

PROMOTING
ACCESS
 TO JUSTICE

Arizona Commission on Access to Justice

Meeting Agenda

February 17, 2016 - 10:00 a.m. to 2:00 p.m.

State Courts Building ♦ 1501 West Washington ♦ Conference Room 119 ♦ Phoenix, Arizona

Conference call-in number: 602-452-3288 Access code: 9868

[ACAJ WEBPAGE](#) [WebEx](#) Password: 9868  

TIME	AGENDA ITEM	PRESENTER
10:00 a.m.	Welcome and Opening Remarks	<i>Judge Lawrence F. Winthrop, Chair</i>
	Approval of minutes from November 18, 2015 <input type="checkbox"/> Formal Action/Request	
10:05 a.m.	Chairperson's report	<i>Judge Winthrop</i>
10:25 a.m.	Report from SRL-Family Court Workgroup	<i>Judge Dean Fink, SRL-FC Workgroup Chair</i>
	<ul style="list-style-type: none"> • Maricopa County's AmeriCorps project • Update on Law4AZ training programs • Update on AZCourtHelp - Arizona's Virtual Access & Resource Center • Simpli Phi Lex "Instructions" project • Update on Q&R Handbook 	<i>Janet Fisher, State Library</i> <i>Theresa Barrett, AOC</i> <i>Judge Dean Fink</i> <i>Kathy Sekardi, AOC</i>
10:50 a.m.	Report from SRL-Limited Jurisdiction Courts Workgroup	
	<ul style="list-style-type: none"> • Forms and instructions for landlord and tenant issues • Update on Resources Sub-Workgroup efforts • Update on Maricopa County Justice Courts efforts 	 <i>Nick Olm, AOC</i> <i>Nick Olm, AOC</i> <i>Jeff Fine, MCJC Court Administrator</i>
11:15 a.m.	Report on latest developments in non-lawyer representation initiatives	<i>Judge Kreamer, Non-lawyer Representation Task Force Chair</i>
11:30 a.m.	Update: Lay Legal Advocates	<i>Chris Groninger, AZFLSE</i>

 **Lunch – 11:45 a.m.** 

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 Nick Olm (602) 452-3134 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.

TIME	AGENDA ITEM	PRESENTER
12:45 p.m.	Report from <i>Pro Bono</i> Service and Funding Workgroup <ul style="list-style-type: none"> • Update regarding the <i>Pro Bono</i> Workgroup's focus and goals • Charitable Tax Report • Report on outreach efforts • Recognition of In-House Counsel of the Year 	<i>Judge Joseph Kreamer, Pro Bono Workgroup Chair</i> <i>Lara Slifko, AZFLSE</i> <i>Dr. Kevin Ruegg, AZFLSE</i> <i>Judge Joseph Kreamer</i>
1:15 p.m.	Review of Commission progress on mandate in Administrative Order No. 2014-83 <input type="checkbox"/> Formal Action/Request	<i>Judge Winthrop</i>
1:55 p.m.	Good of the Order / Call to the Public Adjournment	<i>Judge Winthrop</i>

2016 Meetings

May 18, August 17, and November 9
10:00 a.m. to 2:00 p.m.
State Courts Building, Phoenix, Arizona
Conference Room 119

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Arizona Commission on Access to Justice
DRAFT MINUTES
November 18, 2015
10:00 a.m. to 2:00 p.m.
State Courts Building, 1501 W. Washington Street
Phoenix, AZ 85007

Present: Judge Lawrence Winthrop, Chair; Kip Anderson; Judge Janet Barton; Mike Baumstark; Judge Thomas Berning; Millie Cisneros; Michael Jeanes; Ellen Katz; Judge Joseph Kreamer; Michael Liburdi; Judge James Marnier; John Phelps; Kevin Ruegg; Judge Rachel Torres Carrillo; Lisa Urias

Telephonic: Judge Maria Elena Cruz; Anthony Young

Presenters/Guests: Pamela Bridge; Judge Dean Fink; Kevin Groman; Maggie Kiel-Morse; Judge Bill Rummer; Cari Gerchick; Chris Groninger; Judge Steven McMurry; Judge Patricia K. Norris; Scott Uthe

Administrative Office of the Courts (AOC): Judge Mark Armstrong (ret.); Dave Byers

AOC Staff: Theresa Barrett; Julie Graber; Nick Olm; Kathy Sekardi

I. REGULAR BUSINESS

A. Welcome, Opening Remarks and Approval of Minutes

With a quorum present, the November 18, 2015 meeting of the Arizona Commission on Access to Justice (ACAJ) was called to order by the Chair, Judge Larry Winthrop, at 10:08 a.m.

Motion: Judge Kreamer moved to approve the August 12, 2015 minutes. **Seconded:** Mike Baumstark
Vote: Unanimous.

B. Chairperson's Report on Presentations and Meetings

Judge Winthrop reported the Arizona poverty rate is 21.2%; which equals 1.7 million people (or one out of every 11 people) living at or below the federal poverty level (\$5,000 for individuals and \$12,000 for a family of four).

Over the past year, Judge Winthrop has been building partnerships with a variety of groups to promote the work of the commission, to raise awareness regarding the needs of self-represented litigants, and to educate and inform people about the Arizona Charitable Tax Credit. The presentations have been made to lawyer groups, bar associations, law firms, public law agencies, various business communities and private foundations.

Action item: Judge Winthrop requested members to identify two groups in the community that they feel comfortable talking to about the Arizona challenges that relate to access to justice issues and the work of the commission, the need for legal services funding, and the promotion of the charitable tax credit. Once the groups are identified and the presentations have been made, members are requested to provide this information to staff.

II. REPORT FROM SRL-FC WORKGROUP

A. Report on the Law4AZ project

Maggie Kiel-Morse reported training for library staff is scheduled in January and February of 2016 for the remaining nine counties as part of the Law4AZ project. Ms. Kiel-Morse asked the commission members to help locate volunteer attorneys who are willing to participate with the Law4AZ training.

Mr. Phelps offered to coordinate with Ms. Kiel-Morse to solicit volunteers and mentioned that the Arizona Foundation for Legal Services and Education (AZFLSE) has developed a *pro bono* portal website, which can also be used to solicit volunteers.

Mr. Young suggested group of *pro bono* lawyers could attend the library training sessions. Logistics of their attendance could be accomplished by a conference call with the *pro bono* directors of AZFLSE, the State Bar, and legal service agencies. He also suggested that *pro bono* attorneys could make use public libraries as a free venue in which to speak with low-income people about public benefits, and as a possible website to post educational videos.

B. Maricopa County Superior Court's AmeriCorps Project

Judge Dean Fink reported Maricopa County Superior Court received a three-year AmeriCorps grant to have 38 AmeriCorps members (students) in the Law Library Resource Center to assist self-represented litigants gain access to justice by helping them find legal information, walking self-represented litigants to the filing counter, and completing and filing forms. It is anticipated these activities will have a measurable impact on the court calendar by eliminating the need for repeat visits from litigants who did not initially fill out paperwork correctly. AmeriCorps members will receive a stipend and may receive grant monies for school loans or tuition. Initially, the students will only assist with family court and protective order matters. However, with success, it is hoped that the program can expand to other areas of law.

The program has recruited 57 applicants for the 38 positions. Staff will be interviewing applicants in the coming weeks and final selections will be made by the end of November. Orientation is scheduled over the course of a couple days in January, 2016.

C. Report on the updated "Q&R Handbook"

Ms. Kiel-Morse reported that feedback and comments were received from commission and workgroup members and many of the suggestions were incorporated into the current draft. Some of the changes include:

- Handbook is anticipated to be used electronically within a PDF format to make use of bookmarks for user-friendly navigation.
- "Resources" such as links to web pages and reference materials, have been added below the question and response instead of inside the response narrative.
- New section added for fee waivers and deferrals.
- New section added that outlines the Arizona court system.
- New section added that defines legal information versus legal advice.
- Added the list of things court personnel can and cannot do when helping court customers.

Judge Winthrop expects this document will be helpful when educating the judiciary and judicial staff regarding dealing with self-represented litigant issues. A suggestion was made to sponsor a statewide WebEx event to present this material to the judiciary.

A member inquired as to how the public are educated about what court staff can and can't do. Staff responded by saying that an administrative order (A.O. 2007-28) requires signage be prominently displayed at court service counters, self-service centers, and law libraries open to the public.

Motion: Ms. Ruegg moved to approve the Q&R Handbook and recommend that this document be vetted through the Arizona Judicial Council. **Seconded:** John Phelps **Vote:** Unanimous.

D. Report on the Simpla Phi Lex Project

Judge Fink reported Pima County Commissioner Dean Christoffel developed the Simpla Phi Lex project that transformed family law documents into forms and instructions that are easier to read and understand. University of Arizona law students were partnered with graduate students in the English department to work on this award-winning project.

Judge Fink has established a sub-workgroup to further develop the Simpla Phi Lex products into a generic statewide instructions product.

E. Report on the Arizona's AZCourtHelp Virtual Access and Resource Center

Ms. Kiel-Morse reported a task force was established to develop a project plan for the new AZCourtHelp resource center. The Coconino County Law Library Self-Help Center will house the physical space. The remodeling plans include configuring a modular classroom space to use for workshops and clinics. A comprehensive webpage is planned that will be a discovery tool and a repository for statewide and county-specific self-help videos. There are plans for live video streaming of workshops and clinics so participants have the benefit of asking questions and getting feedback immediately.

An AmeriCorps Vista Grant allowed Coconino County to hire a Program Coordinator who will research and report to the task force on best practices for developing the webpage and what content to provide. The coordinator will also reach out to community organizations and get input regarding the needs of the community and their constituents. The proposed timeline to launch the resource center and webpage is late summer of 2016.

III. REPORT FROM SRL-LJC WORKGROUP

A. Presentation of best practices for ensuring access to justice for self-represented litigants

Judge Steven McMurry, Presiding Justice of the Peace in Maricopa County, presented information about a program that was recently offered to justice court judiciary regarding the best practices for ensuring access to justice for self-represented litigants. The best practices were developed by a committee of Maricopa County Justice Courts Justices of the Peace along with input from the National Center for State Courts.

The best practices were developed by focusing on fairness from the perspective of the self-represented litigant. Although the best practices have not been adopted, they are persuasive and are being followed by Justices of the Peace.

Judge Winthrop noted that it is not improper for judges to accommodate self-represented litigants and there has not been an instance where a judge has ever been admonished for delivering legal information to self-represented litigants in any manner.

B. Report on the Forms Sub-workgroup and Resources Sub-workgroup

Judge Carrillo's reported that over the past year, the Forms Sub-workgroup held numerous meetings to edit forms and information packets for eviction matters and vetted the drafts to various stakeholders. The sub-workgroup has developed ten different forms and packets:

1. 5 Day Notice to Vacate (failure to pay rent)
2. 5 Day Notice to Vacate (health and safety violations)
3. 10 Day Notice to Move (material breach)
4. 10 Day Notice to Move (repeat material or health and safety breach)
5. Immediate Notice to Move (material and irreparable breach)

6. General Information About Landlord and Tenant Rights and Options Before You Come to Court
7. General Information for Tenants Who Have Been Served with Eviction Court Pleadings
8. General Information for a Landlord Filing an Eviction Action in Justice Court
9. Complaint and Summons
10. Judgment

Paul Julien established a group to develop video scripts for landlord/tenant issues. Production is expected to commence in January, 2016. The working titles are:

- o “So You Just Got Served Eviction Paperwork”
- o “So You’re Thinking of Renting an Apartment or Home”
- o “So You’re Thinking of Filing an Eviction Action”

The Justice Courthouses have signs posted that inform the public about requesting fee waiver and deferral form applications at the clerk windows. Justice Court clerks are also being trained to inform the public about the fee waiver and deferral forms.

It was suggested that the commission or one of its workgroups explore developing forms that tenants can use in landlord/tenant matters.

Motion: Judge Carrillo moved to have the commission approve the drafts of the forms and information packets in concept with the understanding that the forms will be reviewed by Arizona State University English Department to alter them to a fifth grade reading level and for the AOC to seek resources to have the documents translated into Spanish. **Seconded:** Mike Baumstark **Vote:** Unanimous.

IV. BARRIERS TO ACCESS TO JUSTICE FOR TENANTS IN EVICTION CASES

Pamela Bridge, Community Legal Services, presented the following issues:

The first issue is an ethical concern regarding court procedures that allow a landlord attorney an opportunity to question a tenant in the courtroom before the judge has taken the bench. Many tenants are nervous and confused and simply leave the courthouse, which may result in a default judgment against the tenant; or the tenant may have signed a stipulated judgment believing that court personnel assisted, when in fact, it was the opposing landlord attorney. Ms. Bridge believes it is crucial for judges to be on time for court and for judges to sign stipulated judgments only if the tenant is present at the hearing to provide an opportunity for the judge to question the tenant about the stipulations proposed in the judgment.

Second, Ms. Bridge stated that judges would benefit from more training in the area of housing subsidies in order to make informed and accurate decisions in these cases. Ms. Bridge explained that many problems faced by tenants occur when a subsidy agency has contracted with a private landlord to pay directly to the landlord part or all of a tenant’s rent on behalf of the tenant. The contract usually states that the landlord cannot evict the tenant if the agency is late paying rent to the landlord. If the agency is late paying the rent it is a dispute between the landlord and the agency, not between the landlord and tenant. Yet, landlords continue to file eviction actions for the full amount of rent, which results in tenants being evicted. Ms. Bridge has reached out to the Arizona Department of Housing and the Housing and Urban Development (HUD), which have already agreed to collaborate with her organization to assist with judicial training needs.

