergency contact

information, children's names and birthdates and the location of the tenant's assigned parking spot;

- Redaction of confidential information would require lawyer supervision and time, thereby increasing the cost of litigation;
- Many large multi-family housing entities have secure tenant portals that provide access to all lease-related documents. An alternative to the proposed rule change could require the landlord to ensure that a detailed accounting record is available on the portal. For those owners/landlord representatives in rural areas or who don't have a tenant portal, perhaps the documents could be provided as an attachment to an e-mail to the tenant.

### **Concerns Identified and Recommendations**

#### **by Maricopa County Justice Court Representatives**

- Attaching lease documents to eviction complaints only creates storage and redaction problems for the courts;
- A different solution would require more detailed information concerning the basis for the eviction action be contained in the Residential Eviction

Information Sheet (REIS), including the method of calculating rental arrearages and other outstanding charges.

### **Conclusion**

All involved in the eviction process agree that tenants are entitled to timely receive documentation relevant to the issue(s) raised by the eviction action. The disagreement concerning the proposed rule changes center on what and how the information is to be provided. The Commission believes the Court should consider a resolution that insures timely delivery of the relevant information without creating any risk of identity theft or release of otherwise confidential information.

RESPECTFULLY SUBMITTED this 18<sup>th</sup> day of April, 2019.

/s/ Lawrence F. Winthrop  
Lawrence F. Winthrop  
Chair, Arizona Commission on Access  
to Justice