

## Arizona Commission on Access to Justice SRL-LJC Workgroup

### Meeting Agenda

April 13, 2017 - 2:00 p.m. to 4:00 p.m.

State Courts Building ♦ 1501 West Washington ♦ Conference Room 331 ♦ Phoenix, Arizona

[ACAJ WEBPAGE](#)



TIME	AGENDA ITEM	PRESENTER
2:00	<b>Welcome and Opening Remarks</b>	<i>Judge Anna Huberman, Maricopa County Justice Court</i>
2:05	<b>ACAJ Rule Petitions</b> <ul style="list-style-type: none"> <li>• <b>R-17-0020 – Stipulated Judgments in Eviction Actions</b>            Initial comments due: 03/14/2017            Supplement to Petition: 04/26/2017            Second round of comments due: 05/31/2017            Reply due: 07/07/2017</li> </ul> <ol style="list-style-type: none"> <li>1. <b>Comment from Manufactured Housing Communities of Arizona and Michael A. Parham</b></li> <li>2. <b>Comment from Mark Hyatt Tynan, Jesse Cook, and Mark Tucker</b></li> <li>3. <b>Comment from Denise Holliday</b></li> <li>4. <b>Comment from Judge Frank Conti</b></li> <li>5. <b>Comment from Paul Henderson and Christopher Walker</b></li> </ol>	<i>Judge Huberman</i>
3:00	<b>Proposed Changes to the Request for Hearing on Garnishment Form 8 (Earnings)</b> <ul style="list-style-type: none"> <li>• Discuss Judge Gerald Williams' letter to Dave Byers and review current and proposed forms</li> </ul>	<i>Judge Huberman</i>
3:30	<b>Discuss Strategic Planning for Workgroup Projects</b> <ul style="list-style-type: none"> <li>• Community Legal Services Justice Court Project's informational documents</li> </ul>	<i>Judge Huberman</i>

## Next Access to Justice Meeting Report

*All*

Wednesday, May 10, 2017 - 10:00 a.m. to 2:00 p.m.  
State Courts Building, Phoenix, Arizona  
Conference Room 119

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The Chair may call items on this Agenda, including the Call to the Public, out of the indicated order. Please contact Kathy Sekardi (602) 452-3253 or Julie Graber (602) 452-3250 with any questions concerning this agenda. Persons with a disability may request reasonable accommodations by contacting Julie Graber at (602) 452-3250. Please make requests as early as possible to allow time to arrange accommodations.

<b>Commenters</b>	<b>Comments</b>	<b>Pg</b>	<b>Commission response</b>
Michael Parham	Proposal seeks to amend functioning rule for emotional reasons and with no legal cause or factual justification to solve a problem	11 16	
Michael Parham	The purpose of this proposal is to delay eviction actions and buy tenants time to live in their landlords' property rent-free while they seek new housing	12	
Michael Parham	The proposal will result in the elimination of stipulated judgments as the motivations for seeking them will be eliminated. Landlord attorneys have stopped meeting with defendants at the courthouse before the initial hearing.	13	
Michael Parham	This proposal will not regulate stipulated judgments, it will end them and the losers will be tenants, their attorneys, and the court system	18	
Michael Parham	The proposal implies that landlord attorneys are browbeating tenants into stipulated judgments against their best interests	18	
Michael Parham	The proposal will reduce the number of tenants able to hire private attorneys to represent them by increasing legal fees from requiring unnecessary court appearances	19	
Michael Parham	Tenants are appearing before judges uniformed because they are not meeting with landlord attorneys before court appearances to learn what is being sought	19	
Michael Parham	Tenant inconvenience will result if the tenant must appear in court when there is no disagreement	19	
Michael Parham	Tenants will lose opportunity to strike beneficial deals like get additional time to move after a judgment. Tenants receiving Section 8 often stipulate to a judgment and sign an agreement not to execute vacating judgment if tenant complied with all terms, thereby preserving tenant's ability to receive Section 8 benefits	19- 20	
Michael Parham	Consequences for special mobile home and RV park tenants who need opportunity to negotiate potential outcomes	20	
Michael Parham	Courts originally encouraged stipulations to reduce calendar congestion. Ending stipulations will cause more tenants to appear in person and result in longer calendars	21	
Michael Parham	Court dockets will slow down, requiring attorneys to spend more time in court, and increasing attorney's fees	21	

<b>Commenters</b>	<b>Comments</b>	<b>Pg</b>	<b>Commission response</b>
Tenant Private Attorneys	Significant impediment for countless tenants who use stipulated judgments as a means of securing a more favorable outcome	39- 40	
Tenant Private Attorneys	Will eliminate their representation of tenants because tenants won't be able to afford services of private attorneys. Proposal adds to the unfairness against tenants	40	
Tenant Private Attorneys	No worthwhile purpose for tenants and will increase attorney's fees	40	
Tenant Private Attorneys	Clients may acknowledge the landlord is entitled to judgment but seek more favorable terms. Through stipulation process, they can get additional time to vacate, time to pay and stay, right to have judgment vacated if they pay in full, or mutual release from the lease if rent is paid in full	41	
Tenant Private Attorneys	Would eliminate stipulation benefits and cost would prevent tenants from hiring private attorneys	42	
Tenant Private Attorneys	A rule that unnecessarily forces a tenant to miss work and pay an attorney to attend court in order to obtain a more favorable outcome violates tenant's interests	42	
Denise Holliday	Increase time required to complete court eviction dockets	45	
Denise Holliday	Force a tenant to miss more time away from work by forcing them to stay and be questioned by the judge	45	
Denise Holliday	Landlord attorneys reached consensus based on pilot program that they will not meet with any defendants and discuss reaching a stipulation (assumes attorney misled the litigant)	45	
Denise Holliday	No evidence that any attorney has ever misled a defendant in the stipulation process	45	
Denise Holliday	Justices of the peace agree that they have not seen any evidence of the alleged issues raised by petitioner	46	

## **Rule Petition and Comments – Table of Contents**

**R-17-0020 – Rule Petition on Stipulated Judgments in Eviction Actions (Filed on 1/9/17)**

### **Comment Schedule:**

Initial comments due: March 14, 2017.

Supplement to Petition if any due: April 26, 2017.

Second round of comments due: May 31, 2017.

Reply due: July 7, 2017

### **Initial Comments filed 03/14/2017**

1. Comment from Manufactured Housing Communities of Arizona and Michael A. Parham (pg. 11)
2. Comment from Mark Hyatt Tynan, Jesse Cook, and Mark Tucker (pg. 39)
3. Comment from Denise Holliday (pg. 45)
4. Comment from Judge Frank Conti (pg. 47)
5. Comment from Paul Henderson and Christopher Walker (pg. 49)



**IN THE SUPREME COURT STATE OF ARIZONA**

PETITION TO AMEND RULE ) Supreme Court No. R-\_\_\_\_\_  
13(b)(4) of the Rules of Procedure )  
for Eviction Actions )  
\_\_\_\_\_ )

Pursuant to Arizona Supreme Court Rule 28, Petitioner, the Arizona Commission on Access to Justice (hereinafter “ACAJ”) through its Chair, respectfully requests this Court amend Rule 13(b)(4) to the Rules of Procedure for Eviction Actions (RPEA), as shown in Appendix A. The new Rule 13(b)(4) would permit courts to accept stipulated judgments only when the court finds the following: both parties or their attorneys personally appear before the court; the court determines that the conditions of Rule 13(a)(1)-(2) have been satisfied; the form to which the defendant stipulated contains the specific warning in RPEA 13(b)(4); the court determines that the parties understand the terms contained in the document they signed; and all parties have initialed the warning language in (b).

**I. Background of the Proposed Rule Amendment.** The ACAJ was established by Administrative Order 2014-83 pursuant to the Court’s strategic agenda of “Advancing Justice Together: Courts and Communities.” The order directs the ACAJ to make recommendations on assisting self-represented litigants and revising court rules and practices to facilitate access to justice and the efficient processing of eviction cases. The Commission’s Limited Jurisdiction Workgroup drafted the proposed rule change concerning stipulated judgments and then reached out to judges throughout the state concerning the proposal.

In November 2016, the ACAJ unanimously agreed to propose the Petition for the rule change for stipulated judgments in evictions and to continue to receive feedback from stakeholders. The ACAJ is informed and believes that the 26 Justice Courts in Maricopa County will in January 2017 voluntarily implement the procedure outlined in this rule petition, and the petition may be revised in response to ongoing feedback from those courts and other stakeholders.

**II. Purpose of the Proposed Rule Amendment.** More than 99 percent of tenants in eviction hearings are self-represented litigants, while approximately 87 percent of landlords are represented by an attorney according to the June 2005 Justice Court Study by the William E. Morris Institute found at [http://www.morrisinstituteforjustice.org/docs/Final\\_eviction\\_report.pdf](http://www.morrisinstituteforjustice.org/docs/Final_eviction_report.pdf).

According to the Joint Center for Housing Studies, Harvard University, December

9, 2015, found at <http://www.jchs.harvard.edu/research/publications/americas-rental-housing-expanding-options-diverse-and-growing-demand>, 36.2 percent of low-income renters (those whose rent is at least half of their income) do not have a high school degree.

