

1. COMMENTS PACKET

Chart of Comments

R-17-0020 – Stipulated Judgments in Eviction Actions

Committer	Page	Description	ACAJ Response
Michael Parham	Pg. 2	The language requires the court to find that all listed factors have occurred prior to accepting the stipulation but the enumerated factors are mutually exclusive and cannot occur together.	
	Pg. 2	Adding “The court determines that the parties understand the terms in the document they signed” creates a conflict under it.	
Pamela Bridge	Pg. 11	Tenants continually complain to legal services advocates that they did not understand: <ul style="list-style-type: none"> • That they were speaking to an attorney for a landlord • The terms of the stipulated judgment • The consequences of the stipulated judgment 	
	Pg. 14	Tenants do not understand that they do not have any right to appeal a stipulated judgment.	
	Pg. 14	Many of the stipulated judgments used in Arizona waive the tenant’s right to file a motion to vacate or motion to reconsider.	
	Pg. 15	While the comments in opposition complain that the proposed rule change will backlog eviction dockets, they have failed to provide any data to support this argument. The justice courts in Pima County have already successfully implemented the procedures set forth.	
	Pg. 16	Requesting tenants remain to appear before a judge is not detrimental to the tenant.	
	Pg. 18	Suggest adding language to allow stipulated judgments to be accepted without the appearance of the parties if the parties are both represented by attorneys and the attorneys signed the document.	

Chart of Comments
R-17-0020 – Stipulated Judgments in Eviction Actions

Committer	Page	Description	ACAJ Response
	Pg. 18-19	<p>Permitting stipulated judgments to be accepted if the landlord attorney informs the court that the tenant was told he or she could appear and declined does not serve the Petition’s objective.</p> <p>This change merely codifies the current inadequate practice in Maricopa County and fails to ensure that the tenant understood the stipulation.</p>	
	Pg. 19	If the justice court judges decided to hear stipulated judgments first during the eviction call, self-represented litigants who reached stipulated judgments would be able to leave the court without delay. Propose adding language to the petition that provides that courts shall call cases with stipulated judgments first.	
Ellen Katz	Pg. 28	This proposal codifies the practice in some MCJC where justices require unrepresented landlords to appear in court when the tenant is represented by legal services. It also codifies the practice in Pima County Justice Courts that unrepresented tenants appear in court for entry of a stipulated judgment.	
	Pg. 29	<p>Tenants reported that they did not understand:</p> <ol style="list-style-type: none"> 1. The terms of the stipulation; 2. They had waived their right to file a motion to reconsider or an appeal; 3. Their landlord did not need to work out the eviction with them <p>Because in the stipulation the tenant waived her right in to file a motion to reconsider or to appeal, the tenant was in a worse position that if she had either not come to court at all or appeared before the justice without agreeing to the stipulation.</p>	
	Pg. 30	The amended proposal suggests that the courts call the stipulated judgment cases first so that	

Chart of Comments
R-17-0020 – Stipulated Judgments in Eviction Actions

Commenter	Page	Description	ACAJ Response
		the tenants who have missed work can have their cases heard quickly and then leave.	
	Pg. 30-31	The proposed amendment does have an exception for cases where travel to the court is impractical or other circumstances justify the court not ensuring that the unrepresented parties understand the stipulation.	

Rule 13. Entry of Judgment and Relief Granted

b. Forms of Judgment.

(4) Stipulated Judgments. The court may accept a stipulated judgment, only when the court finds one of all the following:

- A. Both parties or their attorneys personally appear before the court; ~~or~~
- B. The plaintiff's attorney asserts to the court that the defendant tenant was informed of the right to appear and declined; ~~or~~
- C. The court determines that, because of distance or other circumstances, the defendant cannot personally appear, that good cause exists and it is in the interest of justice to proceed; or and
- D. An attorney for the defendant has signed the stipulation.

~~E.~~ In addition, prior to accepting the stipulated judgment ~~The court determines that the conditions of Rule 13(a)(1)-(2) and (b)(4) have been satisfied, and that defendant has signed the warning language on and the judgment form to which the defendant stipulated that reads as follows contains the following warning:~~

WARNING!

1. The plaintiff's representative is not a court employee.
2. By signing below, you are consenting to the terms of a judgment against you and the plaintiff landlord will now be able to evict you.
3. You may have your wages garnished and the judgment may appear on your credit report.
4. You may lose your right to subsidized housing; ~~and~~
5. You may NOT stay at the ~~rental~~ property, even if the amount of the judgment is paid in full, unless you get the agreement in writing or get a new written rental agreement with the plaintiff your landlord.

~~F. The court determines that the parties understand the terms in the document and defendant has signed the warning language in (b).~~

Rule 13. Entry of Judgment and Relief Granted

b. Forms of Judgment.

(4) Stipulated Judgments. The court may accept a stipulated judgment, only when the court finds one of all the following conditions is met:

~~A.~~ When both parties are represented by attorneys and both or their attorneys sign the stipulation personally appear before the court, or

~~A.B.~~ When one or both parties is unrepresented and the unrepresented party/parties appear before the court and court determines the unrepresented party/parties understand the document signed, or

~~B.~~ The attorney asserts to the court that the tenant was informed of the right to appear and declined, or

C. The court determines that, because of distance or other circumstances, the unrepresented party defendant cannot personally appear before the court and, that good cause exists and it is in the interest of justice to proceed. ~~;~~ and

~~D.~~ In addition, the court may accept stipulated judgment when ~~T~~the court determines ~~that~~ the conditions of Rule 13(a)(1)-(2) have been satisfied and the form to which the defendant stipulated contains the following warning and the defendant has signed the warning language:

WARNING!

- 1. The plaintiff's representative is not a court employee.**
- 2. By signing below, you are consenting to the terms of a judgment against you and the landlord will now be able to evict you.**
- 3. You may have your wages garnished and the judgment may appear on your credit report.**
- 4. You may lose your right to subsidized housing, and**
- 5. You may NOT stay at the rental property, even if the amount of the judgment is paid in full, unless you get the agreement in writing or get a new written rental agreement with your landlord.**

~~E. The court determines that the parties understand the terms in the document and defendant has signed the warning language in (b).~~

D. The court should call cases with stipulated judgments first so that any unrepresented party can leave the court without delay.