Third, there are concerns about handling non-payment of rent cases where inhabitation issues may exist. Ms. Bridge stated that self-represented litigants are unable to navigate through the complex area

of injunctions against landlords for inhabitability issues and suggested that the *Rules for Procedure for Eviction Actions* (Rule 13(b)(4)) should be revised to assist tenants through the process.

Ms. Bridge then requested this commission to:

1. Sponsor workgroups to review these specific concerns.
2. Recommend trainings for judges by Continuing Legal Education (CLE), Court Ordered Judicial Education and Training (COJET) or at each respective court's bench meetings.
3. Explore making rule changes regarding stipulated judgments and tenant actions against landlords.

A member commented that Southern Arizona Legal Aid receives these same complaints and suggested that statewide training for judges would be beneficial.

After inquiry from Mr. Byers, Ms. Katz stated she expects a rule petition allowing a change of judge in eviction cases to be proposed again. Mr. Byers added that this rule petition has previously been rejected by the Arizona Supreme Court for a multitude of reasons and asked the commission to examine the issue further.

The chair stated that the issues presented by Ms. Bridge are within the parameters of this commission's charge. He further commented that conducting trainings at the judicial conference and at bench meetings would be beneficial to the judiciary.

Motion: Ms. Cisneros moved to have the commission support a training on these issues at the judicial conference in June of 2016 and have the commission sponsor that presentation. **Seconded:** Mr. Jeanes **Vote:** Unanimous.

V. PRESENTATION ON RULE PETITION R-14-0027

Judge Mark Armstrong (ret.) informed members this rule change petition proposes a revision to Rule 11 of the *Arizona Rules of Procedure for Eviction Actions*. The proposed change envisions telephonic appearance by parties and witnesses in eviction actions.

Judge Armstrong noted the Maricopa County Justices of the Peace submitted a comment opposing this rule petition and proposed a different rule petition. Ellen Katz, on behalf of the William Morris Institute for Justice (WMIJ), filed a proposal opposing both of the proposed rule petition changes.

Accordingly, the Arizona Supreme Court continued this petition at their last rules agenda meeting in August, 2015, to provide an opportunity to develop language agreeable to all stakeholders. Judge Armstrong drafted new language for the petition based on model language in the *Arizona Rules of Protective Orders Procedure* to facilitate discussions during the extended comment period.

A member stated this petition has been vetted through the task force of legal service attorneys who handle eviction cases. The consensus of the vetting was this proposal is better than the previous proposals, but there are still some concerns.

Judge Armstrong noted this rule change petition is an ongoing process and he is open to further suggestions.

VI. PRO BONO SERVICE AND FUNDING WORKGROUP REPORT

A. Report on the Arizona Charitable Tax Credit Campaign Efforts

Judge Winthrop informed members he distributes the Charitable Tax Credit flyer developed by the Arizona Foundation for Legal Services & Education (AZFLSE) when presenting to various bar foundations and organizations around the state. The flyer identifies seven non-profit organizations that qualify for the charitable tax credit. He clarified that the charitable tax credit is separate and apart from the school tax credit, meaning both donations and tax credits will count.

B. Report on Intel’s Outreach Efforts to Other Corporate Counsel

Scott Uthe, Intel Corporation, reported that contact has been made with the *pro bono* coordinators and Mr. Uthe informed the commission of the following:

- Avnet does not have a *pro bono* coordinator and their corporate counsel have discretion on where and to whom *pro bono* work is provided.
- Discussions with U-Haul are ongoing as to what *pro bono* services will be provided.
- AZ Public Service has reinstated, along with Volunteer Lawyers Programs (VLP), a collaborative program that supports “attorney-for-the-day” counseling.
- Salt River Project will start clinics in January, 2016, to draft wills for underserved clients.

C. Report on the Ongoing Efforts of the *Pro Bono* Service Workgroup and Outreach Efforts

Judge Joe Kreamer and Dr. Kevin Ruegg reported that funds are needed to support the *pro bono* legal service organizations in Arizona. Interest on Lawyers’ Trust Accounts (IOLTA), which funds legal service organizations, has been decreasing steadily over the past few years. This workgroup is working on meeting those challenges for funding.

Legal service organizations are making it as seamless as possible to present corporate counsel and attorneys with volunteer opportunities. Between the Volunteer Lawyers Programs (VLPS) in Maricopa County and from Southern Arizona Legal Aid, there have been almost 4,000 requests for services. The VLPs make the connection between those seeking service and volunteers willing to provide service. There were an additional 120 volunteer lawyers added in the last ten months and additional outreach efforts are ongoing to recruit more volunteers.

Finally, it was shared that recently a steering committee that is comprised of legal service organization directors, the William E. Morris Institute for Justice, and the AZFLSE, examined frontline access to justice issues. This group identified a need for a one-stop portal that attorneys can access to find ways to volunteer. The result of their examination was development of a portal called Online Arizona Justice (probono.azbf.org). Dr. Ruegg will keep commission members posted on implementation of the portal.

VII. REPORT ON NON-LAWYER REPRESENTATION ISSUES

Judge Kreamer reports a significant gap between people that cannot afford attorneys and people who do not qualify for free legal aid. This “modest means gap” needs to be addressed and non-lawyer representation is a possible solution.

Judge Kreamer then shared information regarding the Washington State Limited Liability Legal Technician (LLLT) program. He noted the following:

- Among other things, LLLTs obtain relevant facts for clients; inform clients of possible implications of the law; prepare clients for court, perform legal research and draft legal documents. LLLTs are only assisting with family law matters at this time.
- Qualifications for LLLTs include: an Associate’s degree or higher; complete 45 hours of the core curriculum through the ABA legal program; complete 3,000 hours of paralegal

- experience under the supervision of a lawyer; pass the legal technician exam and ethics exam.
- The LLLT board in Washington State oversees and creates standards for the LLLT program.

Judge Kreamer further noted the challenge with the Washington program is there are not enough people willing to qualify and complete the program due to the costs and time involved. It was noted that Oregon is in the process of creating a system similar to Washington's LLLT program; however, Oregon is considering requiring even more hours of training than the Washington program requires.

It is Judge Kreamer's assessment that when looking at legal services and non-legal representation, navigator programs (such as Maricopa County, New York, and in part Arizona's legal document preparer program), have far more success for one-time help situations. Accordingly, he recommended to continue monitoring other states' programs to identify what is and is not working.

VIII. REPORT ON THE TOWN HALL DISCUSSION

Judge Patricia Norris, Court of Appeals Division 1, and Chris Groninger reported on the recent Town Hall held on August 28, 2015:

This Town Hall focused on the Domestic Violence Legal Assistance Project. Attorneys for legal service groups and lay legal advocates from various constituent groups were invited to the Town Hall to discuss certain emerging issues, to make specific recommendations, and to develop metrics on the domestic violence program.

A member inquired as to whether the town hall addressed the issues of domestic violence for undocumented persons. The member's concern was that a number of agencies funded by LSC have restrictions, as LSC does not allow services for undocumented persons. Ms. Groninger indicated the issue was discussed and expects the pilot project to include the presence of an advocate in those areas of the state that have an increase of undocumented victims.

Judge Winthrop suggested following-up by discussing perspectives and recommendations for the program with the judicial community and to report findings back to the commission. The commission members can then discuss and determine if a formal rule or administrative regulation would benefit the lay legal advocate program.

VIII. OTHER BUSINESS

A. Good of the Order/Call to the Public

There was no response to a call to the public.

B. Adjournment

Meeting adjourned at 1:48 p.m.

C. Next Commission Meeting Date

February 17, 2016

10:00 a.m. to 2:00 p.m.

State Courts Building, Conference Room 119A/B

1501 W. Washington

Phoenix, Arizona 85007

Arizona Commission on Access to Justice

Meeting Date: February 17, 2016	Type of Action Requested: <input type="checkbox"/> Formal action or request <input type="checkbox"/> Information only <input type="checkbox"/> Other	Subject: Report from the Self-represented Litigants in Family Court Workgroup (SRL-FC)
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From: SRL-FC Workgroup Chair

Presenter: Maricopa County Superior Court Judge Dean Fink

Discussion:

1. Judge Dean Fink will discuss the current status of the Maricopa County AmeriCorps project.
2. Judge Fink will provide a report from the Family Court Instructions sub-workgroup.
3. Janet Fisher will describe the efforts of the Law4AZ training programs across the state.
4. Theresa Barrett will provide information regarding the AZCourtHelp project in Coconino County.
5. Kathy Sekardi will update members about the *Q&R Handbook* status.

Recommended Action or Request (if any): None at this time.

Arizona Commission on Access to Justice

Meeting Date: February 17, 2016	Type of Action Requested: <input type="checkbox"/> Formal action or request <input checked="" type="checkbox"/> Information only <input type="checkbox"/> Other	Subject: Report from the Self-represented Litigants in Limited Jurisdiction Court Workgroup (SRL-LJC)
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From: SRL-FC Workgroup AOC Staff

Presenter: Nickolas Olm

Discussion: First, Nick will present on the work that is being done to edit the landlord and tenant instruction packets and forms to a fifth grade reading level. Second, Nick will briefly discuss the current status of the landlord and tenant informational videos. Lastly, Nick will present on the status of having computers donated to the courts for SRLs to use.

Recommended Action or Request (if any): None at this time.

Arizona Commission on Access to Justice

Meeting Date: February 17, 2016	Type of Action Requested: <input type="checkbox"/> Formal action or request <input checked="" type="checkbox"/> Information only <input type="checkbox"/> Other	Subject: Report from the Self-represented Litigants in Limited Jurisdiction Court Workgroup (SRL-LJC)
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From: Maricopa County Justice Courts

Presenter: Jeff Fine, MCJC Court Administrator

Discussion: Mr. Fine will discuss a new collaborative program to assist self-represented litigants in eviction actions and report on judicial training efforts.

Recommended Action or Request (if any): None at this time.

Arizona Commission on Access to Justice

Meeting Date: February 17, 2016	Type of Action Requested: <input type="checkbox"/> Formal action or request <input checked="" type="checkbox"/> Information only <input type="checkbox"/> Other	Subject: Report from the Non-Lawyer Representation Workgroup
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From: Non-Lawyer Representation Workgroup

Presenters: Judge Joseph Kreamer

Discussion: Judge Kreamer will discuss the latest developments in non-lawyer representation initiatives, including the recent report from Utah's Supreme Court Task Force to Examine Limited Legal Licensing.

Recommended motion:
None at this time.

Arizona Commission on Access to Justice

Meeting Date: February 17, 2016	Type of Action Requested: <input type="checkbox"/> Formal action or request <input checked="" type="checkbox"/> Information only <input type="checkbox"/> Other	Subject: Discussion of Expanded Role of Lay Legal Advocates in Domestic Violence Cases
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From: Director of Strategic Initiatives, Arizona Foundation for Legal Services & Education

Presenter: Ms. Chris Groninger

Discussion: Chris Groninger will provide a brief update on the proposed project to expand the role of lay legal advocates working with victims of domestic violence.

Recommended Action or Request (if any): None at this time.

Arizona Commission on Access to Justice

Meeting Date: February 17, 2016	Type of Action Requested: <input type="checkbox"/> Formal action or request <input checked="" type="checkbox"/> Information only <input type="checkbox"/> Other	Subject: Report from the Pro Bono Service & Funding Workgroup
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From: Pro Bono Service & Funding Workgroup

Presenters: Judge Joseph Kreamer and Dr. Kevin Ruegg

Discussion:

1. Judge Kreamer will report on the Workgroup's focus and goals going forward.
2. Lara Slifko will discuss the Charitable Tax Report and the effect recent efforts have had on amounts received.
3. Dr. Ruegg will report on outreach efforts, including articles in April's upcoming Arizona Attorney Magazine focusing on pro bono and recognition of volunteers.
4. We will celebrate Dan Christensen's well-deserved recognition from the Arizona Chapter of the Association of Corporate Counsel as In-House Counsel of the Year.

Recommended motion: None at this time.

Arizona Commission on Access to Justice

Meeting Date: February 17, 2016	Type of Action Requested: <input type="checkbox"/> Formal action or request <input checked="" type="checkbox"/> Information only <input type="checkbox"/> Other	Subject: Review of ACAJ progress on mandate in A.O. No. 2014-83
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From: Judge Lawrence Winthrop

Presenters: Judge Winthrop

Discussion: Judge Winthrop will lead the discussion regarding the ACAJ's progress and efforts to implement directives outlined in A.O. No. 2014-83.

Recommended motion:
None at this time.



The Arizona Commission on Access to Justice Promoting Access to Justice – Goal 1

Chart of Recommendations – Initial Work (A.O. 2014-83) (April, 2014 – January, 2016)

A. Assist self-represented litigants and revise court rules and practices to facilitate access and the efficient processing of family court and eviction cases.

1. Support Maricopa County Superior Court's grant application to AmeriCorps to create a "court navigator" program for self-represented litigants in family court proceedings.
 - Continue to support efforts of Law Library Resource Center (LLRC) program.
 - Continue to request quarterly reports of program status
 - Request report of "best practices" that outline methods and procedures used to develop and administer an effective volunteer service program to assist self-represented litigants for other counties to duplicate

2. Create standardized forms and simplified instructions for self-represented litigants in family court and for litigants in landlord/tenant court.
 - FAMILY COURT: Sub-workgroup is continuing to explore the use of Pima County's Simpla Phi Lex project forms and instructions.
 - LANDLORD/TENANT: The SRL-LJC "Forms" workgroup completed work and transferred forms to AOC to continue to resolve remaining issues. See recommendation 9.
 - Explore options for mandatory use of forms, such as drafting a rule change petition for Rules of Procedure for Eviction Actions to direct the use of landlord notice forms.