Currently, before the eviction cases are called at eviction hearings, landlord attorneys typically ask to speak privately to tenants who are present in the courtroom. These conversations generally last a few minutes and sometimes result in the tenant signing a stipulated judgment and then leaving the court house without appearing before the court. The attorney for the landlord then submits the stipulated judgment to the judge when the case is called. Stipulated judgments are typically drafted by the landlord's attorney in advance of the hearing and printed in small font in English. The proposed judgment usually states the defendant appeared in person even though the defendant leaves before appearing before the judge. The stipulated judgments usually include the following provisions: judgment should be awarded to plaintiff, possession of the premises should be given to the plaintiff and that a writ of restitution will be issued on a certain day. Additionally, the stipulated judgments award the plaintiff monetary damages including rent, court costs, attorney fees and other damages. Frequently, stipulated judgments include a clause that provides that the defendant waives any rights to reconsideration or appeal. In contrast, if the tenant has failed to answer or otherwise defend and has been

defaulted, he or she may still file a motion to reconsider the default judgment. Accordingly, tenants who sign a stipulated judgment are frequently in a worse position than tenants who default.

The potential consequences of stipulated judgments are enormous for tenants. Besides immediately being required to leave their housing, the judgment may now appear on their credit report preventing them from acquiring other housing. Additionally, many subsidized and voucher housing programs terminate assistance if a tenant has an eviction on his or her record. For low-income persons, an eviction action may threaten their only means of shelter. *See, e.g.,* Chester Hartman and David Robinson, *Evictions: The Hidden Housing Problem*, Housing Policy Debate, Vol. 14, Issue 4 (2003) found at <http://content.knowledgeplex.org/kp2/cache/kp/10950.pdf>. 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. 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. Because the consequences of evictions are so critical, the amendments would not only ensure procedural due process, but also assist self-represented tenants by ensuring they understand the important ramifications of stipulated

judgments.

**III. Request for a Modified Comment Period.** Petitioner acknowledges that stakeholders raised concerns about the impact of the rule change and unintended consequences. Public comments may address items that this petition overlooks, or may suggest other changes that improve the proposed rule. As noted, Maricopa County Justice Courts have volunteered to conduct a pilot project starting on January 1, 2017, to implement these procedures on a trial basis, and to gather more information to evaluate the impact of the proposed rule change. Petitioner therefore requests that the Court allow a modified comment period to accommodate the filing of an amended petition after an initial round of public comments. Petitioner suggests the following dates:

- April 30, 2017: First round of comments due
- May 28, 2017: Amended petition due
- June 18, 2017: Second round of comments due
- July 16, 2017: Reply due

**IV. Conclusion.** For the reasons stated above, the Petitioner respectfully requests that the Court open this petition for comments during the modified periods described above.

RESPECTFULLY SUBMITTED this 9<sup>th</sup> day of January, 2017.

By /s/ Judge Lawrence F. Winthrop  
The Honorable Lawrence F. Winthrop, Chair  
Arizona Commission on Access to Justice  
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## APPENDIX A

### 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 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 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:

**Read carefully! WARNING! The plaintiff's representative is not a court employee. By signing below, you are consenting to the terms of a judgment against you and the landlord will now be able to evict you. You may be evicted as a result of this judgment have your wages garnished, the judgment may appear on your credit report, you may lose your right to subsidized housing, and 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 determines that the parties understand the terms in the document they signed and parties have initialed the warning language in (b).



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Attorneys for Commenting Parties Manufactured Housing

6 Communities of Arizona and Michael A. Parham

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

9 In the Matter of:

Supreme Court No. R-17-0020

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

COMMENTS OPPOSING PROPOSED RULE

13  
14 Commenting Parties Manufactured Housing Communities of Arizona and Michael A.  
15 Parham oppose the Petition to Amend Rule 13(b)(4) of the Rules of Procedure for Eviction  
16 Actions (the “Proposal”) filed by the Arizona Commission on Access to Justice (the  
17 “ACAJ”). The Proposal seeks to amend a functioning rule for emotional reasons. It seeks to  
18 amend a court rule with no factual or legal justification to solve a problem where there is not  
19 one. Realistically, the purpose of this needless Proposal is to delay eviction actions and buy  
20 tenants time to live in their landlords’ property rent-free while they seek new housing.

21 In summary, the Proposal would: require both parties in an eviction action to  
22 *personally* appear before the judge to discuss the stipulation (regardless of whether they  
23 have negotiated the stipulated judgment before court, or whether they have entered into an  
24 agreement not to execute the judgment); require the judge to make inquiries of both parties  
25 similar to those made in a criminal change of plea hearing where the defendant’s life and  
26 liberty are at stake and in which the State is an involved party; require that legal advice be  
given to the tenant on any stipulated judgment form; and require that that the tenant be

1 advised that the plaintiff’s representative—the landlord attorney—“is not a court employee”  
2 (implying that attorneys representing landlords misrepresent themselves as court  
3 employees).  
4

5 If the Proposal is adopted, it will effectively result in the elimination of stipulated  
6 judgments in eviction actions, as the motivations for seeking them will be eliminated.

7 **I. INTRODUCTION**

8 On January 1, 2017, severe restrictions were placed on the stipulation process by a  
9 “voluntary” pilot program (referred to in the Proposal) requiring all parties to an eviction to  
10 appear in person and explain the stipulation to the judge. As part of this “voluntary”  
11 program, the first question to be asked by any judge regarding any stipulated judgment is  
12 whether the signature appearing on the judgment is actually the tenant’s—insinuating that  
13 the landlord’s attorney might have forged the tenant’s signature. Other questions include  
14 whether the tenant understands the judgment; whether the tenant understands the possible  
15 ramifications of the judgment to his credit record and whether the tenant knows that his  
16 wages could be garnished; and whether the tenant realizes that the judgment may affect any  
17 Section 8 housing subsidy.

18 Prior to the adoption of this pilot program, landlord attorneys generally met with  
19 tenants appearing in court before an eviction action hearing to discuss the amounts the  
20 landlord was seeking, the tenant’s position, and whether the tenant wished to stipulate to a  
21 judgment. This conversation sometimes resulted in negotiating an extended date for the writ  
22 of restitution (giving the tenant more time vacate the landlord’s property), or reducing the  
23 monetary portions of the judgment. The tenant would receive a copy of the judgment and  
24 could leave the courthouse to avoid waiting through the court’s entire docket just to see a  
25 stipulated judgment entered.  
26

27 Before the pilot program, stipulated judgments were advantageous to the parties and  
28 the Courts because they resolved cases quickly, moved the court’s docket along, and allowed  
tenants to either avoid appearing in court if they stipulated before the hearing date, or to

1 leave the courthouse and get to work or other obligations if they stipulated at the courthouse.  
2 As most of these advantages have disappeared, most landlord attorneys have stopped  
3 meeting with defendants at the courthouse before the initial hearing.  
4

5 If the courts are required to spend time with each tenant answering a series of  
6 questions about the tenant's ability to understand what the tenant signed, there is no benefit  
7 to induce landlord attorneys to speak with tenants before the court appearance and seek a  
8 stipulated judgment. Landlord attorneys would be doubling their work without benefit—  
9 thus stipulations will disappear.

## 10 **II. BACKGROUND OF THE PROPOSED RULE AMENDMENT**

11 The Rules of Procedure for Eviction Actions ("RPEA") were drafted by the Arizona  
12 State Bar Landlord/Tenant Task Force Rules Committee between 2007 and 2009. Rules  
13 Committee members extensively debated and carefully vetted the existing rule permitting  
14 stipulated judgments. Many modifications to the stipulated judgment rule were made,  
15 compromising Committee members' objections and eventually resulting in the current rule.  
16 This was included in the RPEA and unanimously approved by the Committee and Task  
17 Force before being adopted by the Supreme Court. Only one member of the Rules  
18 Committee—Ellen Katz—dissented from the final RPEA proposal submitted to the Supreme  
19 Court, and even her objections did not target the rule regarding stipulated judgments.<sup>1</sup>  
20

21 The existing stipulation rule was not hatched from the minds of evil landlord  
22 attorneys. It (and the rest of the RPEA) was the product of years of debate and deliberations  
23 by a group of people representing all sides of eviction practice who were familiar with this  
24 area of the law.

25 On January 18, 2007, after weeks of debate over stipulations, Gary Restaino, a Rules  
26 Committee member (and former CLS attorney) came up with a proposal marrying together

27 <sup>1</sup> See Ellen Katz e-mail dated February 25, 2007 recommending then current version of stipulated judgment draft rule  
28 in place of proposed legislative change authorizing them and e-mail dated September 25, 2007 objecting to certain rules  
included in final Task Force proposal but not stipulated judgment rule, reproduced in accompanying appendix hereto;  
*see also* William E. Morris Institute for Justice Comments dated May 15, 2008 available at  
<http://www.azcourts.gov/Rules-Forum/aft/150>

1 many diverse opinions in a successful effort to compromise disagreements that resulted in  
2 the current rule.<sup>2</sup> The proposal was embraced by Todd Lang (another Rules Committee  
3 member and former CLS attorney) and Steve McMurry (a Justice of the Peace and former  
4 attorney for AAMHO, a statewide mobile home park tenants' association).<sup>3</sup> This proposal  
5 eventually made its way into the RPEA as Rule 13(b)(4).  
6

7 Nothing has been alleged by the ACAJ in the eight years since the RPEA were  
8 adopted that would justify alteration or elimination of the stipulated judgment rule.

9 The practice of using stipulations in evictions originated about 25 years ago at the  
10 instigation of the Courts as a device to make eviction dockets manageable and ensure that  
11 tenants who appeared understood what their landlords were seeking and why. Ending  
12 stipulated judgments (the practical consequence of the Proposal) will add to docket times  
13 and likely leave unrepresented tenants ignorant of why they are in Court beyond what they  
14 can glean from the papers served on them and during their brief appearance in front of a  
15 judge.