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Communities of Arizona and Michael A. Parham

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

10 In the Matter of:

Supreme Court No. R-17-0020

11 PETITION TO AMEND RULE
12 13(b)(4) OF THE RULES OF
PROCEDURE FOR EVICTION
13 ACTIONS

SECOND ROUND COMMENTS
ON PROPOSED RULE

14
15 Commenting Parties Manufactured Housing Communities of Arizona and
16 Michael A. Parham file these Second Round Comments on the Petition to Amend
17 Rule 13(b)(4) of the Rules of Procedure for Eviction Actions (the “Proposal”) filed by
18 the Arizona Commission on Access to Justice (the “ACAJ”).

19 The ACAJ now proposes in its April 26, 2017 Supplement to revise Rule
20 13(b)(4) and the warning language to provide clarification and improve readability for
21 self-represented litigants. It advises the modified rule will contain sections saying:

22 A. Both parties or their attorneys must personally appear before the court, **or**

23 **B. The attorney can assert to the court that the tenant was informed of the right**
24 **to appear and declined. [...]**

25 E. The court determines that the parties understand the terms in the document **and**
26 **defendant has signed** the warning language in (b).

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This change is acceptable to these parties provided the actual rule actually says that. But the version attached to the modified proposal does not accurately do so though it appears the ACAJ's intent is that it should. For example, the new ACAJ language requires the court to find that *all listed factors* have occurred prior to accepting the stipulation, but the enumerated factors are mutually exclusive and cannot occur together. Our proposed verbiage in the attached Appendices merely corrects the semantics to reflect that the court must find only one of the enumerated factors, before entering judgment. It is believed that this was the ACAJ's intent, and the language is merely being clarified to avoid confusion.

A second problem is the addition of the following language in the revised ACAJ proposal that creates a conflict under it:

D. *The court determines that the parties understand the terms in the document they signed* and parties have initialed the warning language in (b).

Since both parties will not be there when a stipulation is accepted under the revised rule when one party elects not to personally appear this language will create confusion in the minds of judges. How are they to specifically make such a determination? The last paragraph of current RPEA 13(b)(4) reads in part as follows:

The amounts awarded in the judgment must be consistent with the amounts sought in the complaint, although the judgment may also include additional rent, late charges, fees and other amounts that have accrued since the filing of the complaint, if appropriate.

Courts must make this determination under the current rule and making it in each stipulation with the additional assertions of the plaintiff's attorney accomplishes this purpose without the additional language now proposed by the ACAJ. Anything in the stipulation out of line with what the Complaint seeks plus accruing sums thereafter would raise a red flag and trigger a rejection.

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These parties have revised the modified rule proposed by the ACAJ and it appears red lined on Appendix "A" hereto. A clean copy is Appendix "B" hereto.

DATED: May 31, 2017

WILLIAMS, ZINMAN & PARHAM P.C.

Electronically Signed:
By: Melissa A. Parham
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Michael A. Parham

A copy of these comments has been e-mailed this 31st day of May, 2017 to:

Hon. Lawrence Winthrop

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APPENDIX "A" TO
MHCA/PARHAM SECOND ROUND COMMENTS ON PROPOSED RULE
Red Line Copy
RULES OF PROCEDURE FOR EVICTION ACTIONS

Rule 13. Entry of Judgment and Relief Granted

b. Forms of Judgment.

(4) Stipulated Judgments. The court may accept a stipulated judgment, but only if when the court finds one of all the following:

- A. Both parties or their attorneys personally appear before the court, unless the court determines that, because of distance or other circumstances, the defendant cannot personally appear, that good cause exists and it is in the interest of justice to proceed; and
- B. The plaintiff's attorney asserts to the court that the defendant was informed of the right to appear and declined;
- C. The court determines that, the conditions of Rule 13(a)(1)-(2) have been satisfied and the form to which the defendant stipulated contains the following warning: because of distance or other circumstances, the defendant cannot personally appear, that good cause exists and it is in the interest of justice to proceed; or
- D. An attorney for the defendant has signed the stipulation.

In addition, prior to accepting the stipulated judgment the court determines that the conditions of Rule 13(a)(1)-(2) and (b)(4) have been satisfied, and that defendant has signed the warning language on the judgment form to which the defendant stipulated that reads as follows:

Read carefully! WARNING!

- 1. The plaintiff's representative is not a court employee.
- 2. By signing below, you are consenting to the terms of a judgment against you and the landlord plaintiff will now be able to evict you.

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3. You may ~~be evicted as a result of this judgment~~ have your wages garnished, and the judgment may appear on your credit report.

4. You may lose your right to subsidized housing, and

5. You may NOT stay at the rental property, even if the amount of the judgment is paid in full, without your landlord's express consent unless you get the agreement in writing or get a new written rental agreement with your landlord the plaintiff.

~~E. The court determines that the parties understand the terms in the document they signed and parties have initialed the warning language in (b).~~

Yellow Highlights--ACAJ Changes to rule in original or revised proposal.

Red Language--Changes made in these comments.

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**APPENDIX "B" TO
MHCA/PARHAM SECOND ROUND COMMENTS ON PROPOSED RULE
Clean Copy
RULES OF PROCEDURE FOR EVICTION ACTIONS**

Rule 13. Entry of Judgment and Relief Granted

b. Forms of Judgment.

(4) Stipulated Judgments. The court may accept a stipulated judgment, only when the court finds one of the following:

- A. Both parties or their attorneys personally appear before the court;
- B. The plaintiff’s attorney asserts to the court that the defendant was informed of the right to appear and declined;
- C. The court determines that, because of distance or other circumstances, the defendant cannot personally appear, that good cause exists and it is in the interest of justice to proceed; or
- D. An attorney for the defendant has signed the stipulation.

In addition, prior to accepting the stipulated judgment the court determines that the conditions of Rule 13(a)(1)-(2) and (b)(4) have been satisfied, and that defendant has signed the warning language on the judgment form to which the defendant stipulated that reads as follows:

WARNING!