3. Create a web-based virtual self-help service center.
 - Applied and received AmeriCorps VISTA grant, which commenced November, 2015.
 - Coconino County will pilot the AZCourtHelp Virtual Access & Resource Center at the Coconino County Law Library space.

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- Task Force established to plan project scope.
 - On-going: VISTA grant member continues efforts on several fronts:
 1. Website development for azcourthelp.org – collaborative effort with the Arizona Foundation for Legal Services & Education
 2. Development of “legal talks” (workshops, classes, webinars) using volunteer presenters to provide information on specific topics
 3. Outreach and promotion of the Arizona State Charitable Tax Credit and IV-D funding program services.

 - Resource center officially named “AZCourtHelp – Arizona’s Virtual Access & Resource Center”
 - Phase I funding agreement has been approved and grant monies have been disbursed to Coconino County Superior Court.
 - Design and re-configuration of physical space will include installation of a modular training room/classroom and working spaces.
 - Explore technology equipment options and working with court partners for remote accessing
 - Kick-off first legal talk – late summer 2016
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4. Community library legal information pilot project: Under the auspices of the State library system, a pilot project has been designed to create resource centers in the library setting for self-represented litigants.

- Coconino, Gila, Graham, Greenlee, Maricopa, and Yuma counties have participated in training for public library staff. Training consists of three sessions. Each session includes a lecture portion, group exercises to facilitate discussion, handouts, and practice exercises for library staff.
 - The remaining nine counties training has been scheduled for the first two months in 2016.
 - The ACAJ was called upon to assist with recruitment of attorneys willing to participate in the library training sessions.
 - Include public training schedule on the ACAJ webpage and request social media promotion by the AOC Media Relations Director.
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5. Update the 2007 Supreme Court handbook (FAQs) to educate court staff and provide consistent responses regarding “legal advice v. legal information.”

- Establish workgroup to review and revise the original Supreme Court handbook. Comments and feedback were requested from ACAJ members, clerks’ of court, Arizona State Bar, William E. Morris Institute for Justice, subject matter experts, and other court stakeholders.
 - Q&R Handbook final product completed.
 - Document in process of being converted to Adobe on-line version.
 - Document translated into Spanish.
 - Statewide memo to announce updated “Q&R Handbook.”
 - Q&R Handbook will be made available Self-service center webpages on the Arizona Judicial Branch and AJINWeb pages.
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6. Referral to the Committee on the Impact of Domestic Violence and the Courts (CIDVC): explore how to make available to rural hospitals and courthouses the best-practice currently being used in several metropolitan areas where victims of domestic violence who are receiving treatment at a hospital can seek an Order of Protection remotely while at a hospital.

Referred to the Committee on the Impact of Domestic Violence and the Courts (COSC).

Judge Wyatt Palmer, Justice of the Peace in Graham County and COSC member, and John Lucas, IT Director for Graham County, presented Graham County's videoconferencing technology used to issue protective orders between a local safe house and the court.

Graham County has shared the "Video Conference Instructions for D.V. Applications" for any county to use as protocol procedures between a court and safe house.

7. Assist those counties who are currently eligible to apply for and receive federal Title IV-D funding. One goal being to assist those counties who are not currently eligible to receive such funding, to develop outreach programs that would, in turn make them eligible.

AOC has met several times to discuss Title IV-D funding with DES/DCSS. (Point of contact, paperwork?)

Staff coordinated presentation of DCSS leadership to AASCA to share information on IV-D funding.

Compile a list of specific questions to DES/DCSS regarding eligible IV-D funding activities to provide guidance to counties that may want to participate.

8. Explore and discuss the merits and disadvantages of training and licensing lay advocate representation in a family court context, such as the LLLT program in Washington State.

A small workgroup was established (Judge Joseph Kreamer and Todd Lang) to examine the issue of non-lawyer representation. Initial recommendation is to track the newly established and controversial LLLT program in Washington state and to monitor what other states are doing in this regard.

ACAJ member, Judge Peter Cahill (Ret.), initiated discussion of increasing the effectiveness of "lay legal advocates" employed by domestic violence shelters by suggesting that the ACAJ consider revisiting court rules and practices to facilitate access and the efficient processing of family court cases, based on Administrative Order No. 2014-83.

SRL-LJC Workgroup member, Chris Groninger, facilitated and participated in a "Lay Legal Advocate & Attorney Town Hall Meeting" on August 28, 2015. Participants used the Arizona Town Hall process to

create a consensus report of the discussions and recommendations for action.

9. Revise and make all eviction forms easier to read and understand: the forms should include a short summary of likely options.

- Workgroup was formed to review several eviction forms and instructions.
- Workgroup completed initial drafts and transferred product and additional form recommendations to AOC.
- AOC to finalize workgroup's efforts.
- 5 Day Notice to Vacate (failure to pay rent)
- 5 Day notice to Vacate (health and safety violations)
- 10 Day Notice to Move (material breach)
- 10 Day Notice to Move (repeat material or health and safety breach)
- Immediate Notice to Move (material and irreparable breach)
- Complaint and Summons
- Judgment
- General Information About Landlord and Tenant Rights and Options Before You Come to Court (AOC to add hyperlinks, plain language review, and Spanish translation)
- General Information for Tenants Who Have Been Served with Eviction Court Pleadings (AOC to add hyperlinks, plain language review, and Spanish translation)

-
10. Make fee deferral/waiver forms more accessible, both online and at the courthouse.

- ACAJ members identified issues with current fee deferral/waiver forms and updated the application form and order to specifically include the Parent Education program, effective June 1, 2015.
- AOC staff continues to monitor and collaborate with jurisdictions to ensure information and fee deferral/waiver forms are readily accessible and viewable online, and is user-friendly for litigants.
- ("...and at the courthouse.") (training, posters, monitor banners, code section changes [MAS], blurb in videos) Ideas?

-
11. Training: Encourage and mandate specific training for judges and for court staff, particularly concerning the role of the judge in dealing with the self-represented litigant.

- In conjunction with Education Services, training curriculum and resources for ensuring access to justice for self-represented litigants will be developed to present to statewide jurisdictions. Approved in concept at the December, 2015 AJC meeting.

12. Computer access in courthouse: Encourage the placement of computers in court reception or lobby areas to give self-represented litigants the ability to use intelligent forms that the litigant can access, understand and complete on site. Explore potential technology grants from the State Justice Institute, the National Center for State Courts and the ABA to facilitate purchase and installation of such technology.

Explore obtaining Wi-Fi within court buildings so that low-income litigants can access smartphone technology to connect with court webpages (?)

Ongoing - AOC exploring AZSTRUT for eligibility to receive free computers.

13. Housing law clinics: Explore the creation and expansion of law school-based clinical programs as well as Volunteer Lawyer Program clinics in the landlord-tenant area. These clinics could be held on-site at the courthouse, or in a community-based location, such as the public library.

Ideas?

14. Gather and create informational videos about the court process that can be accessed at the courthouse and on law-related websites, such as AZLawHelp.org.

The VISTA grant member will commence an extensive search for court process video links in furtherance of the AZCourtHelp website, which is collaborating with the AZLawHelp organization.

Continue to research video-editing technologies.

Leverage equipment funding and technology expertise by collaborating between the Arizona Foundation for Legal Services & Education, AZLawHelp, and the AZCourtHelp Virtual Access & Resource Center.

B. Encourage lawyers and law firms to provide pro bono services or financial support for civil legal aid for those who cannot afford counsel.

15. Explore the recognition of those judges who are role models in dealing with pro per litigants and how to not only recognize their skills but also how to share their expertise and recommendations with others.

Pro bono workgroup efforts?

16. Law firm pro bono network: Create a statewide network of law firm representatives to link resources and coordinate delivery of private pro bono services.

Develop a law firm pro bono network.

Promotion of network?

17. Pro bono volunteer web portal: Support development of a “one stop” pro bono web portal, created by the Arizona Legal Service Steering Committee and the Arizona Bar Foundation, which will identify volunteer programs across the state and specific opportunities for lawyers to volunteer their services.

Support the creation of a “one stop” pro bono web portal for Arizona attorneys to find volunteer opportunities in Arizona.

AOC links pro bono web portal to Judicial Branch Volunteer Opportunities webpage.

18. Business pro bono network: Create a state-wide network of corporate and business representatives who understand the need for and benefit to the business community of providing legal services to our working poor population, including outreach to and engaging of corporate and in-house counsel.

Pro bono workgroup to set goals to reach out to other companies. Dan Christensen/Scott Uthe speaking to other corporate counsel...result?

19. Encourage and expand public lawyer involvement, including agency adoption of model pro bono policy for government lawyers and to
-

create and publicize opportunities for pro bono service that fit within the ethical and legal restrictions placed on public lawyers providing volunteer service.

? (rule petition/SBA policy change, any clarification on this?)

20. Create a network of retired judges and lawyers to provide training and pro bono services.

Explore ways to connect with retired judges and out-of-state attorneys to perform legal work as volunteers. (i.e. Boston) (Create mailbox?)

21. Develop a plan for media coverage opportunities and dissemination of legal information via print, television and Internet.

Workgroup developed a framework for a comprehensive media plan to spread the word of the ACAJ's initiatives, such as the benefits of pro bono work and the campaign to promote the State Charitable Tax Credit.

Create a quarterly newsletter to provide information on the work of the ACAJ.

Produce a video to introduce the ACAJ's initiatives to corporations and lawyers that would help the general public and key stakeholders better understand the work being done by the ACAJ and its workgroups.

Arizona Attorney magazine is scheduled to run an issue and cover about pro bono work and the ACAJ initiatives during Access to Justice month in April, 2016.

Develop compelling stories and testimonials of how legal services attorneys are assisting low- to modest-income people with real-life scenarios.

Other ?

22. Develop a plan and find creative ways to celebrate and honor volunteers and enhance recognition of pro bono service.

? Pro bono workgroup?

C. Develop an information campaign to inform lawyers and other citizens about the state tax credit for contributions to agencies that serve the working poor, including legal services agencies in Arizona.

23. Arizona State Tax Credit: Expand promotion of the Arizona Tax Credit for Qualifying Charitable organizations. Media coverage and public awareness of the credit, and the social return to the community on such investment needs to be increased.

- The Supreme Court to host a Tax Credit Action event on October 9, 2015, to kick-off promotion and information regarding the benefits of donating tax credits for legal services to low- and modest-income people.
- The Arizona Foundation for Legal Services & Education will develop an informational flyer to use to present to various bar foundations and organizations around the state.
- Develop outline for presenters to follow when speaking with groups.
- Ongoing: Request ACAJ members identify two groups that they would talk to regarding the work of the ACAJ and the need for funding legal services agencies by way of using the charitable tax credit.
- Ongoing: Continue to speak to a variety of community groups, organizations, law firms, public law agencies, private foundations, and the business community to promote the work of the commission, the needs of the self-represented litigants, and the Arizona Charitable Tax Credit.
- 2015 tax credit results – increase of \$77,473

New efforts?

24. Develop new or supplemental funding model: Consider long term funding options for the access to and delivery of pro bono services. Collaborate with other organizations as appropriate.

?

IT IS ORDERED establishing the Arizona Commission on Access to Justice (Commission), as follows:

1. **Purpose.** The Commission shall study and make recommendations on innovative ways of promoting access to justice for individuals who cannot afford legal counsel or who choose to represent themselves in civil cases. The Commission shall evaluate best practices within Arizona and in other states, identify possible changes in court rules or practices to reduce barriers to access, identify and encourage the adoption of best practices among legal service providers, and consider potential long-term funding options.

The Commission's work and priorities will be set by the Chief Justice in consultation with the Chair of the Commission.

The initial work of the Commission shall be to examine and make recommendations on the following:

- a) Assisting self-represented litigants and revising court rules and practices to facilitate access and the efficient processing of family court and eviction cases
- b) Encouraging lawyers and law firms to provide pro bono services or financial support for civil legal aid for those who cannot afford counsel.
- c) Developing an information campaign to inform lawyers and other citizens about the state tax credit for contributions to agencies that serve the working poor, including legal services agencies in Arizona.

2. **Membership and Terms.** The Commission will consist of standing and ad hoc members. Standing members will serve an initial staggered term of one to three years, and may be eligible for re-appointment. Ad hoc members shall be appointed for terms of sufficient length to accomplish the task assigned. The Chief Justice may appoint additional members as necessary.

a) **Standing members.**

- 1) One appellate court judge, who will also serve as Chair and may designate another member to serve as Vice-Chair;
- 2) One clerk of the superior court;
- 3) One court administrator from the superior court;
- 4) Two superior court judges;
- 5) Two limited jurisdiction court judges;
- 6) Two Arizona lawyers in active law practice;
- 7) One Arizona Judicial Council member;
- 8) The Administrative Director of the Courts or designee;
- 9) The Executive Director of the Arizona Foundation for Legal Services & Education, or designee;

- 10) The Executive Director of the State Bar of Arizona, or designee;
- 11) Two legal services representatives; and
- 12) Two public members.

b) Ad hoc members. In addition to the standing members of the Commission, the Chief Justice may appoint ad hoc members whose particular business, legal, judicial, or community experience is needed to undertake the work of the Commission.

c) Work Groups. The Commission Chair may establish or dissolve Work Groups which may be, but are not required to be, partially comprised of persons not members of the Commission.

3. Meetings. Commission meetings shall be scheduled at the discretion of the Chair. Pursuant to ACJA § 1-202, all meetings shall comply with the public meeting policy of the Arizona Judicial Branch.