16 In November 2016, the ACAJ filed its Proposal and agreed to continue to receive  
17 feedback from stakeholders. Most notable about the Proposal is that it identifies no *factual*  
18 need for the amendment sought, instead basing it on the widely discredited June 2005 Justice  
19 Court Study by the William E. Morris Institute.<sup>4</sup> The Proposal essentially would require in  
20 **all** cases where stipulated judgments are submitted to the Court that **both** parties or their  
21 attorneys appear and explain to the judge the facts and circumstances leading to the  
22 stipulation and that the judge question **both** parties to ensure that all requirements of the  
23 RPEA are satisfied. Currently under RPEA Rule 13(b)(4) the court must be satisfied the  
24 stipulated judgment is proper just as it must do for any other judgment, and the trial court  
25 has the *option* of insisting both parties appear and explain it—but that level of inquiry is not  
26

27 <sup>2</sup> See Gary Restaino e-mail dated January 18, 2007 proposing stipulated judgment rule, reproduced in accompanying  
appendix hereto.

28 <sup>3</sup> See Lang and McMurry e-mails dated January 22, 2007 tentatively approving Restaino proposal, reproduced in  
accompanying appendix hereto.

<sup>4</sup> [http://www.morrisinstituteforjustice.org/docs/Final\\_eviction\\_report.pdf](http://www.morrisinstituteforjustice.org/docs/Final_eviction_report.pdf)

1 mandated.

2  
3 Clearly something bad must have happened since January 1, 2009, when the  
4 stipulated judgment rule (with the support of the Task Force members including Ellen Katz,  
5 legal services attorneys, judicial members, landlord attorney members, and Dan McAuliffe,  
6 the Task Force liaison to the Rules Committee) went into effect supporting the instant  
7 proposal to effectively eviscerate it.

8 But the ACAJ is silent on that subject. The only apparent reason seems to be a  
9 distrust of and disdain for landlord attorneys even though no evidence supports this. The  
10 real intent seems be to buy tenants time to live in their landlords' properties rent-free while  
11 they seek other housing. This is evident from the following passage in the Proposal:

12 The inability to find other housing on short notice can lead to the  
13 disruption of children's education, interruption of employment,  
14 dislocation from health care providers, loss of personal  
15 belongings and homelessness. Thus, the consequences of  
16 eviction cases make them very important to tenants and  
17 especially low-income tenants, who often lack back-up  
18 resources. The result of an eviction may be that a family is living  
19 in a car or shelter.

20 Although hardship provokes sympathy, it is not the basis for a Court procedural rule,  
21 especially when the effect is the taking of the landlord's right to possession of his property  
22 when there is no **legal** cause for doing so. Giving time to tenants to live rent-free in landlord  
23 properties because it would be a hardship to move is a taking and is inconsistent with  
24 relevant law.

25 Approximately 80,000 evictions move through Arizona Justice Courts each year,  
26 around 60,000 of which take place in the 26 Maricopa County Justice Courts. In the past, a  
27 substantial percentage involved stipulations.

28 Protections are already built into the RPEA if a tenant believes that he or she has been  
duped into signing a stipulated judgment. They allow for motions for reconsideration,  
motions for new hearings, and motions to stay the writ of restitution when cause exists to  
question the judgment's validity. There is no legal or fact-based justification for requiring

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all tenants stipulating to a judgment to appear personally in the courtroom (often when they would prefer to leave, or when they have already signed an Agreement Not to Execute with their landlord) to be asked a litany of questions similar to those asked during a criminal change of plea hearing. There is no legal or fact-based justification for requiring that legal advice be given on the stipulated judgment form.

**III. HISTORICAL BACKGROUND OF STIPULATED JUDGMENTS IN EVICTION ACTIONS**

Undersigned counsel Michael A. Parham has maintained a substantial eviction practice since 1978. He witnessed and participated in the events leading to the stipulated judgment practice.

In the 1980s, a real estate industry boom fueled the construction of tens of thousands of apartment units. Eventually supply exceeded demand, forcing landlords to offer low rent incentives and even “free rent,” and to reduce credit standards to attract tenants. Around 1989 the market crashed and apartment landlords were forced to raise rents and discontinue rent incentives. Tenants, in unusually large numbers, became the subjects of eviction actions, many having lost their jobs due to the market crash. The high numbers of evictions had a huge impact on Arizona’s justice courts. Courts in precincts that had experienced high growth in apartment construction were suddenly faced with large increases in eviction filings. The Glendale Justice Court at one time handled its eviction calendars by splitting its main courtroom in half and having two judges simultaneously calling cases just to get through the calendar is less than half a day.

Most eviction cases are straightforward and tenants do not dispute the relief being sought. But when tenants appeared in court, judges were forced to explain, case-by-case, what the landlord was seeking. Judges began asking landlord attorneys to meet with tenants before the calendar was called to explain what was being sought and, if there was no disagreement, to obtain stipulations. Until that time, seeking stipulated judgments was not a common landlord attorney practice.

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The motive of the Courts was to reduce the time required to process eviction calendars. Before this practice developed, it was not unusual for such a calendar to take several hours to half a day, depending on the precinct and the time of the month (most evictions are heard during the last half of the month).

Arizona and Maricopa County have experienced several booms and busts since then, and each has resulted in increased eviction workloads on justice courts. The eviction workload of the Courts to this day is enormous and the current stipulated judgment practice enables judges to move their increased calendars along.

**IV. THE ACAJ PROPOSAL**

This Proposal would require both parties to appear and explain the stipulated agreement in Court. The Court would be required to ask the tenant a litany of questions. Based on the questions used in the current pilot program, those questions would be similar to those asked pursuant to *Boykin v. Alabama*, 395 U.S. 238 (1969) during criminal change of plea hearings to ensure that criminal defendants are pleading guilty knowingly and voluntarily. Several of them would focus on whether the landlord’s attorney lied to the tenant or forged the tenant’s signature in order to obtain a stipulated judgment. As a result, the stipulation practice will no longer expedite eviction calendars. It makes no sense for landlord attorneys to continue seeking stipulations since under this Proposal the benefits will disappear.

The ACAJ states that it “is informed and believes that the 26 Justice Courts in Maricopa County will in January 2017 voluntarily implement the procedure outlined in this rule petition.” While it is debatable whether the program was voluntary, the inadequacies in the proposed rule were immediately demonstrated in the pilot program. Since its adoption, landlord attorneys have ceased speaking with tenants and seeking stipulations. In response to seeing the practical effect of the proposed rule, many Justices of the Peace have complained that the proposed rule has created a backlog of court cases and has served no benefit to tenants. Further, tenants appearing in court as defendants in eviction actions have

1 complained that the rule requires them to stay in court, thus preventing them from quickly  
2 returning to work. These would be the same effects if the proposed rule is adopted.

3  
4 Ultimately, the Proposal could actually benefit landlord attorneys by relieving them  
5 of workload shifted by the courts years ago and freeing up time for other activities.

## 6 **V. CONSEQUENCES OF PROPOSAL**

7 Nowhere is the law of unintended consequences more evident than with this Proposal.  
8 In reading it, one is unable to find a legitimate reason for regulating stipulated judgments.  
9 The Proposal speaks about the hardships of evictions on tenants and describes the process by  
10 which stipulations are obtained. But it does not say how stipulated judgments (as opposed to  
11 non-stipulated judgments) add to these hardships. The unstated reason, however, is clear.  
12 The ACAJ implies (with no factual basis) that landlord attorneys are browbeating tenants  
13 into stipulating to judgments against their best interests.

14 It is important to be clear. This Proposal will not regulate stipulated judgments; as a  
15 practical matter, it will end them. As a result of the pilot program in Maricopa County the  
16 practice has already ended there.

17 It is also important to understand that the losers in this proposal are not landlords and  
18 their attorneys but tenants, their attorneys, and the court system. Here are a few of the  
19 consequences:

### 20 **A. *Tenants Represented by Private Counsel***

21 Several private attorneys represent tenants in eviction actions. Private tenant  
22 attorneys seek to keep fees low since tenants facing eviction typically cannot afford much.  
23 Their clients often want to settle by getting more time to pay or vacate. It is common  
24 practice to agree with the landlord's attorney that if the tenant moves out after the stipulated  
25 judgment is entered, the landlord will vacate the judgment thus avoiding undue harm to the  
26 tenant's credit. By calling opposing counsel and seeking a stipulation, tenant attorneys can  
27 not only obtain a settlement but are able to minimize fees since they do not have to charge  
28 for a court appearance.

1           The Proposal will reduce the number of tenants able to hire private attorneys to  
2 represent them by increasing their legal fees as a result of requiring unnecessary court  
3 appearances.

4           **B.     *Uninformed Tenants***

5           Since January 1 of this year, landlord attorneys have mostly stopped seeking  
6 stipulations. Tenants are not meeting with landlord attorneys before their court appearances  
7 to learn what is being sought. Instead, they usually appear before judges knowing nothing  
8 more than what is shown in the Complaint.

9           Discussing a stipulation before court allows both parties to identify errors and  
10 defenses before the court appearance, and a stipulation is entered only when there is  
11 agreement based on those discussions.