- 1. The plaintiff’s representative is not a court employee.**
- 2. By signing below, you are consenting to the terms of a judgment against you and the plaintiff will now be able to evict you.**
- 3. You may have your wages garnished and, the judgment may appear on your credit report.**
- 4. You may lose your right to subsidized housing, and**
- 5. You may NOT stay at the property, even if the amount of the judgment is paid in full, unless you get the agreement in writing or get a new written rental agreement with the plaintiff.**

To Whom It May Concern:

The Southwest Fair Housing Council (SWFHC), established in 1986, is a non-profit, tax-exempt fair housing organization that provides services throughout Arizona. SWFHC advocates for and facilitates the enforcement of the Federal and Arizona Fair Housing Acts and the non-discriminatory ordinances of Arizona municipalities. Its mission is to provide comprehensive services to achieve and preserve equal access to housing for all people.

SWFHC staff during the course of conducting fair housing investigations frequently hears the stories of tenants who have experienced or are facing eviction. The vast majority of these clients do not adequately understand their rights as tenants or under the Fair Housing Act and do not have the resources to hire an attorney. Compared to the need, there are few agencies or organizations available to advocate on their behalf. In order for SWFHC to achieve its mission to preserve equal access to housing for all people, it is crucial that tenants understand what is happening in eviction cases.

The Southwest Fair Housing Council submits this comment in support of the petition to adopt an amendment to the Rules of Procedure for Eviction Actions by adding a requirement concerning the acceptance of stipulated judgments as Rule 13(b)(4). The Council also supports comments made by the William E. Morris Institute for Justice and Community Legal Services. Finally, it supports the amendment proposed by Community Legal Services filed on May 31, 2017, but does not support the amendment proposed by the Access to Justice Commission filed on May 1, 2017.

Respectfully Submitted,

Jay Young
Executive Director

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IN THE SUPREME COURT

STATE OF ARIZONA

**Petition to Amend 13(b)(4) of the
Rules of Procedure for Eviction
Actions**

Supreme Court No. R-16-0040

**COMMENTS IN SUPPORT OF
SUPPLEMENT TO PETITION TO
AMEND RULE 13(b)(4) OF THE
RULES OF PROCEDURE FOR
EVICTION ACTIONS AND
PROPOSED AMENDMENTS**

Pursuant to Rule 28 of the Rules of the Supreme Court, Community Legal Services submits these comments in support of the Petition to Amend Rule 13(b)(4) of the Rules of Procedure for Eviction Actions (hereinafter “Petition”) and proposes amendments to the Petition. The Petition was filed by the Arizona Commission on Access to Justice (hereinafter “ACAJ”). The purpose of the Petition is to assist self-represented litigants by making sure they understand the terms of a stipulated judgment before agreeing to the severe consequences of an eviction. These comments will also respond to the objections submitted by Mike Parham, Denise Holliday, Paul Henderson, Mark Tynon, Jesse Cook and Mark

Tucker. Further, this comment suggests alternative language to the petition which is attached as Appendix A. Specifically, we suggest amending the current proposed language with the following changes:

1. Stipulated judgment only may be accepted when at least one of the following conditions is met:
 - (A) When both parties are represented by attorneys and both attorneys sign the stipulation, or
 - (B) When one or both parties is unrepresented and the unrepresented party/parties appear before the court and court determines the unrepresented party/parties understand the document signed, or
 - (C) The court determines that because of distance or other circumstances, the unrepresented party cannot personally appear before the court and good cause exists and it is in the interest of justice to proceed.

Also, these comments suggest additional language stating that the court should call cases with stipulated judgments first so that any unrepresented party can leave the court without delay.

I. Statement of Interest

Pamela Bridge is a member of the Arizona Commission for Access to Justice and Director of Litigation and Advocacy at Community Legal Services (hereinafter

“CLS”). CLS is a nonprofit law firm which advocates for access to justice for low-income Arizonans. The mission of CLS is to eliminate poverty- based inequities in the civil justice system by providing high quality legal advice, advocacy and assistance to low income Arizonans. As part of its advocacy, CLS frequently represents tenants in eviction actions. While the firm provides direct representation, it is also dedicates extensive time and resources towards increasing access to justice for all low-income Arizonans. Additionally, CLS attorneys do not have a financial interest in eviction hearings. While CLS can be awarded attorney’s fees, the firm uses these awards to assist in future advocacy pursuant to the Legal Services Corporation restrictions and guidelines.

II. The Petition benefits all Self-Represented Litigants.

The proposed rule change benefits both self-represented tenants and landlords. The courts have previously acknowledged the importance of determining whether a self-represented landlord understands a settlement or stipulated judgment. When a CLS attorney represents a tenant against a self-represented landlord and reaches a settlement or stipulated judgment that grants the tenant additional time in his/her housing or reduces the money he/she owes, several courts will not accept the stipulation unless the landlord is present and the judge determines the landlord understands the terms of the settlement. CLS attorneys

understand that the judges who require this procedure are doing so not because they believe CLS attorneys misled the landlord, but rather because they want to make sure the self-represented landlord understands the terms of the agreement. The proposed petition provides this protection for self-represented litigants, regardless of whether they are landlords or tenants.

III. The Petition is Critical because Tenants often do not understand the Terms and Effects of Stipulated Judgments.

In 2015, housing advocates from all of three of the Legal Services Corporation funded organizations throughout the state (hereinafter “Legal Services advocates”) identified tenants' inability to understand stipulated judgments as one of the most critical barriers to access to justice. While a high percentage of tenants do not attend court and receive default judgments, the tenants who sign stipulated judgments at court took the time to properly appear. However, after signing a stipulated judgment and leaving the court without seeing a judge, tenants continually made the following complaints to Legal Services advocates:

- Tenants did not understand they were speaking to an attorney for a landlord.
- Tenants did not understand terms of the stipulated judgment.
- Tenants did not understand the consequences of the stipulated judgment.

A. Tenants did not to understand they were speaking to an attorney for a landlord when agreeing to a stipulated judgment.

Many tenants mistake the landlord's attorney for court personnel. We do not allege that this mistake is caused by willful misrepresentation. Rather, self-represented tenants on the brink of losing their homes and appearing in court for the first time are nervous and sometimes cannot understand the role of the landlord's attorney.