4. Staffing. The Administrative Office of the Courts shall staff the Commission.

5. Commission Reports. The Commission shall submit its reports and recommendations, no less than annually, to the Arizona Judicial Council (AJC). The first report shall be submitted to the AJC for its March 2015 meeting.

IT IS FURTHER ORDERED that the individuals listed in Appendix A are appointed as members of the Access to Justice Commission for terms beginning upon signature of this order and ending on the dates shown by their respective names.

Dated this 20th day of August, 2014.

SCOTT BALES
Chief Justice

Attachment: Appendix A

Appendix A
ARIZONA COMMISSION ON ACCESS TO JUSTICE

Chair

Hon. Lawrence F. Winthrop
Arizona Court of Appeals, Division One
Term Expires: December 31, 2017

Members

Hon. Michael Jeanes
Superior Court Clerk
Term Expires: December 31, 2017

Mike Baumstark
Administrative Director of the Courts
or designee
Term Expires: December 31, 2017

Kip Anderson
Court Administrator
Term Expires: December 31, 2017

Kevin Ruegg
Executive Director, Arizona Foundation for
Legal Services & Education
Term Expires: December 31, 2017

Hon. Maria Elena Cruz
Superior Court Judge
Term Expires: December 31, 2016

John Phelps
Executive Director, State Bar of Arizona or
designee
Term Expires: December 31, 2017

Hon. Janet Barton
Superior Court Judge
Term Expires: December 31, 2015

Ellen Katz
Legal Aid Services, Maricopa
Term Expires: December 31, 2015

Hon. James Marner
Superior Court Judge
Term Expires: December 31, 2015

Anthony Young
Legal Aid Services, Southern Arizona
Term Expires: December 31, 2015

Hon. Thomas Berning
Limited Jurisdiction Court Judge
Term Expires: December 31, 2016

Steve Seleznow
Public Member
Term Expires: December 31, 2016

Hon. Rachel Torres Carrillo
Limited Jurisdiction Court Judge
Term Expires: December 31, 2016

Lisa Urias
Public Member
Term Expires: December 31, 2016

Barb Dawson

Attorney

Term Expires: December 31, 2015

Janet Regner

Arizona Judicial Council Liaison

Term Expires: December 31, 2015

Millie Cisneros

Attorney

Term Expires: December 31, 2016

PROMOTING
ACCESS
 TO JUSTICE

Arizona Commission on Access to Justice

Meeting Agenda

May 18, 2016 - 10:00 a.m. to 2:00 p.m.

State Courts Building ♦ 1501 West Washington ♦ Conference Room 119 ♦ Phoenix, Arizona

Conference call-in number: 602-452-3288 Access code: 8680

[ACAJ WEBPAGE](#) [WebEx link](#)  

TIME	AGENDA ITEM	PRESENTER
10:00 a.m.	Welcome and Opening Remarks	<i>Judge Lawrence F. Winthrop, Chair</i>
* Pg. 3	Approval of minutes from February 17, 2016 <input type="checkbox"/> <i>Formal Action/Request</i>	
10:05 a.m.	Chairperson's report	<i>Judge Winthrop</i>
10:15 a.m.	Report on Legal Services "triage" Program at ASU's Law School	<i>Douglas Sylvester, Dean of ASU's Sandra Day O'Connor School of Law</i>
* Pg. 11		
10:45 a.m.	Report on Civil Justice Reform Committee	<i>Don Bivens, Civil Justice Reform Committee Chair</i>
* Pg. 13		
11:05 a.m.	Report on Fair Justice for All Task Force	<i>Dave Byers, AOC Director and Chair of the Fair Justice for All Task Force</i>
* Pg. 15		
11:25 a.m.	Report from SRL-Family Court Workgroup	<i>Judge Janet Barton, Maricopa County Presiding Judge</i>
* Pg. 17		
* Pg. 19	Update on FAQ/Response/Answer Handbook	<i>Theresa Barrett, AOC staff</i>

 **Lunch – 11:45 a.m.** 

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 Nick Olm (602) 452-3134 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.

TIME	AGENDA ITEM	PRESENTER
12:30 p.m. * Pg. 21	Report from SRL-Limited Jurisdiction Courts Workgroup	<i>Judge Rachel Carrillo, SRL-LJC Workgroup Chair</i>
	<ul style="list-style-type: none"> • Update on Resources Sub-Workgroup 	<i>Nick Olm, AOC staff</i>
* Pg. 23	<ul style="list-style-type: none"> • Update on forms and instructions for landlord and tenant matters <ul style="list-style-type: none"> ○ Discussion of “next steps” 	<i>Nick Olm, AOC staff</i>
* Pg. 25	<ul style="list-style-type: none"> <ul style="list-style-type: none"> □ Formal Action/Request 	<i>Mike Baumstark, AOC Deputy Director</i>
	<ul style="list-style-type: none"> • Training for Judicial Officers/Staff 	<i>Judge Winthrop</i>
1:00 p.m. * Pg. 27	Presentation on Rule Change Petition for Change of Judge (R-16-0022) □ Formal Action/Request	<i>Ellen Katz, William E. Morris Institute for Justice, and Mark Meltzer, AOC Court Services Division Senior Court Policy Analyst</i>
1:20 p.m.	Additional Chair Report Re: Meeting with Joe Sciarrotta from the Attorney General’s Office	<i>Judge Winthrop</i>
1:30 p.m. * Pg. 51	Report from <i>Pro Bono</i> Service and Funding Workgroup □ Formal Action/Request	<i>Judge Joseph Kreamer, Pro Bono Service and Funding Workgroup Chair</i>
1:45 p.m. * Pg. 53	American Bar Association Telephone Workgroups Update	<i>Dr. Kevin Ruegg, AZFLSE</i>
1:55 p.m.	Good of the Order / Call to the Public Adjournment	<i>Judge Winthrop</i>

2016 Meetings
 August 17 and November 9
 10:00 a.m. to 2:00 p.m.
 State Courts Building, Phoenix, Arizona
 Conference Room 119

Follow the Arizona Supreme Court on Facebook and Twitter!



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Arizona Commission on Access to Justice
DRAFT MINUTES
February 17, 2016
10:00 a.m. to 2:00 p.m.
State Courts Building, 1501 W. Washington Street
Phoenix, AZ 85007

Present: Judge Lawrence Winthrop, Chair; Kip Anderson; Judge Janet Barton; Mike Baumstark; Judge Thomas Berning; Millie Cisneros; Judge Maria Elena Cruz; Steve Hirsch; Michael Jeanes; Judge Joseph Kreamer; Judge James Marner; John Phelps via his proxy Carrie Sherman; Janet Regner; Kevin Ruegg

Telephonic: Judge James Marner; Anthony Young

Absent: Judge Rachel Torres Carrillo; Ellen Katz; Michael Liburdi; Steve Seleznow; Lisa Urias

Presenters/Guests: Arianna Cannady; Jeff Fine; Judge Dean Fink; Janet Fisher; Shawn Friend; Kevin Groman; Chris Groninger; Shawn Haught; Hana Martin; Noah Suhr; Kathy Schaben (Telephonic); Lara Slifko

AOE Staff: Theresa Barrett; Julie Graber; Nick Olm; Kathy Sekardi

I. REGULAR BUSINESS

A. Welcome, Opening Remarks and Approval of Minutes

With a quorum present, the February 17, 2016, meeting of the Arizona Commission on Access to Justice (ACAJ) was called to order by the Chair, Judge Larry Winthrop, at 10:05 a.m.

Judge Winthrop introduced new commission member Steve Hirsch from Quarles and Brady LP. Judge Winthrop then recognized the reappointment of the following members to the Arizona Commission on Access to Justice: Judge Janet Barton, Ellen Katz, Judge James Marner, Janet Regner, and Anthony Young. Lastly, Judge Winthrop acknowledged the return of Janet Fisher to the Self-Represented Litigant in Family Court Workgroup and thanked Secretary of State Michelle Reagan and State Law Librarian Joan Clark for allowing Ms. Fisher's return.

Motion: Judge Kreamer moved to approve the November 18, 2015, minutes. **Seconded:** Judge Barton **Vote:** Unanimous.

B. Chairperson's Report on Presentations and Meetings

Judge Winthrop thanked Lisa Urias, Kip Anderson, Janet Regner, and Judge Marner for making presentations to groups regarding the ACAJ initiatives and the Arizona Charitable Tax Credit.

Action item: For this upcoming year, Judge Winthrop requested that every member of the Commission identify at least two groups to present to regarding the commission and its goals.

Judge Winthrop reported that he plans to continue meeting with legislators to educate them about the Commission's mission and how the mission affects legislators' constituents. Judge Winthrop has already met with the Governor's staff and Secretary of State Reagan who were very supportive and offered continuing support to the commission's goals. Judge Winthrop further reported that a new committee was created by Chief Justice Bales: The Committee on Civil Justice Reform (CCJR). This committee's purpose, per Administrative Order 2015-126, is "to develop recommendations, including rule amendments or pilot projects, to reduce the cost and time required to resolve civil cases in

Arizona's superior courts." It was noted the CCJR's work will likely intersect with the work of this commission in the future.

Additional highlights included:

- Dan Christensen was named the "In-House Counsel of the Year" by the Arizona Chapter of the Association of Corporate Counsel.
- Maggie Kiel-Morse, member of the Self-Represented Litigants in Family Court workgroup and the Virtual Resource Center Task Force, has to relocate to Ohio for family reasons. Janet Fisher will fill Ms. Kiel-Morse's role on a temporary basis, pending Ms. Kiel-Morse's replacement being hired.
- Future continuing education programs where access to justice will be included in the curriculum were announced at the American Bar Association (ABA) mid-year meeting.
- Avvo, an online legal advisor marketplace that provides on-demand legal services by phone, is coming to Arizona.

II. REPORT FROM SRL-FC WORKGROUP

A. Maricopa County's AmeriCorps Project

Judge Dean Fink updated the Commission on the AmeriCorps program. To date the Court has trained 34 AmeriCorps members to assist self-represented litigants. Judge Fink then introduced Shawn Haught and Shawn Friend who are managing the project.

Ms. Friend noted that the 34 students are the equivalent of eight full time employees and staff the resource center from 7:30 a.m. to 5:00 p.m. Many speak a second language; including Arabic, Spanish, and American Sign Language, which is an added value. Ms. Friend and Mr. Haught then introduced three current AmeriCorps members: Hannah Martin, Noah Suhr, and Arianna Cannady who spoke about their experiences in the program. Lastly, Ms. Friend shared that Maricopa County is now recruiting attorneys who will provide *pro bono* services at the Maricopa County Law Library/Self-Help Center.

Ms. Friend and Mr. Haught fielded questions and offered to provide any information, tools, or advice to those jurisdictions that are looking into a program such as the AmeriCorps project. Ms. Friend informed members that they are using a system to track work completed by AmeriCorps members and there are also survey questionnaires given to self-represented litigants to track areas in which assistance is provided. Additionally, they are working with the court's information technology department to track the time it takes for those who file dissolutions on their own versus those who solicited the services of AmeriCorps members to file dissolutions.

Commission members thanked Ms. Friend, Mr. Haught and the AmeriCorps members for their work.

B. Update on Law4AZ Training Programs

Janet Fisher reported the Law4AZ Training Program has continued to train public library staff so that they are comfortable providing legal information to the public. Ms. Fisher further reported that Ms. Kiel-Morse worked diligently in the latter part of 2015 to meet with public library staff in the remaining nine counties that had not yet received this training. Before her departure, Ms. Kiel-Morse provided the two-part training to seven of the nine counties. Both of the training sessions were recorded and are available on the State Library's blog site.

Ms. Fisher then reported there was another Law4AZ training session for Maricopa County's public libraries due to a significant workforce turnover since the last training was offered. It was noted that

in the future Shawn Friend will be conducting these training sessions for Maricopa County at the Arizona Capitol Building.

Judge Winthrop shared there are plans to have volunteer attorneys provide training sessions to public librarians on legal information versus legal advice and also have the volunteer attorneys provide *pro bono* legal services to patrons at the public library. Ms. Ruegg offered to post these opportunities for lawyers volunteering at the public libraries on the Online Justice Arizona website. In closing, Ms. Fisher reported that law librarians in Arizona are developing a mentoring program to assist public librarians and answer questions and provide additional resources relative to providing legal information and answering questions for self-represented litigants.

C. Report on AZCourtHelp – Arizona’s Virtual Access and Resource Center

Theresa Barrett updated the Commission on the AZCourtHelp project (virtual court self-help center). Update highlights included:

- Contract finalized with AZFLSE to develop and maintain the website.
- Mohave County recruited to serve as the first hub and to assist with identifying the necessary technological requirements for expansion of the project to other counties.
- Coconino County Superior Court received funding for the physical resource center’s construction. Finally, it was reported that the Task Force continues to explore IV-D funding options with the Department of Economic Security to hire a Family Law Facilitator to enhance services offered to the public.

D. Report on the Simpla Phi Lex Project

Judge Fink reported that the Self-Represented Litigant in Family Court workgroup created a sub-workgroup to review Pima County’s Simpla Phi Lex forms and explore adapting Pima County’s forms so they can be used by any county in Arizona. Over the course of the sub-workgroup’s meetings, the sub-workgroup discovered that there are forms already available that address their goals. Accordingly, the sub-workgroup is drafting a formal memorandum to be disseminated statewide to inform courts of the variety of materials available for their use. Concurrently, commission staff are working on compiling county specific information that can be used to populate a generic Simpla Phi Lex template document to provide yet another option for courts to use.