12           **C.     *Tenant Inconvenience***

13           In those few instances where stipulations are obtained if this Proposal is accepted,  
14 tenants will no longer be able to leave court immediately to get to work or for other reasons  
15 after signing it. They will need to waste time on a case with which they have no  
16 disagreement. This is significant because court calendars are taking more time under the  
17 new policy.

18           Tenants will no longer be able to sign a stipulated judgment and an Agreement Not to  
19 Execute, and avoid having to attend any court appearance altogether. Instead, even if they  
20 have already worked out a signed contract with their landlord, tenants will be required to  
21 attend a court appearance to state that the landlord's attorney did not forge their signature or  
22 lie to them in order to get them to sign the judgment.

23           **D.     *Lost Tenant Opportunities***

24           If the Proposal is adopted, tenants will lose the opportunity to strike beneficial deals.  
25 For example, it is common for tenants to get additional time to move after a judgment when  
26 the landlord's lawyer hears of significant hardships and other factors. It is common for  
27 tenants receiving Section 8 to stipulate to a judgment and sign an Agreement Not to Execute  
28

1 with their landlord that calls for vacating the judgment if the tenant has complied with all  
2 terms of the agreement, thereby preserving the tenant’s ability to receive Section 8 benefits.  
3 This is likely the single most important factor for a Section 8 tenant facing an eviction.  
4

5 **E. *Special Mobile Home and RV Park Tenant Consequences***

6 Tenants in mobile home and RV park cases may lose the opportunity to have a  
7 discussion with the landlord’s lawyer regarding working out arrangements to store the  
8 tenant-owned mobile home or RV on-site in the landlord’s park after the tenant vacates.  
9 Additionally, stipulated judgments and Agreements Not to Execute are particularly common  
10 in mobile home and RV cases and often allow the tenant more time to move and address the  
11 issue of what will be done with the tenant’s home. This is especially important in mobile  
12 home and RV cases, which involve more intricacies and potential ramifications than  
13 residential evictions. It is critical for tenants to have the opportunity to negotiate potential  
14 outcomes beyond what may be discussed in court before the judge. Unfortunately, there is  
15 an absence of judicial training in this area of the law. Commenting party MHCA regularly  
16 provides training in this area of law for community managers pursuant to A.R.S. § 33-1437  
17

18 **F. *Impact on Courts***

19 As discussed above, the courts originally encouraged stipulations to reduce calendar  
20 congestion. Ending stipulations (the practical effect of the Proposal) will cause all tenants  
21 showing up at court to sit through long calendars. Witnesses in contested cases will be  
22 required to wait through long calendars before their cases are called.

23 **G. *Attorneys’ Fees Will Increase***

24 If the Proposal is accepted, stipulations will cease as has been shown via the pilot  
25 program. Without stipulations, court dockets will slow down, requiring attorneys to spend  
26 more time in court. If this practice continues, it will likely result in more attorneys being  
27 needed to cover the same number of courts. As a result, attorneys’ fees in eviction actions  
28 will increase. This will directly harm tenants as they are required to pay their landlords’

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attorneys' fees to reinstate their leases. It is in the tenants' best interest that attorneys' fees remain at current minimal rates.

**VI. CONCLUSION**

The Proposal seeks to help tenants for reasons related to sympathy, emotion, and mistrust of and disdain for landlord attorneys, rather than evidence-based problems with the current rule. The Proposal's effect would be quite the opposite—Courts and tenants will suffer, not benefit.

The fact that the ACAJ has submitted the proposal, but asked for time to re-write it after the initial comment period, demonstrates that the proponents of the rule are unfamiliar with the practical effects such a rule would have. The Proposal should be rejected.

**DATED:** March 14, 2017

**WILLIAMS, ZINMAN & PARHAM P.C.**

By: 

Michael A. Parham  
Melissa A. Parham  
7701 East Indian School Rd., Suite J  
Scottsdale, AZ 85251  
*Attorneys for Commenting Parties Manufactured Housing  
Communities of Arizona and Michael A. Parham*

A copy of these comments has been e-mailed this 14th day of March, 2017 to:

Hon. Lawrence Winthrop

**Appendix # 1 to MHCA and Parham Comments  
on Proposed Stipulation Rule**

**Katz E-mail Dated 2/25/07**

**With Extracts From Attachment Showing  
Objections to HB2361 Including Recommendation  
Proposed Stipulation Rule Be Adopted**

# HB 2361

\* Ellen Sue Katz <eskatz@qwest.net>

Sun 2/25/2007 11:35 AM

Inbox

\* To: michaelparham@msn.com <michaelparham@msn.com>;

📎 1 attachments (92 KB)

Fact Sheet (REVISED II) on HB 2361 02.24.07.pdf;

\* Here are our comments to your informal revision to hbl2361. I apologize this took so long to get to you. I have sent this to Representative Reagan as well.

**Fact Sheet on Informal Revisions to HB 2361 (February 11, 2007, by Mike Parham)**

**Prepared by the**

**William E. Morris Institute for Justice**

**\*February 23, 2007**

There are two main kinds of evictions: Special detainers apply to residential landlord-tenant agreements. The statute is called the Arizona Residential Landlord and Tenant Act ("ARLTA"). Forcible entry and detainers ("FEDs") apply to a larger group of cases and include commercial leases. Because many provisions of the FED statute are incorporated into ARLTA, a change in the FED statute will create a change in ARLTA.

Arizona enacted ARLTA in 1973. The FED statute predates ARLTA by many decades. ARLTA strikes a balance between the rights of tenants and landlords. Eviction law is very important because approximately one-third of Arizonans are tenants. Eviction cases use expedited procedures and it is typical that if a landlord claims a tenant did not pay rent on the first of the month, the landlord could be in court by the 15<sup>th</sup> – 20<sup>th</sup> of the month. In addition, tenants facing eviction overwhelmingly lack both legal counsel and familiarity with the legal system.

While the informal revised draft of HB 2361 prepared by Mike Parham eliminated several provisions that restricted tenants' rights, the proposed revised legislation continues to restrict tenants' rights and protections in many ways.

The promotional material by the Arizona Multi-Housing Association mainly focuses on the provisions that are favorable to tenants (the complaint shall adequately advise the tenant of the facts of the case; specifies what the court should review prior to making a decision). These are requirements that substantially have been agreed to in the State Bar Task Force Rules Subcommittee that has met for the last 10 months and continues to meet and are more appropriate for the rule making process. As explained below, the drafter of this legislation used drafts from the rules subcommittee from last year. Those drafts have been superseded by better written, more organized and, in some places, modified rules.

\* We only highlight below the major areas of the bill that restrict tenants' rights. If a provision was deleted in the informal draft **WE HAVE NOT REFERRED TO IT IN THIS DOCUMENT.** If any of the deleted provisions remain in the bill, our comments from the January 23, 2007, Fact Sheet remain.

Bill Provisions	What the Provision Does	Current Law/Practice	Why Legislation is not Needed
12-1178(D)(1)-(a)-(c)	Specifies what court should review prior to issuing default judgment.	There are no standards.	These requirements are more appropriate for rule making and are being addressed in the task force committee. Moreover, they should not be used to justify the onerous provisions in the bill.
12-1178(D)(2)	Language on when defendant appears and admits allegations.	No provision.	If substance is incorporated, rule 12(a) (1-4) and b (3) of the rules subcommittee should be used.
12-1178(D)(2) cont'd.			These requirements are more appropriate for rule making and are being addressed in the task force committee. Moreover, they should not be used to justify the onerous provisions in the bill.  If substance is incorporated, rule 12(a) (1-4) and b (3) of the rules subcommittee should be used.
12-1178(D)(3)	<u>Language on stipulations.</u>	No provision.	<u>These requirements are more appropriate for rule making and are being addressed in the task force committee. Moreover, they should not be used to justify the onerous provisions in the bill.</u>

\*

Bill Provisions	What the Provision Does	Current Law/Practice	Why Legislation is not Needed
12-1178(D)(4)	Specifies what court should review for a contested matter.	There are no standards.	<p>If substance is incorporated, rule 12(b)(4) of the rules subcommittee should be used. <u>- Copy of this follows</u></p> <p>These requirements are more appropriate for rule making and are being addressed in the task force committee. Moreover, they should not be used to justify the onerous provisions in the bill.</p>
12-1178(D)(5) and (6)	Explains relief that can be awarded.	No detailed provision.	<p>If substance is incorporated, rules 12(a) (1-4) and b (3) and 12(c)(2) and (d) from rules subcommittee should be used.</p> <p>These requirements are more appropriate for rule making and are being addressed in the task force committee. Moreover, they should not be used to justify the onerous provisions in the bill.</p>
12-1178(E)	Explains writ of possession procedures.	No provision.	<p>If substance is incorporated, relevant parts of rule 12(c) of the rules subcommittee should be used.</p> <p>These requirements are more appropriate for rule making and are</p>

**UNIFORM RULES OF PROCEDURE  
FOR EVICTIONS**

\* January 31, 2007 - Draft

Proposed by the Rules Committee of the Landlord Tenant Task Force  
State Bar of Arizona

**Table of Rules**

1. Title and Scope of Rules
2. Construction of Rules
3. Definitions
4. Computation: Shortening or Extension of Time
5. Summons and Complaint: Issuance, Contents and Service of Process
6. Service of Pleadings, Other Papers and Orders After Complaint
7. Answers
8. Counterclaims and Consolidation
9. Motions
10. Discovery
11. Initial Appearance and Trial Procedures
12. Entry of Judgment and Relief Granted
13. Writs
14. Appeals
15. Responsibilities of Attorneys and Parties
16. Transfer of Cases
17. Bankruptcy
18. Miscellaneous

**Rule 1. Title and Scope of Rules**

These rules shall be known and cited as the Uniform Rules of Procedure for Evictions ("URPE"). These rules shall govern the procedure in the superior courts and justice courts involving forcible and special detainer actions, which are jointly referred to herein as "eviction actions." For purposes of these rules, there shall be only one form of action known as the "eviction action." The Arizona Rules of Civil Procedure shall not apply in eviction actions except as specifically incorporated by reference herein.