B. Tenants did not understand terms of the stipulated judgment.

During a pilot program at the Downtown Justice Center and Country Meadows Justice Court, law students provided written materials regarding eviction to tenants at a table outside the courtrooms. In addition, they would view each hearing to document the effectiveness of the written materials. During that process, the law students documented seeing many of the brief conversations between landlord attorneys and self-represented tenants, finding:

- Those conversations lasted no more than two minutes.
- The landlord attorney would often hold a pre-printed stipulated judgment while quickly discussing the form with the tenant and only provided the tenant with a copy of the judgement after it was signed by the tenant.

- Several tenants did not understand the document they signed or the consequences of the document.
- Several tenants stated they believed that the landlord would still work with them to retain housing after the stipulated judgment was signed, yet that understanding was not memorialized in the judgment.
- One tenant reported she did not even understand that she had agreed to be evicted.

These unjust outcomes are consistent with our experience at CLS. Tenants frequently apply for legal services because of misunderstandings about the terms of a stipulated judgment they signed. For instance, recently we received a complaint from a mother whose rent was supposed to be paid almost entirely by the Section 8 Housing Choice Voucher Program. However, she agreed in a stipulated judgment to pay the entirety of the landlord's rental amount, including the amount paid by Section 8. This mother did not understand that she had agreed to such improper terms until she came to CLS.

Legal Services advocates believe there are several critical factors that lead to fundamental misunderstandings by the tenants, including: the small print of the judgment terms on the carbonless NCR pre-printed forms, the limited time landlord attorneys have to discuss the terms with the tenant, and other important factors which might not be immediately apparent to the landlord attorneys, like

tenant language barriers and disabilities.

C. Tenants fail to understand the consequences of the stipulated judgments.

In addition to ordering a tenant to leave his or her home, stipulated judgments often have a devastating and enduring impact on tenants' lives in ways they do not anticipate. Stipulated judgments affect tenants' credit scores and evictions limit tenants' ability to find housing in the future. Landlords sometimes garnish the tenants' wages in order to recover the monetary judgment, resulting in future evictions, utility issues, and consequently, endless fees and future judgments that never allow them to escape debt and poverty. Tenants in subsidized housing, such as the Section 8 Housing Choice Voucher Program, are more than often permanently barred from obtaining subsidized housing once they suffer an eviction, losing one of their few opportunities to afford to house their families and gain enough wealth to improve their situation.

Also, tenants do not understand that they do not have any right to appeal a stipulated judgment. Contrary to Mr. Parham's comments, many of the stipulated judgments used in Arizona waive the tenant's right to file a Motion to Vacate or Motion to Reconsider. Since tenants can file a Motion to Reconsider on a default judgment, these tenants perversely would have had more recourse if they had stayed home.

VI. Asking that a Judge Determines that a Tenant Understands the Terms Will Not Back Log the Court.

While the comments in opposition complain that the proposed rule change will backlog eviction dockets, they have failed to provide any data to support this argument. The justice courts in Pima County have ready successfully implemented the procedures set forth in the proposed rule change and provide tenants this access to justice without experiencing a backlog in their calendars. Additionally, housing courts in other states with large cities, including New York, accept stipulated judgments from tenants only if the tenant is present and the judge determines the tenant understood the terms in which they agreed.

(<https://www.nycourts.gov/COURTS/nyc/housing/stips.shtml>.)

In Maricopa County, each justice court has set times during the week to hear evictions. During the summer of 2016, the law students in the pilot program documented every stipulated judgment filed in the five justice courts in the Downtown Justice Center and at the Country Meadow Justice Court. Usually, there was only one stipulated judgment filed in a court per day. At the most, they saw three stipulated judgments filed on a day and that was very rare. In 2016, there were approximately 200 stipulated judgments filed per month in Maricopa County shared among 26 justice courts. With approximately 20 court days per month, this means that stipulated judgments only account for one judgment per

court, about every three days.

Further, Justice Court judges already make similar determinations that we are requesting here in criminal pleas, and they are most often able to determine the defendant understands the terms of the plea in less than five minutes.

IV. Requesting Tenants Remain to Appear before a Judge is Not Detrimental to the Tenant.

Some of the opposition comments state that the proposed rule change will be detrimental to tenants because it will prohibit the landlord from granting more time in the unit or reducing the monetary judgment. Others argue that it will result in increased attorney's fees and require the tenant to remain at court longer.

First, under the proposed rule change, if the parties are both represented by attorneys, they will not need to appear before the court for the stipulated judgment to be accepted. When a party is represented, it is understood that he/she has consulted with an attorney whose interests are to his/her benefit and will explain the terms to him or her. Therefore, the amended language attached at Appendix A makes an exception for situations in which both parties are represented.

Second, under the proposed rule change, the parties can still change the terms of the stipulated judgment and add time or reduce money before it is filed with the Court. Nothing in the proposed rule change prohibits that. However, because the tenant is still signing a stipulated judgment, it is imperative that the tenant

understands what he or she signed.

Third, the prospect that attorney's fees will be raised against tenants if tenants remain in the courtroom so that the judge can determine if they understand the document that will legally bind them is spurious. Attorneys are already receiving up to \$300 in attorney's fees in stipulated judgments against self-represented tenants when the tenant leaves the courtroom and does not appear. This is generally the same amount they receive when the tenant appears at the initial return when the judge determines the tenant does not have a defense and orders a judgment against a tenant. Surely, judges will not grant additional attorney's fees when the judge himself or herself determines the tenant did or did not understand the terms of the stipulated judgment.

Fourth, for the tenant who took the time to come to court at his or her subpoenaed time, the benefit of making sure the tenant understands the judgment outweighs the minutes the tenant will need to remain in the courtroom. As described above, there are set times in which courts hear evictions. Generally, justice court judges determine the order of the case by which landlord attorney is in the room. Judges usually provide the professional courtesy of taking all of a landlord attorneys' cases together. If the justice court judges decided to hear stipulated judgments first during the eviction call, those tenants would not have prolonged waits.