E. Report on the updated “Q&R Handbook”

Ms. Sekardi reported that feedback and comments were received from commission and workgroup members and many of the suggestions were incorporated into the Q&R Handbook in an Adobe PDF format. The PDF will have user-friendly navigation features, will be translated into Spanish, and will be made available on the court’s intranet and internet page as well as for Legal Information versus Legal Advice training.

III. REPORT FROM SRL-LJC WORKGROUP

A. Forms and instructions for landlord and tenant issues

Mr. Olm reported on the current status of the landlord and tenant informational packets and forms and his work with an honors student at Arizona State University recruited to further review the information packets. The goal of getting this additional review being to reflect an easier reading level for self-represented litigants.

B. Update on Resources Sub-Workgroup efforts

Mr. Olm next reported on the status of the landlord and tenant informational videos. Several meetings were held to review the working scripts that were discussed at the last commission meeting. These scripts are currently being storyboarded and are in the pre-production stages. Members were supportive of the animated videos and encouraged further production of them.

C. Update on Maricopa County Justice Courts efforts

Jeff Fine, Court Administrator for the Maricopa County Justice Courts, updated the commission on the efforts underway to improve access to justice in Maricopa's justice of the peace courts. Initiatives being made by the justice courts include:

1. Eviction forms

In collaboration with the SRL-LJC Workgroup the landlord and tenant forms have been revised to have the information that is most important clearly visible on the form.

2. Eliminating paperwork

Maricopa County Justice Courts are beta testing delivering information to litigants via email as opposed to regular mail as home addresses on citations are frequently wrong. Maricopa County Justice Courts are also looking at delivering information, including videos and documents, to litigants via text messaging.

3. Training

Mr. Fine reported that Maricopa County Justice Courts hired a full time training judge to provide training on how to provide legal information to self-represented litigants and to mentor newly hired judges. Additionally, the training judge will coordinate monthly training events.

In addition to the "Best Practices for Assisting Self-Represented Litigants" training that was videotaped and is available for all judges in Arizona to view, training for judges on federal subsidized housing eviction matters is in the planning stages and will include a Community Legal Services Attorney, a landlord attorney, and a judge with direct experience on the topic.

4. Resources for Litigants

Mr. Fine reported that a "navigator program" at the Downtown Justice Court Center is being implemented in partnership with Community Legal Services. This program provides the opportunity for laws students to be "navigators" that provide information and resources to self-represented litigants.

Additionally, Maricopa County Justice Courts are now only using Electronic Document Management System (EDMS) for civil cases. The court can connect online resources to court automated systems when using EDMS.

In closing, Mr. Fine requested the commission support training opportunities for court support staff. Mr. Fine indicated that staff turnover for front line clerks in the justice courts is significant due to budget constraints and low pay, leaving minimally experienced staff as the first contact for litigants with questions. Having frequent training for staff, especially in the area of assisting self-represented litigants, as well as addressing attrition issues would be very beneficial.

IV. REPORT ON LATEST DEVELOPMENTS IN NON-LAWYER REPRESENTATION INITIATIVES

Judge Kreamer reported on the latest developments in non-lawyer representation initiatives, including the recent report from Utah's Supreme Court Task Force that examined limited license legal technicians.

Judge Kreamer stated the American Bar Association's (ABA) House of Delegates adopted Resolution 10, which adopts the *ABA Model Regulatory Objectives for the Provision of Legal Services*. This resolution sets forth a framework for states to discuss non-lawyer representation. These discussions from other states will continue to be monitored by members of this commission as well as a task force to examine Washington State's Limited Liability Legal Technician program.

Judge Winthrop commented that Arizona already has a program to certify legal document preparers (Arizona Code of Judicial Administration § 7-201 and 7-208), which is why Arizona is taking a conservative approach before aggressively considering implementing a full-fledged licensed technician program. He noted that part of the efforts in other states is for non-lawyer advocates to prepare documents to file with courts and agencies; Arizona already has that service available.

V. UPDATE ON LAY LEGAL ADVOCATES

Ms. Groninger updated the commission on the status of the lay legal advocate's for domestic violence project. Ms. Groninger stated she spoke with anti-poverty advocates in British Columbia who provided helpful information and resources about their version of a lay legal advocate program. The Arizona Foundation for Legal Services and Education (AZFLSE) along with the Arizona Coalition to End Sexual and Domestic Violence will distribute a survey to domestic violence agencies to determine if the agencies employ domestic violence advocates and what roles and duties these advocates have at the shelter or agency. Once this information is obtained, training should then be developed and provided to lay legal advocates. Additionally, AZFLSE's efforts to obtain funding to develop a training event and curriculum for advocates for a potential pilot project are ongoing.

After an inquiry of a member, Judge Winthrop stated these ongoing reports of the lay legal advocate project are in response to this commission's approval to further explore this project. Additionally, Judge Winthrop mentioned the commission has been supportive of exploring this concept but has yet to take a position to support continuing/permanent funding for this project.

VI. PRO BONO SERVICE AND FUNDING WORKGROUP REPORT

A. Update regarding the *Pro Bono* Workgroup's focus and goals

Judge Kreamer, who has taken over for Barb Dawson as chair for the *Pro Bono* Workgroup, reported that outreach to corporate counsel for involvement with *pro bono* work is ongoing. Kevin Groman, from the Arizona Chapter of the Association of General Counsel, is assisting Judge Kreamer with this project but he would like to have more public lawyer involvement in *pro bono* services. It was noted public lawyers have expressed frustration with not being able to provide legal services because of a potential conflict of interest. To address this challenge the State Bar of Arizona is considering whether a policy change is needed to clarify what level of involvement public lawyers can have with providing *pro bono* services.

B. Charitable Tax Report and Report on Outreach Efforts

Lara Slifko reported on the 2015 Charitable Tax Report numbers and stated Southern Arizona Legal Aid (SALA) had great success with outreach efforts to solicit charitable tax contributions. SALA's high success rate in obtaining donations is attributed to mailings sent to members of the bar in SALA's service area as well as those outside the county. Follow-up phone calls to those who received mailings from SALA and calls to each of the donors thanking them for their donation were also made.

Judge Winthrop thanked the State Bar of Arizona for their listserv emails to remind members of the State Bar about the Charitable Tax Credit. Judge Winthrop also thanked Geoffrey Trachtenberg for writing a column in the Arizona Attorney Magazine promoting the Charitable Tax Credit.

Finally, it was noted there are two bills currently in the legislature that will have an effect on the Charitable Tax Credit; SB1216 and SB1217.

C. Recognition of In-House Counsel of the Year

Judge Kreamer reported the State Bar of Arizona, through the Arizona Attorney Magazine, will devote an entire issue of the magazine to lawyers doing *pro bono* work around Arizona. Dr. Ruegg will also be authoring a piece in the Arizona Attorney Magazine.

Additionally, it was noted the Arizona State Bar Board of Governors has developed a new award to recognize *pro bono* service by in-house counsel. The first award will be presented at the Arizona State Bar Convention in June.

VII. REVIEW OF COMMISSION PROGRESS ON MANDATES IN ADMINISTRATIVE ORDER NO. 2014-83

Judge Winthrop reviewed the commission's progress in relation to the mandates in Administrative Order 2014-83. He then queried members about what topics they would like this commission to review in the future.

Members expressed their interests in exploring the negative impact that fines, fees and assessments have on largely low-income people. Mr. Baumstark mentioned that this issue is being reviewed by the Conference of Chief Justices and the Conference of State Court Administrators, and that the Arizona Supreme Court is currently in the process of creating a task force to look at this issue as well.

Members offered the following additional suggestions for future work:

- Explore the use of technology to advance access to justice in the courts and legal services, as well as possibly creating a technology workgroup.
- Continue the focus on building relationships with the Arizona Legislators to expand their understanding of the role they play in access to justice.
- Work with the Civil Justice Reform Committee to ensure that there is not duplication of efforts in projects to advance access to justice.
- Build stronger relationships with the tribal courts; especially in the commission's review of editing forms and the use of technology in the courts.

VIII. OTHER BUSINESS

A. Good of the Order/Call to the Public

There was no response to a call to the public.

B. Adjournment

Meeting adjourned at 1:44 p.m.

C. Next Commission Meeting Date

May 18, 2016

10:00 a.m. to 2:00 p.m.

State Courts Building, Conference Room 119A/B, 1501 W. Washington, Phoenix, Arizona 85007

Arizona Commission on Access to Justice

Meeting Date: May 18, 2016	Type of Action Requested: <input type="checkbox"/> Formal action or request <input checked="" type="checkbox"/> Information only <input type="checkbox"/> Other	Subject: Report on Legal Services “triage” Program at ASU’s Law School
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From: Dean of ASU’s Sandra Day O’Connor School of Law

Presenter: Douglas Sylvester

Discussion:

Dean Sylvester will report on the newly established triage program that will be housed at ASU’s newly built law school in Downtown Phoenix.

Recommended Action or Request (if any): None at this time.

Arizona Commission on Access to Justice

Meeting Date: May 18, 2016	Type of Action Requested: <input type="checkbox"/> Formal action or request <input checked="" type="checkbox"/> Information only <input type="checkbox"/> Other	Subject: Overview of work of Committee on Civil Justice Reform.
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From: Jennifer Albright

Presenter: Don Bivens

Discussion: Brief Overview of the Committee on Civil Justice Reform (CJRC). Overview will discuss the charge of the CJRC, the four work groups formed to develop recommendations, pilot projects and rule amendments, and the timeline for the CJRC's work. The Presenter will mention a few subject areas of overlap between ACAJ and CJRC and seek and comments or recommendations for ideas to consider.

Recommended Action or Request (if any): None at this time.

Arizona Commission on Access to Justice

Meeting Date: May 18, 2016	Type of Action Requested: <input type="checkbox"/> Formal action or request <input checked="" type="checkbox"/> Information only <input type="checkbox"/> Other	Subject: Report on Fair Justice for All Task Force
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From: Fair Justice for All Task Force

Presenter: Dave Byers, AOC Director and Chair of the Fair Justice for All Task Force

Discussion: Mr. Byers will report on the Fair Justice for All Task Force regarding the work it produced over the two day event in April. Some of the work being done by this committee will also crossover into the work of the ACAJ.

Recommended Action or Request (if any): None at this time.

Arizona Commission on Access to Justice

Meeting Date: May 18, 2016	Type of Action Requested: <input type="checkbox"/> Formal action or request <input checked="" type="checkbox"/> Information only <input type="checkbox"/> Other	Subject: Report from the SRL-FC Workgroup
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From: SRL-FC Workgroup

Presenters: Judge Janet Barton

Discussion: Judge Barton will update the commission on the AmeriCorps project (4 month mark), on the Maricopa County Self-Help Center and the Law4AZ Library Project.

Recommended motion: none at this time.

Arizona Commission on Access to Justice

Meeting Date: May 18, 2016	Type of Action Requested: <input type="checkbox"/> Formal action or request <input checked="" type="checkbox"/> Information only <input type="checkbox"/> Other	Subject: Update on FAQ/Response/Answer Handbook
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From: AOC Staff

Presenters: Theresa Barrett

Discussion:

Theresa will update the commission on the handbook and its pending translation into Spanish.

Recommended motion: None at this time.

Arizona Commission on Access to Justice

Meeting Date: May 18, 2016	Type of Action Requested: <input type="checkbox"/> Formal action or request <input checked="" type="checkbox"/> Information only <input type="checkbox"/> Other	Subject: Report from SRL-Limited Jurisdiction Courts Workgroup
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From: SRL-LJC Workgroup

Presenter: Judge Rachel Torres-Carrillo, Chair

Discussion: The workgroup met on May 2 at the AOC. Judge Carrillo will update the commission on its discussion pertaining to videoconferencing for civil matters in limited jurisdiction courts. She will also talk about additional projects that the workgroup would like to consider and possibly work on.

Recommended Action or Request (if any): None at this time.

Arizona Commission on Access to Justice

Meeting Date: May 18, 2016	Type of Action Requested: <input type="checkbox"/> Formal action or request <input checked="" type="checkbox"/> Information only <input type="checkbox"/> Other	Subject: Report on the status of landlord/tenant videos and forms and instruction packets
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From: AOC Staff

Presenters: Nick Olm

Discussion:

Nick will report on the status of the information videos and will report on the current status of the landlord/tenant forms and instructions packets.

Recommended motion: None at this time.

Arizona Commission on Access to Justice

Meeting Date: May 18, 2016	Type of Action Requested: <input checked="" type="checkbox"/> Formal action or request <input type="checkbox"/> Information only <input type="checkbox"/> Other	Subject: Proposal to mandate the use of eviction notices and forms developed by the SRL-LJC WG
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From: AOC Staff

Presenters: Mike Baumstark

Discussion:

Mike Baumstark will discuss the next steps for these forms and instructions which will entail mandating these forms through a Rule petition change.

Recommended motion: (pending)

Arizona Commission on Access to Justice

Meeting Date: May 18, 2016	Type of Action Requested: <input checked="" type="checkbox"/> Formal action or request <input type="checkbox"/> Information only <input type="checkbox"/> Other	Subject: Presentation on Rule Change Petition for Change of Judge in Eviction Matters (R-16-0022)
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From: Ellen Katz, William E. Morris Institute for Justice

Presenters: (same)

Discussion:

Ellen Katz will present this Rule change petition and request that the commission support it. Mark Meltzer from the AOC, will be available to answer provide any necessary clarification or to field questions.