**Rule 2. Construction of Rules**

These rules shall be construed in accordance with statutory provisions related to forcible entry and detainer actions and special detainer actions. All eviction actions are statutory summary proceedings and the statutes establishing them govern their scope and procedure.

the court shall hear evidence establishing such a breach before ordering a writ of restitution within 24 hours or less.

- C. Mailing Default Judgments. The plaintiff shall promptly mail or deliver a copy of the default judgment to the defendant.

**12(b)** 4. Stipulated Judgments. The court may accept a stipulated judgment, but only if the court determines that the conditions of Rule 12(a)(1-2) have been satisfied and the judgment form to which the defendant stipulated contains the following warning:

**Read carefully! By signing below, you are consenting to the terms of a judgment against you. You may be evicted as a result of this judgment, the judgment may appear on your credit report, and 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.**

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. Notwithstanding Rule 12(c)(2), if all parties or their attorneys personally appear before the Court and the addition is reasonable, the Court may award an amount for damages or categories of relief not specifically stated in the complaint and shall not enter a stipulated judgment that contains a waiver of post judgment motions or appeals.

c. **Relief Granted.**

1. Possession of the premises.
  - A. Except as provided in subsection (2) of this section, if the judgment is for the plaintiff, possession of the premises shall be awarded to the plaintiff. No writ of restitution shall be issued until five calendar days after the judgment is signed.
  - B. When an immediate termination has been obtained due to a breach of a residential lease agreement that qualifies as "material and irreparable" under the applicable statute, the judgment shall provide for the writ of restitution to issue between 12 and 24 hours after entry of judgment, or longer if the plaintiff so requests.

*Comment*

*The term "material and irreparable" as used in this*

**Appendix # 2 to MHCA and Parham Comments  
on Proposed Stipulation Rule**

**Katz E-mail Dated 9/5/07**

**With Katz minority Report Objecting to Certain  
Rules but Not Objecting to Stipulation Rule**

# RE: Board of Governors Action on Rules of Procedure for Eviction Actions

Ellen Sue Katz <eskatz@qwest.net> ✱

Tue 9/25/2007 9:59 AM ✱

To: 'Rosenbaum, David' <drosenbaum@omlaw.com>; tf.lttf@azbar.org <tf.lttf@azbar.org>;

Cc: 'Dourlein, Kelly' <kdourlein@omlaw.com>;

## Task Force Members. ✱

I want to give a little more detail to the process before the Board of Governors. As you know, I submitted a minority report on 2 rules I believe restrict tenants' rights, rules 8e and 17d. I made a short presentation at the BOG meeting in June. Unfortunately, I was not told of the BOG's rules subcommittee meeting where the rules were discussed and voted on. I wish I had been there. I went to the general BOG meeting last Friday and made a short presentation about my 2 objections. There was a motion to send the rules up with the minority report but this failed 10 to 11. I was heartened that even though the rules committee supported the proposed rules, 10 members had their doubts about the 2 rules I objected to. I thank Leslie Hall for bringing up the motion. On to the Supreme Court!

✱ Ellen.

---

**From:** tf.lttf-owner@webmail.azbar.org [mailto:tf.lttf-owner@webmail.azbar.org] **On Behalf Of** Rosenbaum, David  
**Sent:** Friday, September 21, 2007 12:04 PM  
**To:** tf.lttf@azbar.org  
**Cc:** Dourlein, Kelly  
**Subject:** Board of Governors Action on Rules of Procedure for Eviction Actions

Dear Landlord-Tenant Task Force members:

It is my pleasure to inform you that the State Bar Board of Governors voted unanimously at its meeting this morning to petition the Arizona Supreme Court for approval of the Task Force's proposed Rules of Procedure for Eviction Actions. Judges Hegyi and McMurry joined me at the meeting to make a presentation and answer questions. Guy was ill or he would have been there as well. Ellen Katz also attended and summarized her minority report. All three minority reports were addressed, and of course all were previously submitted to the Board.

Special thanks to Hugh and Guy for their leadership and hard work chairing the subcommittee, and to each of the subcommittee members for the many hours spent on this important and worthwhile project.

The petition will be filed within the next few months, before the Court's January 10 deadline. After the petition is submitted to the Supreme Court a public comment period will open, followed by a decision by the Court at its annual rules conference next September.

David

David B. Rosenbaum

[drosenbaum@omlaw.com](mailto:drosenbaum@omlaw.com) 2929 North Central Avenue

[biography](#) Suite 2100

(602) 640-9345 (direct) Phoenix, Arizona 85012

(602) 640-6051 (fax) [www.omlaw.com](http://www.omlaw.com)



<https://outlook.live.com/owa/?viewmodel=ReadMessageItem&ItemID=AQMkADAwA1IwMTAwAC0wMTMzAC11ZDg0LTAwAi0wMAoARgAAA3Sn5jyzAlpArtl...> 1/2

\* Minority Position on two rules by Ellen Katz.

\* Rule 8(e):

This rule is adapted from the Arizona Residential Landlord and Tenant Act (“ARLTA”), A.R.S. § 33-1365. There is no dispute over the first sentence that tracks the language of the statute. The second sentence would allow a court to dismiss a counterclaim if a tenant failed to pay the undisputed rent into court. This provision is not in the current statute. Under A.R.S. § 33-1365(a), a tenant who deposits undisputed rent into court may avail herself of the safe harbor provision. Under that provision, even if a tenant withheld more rent than the court found appropriate, judgment for possession would still be awarded to the tenant if: (1) the tenant posted the undisputed rent with the court; (2) the court found the tenant acted in good faith; and (3) the tenant satisfied the judgment for rent awarded to the landlord. Thus, a tenant who withheld half of their rent (\$300) because of bad conditions in the apartment, and deposited the undisputed rent into court will get possession of the unit even if the court finds the tenant should have only withheld \$150, if the court finds the tenant acted in good faith and the tenant pays the difference in rent owed.

The second sentence goes beyond the statute to allow the court to dismiss the counterclaim if the undisputed rent is not posted. The penalty in the statute for not depositing the undisputed rent is loss of the safe harbor, not dismissal of the counterclaim. Eviction cases move very quickly and continuance are for short periods (3 days in justice courts). If tenants are not allowed to bring and pursue counterclaims in eviction cases, they will not be brought. There is no reason for the second sentence in Rule 8e and I request that the full committee delete it.

\* Rule 17(d) – Appeals:

Under the Forcible Entry and Detainer Statute, A.R.S. § 12-1179, a tenant must post certain amounts of money to stay in the residential unit during the appeal. Specifically, to stay the writ of restitution (possession), the tenant must post the rent accruing since the judgment, plus costs and attorney’s fees, and the periodic rent as it comes due during the appeal. A.R.S. § 12-1179(d). Rule 17(d) would change the current law in several respects when the appeal is from a finding of material and irreparable breach that involves underlying allegations of “violent conduct, crimes against children, criminal activity involving serious property damage or drug related activity.” This rule:

- (1) Authorizes the court to deny a tenant the statutory right to remain in their housing pending appeal, even if the rent bond is paid.

- (2) Places the burden on the tenant to affirmatively request in writing that she/he wishes to remain in the unit pending appeal.
- (3) Requires the court to review only the evidence in the record without a hearing and balance the interests of the tenant, other residents, the landlord and “the public at large” to decide if the writ should be stayed.
- (4) Allows the court to impose conditions on the tenant remaining in the unit during appeal, including the exclusion of certain residents such as children or teenagers, from the unit pending appeal.
- (5) Allows the court to hold a hearing for an emergency motion to lift the stay if the landlord claims the tenant breached the conditions of appeal.

Since this rule changes the current statute, that should be reason enough to delete it. An additional reason to delete this rule is the adverse effect it will have on vulnerable persons, such as victims of domestic violence. Tenant advocates state that landlords include very broad “crime free” lease provisions in leases that many advocates believe violate the ARLTA. These lease provisions make the tenant liable for any criminal activity on or near the premises that anyone a tenant knows commits. Tenant advocates also state that landlords routinely file “material and irreparable breach” cases to get into court quicker, reduce the time required to obtain possession of the unit and reduce the likelihood of an appeal.

Many landlords evict a victim of domestic violence for being the victim of a crime under the crime free lease provisions. As an example, a landlord files an eviction because a tenant was a victim of domestic violence; called the police; the abuser was arrested; and the landlord claims this abuse (criminal activity) violated the terms of the crime free lease provision. There could be property damage—the abuser punched a hole in the wall, or abuse to a child—he hit his child and the child had to go to the hospital. Under this provision, if the victim of abuse wanted to challenge her eviction and remain in her home, the court could order her to move. Or the court could order that the abuser remain away from the residential unit. If he returned, even against the wishes of the tenant-victim, the court could lift the stay of the writ pending the appeal. These cases are not uncommon. This rule will allow landlords to continue to misuse the immediate and irreparable breach and the crime free lease provisions.

I request that the full committee delete rule 17d in its entirety.