Importantly, the proposed Petition provides that the judge can accept a stipulated judgment without the tenant being present for good cause and in the interests of justice. Therefore, if the tenant informs the clerk or writes affirmatively that he or she needs to leave, but understands the stipulation, the judge would still be able to accept the stipulation without the tenant present.

V. Proposed Changes to the Current Supplemental Petition.

While Community Legal Services supports the objective of the Petition to ensure that self-represented litigants understand a stipulated judgment before it is signed, we believe the amended language attached to this Comment goes further to accomplish that objective than the language currently proposed in the Petition.

CLS supports the following changes to the Petition:

1. When a party is being represented by counsel, it is understood that the terms in the stipulated judgment are being explained to the party. Therefore, we suggest adding language to allow stipulated judgments to be accepted without the appearance of the parties if the parties are both represented by attorneys and the attorneys signed the document.
2. Legal Services advocates believes the current language of Petition which permits stipulated judgments to be accepted if the landlord attorney informs

the court that the tenant was told he or she could appear and declined does not serve the Petition's objective. This change merely codifies the current inadequate practice in Maricopa County and fails to ensure the tenant understood the stipulation. Additionally, as discussed above, the proposed Petition allows a judge to accept a stipulated judgment without the tenant being present for good cause and in the interests of justice. Therefore, if the tenant informs the clerk or writes affirmatively that he or she needed to leave, but understands the stipulation, the judge would still be able to accept the stipulation without the tenant present.

3. As discussed above, if the justice court judges decided to hear stipulated judgments first during the eviction call, self-represented litigants who reached stipulated judgments would be able to leave the court without delay. Therefore, we propose adding language to the Petition that provides that courts shall call cases with stipulated judgments first.

VII. CONCLUSION

For low income persons, an eviction action may threaten their only means of shelter. The inability to find other housing on short notice can lead to the disruption of children's education, interruption of employment, dislocation from health care providers, loss of personal belongings and homelessness. In addition,

the eviction process may lead to monetary judgments. Thus, the consequences of eviction cases make them very important to tenants and especially low income tenants, who often lack back-up resources. The result of an eviction may be that a family is living in a car or shelter.

Surely, the courts have a duty to attempt to ensure the tenants who took the time to appear at court understand the terms of the document that has such dramatic consequences on a tenant's family, and from which misunderstandings so often arise. The purpose of the Petition is to improve access to justice for self-represented litigants by attempting to ensure they fully understand stipulated judgments. Legal Services advocates look forward to working with the courts and the landlord attorneys in other ways to increase access to justice for self-represented litigants in justice courts and believe this proposed rule change is an important step to assisting access to our courts.

For these reasons, Community Legal Services supports the Petition by the Arizona Commission on Access to Justice and asks that the Petition along with CLS' proposed changes be adopted.

Respectfully submitted this 31st day of May.

COMMUNITY LEGAL SERVICES

By/s/ Pamela M. Bridge

Pamela Bridge
Community Legal Services
305 South Second Avenue
Phoenix, Arizona 85003

Electronic copy filed with the Clerk
of the Supreme Court of Arizona this
31st day of May 2017

Copy of the foregoing emailed and
mail to:

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By: /s/Pamela M. Bridge

APPENDIX A

Rule 13. Entry of Judgment and Relief Granted

b. Forms of Judgment.

(4) Stipulated Judgments.

A. The court may accept a stipulated judgment, ~~but~~ only ~~if~~ when the court finds one of the following conditions is met:

1. When both parties are represented by attorneys and both attorneys sign the stipulation, or
2. When one or both parties is unrepresented and the unrepresented party/parties appear before the court and court determines the unrepresented party/parties understand the document signed, or
3. The court determines that because of distance or other circumstances, the unrepresented party cannot personally appear before the court and good cause exists and it is in the interest of justice to proceed.

B. In addition, the court may accept stipulated judgment when the court determines the conditions of Rule 13(a)(1)-(2) have been satisfied and the form to which the defendant stipulated contains the following warning and the defendant has signed the warning language. :

~~Read carefully!~~ WARNING!

1. **The plaintiff's representative is not a court employee.**
 2. **By signing below, you are consenting to the terms of a judgment against you and the landlord will now be able to evict you.**
 3. **You may be evicted as a result of this judgment have your wages garnished and, the judgment may appear on your credit report,**
 4. **You may lose your right to subsidized housing, and**
 5. **You may NOT stay at the rental property, even if the amount of the judgment is paid in full, without your landlord's express consent unless you get the agreement in writing or get a new written rental agreement with your landlord.**
- C. **The court should call cases with stipulated judgments first so that any unrepresented party can leave the court without delay.**

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7 IN THE SUPREME COURT

8 STATE OF ARIZONA

9 PETITION TO AMEND RULE 13(b)(4)
10 OF THE PROCEDURE FOR EVICTION
11 ACTIONS

Supreme Court No. R-17-0020

12 **COMMENTS IN SUPPORT OF**
13 **PETITION TO AMEND RULE 13(b)(4)**
14 **OF THE RULES OF PROCEDURE**
15 **FOR EVICTION ACTIONS AND**
16 **PROPOSED AMENDMENT FILED BY**
17 **COMMUNITY LEGAL SERVICES ON**
18 **MAY 31**

19 Pursuant to Rule 28 of the Arizona Rules of the Supreme Court, the William E.
20 Morris Institute for Justice (“Institute”) respectfully submits this comment in support of
21 the petition to adopt an amendment to the Rules of Procedure for Eviction Actions by
22 adding a requirement concerning the acceptance of stipulated judgments as Rule 13(b)(4).
23 The Institute also supports the amendment proposed by Community Legal Services filed
24 on May 31, 2017, but does not support the amendment proposed by the Access to Justice
25 Commission filed on May 1, 2017. The initial petition was proposed in response to well-
26 articulated concerns that unrepresented tenants sign stipulated judgements when the
27 tenants do not understand: the terms of the judgment; that they are giving up their rights
28 to appeal and that they think they still have the option to work something out with the
landlord.