Recommended motion: (pending)

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E-16-0022

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

10 In the Matter of:

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

Supreme Court No. R-

PETITION

14 Pursuant to Rule 28 of the Rules of the Arizona Supreme Court, the State Bar
15 of Arizona hereby petitions this Court to adopt an amendment to the Rules of
16 Procedure for Eviction Actions by adding a change of judge rule, as Rule 9(c). The
17 proposed rule would permit for a change of judge as a matter of right and for cause
18 in eviction actions in Justice Court. The proposed rule is similar to Rule 133(d) of
19 the Justice Court Rules of Civil Procedure that permits a change of judge in other
20 civil cases heard by the Justice Court. In support of this Petition, the Legal Services
21 Committee of the State Bar states the following:

22 **I. Statement of Interest**

23 The Legal Services Committee of the State Bar is a standing committee of the
24 State Bar comprised of a broad cross-section of attorneys, including the executive
25 directors of the three legal services programs. The Committee's mission is to work

1 on access to justice issues for low-income Arizonans. The Committee historically
2 has had an interest in the rights of tenants in eviction cases.

3
4 **II. Background and Purpose of the Proposed Rule Amendment**

5 In 2008, the State Bar of Arizona submitted a Petition to Amend the Rules of
6 Procedure for Eviction Actions, Supreme Court Number R-07-0023. The proposed
7 rules were the product of the State Bar Landlord/Tenant Task Force appointed by
8 the State Bar President. Members of the Legal Services Committee served on the
9 Task Force. The Task Force members included justices and attorneys representing
10 tenants and landlords. Included in the petition was a proposed rule for a change of
11 judge for eviction cases in Justice Court, rule 11(e). The final rules adopted by the
12 Supreme Court and effective January 1, 2009, did not contain a change of judge rule
13 for evictions in Justice Court.¹

14 In 2012, the State Bar Petitioned for Approval of Justice Court Rules of Civil
15 Procedure. Included in the proposed rules was a change of judge rule. The Court
16 approved the Justice Court Rules of Civil Procedure. Rule 133(d) provides for a
17 change of judge as a matter of right and for a change of judge if the party believes
18 the party will not have a fair and impartial trial before the justice. The Justice Court
19 Rules of Civil Procedure do not apply to evictions. Rule 101(b). These rules were
20 effective January 1, 2013.

21
22
23 ¹ For cases in Superior Court, the change of judge provision in Rule 42(f) of the
24 Arizona Rules of Civil Procedure applies and permits changes of judge as a matter of right
25 and for cause. Specifically, Rule 1 of the Rules of Procedure for Eviction Actions provides
that Rule 42(f) applies to evictions in Superior Court.

1 In 2013, the State Bar of Arizona filed a petition for the change of judge rule
2 using the rule originally proposed in 2008. Supreme Court Number R-13-0047. The
3 Arizona Supreme Court denied the petition. In 2015, the Legal Services Committee
4 of the State Bar again proposed a change of judge rule. This time the rule was
5 patterned after the general Justice Court Change of Judge Rule. The petition
6 submitted by the State Bar of Arizona ultimately had 2 options, one option was the
7 rule proposed by the Legal Services Committee and the other option was submitted
8 by Judge C. Steven McMurry, Presiding Justice of the Peace of Maricopa County.
9 Supreme Court Number R-15-0015. Subsequently, the State Bar of Arizona filed a
10 comment proposing a further modification to both options. The Supreme Court
11 denied the petition.

12 The Legal Services Committee continues to recognize the need and
13 importance of a change of judge rule in eviction cases. While somewhat unusual,
14 the Committee again proposes a rule change for eviction cases. Eviction actions,
15 one of the most common civil cases heard in Justice Court, continue to be the only
16 type of case that has no change of judge rule.² Petitioner submits the proposed
17 change of judge rule for consideration by the Court so that litigants in eviction cases,
18

19 ² In addition to eviction cases, the Justice Court Rules of Civil Procedure do not apply
20 to civil traffic, civil boating, protective orders and injunctions against harassment. Rule
21 101(b). These other cases have change of judge rules. Changes of judge are permitted in
22 orders of protection and injunctions against harassment cases because pursuant to Rule
23 1(A)(2) of the Arizona Rules of Protective Order Procedure, the Arizona Rules of Civil
24 Procedure apply to those cases, unless specifically inconsistent with the rules. Thus, as
25 relevant here, Rule 42(f) applies to those cases, as well. For civil traffic and boating cases,
Rule 7 of the Rules of Procedure in Civil Traffic and Civil Boating Violation Cases
provides that a change of judge as a matter of right does not apply in these cases except for
cases consolidated with a criminal matter.

1 like all other litigants in civil cases heard in Justice Court and eviction litigants in
2 Superior Court, have the right to a change of judge.

3 **III. Proposed Rule Amendment**

4 The proposed rule, Rule 9(c) is:

5 Rule 9(c): Motion for Change of Judge:

6 For purposes of this subsection, a lawsuit has only two sides. A
7 party or a side, if there is more than one plaintiff or one defendant in a
8 lawsuit, may request a change of judge as a matter of right orally or in
9 writing. The party or side must request a change of judge as a matter
10 of right in the precinct where the lawsuit is pending. The request must
11 state that the party or side has not previously requested a change of
12 judge in this lawsuit, that the party or side has not waived the party's
13 right to change of judge, and that the request is timely. A request is
14 timely if it is made prior to or at the time of the first court appearance
15 or upon reassignment of the matter to a new judge for trial. A party
16 waives a right to a change of judge if the judge has ruled on any
17 contested motion or issue, or if the trial has started. When a proper and
18 timely request for a change of judge as a matter of right is orally
19 requested or filed, the court must transfer the lawsuit to a new judge
20 within the county for further proceedings.

21 If a party believes that the party will not have a fair and impartial
22 trial before a justice of the peace, then the party must proceed as
23 provided in Arizona Revised Statutes § 22-204, except that any request
24 must be made by the date of the first court appearance and five days'
25 notice is not required.

Renumber to conform.

The first paragraph on change of judge as a matter of right is taken from
current Justice Court Rule 133(d) with minor edits to reflect the practice in Justice
Court. Similarly, the second paragraph concerning change of judge for cause is
taken from the last sentence in Rule 133(d) but with modifications to reflect the

1 practice in Justice Court and changes subsequently made to A.R.S. § 22-204 in
2 2013.

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

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

10
11 For low-income persons, an eviction action may threaten their only means of
12 shelter. *See, e.g.,* Chester Hartman and David Robinson, *Evictions: The Hidden*
13 *Housing Problem*, Housing Policy Debate, Vol. 14, Issue 4 (2003) found at
14 <http://content.knowledgeplex.org/kp2/cache/kp/10950.pdf>. The inability to find
15 other housing on short notice can lead to the disruption of children's education,
16 interruption of employment, dislocation from health care providers, loss of personal
17 belongings and homelessness. In addition, the eviction process may lead to
18 monetary judgments. These monetary judgments make it difficult for tenants to
19 secure new rental housing. Thus, the consequences of eviction cases make them
20 very important to tenants and especially low-income tenants, who often lack back-
21 up resources. The result of an eviction may be that a family is living in a car. The
22 importance of these cases and the property interest at stake certainly is undercut by
23 not allowing a change of judge.

24 Although eviction cases have shorter statutory time frames than some of the
25 other civil cases heard in Justice Court, these time frames are not a sufficient reason

1 to deny litigants a right to change judge. If a tenant or a landlord believes that he
2 or she cannot get a fair trial before a justice, then they should be allowed as other
3 litigants are, to request a change of judge. The change of judge requests can be
4 handled like other continuances for cause. As an example, the common practice in
5 many Justice Courts is that if a tenant appears on the court date noted in the summons
6 and has a defense, the case is continued to another date for a trial. *See* Rule 11(c) of
7 the Rules of Procedure for Eviction Actions (continuances may be granted “on the
8 request of a party for good cause shown or to accommodate the demands of the
9 court’s calendar”); Arizona Residential Landlord and Tenant Act, A.R.S. § 33-
10 1377(C). The same or similar practice could apply to a change of judge request.

11
12 The following examples highlight the fundamental unfairness of not having a
13 change of judge for eviction cases in justice court. Using Maricopa County as an
14 example, if a person lives in the Encanto Precinct, all the cases against them will be
15 assigned to the one Encanto Justice of the Peace. If a resident in the Encanto Precinct
16 is sued on a credit card debt, the person appears before the Encanto Justice and that
17 Justice resolves the case. The defendant may think he or she was not treated fairly
18 by the Justice. If the person is sued again on another credit card debt 10 months later
19 and still lives in the Encanto Precinct, his or her case will be assigned to the same
20 Justice. In this situation, the person can request a change of judge under Rule 133(d)
21 of the Justice Court Rules of Civil Procedure. If the person is served an eviction
22 action, he or she cannot request a change of judge. This differential treatment is
23 unfair and undercuts the public’s confidence in our judicial system.

24 Second, until recently, several prominent landlord attorneys served as Justices
25 of the Peace *Pro Tempore* in Maricopa County on eviction calendars. While legal

1 services was told this practice ceased after ethical concerns were raised, in a recent
2 case, a landlord attorney served as a Justice of the Peace *Pro Tempore* on an eviction
3 calendar. Consider the case of a legal services attorney who comes to court to
4 represent a tenant in an eviction case and finds a Justice of the Peace *Pro Tempore*
5 whose legal practice is primarily representing landlords and property management
6 companies. The legal services attorney may not think his or her client can get a fair
7 trial before the Justice. Should the legal services attorney have to try the case before
8 a Justice *Pro Tempore* he or she thinks is unfair? If there is no change of judge rule,
9 they will.

10 Finally, take the case of a tenant who files an appeal of the eviction judgment.
11 If the tenant wins the appeal, with no change of judge rule, on remand this case
12 would go back to the same justice. Rule 42 (f)(1)(E) of the Rules of Civil Procedure
13 recognizes the inherent problem this may create and provides that when on remand
14 a new trial is ordered, “then all rights to change of judge are renewed and no event
15 connected with the first trial shall constitute a waiver.” Certainly, the same reasons
16 behind Rule 42 (f)(1) (E) apply in the eviction context.

17 The reality is that vast majority of tenants who lose their eviction case do not
18 have an attorney or the resources to file an appeal. For these tenants, the initial trial
19 is their only opportunity for relief. For all these reasons, the legal services
20 community continues to request a change of judge rule in eviction cases.

21 **V. Consistency with the Statutory Scheme and Time Standards**

22 Objections to the change of judge rule petition previously in 2014 and 2015
23 suggested that a change of judge is impractical in rural areas and inferred a dilatory
24
25

1 intent on the part of tenants' rights advocates. To be clear, the State Bar of Arizona
2 seeks only parity, that is, a peremptory provision that allows for litigants in eviction
3 cases in Justice Court to have the same right to change judge as litigants in eviction
4 actions in Superior Court and litigants in other cases in Justice Court.

5
6 Moreover, the annual statistics on where eviction actions take place show the
7 limited impact this rule will have on Justice Court administration. The rural precincts
8 heard only a fraction of the approximately 86,000 eviction actions filed in Justice
9 Courts statewide in 2014. More than 66,000 evictions were filed in Maricopa
10 County and another 14,000 were filed in Pima County.

11 <http://www.azcourts.gov/Portals/39/2014DR/JPMaricopa.pdf>;

12 <https://www.azcourts.gov/Portals/39/2014DR/JPPima.pdf>;

13 <http://www.azcourts.gov/statistics/AnnualDataReports/2014DataReport/2014Case>

14 [ActivitybyCounty.aspx](http://www.azcourts.gov/statistics/AnnualDataReports/2014DataReport/2014CaseActivitybyCounty.aspx)³ This leaves approximately 6,000 evictions throughout the
15 rest of the state, and even as to those evictions, the vast majority end in default.

16 Similar filings were reported in 2012 and 2013.⁴ Thus, this rule affects only that
17 small minority of tenants who contest the eviction. This Court should not allow

18 _____
19 ³ Opponents of a change of judge rule often offer the Duncan Justice Court as an
20 example where the change of judge would be hard to implement. But the Duncan Justice
21 Court received just 8 new eviction actions in the year ending June 30, 2013, only 4 in the
22 prior year, and none of those cases proceeded to trial. See <http://www.azcourts.gov/Portals/39/2013DR/JPGreenlee.pdf#page=5>. In the year ending June 30, 2014, only 6
23 eviction cases were filed and none went to trial. See <https://www.azcourts.gov/Portals/39/2014DR/JPGreenlee.pdf>. Thus, during this 3 year period, a change of judge rule would
have had no impact on court administration.

24 ⁴ In 2012 and 2013, there were approximately 84,000 evictions filed in justice courts
25 with 78,000 filed in Maricopa and Pima Counties. See <http://www.azcourts.gov/statistics/AnnualDataReports/2013/DataReport/2013CaseActivitybyCounty.aspx>.

1 heightened concern for rural precincts to outbalance due process rights of tenants
2 statewide.

3
4 In addition, the speedy timeframes of eviction actions are not as unique as
5 suggested. Changes of judge are permitted in time-sensitive applications for orders
6 of protection and injunctions against harassment in Justice Court. *See* Rule 1(A)(2)
7 of the Arizona Rules of Protective Order Procedure (declaring that the Arizona Rules
8 of Civil Procedure apply to those cases “when not inconsistent with these rules.”)
9 Even in Superior Court, where the change of judge applies in all cases except cases
10 in Tax Court, Ariz. R. Civ. P. 42(f)(1)(A), the exercise of a peremptory challenge to
11 a judicial officer can delay a request for injunctive relief under Ariz. R. Civ. P. 65,
12 particularly in rural counties with limited benches. Courts and administrators can
13 adapt in order to ensure the provision of justice and this Court should not presume
14 prejudicial delay.