Restaino E-mail Dated 1/18/07

## RE: L-T - latest draft

Restaino, Gary (USAAZ) <Gary.Restaino@usdoj.gov> ✖

Thu 1/18/2007 9:57 AM

To: Hugh Hegyi - SUPCRTX <hegyih@superiorcourt.maricopa.gov>; lawguyaz1@cox.net <lawguyaz1@cox.net>; michaelparham@msn.com  
 ✖ <michaelparham@msn.com>; jkastner@clsaz.org <jkastner@clsaz.org>; Gerald Williams - MCJ CX  
 ✖ <GeraldWilliams@mcjc.maricopa.gov>; Ron Myers - MCJ CX <RonMyers@mcjc.maricopa.gov>; C. Steven McMurry - MCJ CX  
 ✖ <C.StevenMcMurry@mcjc.maricopa.gov>; todd.lang@azcleaselections.gov <todd.lang@azcleaselections.gov>;  
 ✖ daniel.mcauliffe@azbar.org <daniel.mcauliffe@azbar.org>; eskatz@qwest.net <eskatz@qwest.net>; drosenbaum@omlaw.com  
 ✖ <drosenbaum@omlaw.com>; Rachel Carrillo - MCJ CX <RachelCarrillo@mcjc.maricopa.gov>;

Thanks Hugh. Here's my crack at 12d. In short, my proposal would not require the parties to appear before the court, but would limit damages and other relief to categories contained in the complaint, consistent with the limitations proposed in default and contested cases.

Proposed change: Add the following language after the stipulation disclaimer, which mirrors the new language in Rule 12a4 for defaults: "Notwithstanding the recitations in the stipulated judgment, the Court shall not award any amount for damages or categories of relief not specifically stated in the complaint. 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."

**Rationale:** I tried to look at this over a spectrum of proposed relief. On the one side, I think we can all agree that a stipulation that contains an unlawful promise (e.g., tenant promises to give landlord a kidney) or a clearly improper and/or unconscionable promise (e.g., reimbursement of taxable costs of \$1,000) would not be enforced. On the other side, I would tend to agree that a stipulated judgment that provides the landlord with all the relief to which he would be entitled under the complaint may nonetheless provide some benefit to the tenant (more likely the intangible benefit of "getting this over with" but possibly a tangible benefit enabling the tenant to leave court earlier to get back to work) to justify its entry. It seems to me that a stipulated judgment that provides for additional relief that is permitted under the ARLTA yet not accounted for in the complaint is closer to the improper side of things, and, if permitted, would obviate the well-pleaded complaint provisions on which we have developed a general consensus.

**From:** Hugh Hegyi - SUPCRTX [mailto:hegyih@superiorcourt.maricopa.gov]

**Sent:** Wednesday, January 17, 2007 10:01 PM

**To:** lawguyaz1@cox.net; Hugh Hegyi - SUPCRTX; michaelparham@msn.com; jkastner@clsaz.org; Restaino, Gary (USAAZ); Gerald Williams - MCJ CX; Ron Myers - MCJ CX; C. Steven McMurry - MCJ CX; todd.lang@azcleaselections.gov; daniel.mcauliffe@azbar.org; eskatz@qwest.net; drosenbaum@omlaw.com; Rachel Carrillo - MCJ CX

**Subject:** L-T - latest draft

Thanks to Judges McMurry and Carrillo for hosting our meeting this evening. Enclosed please find a copy of our latest draft of the rules that incorporates the changes and decisions we made today. Next Wednesday we'll meet again at CLS.

Hugh  
602 506-7832

Lang and McMurry E-mails Dated  
1/22/07

## RE: L-T - latest draft

Todd Lang <todd.lang@azcleaselections.gov> ✖

Mon 1/22/2007 2:43 PM

To: 'C.Steven McMurry - MCJCX' <C.StevenMcMurry@mcjc.maricopa.gov>; 'Restaino, Gary (USAAZ)' <Gary.Restaino@usdoj.gov>; 'michael parham' <michaelparham@msn.com>; 'Hugh Hegyi - SUPCRTX' <hegyih@superiorcourt.maricopa.gov>; lawguyaz1@cox.net <lawguyaz1@cox.net>; 'Gerald Williams - MCJCX' <GeraldWilliams@mcjc.maricopa.gov>; 'Ron Myers - MCJCX' <RonMyers@mcjc.maricopa.gov>; daniel.mcauliffe@azbar.org <daniel.mcauliffe@azbar.org>; eskatz@qwest.net <eskatz@qwest.net>; 'Rachel Carrillo - MCJCX' <RachelCarrillo@mcjc.maricopa.gov>; drosenbaum@omlaw.com <drosenbaum@omlaw.com>; 'Jeffrey Kastner' <jkastner@clsaz.org>; ✖

That might be the time when you do step in and review the stip. When there are provisions that were not in the complaint. Then it may be appropriate to ask the tenant about his/her understanding of the agreement. This won't raise the time restraint concerns because I imagine that these extra side agreements are not that common. I like Gary's proposal.

✖ **From:** C.Steven McMurry - MCJCX [mailto:C.StevenMcMurry@mcjc.maricopa.gov]

**Sent:** Monday, January 22, 2007 1:37 PM

✖ **To:** Restaino, Gary (USAAZ); michael parham; Hugh Hegyi - SUPCRTX; lawguyaz1@cox.net; Gerald Williams - MCJCX; Ron Myers - MCJCX; todd.lang@azcleaselections.gov; daniel.mcauliffe@azbar.org; eskatz@qwest.net; Rachel Carrillo - MCJCX; drosenbaum@omlaw.com; Jeffrey Kastner

**Subject:** RE: L-T - latest draft

Colleagues,

✖ I share Mike's concern for "the Nanny state" and Gary's concern for the lack of understanding by tenants of stipulations. We must achieve a compromise that addresses both concerns. I am close to, but not yet persuaded to accept, Gary's proposed compromise language. I take issue with this part of his rationale:

"It seems to me that a stipulated judgment that provides for additional relief that is permitted under the ARLTA yet not accounted for in the complaint is closer to the improper side of things, and, if permitted, would obviate the well-pleaded complaint provisions on which we have developed a general consensus."

I remain a supporter of the well-pleaded complaint, but I don't think it's at risk here. Here's the sort of thing I contemplate: The landlord forgot to add the \$40.00 for the broken front window to the complaint, but the tenant knows it's true and stipulates to it. This accommodation makes it easier for the landlord to wait a few more days beyond the five before seeking a writ. Why should I, as a judge, be keen to prevent these compromises?

Steve McMurry

-----Original Message-----

**From:** Restaino, Gary (USAAZ) [mailto:Gary.Restaino@usdoj.gov]

**Sent:** Sunday, January 21, 2007 2:07 PM

**To:** michael parham; Hugh Hegyi - SUPCRTX; lawguyaz1@cox.net; Gerald Williams - MCJCX; Ron Myers - MCJCX; C.Steven McMurry - MCJCX; todd.lang@azcleaselections.gov; daniel.mcauliffe@azbar.org; eskatz@qwest.net; Rachel Carrillo - MCJCX; drosenbaum@omlaw.com; Jeffrey Kastner

**Subject:** RE: L-T - latest draft

More observations:

1 **The Law Office of Mark Hyatt Tynan**  
Mark Hyatt Tynan, Esq.  
2 7320 E Shoeman Ln Ste 204  
3 Scottsdale, AZ 85251-3359  
480-612-0577

4 **Cook & Price, PLC**  
Jesse D. Cook, Esq.  
5 402 E. Southern Ave.  
6 Tempe, AZ 85282  
480.407.4440

7 **The Law Office of Mark A. Tucker**  
Mark Tucker, Esq.  
8 2650 E Southern Ave  
9 Mesa, AZ 85204-5413  
480-633-9466

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

11 In re:

Supreme Court No. R-17-0020

12 **PETITION TO AMEND THE**  
13 **RULES OF PROCEDURE FOR** )  
14 **EVICITION ACTIONS** )

**COMMENTS re:**  
**PROPOSED RULE REGARDING**  
**STIPULATED JUDGMENTS**

15 \_\_\_\_\_ )  
16  
17 The undersigned hereby jointly file their Comments and Objections to the  
18 Petition to Amend the Rules of Procedure for Eviction Actions (“Petition”)  
19 requiring court inquiries of parties and their attorneys for stipulated judgments. As  
20 noted to this Court previously, we believe that we are the primary *private* attorneys  
21 who appear on behalf of tenants in eviction actions in Maricopa County, as opposed  
22 to *pro bono* attorneys. It is our opinion based upon years of experience that the  
23 proposed rule will create a significant impediment for countless tenants who use  
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1 stipulated judgments as a means of securing a more favorable outcome. Moreover,  
2 the proposed rule will effectively eliminate our representation of tenants, as many  
3 will no longer be able to afford the services of a private attorney. It should be noted  
4 with the imposition of the Rules for Eviction Actions, the ability of many tenants to  
5 afford representation was curtailed. These proposed rule changes only add to the  
6 unfairness against tenants.  
7

8  
9 We expect that other interested parties are going to submit comments  
10 addressing what they believe are legal issues with the Petition. Such legal  
11 arguments will not be addressed herein as the sole purpose of our Comments is to  
12 address the negative, practical affect the Petition will have on our clients, the  
13 tenants.  
14