The Institute supports the proposed petition and the amendment proposed by
Community Legal Services (“CLS”). Unfortunately, in response to criticism by the
attorneys who represent landlords, the Access to Justice Commission (“Commission”)
proposed an amendment to the initial petition that the Institute believes sanctions the

1 current practice in Maricopa County Justice Courts without making any of the needed
2 reforms. The amendment proposed by CLS adopts the current practice in some Maricopa
3 County Justice Courts when the landlord is unrepresented and legal services represents
4 the tenant.¹ In those cases, the justices may require that the unrepresented landlord
5 appear in court and the justices question the landlord to ensure the landlord understands
6 the terms in the stipulations. The justices should ensure that unrepresented tenants
7 understand the terms in the stipulations as well. The CLS amended proposal also does
8 not impact the presence of counsel in court when both parties are represented and instead
9 focuses on when one or both parties are unrepresented. This change addresses the
10 concerns raised by private attorneys who represent tenants as there is no need for court
11 supervision when both parties are represented. Finally, the proposal suggest that courts
12 hear stipulated judgments first so that unrepresented parties can leave the court once their
13 case is dispositioned.

14 In support of the Petition and the modification proposed below by CLS, the
15 Institute states the following:

16 **I. Statement of Interest**

17 The Institute is a non-profit program established to advocate and litigate on behalf
18 of the interests of low-income Arizonans. We work closely with the three federally
19 funded legal services programs, other legal advocacy programs and community groups.

20 For the last 13 years, the Institute has had a focus on the rights of tenants in
21 eviction cases. The Director of the Institute was a member of the State Bar Task Force
22 that drafted the original Rules of Procedure for Eviction Actions and has responded to
23 landlord and tenant bills proposed at the state legislature. Some landlord attorneys who
24 filed objections have referenced both the Institute's comments to a state landlord and
25 tenant bill filed in 2007 and to the Institute's support of current Rule 13 in 2009. The
26 Institute's position regarding prior landlord bills at the legislature and to the original Rule

27 ¹ The information about the handling of stipulated judgments where the landlord is
28 unrepresented and the tenant is represented by legal services was provided to the
Institute's Director by CLS staff.

1 13 are not relevant to this petition. The current inquiry is what is known about the use of
2 stipulated judgments with unrepresented tenants and should that matter be addressed. As
3 fully explained by CLS, in the intervening years concerns have been raised about the use
4 of stipulations with unrepresented tenants and this petition and the CLS proposed
5 amendment address those concerns.

6 **II. Background and Purpose of the Proposed Rule Amendment**

7 After CLS made a presentation to the Commission concerning problems its staff
8 had observed with stipulated judgments in eviction cases in justice courts, the
9 Commission submitted Petition R-17-0020. The purpose of the petition was to ensure
10 that unrepresented tenants understand the terms of the stipulated judgments they sign. As
11 CLS explained, CLS staff have interviewed numerous tenants who had signed stipulated
12 judgments but did not understand who they were talking to, what they had signed and
13 certainly did not understand that they had to move out and had given up their rights to file
14 an appeal.

15 This petition is an attempt to address the well-articulated problem. The landlord
16 bar opposes the petition. In response to the landlord opposition, the Commission
17 proposed a modified rule on May 1. With all due respect, the Institute suggests that the
18 Commission's modified petition simply codifies the current practice in Maricopa County
19 Justice Courts without the needed reforms.

20 **III. CLS Modified Proposal filed on May 31, 2017**

21 The Institute joins CLS and requests that Rule 13 of the Rules of Procedure for
22 Eviction Actions be modified as follows:

23 (4) Stipulated Judgments.

24 A. The court may accept a stipulated judgment, ~~but~~ only
25 if when the court finds one of the following conditions
26 is met:

27 1. When both parties are represented by attorneys
28 and both attorneys sign the stipulation, or

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2. When one or both parties is unrepresented and the unrepresented party/parties appear before the court and court determines the unrepresented party/parties understand the document signed, or

3. The court determines that because of distance or other circumstances, the unrepresented party cannot personally appear before the court and good cause exists and it is in the interest of justice to proceed.

B. In addition, the court may accept a stipulated judgment when the court determines the conditions of Rule 13(a)(1)-(2) have been satisfied and the form to which the defendant stipulated contains the following warning and the defendant has signed the warning language:

Read carefully! WARNING!

1. The plaintiff’s representative is not a court employee.

2. By signing below, you are consenting to the terms of a judgment against you and the landlord will now be able to evict you.

3. You may be evicted as a result of this judgment have your wages garnished and, the judgment may appear on your credit report,

4. You may lose your right to subsidized housing, and

5. You may NOT stay at the rental property, even if the amount of the judgment is paid in full, without your landlord’s express consent unless you get the agreement in writing or get a new written rental agreement with your landlord.

C. The court should call cases with stipulated judgments first so that any unrepresented party can leave the court without delay.

Subsection (1) addresses the situation where both parties are represented and the stipulation does not require judicial inquiry of the parties. Subsection (2) reflects that the

1 court should ensure the unrepresented party/parties understand the stipulation. Subsection
2 (3) allows for an unrepresented party to not appear before the court in limited
3 circumstances. Section B is in the current rule and should remain. Finally, in Section C,
4 to facilitate unrepresented litigants appearing before the court, the courts should be
5 encouraged to hear stipulated judgment cases first. The warning is the one proposed by
6 the Commission on May 1.

7 As will be discussed below, this proposal codifies the practice in some Maricopa
8 County Justice Courts where justices require *unrepresented landlords* to appear in court
9 when the tenant is represented by legal services. It also codifies the practice in Pima
10 County Justice Courts that unrepresented tenants appear in court for entry of a stipulated
11 judgment.² Admittedly, this proposal will change the practice in Maricopa County
12 Justice Courts. As explained below, the change is warranted.

13 **IV. Explanation of Need for Proposed Rule**

14 Tenants have a property interest in their residences. *Green v. Lindsey*, 456 U.S.
15 444, 451-52 (1982). *See also Foundation Development Corporation v. Loehmann's*, 163
16 Ariz. 438, 442, 788 P.2d 1189, 1193 (Ariz. 1990) (recognizing common law right of
17 tenant's property interest in rental). Eviction proceedings that deprive tenants of that
18 property must comply with the due process requirements of the 14th Amendment to the
19 United States Constitution. *Greene*, 456 U.S. at 455.