15 For similar reasons, a decision by this Court in support of a peremptory
16 judicial challenge is not inconsistent with the provisional “Timing Standards”
17 supported by the Arizona Judicial Council. The Arizona Judicial Council’s
18 Executive Summary recognizes the appropriate balance of the rights of individual
19 litigants against the need for case management tools.

20
21 Case processing standards should complement, rather than
22 supplant, due process considerations. Waiting periods are
23 deliberately built into some court procedures and
24 processes in order to preserve parties’ rights (e.g., to
25 provide adequate notice, to conduct discovery, or to

1 receive service of process).⁵

2
3 “Excerpt from the Interim Report and Recommendation of the Arizona Case
4 Processing Standards Steering Committee,” September 30, 2013, available at
5 [http://www.azcourts.gov/Portals/84/MeetingMaterials/2013/October/Tab4AzCaseP](http://www.azcourts.gov/Portals/84/MeetingMaterials/2013/October/Tab4AzCaseProcStand_2_.pdf)
6 [rocStand_2_.pdf](http://www.azcourts.gov/Portals/84/MeetingMaterials/2013/October/Tab4AzCaseProcStand_2_.pdf). The Arizona Supreme Court in Administrative Order No. 2013-
7 95, on November 14, 2013, provisionally adopted the case processing standards “to
8 provide local courts and the Administrative Office of the Courts (“AOC”) with a
9 time standards framework for the development and testing of case management
10 reports.” <http://www.azcourts.gov/Portals/zz/admorder.Order13/2013.95>. These
11 provisional case processing standards should not affect the consideration of the
12 petition.

13 The provisional resolution standard is to resolve 98% of eviction actions
14 within 10 days. <http://www.azcourts.gov/Portals/22/admorders/Orders13/2013-95>.
15 Whether this provisional standard will be affected by the proposed rule is
16 speculative. If there is an adverse impact, the Court can anticipate that the impact
17 would be relatively small, given the paucity of eviction trials and the heavy volume
18 of default judgments.⁶ Using the provisional standard that 2% of the evictions would
19

20 ⁵ We would add, in the eviction context, the right to a three-day continuance in Justice
21 Court. *See* Rule 11(c) of the Rules of Procedure for Eviction Actions (continuances may
22 be granted “on the request of a party for good cause shown or to accommodate the demands
23 of the court’s calendar”) and the Arizona Residential Landlord and Tenant Act, A.R.S. §
24 33-1377(C); *see also* A.R.S. § 12-1177(C) (permitting up to three days for a continuance
25 in Justice Court actions).

⁶ In addition, it is not the case that currently all eviction trials occur within the three
day time frame for continuances in A.R.S. § 12-1177(C). Either party can request a trial
by jury (Rule 12 of the Rules of Procedure for Eviction Actions) and file motions,

1 not be resolved within 10 days, for the 86,000 evictions filed in 2014 that would be
2 1,720 cases. The Committee sincerely doubts that the change of judge rule would
3 impact this number of cases. The State Bar of Arizona supports the efforts of the
4 Judicial Council to move cases forward faster for the benefit of the litigants and the
5 justice system as a whole, but those efforts can and should take into account the
6 substantive rights of the individual litigants as well. The proposed rule does that for
7 eviction litigants.

8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25

CONCLUSION

The State Bar of Arizona submits this petition again because of the importance
of this issue. The proposed rule removes the disparity of a lack of change of judge
rule for eviction actions in Justice Court. Eviction court litigants should have the
same right to a change of judge as a matter of right and for cause as other civil
litigants in Justice Court and Superior Court.

Finally, if the Court has concerns about the effect the rule change will have
on justice court administration, as an alternative, the State Bar of Arizona proposes

including motions to amend, for judgment on the pleadings, to dismiss, for
reconsideration and other appropriate motions with a reasonable opportunity to respond
before a ruling by the court (Rule 9 of the Rules of Procedure for Eviction Actions). The
parties also can request disclosure of evidence, taking of depositions, production of
documents, inspection of the property and issuance of subpoenas (Rule 10 of the Rules of
Procedure for Eviction Actions). While jury trials, discovery and motion practice are not
common, they are allowed and all of the justice courts accommodate these requests, even
those in the rural counties. There is no reason that a request for a change of judge similarly
cannot be accommodated.

1 an approval period of one year. A limited approval period will give all sides
2 sufficient time to see what effects, if any, the rule change has on court administration.

3 For all these reasons, Petitioner requests the Court approve this petition.

4
5 RESPECTFULLY SUBMITTED this ____ day of _____, 2016.

6
7
8 _____
9 John Furlong
10 General Counsel

11
12 Electronic copy filed with the
13 Clerk of the Arizona Supreme Court
14 this ____ day of _____, 2016.

15 by: _____

Hon. C. Steven McMurry, on behalf of the
Committee on Limited Jurisdiction Courts
C/o Administrative Office of the Courts
1501 W. Washington St., Ste. 410
Phoenix, AZ 85007

IN THE SUPREME COURT

STATE OF ARIZONA

In the Matter of:	)	Supreme Court No. R-16-0022
)	
PETITION TO ADOPT RULE 9.1, RULES OF PROCEDURE FOR EVICTION ACTIONS	)	Comment from the LJC Opposing the Petition
_____)	
)	

This comment is submitted on behalf of the Committee on Limited Jurisdiction Courts (the “LJC”), which authorized the undersigned committee member at its February 24, 2016 meeting to file a comment in opposition to this rule petition.

I. Introduction. The LJC opposes the proposed amendment because the amendment is impractical and unnecessary. The amendment is not prudent because it would make it difficult for a number of justice courts to comply with statutory requirements and with this Court’s time standards. If adopted, the amendment would likely have an adverse impact upon tenants.

II. The Proposed Rule Amendment Is Impractical and Unnecessary.

Undersigned's courtroom is in a courthouse in central Phoenix. Five justice court precincts share that location, which has a combined clerical area and a corridor of interconnected judicial chambers. In the past five years, these five urban courts have processed approximately 60,000 eviction cases. Each of those five judges will honor a change of judge in an eviction case, even though there is no current rule. No judge wants to hear a case in which his or her objectivity is in question, and in those infrequent cases in which a change of judge might be appropriate, a change of judge will occur without a rule, often at the initiation of the judge. The court accommodates a change of judge request by immediately transferring the matter to one of the other four judges in the building. The receiving judge of a transferred eviction action in the central Phoenix courthouse is typically able to address it quickly, and a change of judge does not result in a delay in this courthouse.

On the other hand, isolated rural courts cannot easily make similar accommodations to fulfill a change of judge request in an eviction action. It may be similarly difficult for stand-alone urban courts to readily accommodate a change of judge request. These courts do not have the luxury of having another judge or judges down the hallway. Court administration in stand-alone urban and rural justice of the peace courts will have to locate and arrange for a new judge. That

could take days, and depending on the location, it might not happen quickly. A change of judge request could quickly gain the perception of an easy way to delay an eviction proceeding.

III. The Proposed Rule Change is Not Prudent. The Arizona Judicial Council has approved a time standard that requires 98% of eviction filings in justice courts to be resolved by a judgment or dismissal within ten days of filing. Unlike some of the other time standards, the eviction standard has not been controversial because it results directly from the requirements of Arizona law. An eviction case must be set for trial no less than six days from the date of filing (A.R.S. § 33-1377 (B).) The court can continue the case for an additional three days (A.R.S. § 12-1177(C).) Thus, legally the court *must* resolve the eviction case within nine days of filing.

If the Court adopts this proposal, resolution of an increased number of eviction actions within nine days will not be possible, at least for isolated rural courts, and most likely for stand-alone urban courts as well. This proposal, if adopted, could make it very difficult for some justice courts to be compliant with Arizona statutory requirements concerning evictions, or could make it difficult for justice courts to meet this Court's time standards for case disposition.

IV. The Proposed Rule Change Will Likely Have An Adverse Impact Upon Tenants. The Petition in this matter is written from a tenant perspective, and

argues that the change it seeks will help tenants. The LJC, however, is convinced that the advocates for the proposed rule change have incorrectly analyzed the dynamics of the situation. The proposed rule change will adversely affect tenants.

It is very rare for a tenant to be represented in an eviction action; representation probably occurs in less than 1% of the cases. An unrepresented or self represented tenant is unlikely to know much about the Rules. Even if the tenant knew about a Rule authorizing a change of judge, the tenant would also need substantial knowledge and sophistication regarding the court system to have a reliable opinion about whether exercising the right to an automatic change of judge was likely to gain the tenant a judge more sympathetic to his situation. It will, therefore, be a very rare situation in which an automatic change of judge will benefit the tenant.

On the other hand, the lawyers representing landlords in eviction proceedings are "frequent flyers" in the court system. They talk to each other, and they all know which judge is perceived to be "pro tenant". They also know the rules. It is far, far more likely that the proposed rule change will be used by these attorneys to remove eviction cases from "pro tenant" judges.

V. Conclusion. The LJC includes justices of the peace from urban and rural jurisdictions across Arizona. The LJC believes that the State Bar may not have consulted any justice of the peace who is a State Bar member, or any attorney who

routinely represents plaintiffs in justice court evictions, prior to filing this rule petition. These stakeholders oppose the proposed rule change. This proposed rule change is unnecessary, impractical, and imprudent. It will have an adverse impact upon tenants. The Court should decline to adopt it.

RESPECTFULLY SUBMITTED this 25th day of April, 2016

By /s/ _____
Hon. C. Steven McMurry, on behalf of the
Committee on Limited Jurisdiction Courts
C/o Administrative Office of the Courts
1501 W. Washington Street, Suite 410
Phoenix, AZ 85007

Copy of this comment
Emailed this 17 day of
April, 2016 to:

John A. Furlong, Esq.

1 **PROPOSED REPLY SUBMITTED BY THE STATE BAR'S**
2 **LEGAL SERVICES COMMITTEE**

3 IN THE SUPREME COURT

4 STATE OF ARIZONA

5 PETITION TO AMEND THE RULES OF
6 PROCEDURE FOR EVICTION
7 ACTIONS

Supreme Court No. R-16-0022

**Response to Comments to Petition to
Amend the Rules of Procedure for
Eviction Actions**

8
9
10 Pursuant to Rule 28 of the Rules of the Supreme Court, the Legal Services
11 Committee of the State Bar, respectfully responds to comments submitted in opposition
12 to the Petition to Amend the Rules of Procedure for Eviction Actions by adding a change
13 of judge rule, as Rule 9(c). The proposed rule would permit for a change of judge as a
14 matter of right and for cause in eviction actions in Justice Court. The proposed rule is
15 similar to Rule 133(d) of the Justice Court Rules of Civil Procedure that permits a change
16 of judge in other civil cases heard by the justice courts. As discussed in the petition,
17 eviction cases in justice court are the only civil cases in justice or superior courts without
18 a change of judge rule. The Legal Services Committee thinks Arizona courts should
19 provide an opportunity for a change judge as a matter of right in all cases as a matter of
20 fundamental fairness. Thus, this petition raises issues of access to justice.

21 The Committee on Limited Jurisdiction Courts (“LJC”) submitted a comment
22 opposing the petition. The LJC opposes the petition for four primary reasons. The LJC
23 claims the amendment is impractical, unnecessary, not prudent and that it will likely have
24 an adverse impact on tenants. As explained below, the Legal Services Committee
25 disputes these claims.

26 For its assertion that the rule is not needed, the LJC claims the central courthouse
27 in Phoenix with five courtrooms will honor a change of judge request because “[n]o
28

1 judge wants to hear a case in which his or her objectivity is in question.”¹ The LJC,
2 however, fails to explain how a litigant would even know such a procedure is available.
3 This informal policy referenced by the LJC is unknown to litigants and legal services
4 attorneys and does not extend beyond those courts. Moreover, if it is the case that no
5 judge wants to hear a case where his or her objectivity is called into question, then the
6 Legal Services Committee of the State Bar questions why the LJC is opposed to the
7 petition. As fully explained in the petition, there is a need for the change of judge
8 procedure for eviction cases in a public rule that extends to all justice courts.

9 For its assertion of impracticality, the LJC claims that “isolated rural courts”
10 cannot “easily” accommodate requests and stand-alone urban courts “may” find it
11 difficult to “readily” accommodate a change of judge request. The Legal Services
12 Committee thinks the number of change of judge requests in rural courts will be few as
13 there are a minute number of eviction cases filed in these courts, even fewer cases where
14 the tenant comes to court and an even smaller percentage of those litigants who may seek
15 a change of judge request.² While the number of evictions filed in urban courts may be
16 higher, given the large number of default judgments in eviction cases, the change of
17 judge requests should not significantly impact the justice court administration.
18 Significantly, the LJC fails to provide any information on how many change of judge
19 requests are filed in rural or stand-alone urban courts for other types of cases. The LJC
20 presents no data on this issue and instead relies on speculation. To address this
21 speculation, the Legal Services Committee has suggested a one-year limit on the rule
22 change to see if the rule change, in fact, presents widespread administrative issues. If the

23
24 ¹ In Pima County, the second largest county, all eviction cases are heard in a
consolidated justice court.

25 ² As an example, during the prior **3** years ending June 30, 2014, a total of only **18**
26 eviction cases were filed in the Duncan Justice Court. None of those cases went to trial.
27 *See* <http://www.azcourts.gov/Portals/39/2013DR/JPGreenlee.pdf>; www.azcourts.gov/Portals/39/2014DR/JPGreenlee.pdf. Thus, the proposed rule change would have had no
28 effect on justice court administration in the Duncan Justice Court over that 3 year period.

1 rule change is promulgated on a one year basis, this will give the LJC sufficient time to
2 document any actual widespread administrative issues. If such evidence is produced,
3 then the Legal Services Committee of the State Bar and the Court can address those
4 matters. The LJC did not address the proposed one year limitation or explain why it is
5 not an appropriate alternative.