15  
16 We believe that of all the eviction rule petitions that have been submitted  
17 since 2009, this Petition regarding stipulated judgments will have the most direct,  
18 irreversible negative consequence for tenants. Many will be now be unable to  
19 obtain legal counsel and countless others will be deprived of the benefit of  
20 stipulations.  
21

22  
23 As set forth more fully in our Comments to Rule Petition R-16-0040, which  
24 is incorporated herein by reference, we believe we are the primary private attorneys  
25 who represent tenants in civil actions, including evictions. Unlike *pro bono* or legal  
26 aid attorneys, we charge for our services. We give significant consideration to  
27  
28

1 tenants' financial circumstances—our clients' finances dictate what actions they  
2 want us to perform. Adoption of new rules which require unnecessary steps in the  
3 eviction process will serve no worthwhile purpose for tenants but will instead  
4 increase our attorneys' fees to the point that most tenants will no longer be able to  
5 retain us to defend against evictions.  
6

7  
8 As this Court is aware, an eviction action is an expedited, statutory action,  
9 with a limited scope. In most cases, the sole issue is whether rent was timely  
10 tendered and what, if any, counterclaims may be raised. It is because of this, and  
11 because of the limited funds of our clients, that we are tactical in the actions we  
12 take. Most commonly, our clients retain us to resolve the eviction action through  
13 negotiations prior to any court appearances. It is often not in our clients' best  
14 interest, nor is it practical, for our client to pay attorneys' fees to litigate an eviction  
15 even when there are *bona fide* defenses. It is a strategic decision to write a letter or  
16 send a draft Motion to Dismiss to the landlord or its counsel, and explain what we  
17 believe are the legal or factual defects in the case. From this point, we seek to  
18 negotiate either a dismissal of the case where warranted, or a stipulated judgment.  
19  
20  
21  
22

23 When appropriate, our clients acknowledge the landlord is entitled to  
24 judgment, but seek more favorable terms. Through the stipulation process, we are  
25 able to get our tenant clients: additional time to vacate; time to pay and stay; the  
26 right to have the judgment vacated if they pay in full; or a mutual release from the  
27  
28

1 lease if the rent is paid in full, thus relieving our clients of future liability. There  
2 are many potential variables upon which we can reach favorable stipulated  
3 judgments.  
4

5         The ability to reach such stipulations prior to court is vital to our clients  
6 because: (1) it avoids unnecessary attorneys' fees being spent on travelling to court,  
7 waiting around and then making perfunctory court appearances; and (2) it prevents  
8 tenants from missing work, medical or other important appointments to attend  
9 court. The proposed rule would eliminate these benefits and the cost would prevent  
10 tenants from hiring private attorneys. A rule that would unnecessarily force tenants  
11 to miss work and pay an attorney to attend court, in order to obtain a favorable  
12 outcome, directly violates the tenants' interests. Furthermore, a rule that  
13 necessarily increases the landlord's attorney's fees harms the tenant as the tenant  
14 will bear the brunt of those needless but additional attorney's fees in any settlement.  
15  
16  
17  
18

19         It is also important to note that in many cases, tenants are unable to afford  
20 our services and, where appropriate, we advise them to seek a stipulation  
21 themselves. While we obviously believe we are able to obtain more favorable  
22 terms for our clients, we have seen many self-represented tenants reach favorable  
23 stipulated judgments.  
24

25         As we have seen in the past two months, if additional steps are imposed in  
26 the stipulation process, landlords will be unwilling to engage in such negotiations  
27  
28

1 with tenants. Such *pro se* tenants therefore will be unable to gain the invaluable  
2 changes that they may want in the judgment.  
3

4 **CONCLUSION**

5 It is our belief that the current proposal was likely set forth with good  
6 intentions, but no consideration was given to the practical effect the proposed  
7 amendments would have upon tenants. As private tenant attorneys, we strongly  
8 oppose the proposed rule change. Perhaps in order to avoid potential harm to  
9 tenants by well meaning people, at least one of the undersigned should be included  
10 in future deliberations on rules changes and additions as they concern tenants.  
11 Accordingly, we respectfully request the court to deny the petition.  
12  
13

14 RESPECTFULLY SUBMITTED this 14th day of March, 2017.  
15  
16

17 s/ Mark Hyatt Tynan \_\_\_\_\_  
18 Mark Hyatt Tynan  
19 Law Offices of Mark Hyatt Tynan

s/ Mark Tucker \_\_\_\_\_  
Mark Tucker  
Law Offices of Mark A. Tucker

20  
21 s/ Jesse Cook \_\_\_\_\_  
22 Jesse Cook  
23 Cook & Price PLC

24 A copy of this comment has been e-mailed  
25 this 14th day of March 2017 to:

26 Hon. Lawrence Winthrop  
27 1501 W Washington, Suite 410  
28 Phoenix, AZ 85007  
spickard@courts.az.gov



14 Mar 2017 07:37 PM

Denise M. Holliday  
Holliday & Holliday PC  
7150 N 16th St.  
Phoenix, AZ 85020-5545  
602-230-0088  
hollidaylaw@netzero.net

I hereby join in the comments filed by the law firm of Williams, Zinman and Parham. As an attorney that has litigated in this specific arena for over 20 years, the existing rules that became effective in 2009 already provide adequate protections for all parties. By requiring litigants to physically appear before the Judge before the court will accept their written settlement, there are multiple consequences that negatively impact these parties and the court system.

1) The proposed rule will increase the time required to complete the court eviction dockets. This will increase the attorney fees charged to the tenants. Currently, the attorney fees charged for eviction actions are significantly lower than in any other field.

2) By refusing to allow a tenant to execute the stipulation and leave, this proposed rule will force a tenant to miss more time away from work while they wait for the court to call their case, only to be cross-examined as to whether they understood what they just signed. In fact, during the pilot program in Maricopa County Justice Courts in January 2017, multiple defendants complained they were being treated unfairly and were caused undue delay when these litigants had already read the pleadings and acknowledged they were liable. They understood what they signed but were forced to stay and be questioned by the judge. Many took this as an insult to their intelligence.

3) The attorneys in this field have reached a consensus based upon the pilot program in the Maricopa County Justice Courts in January 2017. Because of this program, they will not meet with any defendants and discuss reaching a stipulation. This is based upon the pilot questions by the trial court that led the listener to believe the attorney was under suspicion and must have misled the litigant. The program also required the attorney to provide legal advice to the opposing party.

4) There has been no evidence or single incident that any attorney has ever misled any defendant in the stipulation process. In fact, in the one and only case where a complaint was made by a third party over what they stated was an "overheard misrepresentation", the trial court held a hearing and found that the person reporting the allegations admitted they were not been present during the entire discussion and may have been mistaken in their report. It should noted the person who made this allegation was a lawyer that has been outspoken about the use of stipulations in eviction actions and was part of a special summer pilot program that was attempting to gather information about how the justice courts were operating. This attempt to manufacture a problem when none existed was outrageous and unethical. That program created so many problems, the courts that had voluntarily agreed to participate in the program shut

down how that group was permitted to operate in the court system and the contact they had with the litigants.

5) The justice court system processes a very large number of evictions each month. It is very relevant for this Court to review the comments made by the judges regarding concerns they have with this proposed rule. Presiding Judge Steve McMurry created this program, encouraged a number of judges to participate in the January pilot program, and has provided this Court with a very frank view of their findings. I strongly encourage this Court to consider the opinions of the very judges that preside over over 80% of all the eviction actions heard in this state. They universally agree they have seen no evidence of the alleged issues raised by the Petitioner.

Finally, the comments and positions made by all the stakeholders during the creation of the RPEA between 2007 through 2008 should be reviewed prior to this Court making any substantial changes. These changes are suggested and supported only by a small group of people who have openly admitted their desire to make the eviction process slower and more difficult. Arizona is one of the few states with very fair and balanced rules and statutes that equally protect the rights and responsibilities of both the landlord and the tenant. This fact has helped our housing industry provide affordable housing opportunities for everyone.

14 Mar 2017 07:50 PM

To whom it may concern:

I wholeheartedly join Mr. Parham's comments and share his concerns regarding the proposed rule, which adds a needless layer of procedural complexity to a rather simple situation. The proposed rule significantly frustrates the imperative for promoting judicial economy. How? By taking the ancient Latin maxim "Lex non requirit actus vanae" ("The law does not require a futile act") and standing it on its head.

Eviction actions are both statutory and civil in nature. In no other civil context is the court asked to play a paternalistic role in divining whether adult litigants are capable of settling lawsuits they're involved in. Misfortune--financial, medical, or otherwise--is an immutable part of human existence. In my experience in serving as a justice of the peace, I have found that only a very small percentage of eviction actions actually involve either justiciable issues of fact or appropriate legal defenses. The vast majority of eviction stipulations involve nothing more than a recognition on part of the defendant/tenant that they have not paid the rent, and that their financial difficulties, regrettable as they may be, do not amount to a viable legal defense to the action.

Therefore this proposed rule, when viewed in light of the facts as they are actually presented in eviction matters in justice courts across Arizona, cannot possibly be designed to promote "access to justice." This is because the proposed rule, in the overwhelming majority of cases, flies in the face of reality. It seems to many such as myself that the actual purpose of the proposed rule re: stipulations is the promotion of "access to social justice." This, I believe, is not the proper role of the judiciary, and is perhaps best left to the legislative branch of our state government.