20 For low-income persons, an eviction case threatens their only means of shelter.
21 The inability to find other housing on short notice can lead to the disruption of children's
22 education, interruption of employment, dislocation from health care providers, loss of
23 personal belongings and homelessness. In addition, the eviction process may lead to
24 monetary judgments. Thus, the consequences of eviction cases make them very
25 important to tenants and the community at large who may be called upon to assist the
26 displaced tenants.

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28 ² The Institute's understanding is that outside Pima and Maricopa Counties stipulated judgments are rarely used and are not a concern.

1 While private attorneys who represent tenants often do negotiate more favorable
2 terms in stipulations, CLS reports that they rarely see an unrepresented tenant who has
3 received any additional consideration for signing the waiver of their right to file a motion
4 to reconsider or right to appeal.

5 Legal services identified the use of stipulated judgments in eviction cases as one
6 of its major concerns. They documented that numerous tenants came to the legal services
7 office with signed stipulated judgments. The tenants reported that they did not
8 understand:

- 9 1. The terms of the stipulation;
- 10 2. They had waived their right to file a motion to reconsider or an appeal; and
- 11 3. Their landlord did not need to work out the eviction with them.

12 In many of these cases, because in the stipulation the tenant waived her right in to
13 file a motion to reconsider or to appeal, the tenant was in a worse position than if she had
14 either not come to court at all or appeared before the justice without agreeing to the
15 stipulation. In neither case would the tenant have lost her right to file a motion to
16 reconsider or an appeal. This is very important, because as noted above, CLS reports that
17 in the stipulations they have reviewed, the tenant is rarely getting any consideration for
18 the waiver.

19 This must lead to the question of what information the landlord attorney is giving
20 the tenant. Does anyone think a tenant would sign a stipulation *with* a waiver where they
21 are not given additional time to stay in the rental or a reduction in their rent if they had
22 been told: “In this stipulation you are giving up your right to appeal or to file a motion to
23 reconsider. If you do not sign the stipulation, you would get the same judgment without
24 the waiver if you went before the judge or chose to just leave court now and not appear
25 before the judge.”³ Thus, the issue is not simply what the landlord attorney may tell the

26 _____
27 ³ The issue is not that the landlord attorneys are being asked to give unrepresented
28 tenants “legal advice.” Rather, an unrepresented tenant should understand the stipulation
and how it compares to the judgment a court would enter. Rule 42 of the Rules of the
Supreme Court, E.R. 4.3, provides that in dealing with an unrepresented party, the lawyer

1 unrepresented tenant but what they do not tell the tenant. CLS reports that it is also
2 common for the unrepresented tenant who has signed a stipulation to have been told (or
3 understood) that they should contact the landlord and see if they can work out an
4 arrangement for them to stay in the rental. The “you can try to work it out” language is a
5 false hope. Once the stipulated judgment is signed the landlord has no obligation to try to
6 work anything out with the tenant and the tenant may use precious time trying to contact
7 the landlord when what they need to do is make arrangements to move.

8 The landlord attorneys want to continue their current practices. The current court
9 practices are set for the convenience of the landlord attorneys. As an example, it is
10 typical court practice in Maricopa County for the cases where landlord attorneys are
11 present to be heard first. The amended proposal suggests that the courts call the
12 stipulated judgment cases first so that the tenants who have missed work can have their
13 cases heard quickly and then leave. This would address the situation where tenants do
14 not want to wait until the end of the call for their cases to be heard. This process would
15 not inconvenience any landlord attorney or cause them to incur additional fees for their
16 clients. Historically, in Maricopa County the justice courts set eviction calendars with
17 many evictions on the call and most landlord attorneys have several cases on the
18 calendar. Thus, no additional attorneys’ fees are incurred if a stipulated judgment is
19 reviewed by the court and if those cases are heard first. In addition, this process will
20 have a minimal impact on the court calendars. The courts certainly should be able to
21 interview the 0-3 unrepresented tenants each calendar call who may have been
22 approached to sign a stipulated judgment and determine whether the tenants understand
23 the stipulated judgment. As noted previously, this is the practice in Pima County Justice
24 Courts. The courts should not see this proposal as a burden on them. Ensuring fairness is
25 the obligation of the courts.

26 Finally, the proposed amendment does have an exception for cases where travel to
27

28 shall not state or imply that the lawyer is disinterested and shall correct any
misunderstanding of the lawyer’s role.

1 the court is impractical or other circumstances justify the court not ensuring that the
2 unrepresented parties understand the stipulation.

3 The proposed amendment is a step for access to justice for unrepresented tenants.
4 It is being proposed by legal services attorneys who have no financial interest in these
5 cases and only seek to ensure that the eviction process is fair to unrepresented tenants. If
6 the Court adopts the proposed amendment, the landlord bar in Maricopa County will
7 decide if they want to continue to use stipulated judgments with unrepresented tenants.
8 The Institute suspects that if the landlord bar sees it is in their clients' interest to do so,
9 they will.

10 **Conclusion**

11 The petition and the CLS proposed amendment address a major access to justice
12 issue for unrepresented tenants identified by legal services. For all the reasons stated
13 above, the Institute requests the Court approve the petition with the CLS amendment filed
14 on May 31, 2017 and not approve the Commission amendment filed on May 1.

15 Respectfully submitted this 31st day of May 2017.

16 WILLIAM E. MORRIS INSTITUTE FOR JUSTICE

17
18 By /s/ Ellen Sue Katz

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22 Original electronically filed with the
23 Clerk of the Supreme Court of Arizona
this 31st day of May 2017

24 Copy of the foregoing emailed this 31st day
25 of May 2017, to:

26 Honorable Lawrence Winthrop
27 Chair of the Access to Justice Commission

28 By: /s/ Ellen Sue Katz

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IN THE SUPREME COURT
STATE OF ARIZONA

**Petition to Amend 13(b)(4) of Rules of
Procedure for Eviction Actions**

Supreme Court No. R17-0020

**COMMENTS IN SUPPORT OF SUPPLEMENT
TO PETITION TO AMEND RULE 13(b)(4) OF
THE RULES OF PROCEDURE FOR
EVICTION ACTIONS**

The Arizona Center for Disability Law (“ACDL”) agrees with the comments and amendments offered by Community Legal Services (“CLS”), and offers additional reasons why those solutions are particularly necessary for individuals with disabilities. The ACDL is the Protection and Advocacy organization designated to “protect[s] the legal and human rights of individuals with developmental disabilities” in Arizona, as required by 42 U.S.C.A. § 15041, et seq.

