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IN THE SUPREME COURT OF THE STATE OF ARIZONA

In the Matter of:)	SUPREME COURT
)	No. R-07-0023
PETITION FOR)	COMMENTS ON
PROCEDURE FOR)	CHANGES TO
EVICITION ACTION)	PROPOSED RULES

WHO ARE WE

As Arizona attorneys representing landlords in landlord-tenant and fair housing matters for a combined 117 years in Arizona, we write these comments in concert with the Arizona Association of Realtors, Arizona Multihousing Association, the Manufactured Housing Communities of Arizona and the National Apartment Association.

The work of our combined practices includes evictions for residential rental units in almost every Justice of the Peace court in Arizona, and combined our firms represent property owners and managers in tens of thousands of cases per year, primarily in the Maricopa County Justice of the Peace courts, but also in every county in the State.

COMMENTS ON REVISED PROPOSED RULES OF PROCEDURE FOR EVICTION ACTIONS

Concern: *Appendix A - Residential Eviction Information Sheet (published and distribution required by the Arizona Supreme Court).*

While the changes made are positive there are still items that need to be addressed in Appendix A

- (1) While this information is helpful for the tenant the rental housing industry believes that this notice should be distributed by the Courts and made available to tenants on-line.
- (2) If the Supreme Court still deems this notice is necessary to be sent by the plaintiff we respectfully request the Appendix A notice be provided on the back of the summons and the following changes be made to the Appendix text:
 - a. The Notice paragraph of the Appendix A states that the tenant should have received this notice before the lawsuit was filed. This should be revised to read the notice should be received along with the summons, to read as follows:

“Notice. A landlord must provide a tenant with written notice saying why the eviction process has started. The tenant should have received this notice ~~before this lawsuit was filed~~ with the summons”
 - b. The At Court paragraph should be changed to read as follows:

“At Court. At the time and date listed on the summons, the judge will start calling cases. If both parties are present the judge will ask the tenant whether the complaint is true. If the tenant says “no”, he or she will need to briefly tell the judge why. If the reason ~~appears to be~~ is a legal defense, the judge will need to hear testimony from both sides and make a decision after trial. After talking to the landlord or its attorney, a tenant may wish to agree to what the landlord is requesting by signing a “stipulation”. A stipulation is an agreement under which the parties resolve the dispute on the basis of what the agreement says. Only matters contained in the written agreement can be enforced. These agreements should be clear and understandable by both parties. Most stipulations include judgments against tenants. ~~See below.~~”
 - c. The After a Judgment section should be amended for consistency as and clarification as follows:

“After a Judgment. If a landlord receives a judgment, it may apply for a writ of restitution to remove the tenant(s) and all occupants. ~~residents.~~ Writs of ~~R~~estitution are served by constables, who will direct the residents to leave. A tenant may avoid the difficulties associated with a writ of restitution by vacating the property and returning the keys to the landlord. This ends the tenants’ ~~his or her~~ possession of the residence. A tenant will have five (5) days to vacate the premises unless the court has found a material and irreparable breach of the lease on behalf of the tenant in which case the tenant has only twelve (12) to twenty-four (24) hours to vacate”

Concern: *Rule 5.b.(1) Summons and Complaint: Issuance, Content and Service of Process.* This proposed rule requires the attorney to bring the complaint in the legal name of the party claiming entitlement to possession of the property. This information is readily available to the resident via the county assessor office (see: www.maricopa.gov/Assessor/Residential_Property_links.aspx) and there is a rental registration requirement for all rental units in Arizona. More importantly, however, the tenant who leases an apartment at “Maple Gardens” writes rent checks to “Maple Gardens” and sees property staff wearing “Maple Gardens” uniforms every day will be confused if he or she receives a summons and complaint from the legal entity “Acme Realty Trust”. Requiring that the complaint be made in the name of the legal owner will cause confusion for the tenant who is unfamiliar with the other entity.

Recommendation: The current system works well in regard to this issue and we recommend that no changes be made and that the proposed rule be rejected.