Respectfully submitted,

FRANK J. CONTI  
Justice of the Peace  
Dreamy Draw Justice Court  
Maricopa County, AZ



14 Mar 2017 08:29 PM

Paul A. Henderson, Esq. (AZBN 22891)  
Christopher R. Walker, Esq. (AZBN 28977)  
Law Offices of Scott M. Clark, P.C.  
3008 N. 44th Street  
Phoenix, Arizona. 85018  
(602) 957-7877

Attorneys Paul A. Henderson and Christopher R. Walker, of the Law Offices of Scott M. Clark, P.C. and who are counsel to a large number of multifamily and single-family landlords and property owners throughout the State of Arizona, hereby join and endorse the objection and comments filed by attorneys Michael A. Parham and Melissa A. Parham.





**MARICOPA COUNTY JUSTICE COURTS**

North Valley Justice Court  
14264 West Tierra Buena Lane  
Surprise, AZ 85374  
23 March 2017

Presiding  
Justice of the Peace  
C. Steven McMurry

Associate Presiding  
Justice of the Peace  
Keith E. Russell

Justices of the Peace  
Fred Arnett  
Cecil Ash

Rachel Torres Carrillo

Frank Conti

Leonore Driggs

Keith Frankel

Andy Gastelum

Joe Getzwiller

Sam Goodman

Joe "Pep" Guzman

Jimmie Hernandez

Andrew Hettinger

Anna Huberman

Miles Keegan

Tyler Kissell

John McComish

David Osterfeld

Michael Reagan

Steven Sarkis

Steve Urie

Donald Watts

Cody Williams

Gerald Williams

Craig Wismer

David K. Byers  
Administrative Director  
Supreme Court of Arizona  
1501 West Washington  
Phoenix, AZ 85007-3231

Re: Request for Changes in Garnishment Hearing Request Form  
for Use in Justice Courts

Dear Mr. Byers:

The Best Practices Committee (Committee) of the Maricopa County Justice Court Bench recommends added language for the mandated garnishment hearing request form. This language will help self-represented litigants better understand the purpose of a garnishment hearing. Specifically, we desire to add an additional warning to make clear that a litigant cannot attack the judgment during a garnishment hearing. We also recommend that an option be added to focus the defendant on whether the amount being withheld is causing a hardship—the true issue for most garnishment hearings. On February 22, 2017, the Limited Jurisdiction Court Committee (LJCC) unanimously approved these recommendations. According to Administrative Order 2001-102, you are the approval authority for any changes to garnishment forms and we request that you approve these recommended changes.

**Problem:** Nearly every garnishment hearing begins with the defendant attempting to challenge or re-litigate the judgment. This is an extremely common misunderstanding that the existing mandated garnishment forms fuel because they allow a defendant to check a box before a line that reads, "The judgment creditor does not have a valid judgment against me." To add to the confusion, that statement is followed by two blank lines allowing the defendant to write in anything that he or she desires. These mandated garnishment forms are statutory. A.R.S. § 12-1598.16.

**Legal Background:** The main and often only purpose of a wage garnishment hearing is for the court to determine whether, based on clear and convincing evidence, the amount being withheld would cause "the judgment debtor or his family" to "suffer extreme economic hardship." A.R.S. § 12-1598.10. If so, then the Court can reduce the amount of the nonexempt withholding from 25% to not less than 15%. Other issues can be the proper subject of a garnishment hearing, but those issues usually do not appear in justice courts. (e.g. the creditor does not have a valid judgment because the judgment is from a court in another state and the spouse was not a part of that lawsuit; judgment is being improperly

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Administrative Pro Tem  
Quentin V. Tolby

---

Justice Court Administrator  
Jeff Fine

222 N. Central Avenue, Suite 210  
Phoenix, AZ 85004

enforced against community property because it was a separate debt and none of the debt was incurred on behalf of the marital community).

**Solution:** Our Committee recommends the following changes to the mandated form. We propose adding the following warning near the top of our garnishment hearing request forms:

“YOU WILL NOT BE ABLE TO CHALLENGE THE JUDGMENT AT THE GARNISHMENT HEARING. For example, if you believe that the evidence was insufficient, then you may file a Motion for Reconsideration. If you believe that you were not correctly served then you may file a Motion to Set Aside the judgment. However, the court will not address these motions in detail at the garnishment hearing.”

We also propose adding another check box with the following sentence after it: “The amount being withheld from my pay is causing an extreme financial hardship for me or for my family.” We have attached a proposed form to help envision the change.

The LJCC recommended an additional change. On the line that reads, “The judgment creditor does not have a valid judgment against me,” it recommended adding, “because the garnishment has been filed against the wrong person.” That proposed change is also included on the attached proposed form.

We respectfully request that you approve our recommended changes to the garnishment hearing request form and adopt our proposed form as the official garnishment hearing request form. If you have any questions or need any additional information, please feel free to call me at (602) 372-2564 or email me at [geraldwilliams@mcjc.maricopa.gov](mailto:geraldwilliams@mcjc.maricopa.gov).

Sincerely,

GERALD A. WILLIAMS  
Justice of the Peace

Attachments

1. Proposed garnishment form
2. Current garnishment form

Person Filing: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

City, State, Zip: \_\_\_\_\_

Daytime Phone / Alternate Phone: ( ) - ( ) -

Representing:  Self  Attorney  Other

State Bar No. (if applicable): \_\_\_\_\_



# Maricopa County Justice Courts, Arizona

North Valley Justice Court 14264 W. Tierra Buena Ln., Surprise, AZ 85374 602-372-2000

CASE NUMBER: \_\_\_\_\_

## REQUEST FOR HEARING ON GARNISHMENT FORM 8 (EARNINGS) (A.R.S. § 12-1598.16(C))

( ) -  
Judgment Creditor

( ) -  
Judgment Debtor

( ) -  
Garnishee

**YOU WILL NOT BE ABLE TO CHALLENGE THE FACTUAL BASIS FOR THE JUDGMENT AT THE GARNISHMENT HEARING.** For example, if you believe that the evidence was insufficient, then you should file a Motion for Reconsideration. If you believe that the service was not done correctly, then you should file a Motion to Set Aside the judgment. However, motions like these will most likely not be discussed in detail at the garnishment hearing.

I am the judgment debtor (Defendant) or I represent the judgment debtor in this case. I request a hearing on this garnishment because: *(Check all that apply)*

- The amount being withheld from my pay is causing an extreme financial hardship for me or for my family.
- The judgment creditor does not have a valid judgment against me because this garnishment has been filed against the wrong person.
- The judgment has been paid in full.
- On my normal payday, I received no earnings (paycheck).
- My employer did not deliver to me, within 15 days of when my employer was served with the Writ of Garnishment, one or more of the following documents: Notice to Judgment Debtor, Garnishee's Answer, or Request for Hearing.
- My debt to this judgment creditor (Plaintiff) is subject to a qualified debt scheduling agreement:  
*(If you checked this box, enter the name of the debt counseling organization that set up your debt scheduling agreement.)*

Other: \_\_\_\_\_

Copy provided to judgment creditor on:

Date: \_\_\_\_\_

By:  Mail  Hand delivery

Copy provided to garnishee on:

Date: \_\_\_\_\_

By:  Mail  Hand delivery

The Court can call me at \_\_\_\_\_ between 8 a.m. and 5 p.m. regarding the hearing, if necessary.

Date \_\_\_\_\_  
Judgment Debtor or Authorized Agent

**WARNING TO JUDGMENT DEBTOR: To request a hearing, this document, or one similar, must be received by the Court within (10) ten business days after you receive Garnishee's Answer, unless you show good reason for the delay.**



Person Filing: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

City, State, Zip: \_\_\_\_\_

Daytime Phone / Alternate Phone: ( ) - ( ) - \_\_\_\_\_

Representing:  Self  Attorney  Other

State Bar No. (if applicable): \_\_\_\_\_



# Maricopa County Justice Courts, Arizona

North Valley Justice Court 14264 W. Tierra Buena Ln., Surprise, AZ 85374 602-372-2000

CASE NUMBER: \_\_\_\_\_

## REQUEST FOR HEARING ON GARNISHMENT FORM 8 (EARNINGS) (A.R.S. § 12-1598.16(C))

( ) -  
Judgment Creditor

( ) -  
Judgment Debtor

( ) -  
Garnishee

I am the judgment debtor or I represent the judgment debtor in this action. I want a hearing on the garnishment of earnings from this garnishee because: *Check all that apply*

The judgment creditor does not have a valid judgment against me because  
\_\_\_\_\_

The judgment has been paid in full.

On my normal payday, I received no earnings (paycheck).

I did not get a copy of the nonexempt earnings statement with my paycheck.

My employer did not deliver to me, within 15 days of when my employer was served with the Writ of Garnishment, one or more of the following documents:

- Notice to Judgment Debtor
- Garnishee's Answer
- Request for Hearing

My debt to this judgment creditor is subject to a qualified debt scheduling agreement with:  
*If you checked this box, enter the name of the debt counseling organization that set up your debt scheduling agreement.*

Copy provided to judgment creditor on:
Date: _____
By: <input type="checkbox"/> Mail <input type="checkbox"/> Hand delivery

Copy provided to garnishee on:
Date: _____
By: <input type="checkbox"/> Mail <input type="checkbox"/> Hand delivery

The Court can call me at \_\_\_\_\_ between 8 a.m. and 5 p.m. regarding the hearing, if necessary.

Date \_\_\_\_\_  
Judgment Debtor or Authorized Agent

**WARNING TO JUDGMENT DEBTOR:** To request a hearing, this document, or one similar, must be received by the Court within (10) ten business days after you receive Garnishee's Answer, unless you show good reason for the delay.