Under both Arizona and federal law, it is illegal to discriminate against individuals because of their disabilities. Ariz. Rev. Stat. Ann. § 41-1491.19 (2014); 42 U.S.C.A. § 3604(f)(3)(B). Individuals with disabilities have nonetheless historically faced a “a pattern of unequal treatment in the administration of a wide range of public services..., programs, and

activities, including unconstitutional treatment in the administration of justice.” Tennessee v. Lane, 541 U.S. 509, 525 (2004).

To combat this inequity, the Arizona and federal law make it unlawful for any person to refuse “to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford ... person(s) [with disabilities] equal opportunity to use and enjoy a dwelling.” Ariz. Rev. Stat. Ann. § 41-1491.19 (2014); 42 U.S.C.A. § 3604(f)(3)(B).

Determining appropriate accommodations takes time. Disabilities affect each individual in unique, subtle, and often unobvious ways. Finding accommodations that allow equal access and understanding requires a conversation; an interactive process to discern the “condition that results from the interaction between some physical or mental characteristic labeled an “impairment” and the contingent decisions that have made physical and social structures inaccessible to people with that condition.” Samuel R. Bagenstos, Subordination, Stigma, and Disability”, 86 Va. L. Rev. 397, 426 (2000).

As CLS states in their comments, the process of determining appropriate accommodations is almost never more important than it is in dealing with evictions. Evictions deprive families of their home, saddles them with debts that they may never be able to pay, and cuts many off from subsidies that can help them escape poverty. According to the National Alliance on Mental Illness (NAMI), losing safe and affordable housing is one of the most powerful barriers to recovery. When the basic need of housing is not met, people with mental illness may cycle in and out of homelessness, jails, shelters and hospitals.

But, the process for determining appropriate accommodations is almost never more difficult than it is in negotiating a stipulated judgment in the minutes before an eviction hearing. Evictions are a legal process; full of unfamiliar terms, rules and procedures that are always confusing and intimidating, and certainly moreso for individuals with disabilities that profoundly affect their ability to understand, participate and/or communicate in the proceedings.

The confusion and intimidation that naturally precedes these hearings is only compounded when an attorney then proposes a stipulated judgment to an unrepresented disabled party in the minutes before it begins. Negotiating with unrepresented parties requires the lawyer to explain that she “represents an adverse party and is not representing the person”, because “an unrepresented person, particularly one not experienced in dealing with legal matters, might assume that a lawyer is disinterested in loyalties or is a disinterested authority on the law even when the lawyer represents a client.” Ariz. Sup. Ct. Rule 42, Rules of Prof’l Conduct ER 4.3 cmts.1, 2.

The lawyer may then “inform the person of the terms on which the lawyer's client will enter into an agreement or settle a matter, prepare documents that require the person's signature and explain the lawyer's own view of the meaning of the document or the lawyer's view of the underlying legal obligations.” In negotiating a stipulated judgment, all of the information that an attorney is ethically required to explain to an unrepresented disabled party is important and complex. Many individuals with disabilities simply cannot understand the information conveyed in that sort of negotiation without reasonable accommodations.

Reasonable accommodations that result in equal treatment for individuals with disabilities are almost never going to be discovered in a settlement discussion that takes place in a courtroom

lobby a few minutes before the hearing. So, most individuals with disabilities simply will not understand the agreement they are signing, or its potentially devastating implications.

As an illustration of this, consider an attorney explaining a stipulated judgment might assume that a hard of hearing party can read lips. According to the National Association of the Deaf (NAD), the ability of a deaf or hard of hearing individual to speak clearly does not mean that he or she can hear well enough to understand spoken communication or to lipread effectively. Forty to sixty percent of English sounds look alike when spoken. On average, even the most skilled lipreaders understand only twenty-five percent of what is said to them, and many individuals understand far less. Lipreading is most often used as a supplement to the use of residual hearing, amplification, or other assistive listening technology. Because lipreading requires some guesswork, very few deaf or hard of hearing people rely on lipreading alone for exchanges of important information. For a powerful visual reminder of why lipreading does not provide effective communication, especially in legal settings, we recommend the YouTube video entitled “Can You Read My Lips.” In a courtroom, an individual who is hard of hearing or deaf would be entitled to auxiliary aids and services to have effective communication.

An attorney reviewing a stipulated judgment with a deaf individual may assume she can read the document without offering an American Sign Language (ASL) interpreter. As the Ninth Circuit Court of Appeals recognized, “ASL is a visual, three dimensional, non-linear language, and its grammar and syntax differ from the grammar and syntax of English and other spoken languages. In many cases, there is no one-to-one correspondence between signs in ASL and words in the English language.” U.S. E.E.O.C. v. UPS Supply Chain Sols., 620 F.3d 1103, 1105 (9th Cir. 2010). For many individuals whose first and primary language is American Sign

Language and who graduated from a state school for the deaf, they read English at a 3rd to 5th grade level and may not understand the information in the stipulated judgment without an ASL interpreter to translate the information into their first language.

The rule changes proposed by CLS will help mitigate the inequities experienced by individuals with disabilities in the eviction process. The changes will help insure that individuals with disabilities are not being deprived of their rights in a process they were never given a chance to understand. The changes will help insure that individuals with disabilities will be able to avail themselves to the reasonable accommodations afforded by the courts, that they may not even know exist. We believe the rule changes proposed by CLS should be adopted.

Respectfully submitted this 31st day of May, 2017.

ARIZONA CENTER FOR DISABILITY LAW

By: /s/ Chris Carlsen
Chris Carlsen

Electronic copy filed with the Clerk
of the Supreme Court of Arizona this
31st day of May 2017

Copy of the foregoing emailed and
mail to:

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