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

9 In the Matter of:

Supreme Court No. R-19-0018

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

REPLY OF THE
STATE BAR OF ARIZONA

14 Pursuant to Rule 28 of the Arizona Rules of the Supreme Court, the State Bar
15 of Arizona (“State Bar”) submits this Reply in response to the comments regarding
16 the State Bar’s Petition to Amend the Rules of Procedure for Eviction Actions. The
17 Petition requests that Rules 5(d) and 10(a) be amended to require landlords serve a
18 copy of the lease and other relevant documentation, along with the complaint.

19 Currently, only a notice to vacate is required as an attachment to the
20 complaint. The lease and other relevant rental documents on which the eviction is
21 based, are not required attachments to the complaint. While the disclosure process
22 provides for access to these documents, community legal services offices report that
23 tenants do not know they can make such request.
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1 **I. Constitutional Due Process Protections Apply to Eviction Cases**

2 The Petition notes the importance of stable housing and the due process rights
3 of a tenant. The comments address countervailing privacy concerns of equal
4 importance to a tenant, along with an increased burden to the landlord and the courts.
5 As noted in the Petition, legal services attorneys have identified the issue of
6 unsophisticated tenants lacking relevant documents to respond to an eviction action;
7 or understanding that they may request these documents. The Petition seeks to
8 facilitate the access to proper legal analysis in a timely manner, as time is of the
9 essence in eviction cases, so that tenants afforded due process in eviction actions.
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12 **II. General Themes Reflected in Comments Filed in Response to Petition**

13 The submitted comments present three general concerns. First, since leases
14 contain confidential information, the mandatory inclusion of those details will
15 potentially expose the private information of a tenant. Second, attaching copies of
16 all documents (even the subset of only “relevant” documents) will have a cost and
17 will be an administrative burden on landlords and the courts. Third, the concern that
18 the proposed rule is broader than necessary, and that there are better ways to amend
19 the eviction rules. The concerns reflected in comments filed by others are addressed,
20 generally, below.
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1 **A. Concerns Related to Confidential Information in Leases**

2 In response to the revelation in some of the comments that leases contain
3 sensitive personal information of tenants, the legal services attorneys raise their
4 concerns as to residential leases containing confidential information (e.g. social
5 security numbers, bank account numbers, emergency contact information and
6 children’s names and birthdays). Several comments argue that if the complaint with
7 attachments must be served through posting on the tenant’s door, the confidential
8 information will be compromised. One solution is to not include sensitive personal
9 information in the lease agreement. Another solution is to require redaction of
10 sensitive personal information prior to posting.
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12 **B. Administrative Cost Issue**

13 Some comments note that attaching the additional documentation will
14 increase costs, administrative burden to the landlord, and significantly increase the
15 amount of paper submitted to the court. The tenant and landlord bars indicate that
16 standardized leases are predominantly used but vary in length. Similar concerns are
17 noted regarding ledger pages for rent delinquency cases – different accounting
18 procedures or programs present a non-standardized format of differing page lengths.
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20 A modified approach, to minimize a ballooning page count, would be a
21 qualifier of only “relevant” attachments from the entire lease. The countervailing
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1 concern is that with a proposed potential sanction of dismissal, the landlord would
2 cautiously choose to still attach everything. Such a modification would most
3 appropriately be made within the proposed Rule 5(d)(3), Rules of Procedure for
4 Eviction Actions (RPEA).

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6 Scanning technology and electronic case files become important
7 considerations in evaluating the administrative and record keeping burdens from this
8 proposed change. Coordinated changes will need to be adopted for disclosure
9 requirements in Rule 10, RPEA, as proposed – with a potential offset to
10 administrative time.

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12 Of prevailing importance, is that tenants have the documents needed to
13 evaluate and prepare a defense sufficiently prior to the hearing date. This interest is
14 furthered by providing the relevant documents with the complaint. Tenants’ rights
15 can be balanced against the administrative cost and impact on the system by
16 incorporating language that allows for the landlord to omit addendums or other
17 superfluous documents that are not material to the basis for eviction.
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20 **C. Comment Submitted by Maricopa County Justices of the Peace**

21 The Comment by the Maricopa County Justices of the Peace (“judges”)
22 suggests there are other potential amendments to the eviction rules that would be
23 better pinpointed alternatives.
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1 The judges propose first to amend the Residential Eviction Information Sheet
2 (Appendix A, RPEA) required by Rule 5(a)(5) to explain how a tenant may request
3 relevant information prior to the hearing. In conjunction with this, the justices also
4 propose, instead, to add a requirement in Rule 5(d)(3) that the landlord informs the
5 tenant, in the complaint, that the tenant can make requests for information prior to
6 the initial appearance (rather than mandating the attachment of the documents).
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8 Next, the judges suggest adding a sentence to Rule 11(c) (rather than the
9 additional sanction subparagraph as Rule 5(e)) requiring a continuance if the
10 requested disclosures are not made (unless both parties agree to proceeding). The
11 legal services attorneys note the potential hardships of needing time off from work,
12 transportation problems, and child care issues that such continuances can have on a
13 tenant (Comment of William E. Morris Institute for Justice, pp. 4-5). Finally, the
14 judges suggest that Rule 5(d)(1) be clarified for cases where the tenant pays the
15 overdue rent, reasonable accumulated fees, and costs prior to the entry of judgment.
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18 The State Bar recognizes the concern from the William E. Morris Institute for
19 Justice that some of the proposed changes set forth in the judges' Comment are better
20 suited for a separate Rule 28 petition. Such an approach would allow the opportunity
21 for more public comment on a specific rule-change proposal, rather than as a limited
22 reply to a comment on the State Bar's Petition.
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