Concern: *Rule 5.b.(7) Summons and Complaint: Issuance, Content and Service of Process – State Specific Reason for the Eviction.* This proposed rule requires the complaint to include a **specific** reason for the eviction; that the defendant was served a proper notice to vacate

Recommendation: Define or delete specific.

Concern: *Rule 5.c.(4)(5) and (6) Summons and Complaint: Issuance, Content and Service of Process –* The method of calculating late fees is specified in the lease agreement and known to the tenant at the time a lease is executed.

Recommendation: We respectfully request that this section be clarified and reference the lease agreement.

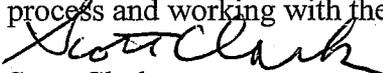
Concern: *Rule 10 d. - Disclosure.* This rule was revised by the Court to incorporate Ariz.R.Civ.P. 45 dealing with subpoenas into the eviction rules. Rule 45 is inconsistent with the statutory time periods set forth in the forcible and special detainer statutes (e.g., giving the subpoenaed party 14 days to object to a subpoena.

Recommendation: The following language should be added.
“Notwithstanding the time periods prescribed in Rule 45, however, the rule shall not be applied in such a way as to extend the trial in an eviction proceeding beyond the statutory requirements. It shall be the responsibility of the party requiring the attendance of the witness to ensure that he or she appears at the scheduled time. Failure of a witness to attend despite being served with a subpoena shall not constitute cause for extending the statutory deadlines to postpone a trial although the person disobeying the subpoena remains subject to sanctions for failure to attend”.

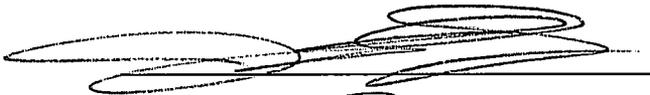
CONCLUSION

We respectfully request that the rule package be adopted with the recommended changes and clarifications.

Thank you for your time and consideration of our position. We will be happy to provide additional information if necessary and look forward to participating in the rule-making process and working with the Supreme Court.


Scott Clark

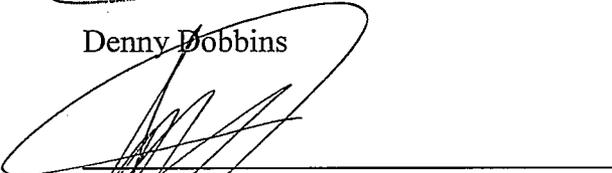
Matt Koglmeier



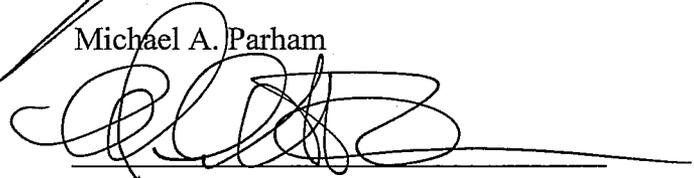
Denny Dobbins



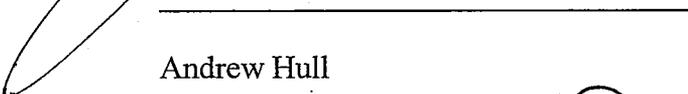
Michael A. Parham



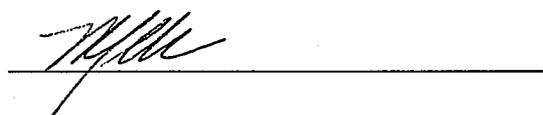
Mark Heldenbrand

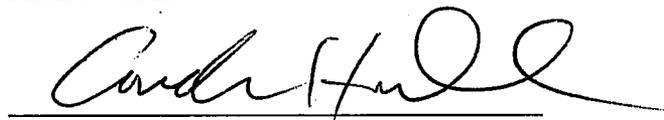


Mike Clow – AMA 2008 Chairman of the Board



Andrew Hull





DATED: October 30, 2008

A copy of this comment has been mailed this 30th day of October 2008 to:

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