6 The LJC also claims the amendment is not “prudent.” The LJC cites to the
7 Arizona Judicial Council resolution standard and claims it will not be possible to meet
8 this standard in “isolated rural courts” and “most likely” in stand-alone urban courts. The
9 LJC provides only speculation on impact and, again, provides no data in support. As
10 noted above, the one-year limit on the rule change will give the justice courts time to
11 provide this data. Moreover, as explained in the petition, the case processing standards
12 are intended to provide the courts with a framework for the development and testing of
13 case management reports and are intended to compliment, not supplant due process
14 considerations. These standards are not set in stone, should be able to accommodate the
15 change of judge requests and can be tweaked if necessary. The one year limit will provide
16 everyone an opportunity to see what effect, if any, the change of judge rule has on
17 processing standards and judicial administration.

18 Finally, the LJC claims the amendment “will likely” have an adverse impact on
19 tenants. The LJC claims that tenants are unrepresented 99% of the time and will not
20 know about this rule, and if a tenant did know about the rule, he or she would not have
21 the “knowledge” and “sophistication” to use it. The Legal Services Committee knows of
22 no other situation where such a claim is considered a valid reason to not promulgate a
23 procedural rule. Certainly it was not a valid reason to not have change of judge
24 provisions in Rule 42 of the Rules of Civil Procedure or Rule 133 of the Justice Court
25 Rules of Procedure. It is not a valid reason in this case either. This rule simply brings
26 parity to eviction cases with other civil cases heard in justice court and eviction cases
27 (and all other civil cases) heard in superior court that have a change of judge rule.

28

1 The LJC also suggests that some landlord attorneys will use the rule more than
2 tenants. This claim, as well, is speculation. The claim also appears to go against the
3 landlords' interests for the speediest resolution of cases because the LJC speculates that
4 the change of judge request could "gain the perception of an easy way to delay" the
5 proceedings.

6 Moreover, the LJC states that no justice of the peace or landlord attorney was
7 consulted about this rule change before the petition was filed and they oppose the rule
8 change. This claim is not correct. The LJC comments were submitted by Maricopa
9 County Justice Steven McMurry who attended the Board of Governors meeting where
10 this petition was discussed and voted upon and provided testimony in opposition to the
11 petition. In addition, Maricopa County Justice Gerald Williams attended the State Bar
12 Rules Committee meeting and provided testimony against the rule change and submitted
13 a letter written by Justice McMurry. In his remarks to the Board of Governors, Justice
14 McMurry stated that the landlord bar did not oppose the petition. The record is clear that
15 this petition was fully vetted at the State Bar.

16 **Conclusion**

17 For all these reasons, the Legal Services Committee of the State Bar requests that
18 the Court approve the petition, and if there are concerns about the effect the petition may
19 have on justice court administration that the Court limit the rule change to one year. That
20 limitation will provide sufficient time for the justice courts to collect data on the number
21 of change of judge requests, where these requests arise and the effects, if any, the
22 requests have on judicial administration. This process also will address the issue of
23 fundamental fairness for litigants in eviction cases and access to justice.

24 Respectfully submitted this ___ day of May 2016.

25 LEGAL SERVICES COMMITTEE OF THE
26 STATE BAR

27 By /s/Ellen Sue Katz
28 Ellen Sue Katz

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William E. Morris Institute for Justice
3707 North Seventh Street, Suite 220
Phoenix, Arizona 85014-5095

Original electronically filed with the
Clerk of the Supreme Court of Arizona
this ____ day of May 2016.

By: /s/ Ellen Sue Katz _____

Arizona Commission on Access to Justice

Meeting Date: May 18, 2016	Type of Action Requested: <input type="checkbox"/> Formal action or request <input type="checkbox"/> Information only <input checked="" type="checkbox"/> Other	Subject: Report from <i>Pro Bono</i> Service and Funding Workgroup
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From: Pro Bono Service and Funding Workgroup

Presenters: Judge Joseph Kreamer

Discussion: Judge Kreamer (and Kevin Ruegg) will update the commission on the workgroup's meeting that took place on May 5.

Recommended motion: (possible motion pending)

Arizona Commission on Access to Justice

Meeting Date: May 18, 2016	Type of Action Requested: <input type="checkbox"/> Formal action or request <input checked="" type="checkbox"/> Information only <input type="checkbox"/> Other	Subject: American Bar Association Telephone Workgroups Update
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From: American Bar Association Telephone Workgroup

Presenters: Dr. Kevin Ruegg, ACAJ member

Discussion: Dr. Ruegg will update the commission on the Self-Help Services and Courtroom Innovations Working Group that was established the American Bar Association and the Self-Represented Litigation Network. The workgroups have monthly conference calls and Dr. Ruegg will provide information on the content of those phone calls.

Recommended motion: None at this time.



HOUSE OF REPRESENTATIVES

SB 1216

charitable donations; tax credit amounts
Prime Sponsor: Senator Yarbrough, LD 17

DP Committee on Ways and Means
DPA Caucus and COW
X As Transmitted to the Governor

OVERVIEW

SB 1216 increases the amount a taxpayer may claim as a tax credit for contributions made to a charitable organization.

PROVISIONS

1. Increases the amount of tax credit a taxpayer may claim for contributions to a qualifying charitable organization from \$200 to \$400 for individuals and \$400 to \$800 for married couples.
2. Increases the amount of tax credit a taxpayer may claim for contributions to a foster care charitable organization from \$400 to \$500 for individuals and from \$800 to \$1000 for married couples.
3. Allows a taxpayer to receive separate tax credits for voluntary cash contributions to a qualifying charitable organization and to a qualifying foster care charitable organization.
4. Contains a retroactive effective date of January 1, 2016.

CURRENT LAW

A taxpayer may receive a tax credit for up to \$200 for individuals and \$400 for married couples for making voluntary cash contributions to a qualifying charitable organization. The cap rises to \$400 for individuals and \$800 for married couples if the organization is a qualifying foster care charitable organization. Taxpayers are required to report the name of the charitable organization and the amount of contribution to the Department of Revenue (DOR). Each qualifying charitable organization is required to provide DOR with a written certification that it meets all the criteria to be considered a qualifying charitable organization. *Qualifying charitable organization* is defined as a nonprofit organization that spends at least 50% of its budget on services to residents. *Qualifying foster care charitable organization* is defined as a qualifying charitable organization that provides services to at least 200 foster children and spends at least 50% of its budget on services to foster children (A.R.S. 43-1088).



HOUSE OF REPRESENTATIVES

SB 1217

charitable tax credit; contribution date
Prime Sponsor: Senator Yarbrough, LD 17

DP Committee on Ways and Means
DP Caucus and COW
X As Transmitted to the Governor

OVERVIEW

SB 1217 allows a tax credit for contributions made to a charitable organization to be applied to the current or preceding taxable year, if made on or before April 15th.

PROVISIONS

1. Allows a tax credit for contributions made to a charitable organization, on or before April 15th, to be applied to the current or preceding taxable year.
2. Contains a retroactive effective date of January 1, 2016.
3. Makes conforming changes.

CURRENT LAW

A taxpayer may receive a tax credit for up to \$200 for individuals and \$400 for married couples for making voluntary cash contributions to a qualifying charitable organization. The cap rises to \$400 for individuals and \$800 for married couples if the organization is a qualifying foster care charitable organization. Taxpayers are required to report the name of the charitable organization and the amount of contribution to the Department of Revenue (DOR). Each qualifying charitable organization is required to provide DOR with a written certification that it meets all the criteria to be considered a qualifying charitable organization.

PROMOTING ACCESS TO JUSTICE

Arizona Commission on Access to Justice

Meeting Agenda

August 17, 2016 - 10:00 a.m. to 2:00 p.m.

State Courts Building ♦ 1501 West Washington ♦ Conference Room 119 ♦ Phoenix, Arizona

Conference call-in number: 602-452-3288 Access code: 0669

[ACAJ WEBPAGE](#) [WebEx link](#)  

TIME	AGENDA ITEM	PRESENTER
10:00 a.m.	Welcome and Opening Remarks	<i>Judge Lawrence F. Winthrop, Chair</i>
	<p>Approval of minutes from May 18, 2016</p> <p><input type="checkbox"/> <i>Formal Action/Request</i></p>	
10:05 a.m.	Chairperson's report	<i>Judge Winthrop</i>
10:15 a.m.	Presentation on the Institute for Justice Chicago Entrepreneur Clinic <ul style="list-style-type: none"> • Institute for Justice webpage http://ij.org/ij-clinic-on-entrepreneurship/ • University of Arizona Intellectual Property & Entrepreneurship Clinic webpage https://law.arizona.edu/intellectual-property-entrepreneurship-clinic 	<i>Beth Kregor, Director of the Institute of Justice Clinic on Entrepreneurship</i>
11:00 a.m.	Presentation on the Michigan Online Court Project <ul style="list-style-type: none"> • University of Michigan webpage http://thirdcentury.umich.edu/online-court-project/ • Michigan Journal of Race and Law Online Case Resolution Systems Enhancing Access, Fairness, Accuracy, and Efficiency <p><input type="checkbox"/> <i>Formal Action/Request</i></p>	<i>M.J. Cartwright, CEO and Director of Court Innovations, Inc.</i>

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 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.

12:00 p.m.

☞☞ Lunch Break ☞☞

12:45 p.m. Report on the Fair Justice for All Task Force

*Dave Byers,
Executive Director, AOC
and Chair of the Fair
Justice for All Task Force*

Formal Action/Request

1:30 p.m. Report on Law4AZ Project

*Jonathan Voigt,
State Library of Arizona*

1:35 p.m. Proposed rule change petition regarding stipulated judgments in
eviction actions

Ellen Katz

Formal Action/Request

1:45 p.m. Update on the AZCourtHelp.org website

Judge Winthrop

1:50 p.m. Report from *Pro Bono* Service and Funding Workgroup
Judge Kreamer will update the members on the most recent meeting

*Judge Joseph Kreamer,
Pro Bono Service and
Funding Workgroup
Chair*

1:55 p.m. Good of the Order / Call to the Public

Judge Winthrop

Future meeting dates:

February 15, 2017 August 16, 2017

May 17, 2017 November 8, 2017

Adjournment

2016 Meetings

November 9

10:00 a.m. to 2:00 p.m.

State Courts Building, Phoenix, Arizona

Conference Room 119

Follow the Arizona Supreme Court on Facebook and Twitter!

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 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.

Arizona Commission on Access to Justice
DRAFT MINUTES
May 18, 2016
10:00 a.m. to 2:00 p.m.
State Courts Building, 1501 W. Washington Street
Phoenix, AZ 85007

Present: Judge Lawrence Winthrop, Chair; Kip Anderson; Judge Janet Barton; Mike Baumstark; Judge Thomas Berning; Millie Cisneros; Steve Hirsch; Michael Jeanes; Ellen Katz; Judge Joseph Kreamer; John Phelps; Janet Regner; Kevin Ruegg; Judge Rachel Torres Carrillo

Telephonic: Judge Maria Elena Cruz; Judge James Marnier; Anthony Young

Absent: Michael Liburdi; Steve Seleznow; Lisa Urias

Presenters/Guests: Charles Adornetto; Don Bivens; Dave Byers; Kathleen Cole; Jeff Fine; Cari Gerchick; Kevin Groman; Chris Groninger; Lara Slifko; Dean Douglas Sylvester

AOC Staff: Theresa Barrett; Julie Graber; Mark Meltzer; Nick Olm; Kathy Sekardi

I. REGULAR BUSINESS

A. Welcome, Opening Remarks and Approval of Minutes

With a quorum present, the May 18, 2016 meeting of the Arizona Commission on Access to Justice (ACAJ) was called to order by the Chair, Judge Larry Winthrop, at 10:12 a.m.

Motion: Judge Winthrop moved to approve the February 17, 2016 minutes. **Seconded:** Judge Barton
Vote: Unanimous.

II. CHAIRPERSON'S REPORT

Highlights of Judge Winthrop's report:

- Commission staff has updated the Arizona Charitable Tax Credit Video to include the new legislative changes (SB1216 and SB1217) that increase credit amounts and extend the deadline for donating. This video along with other materials can be used by members for commission outreach and tax credit presentations.
- Judge Winthrop thanked members who have made presentations about the Arizona Charitable Tax Credit.
- Chief Justice Bales was one of the panelists who spoke at the White House Access to Justice Forum in April. He discussed the issue of fines and fees and the work of the Fair Justice for All Task Force. Microsoft, one of the business representatives at the forum, announced they have donated \$1,000,000 and technology services to create an "open source" legal services triage portal.
- Judge Winthrop has had an opportunity to discuss with several of Arizona's Congressional leaders a concern for funding for civil legal aid.
- At the American Bar Association Access to Justice Chairs Meeting in Chicago, Judge Winthrop met with other access to justice chairs and learned what other states are doing with access to justice initiatives.
- The ACAJ annual report will be provided to the Arizona Judicial Council (AJC) and the Presiding Judges at their June meetings. The presentation will also include a demonstration of the state-wide virtual legal resource website (AZCourtHelp.org).

III. REPORT ON LEGAL SERVICES “TRIAGE” PROGRAM AT ASU’S LAW SCHOOL

Douglas Sylvester, Dean of Arizona State University’s (ASU) Law School, presented on the legal services triage program that will be housed at the Arizona Legal Center near ASU’s new downtown law school. Dean Sylvester reported this program allows law students, under the supervision of licensed attorneys, to provide legal triage to clients and then refer those clients to attorneys who provide legal services in the area of law needed for their matter. The legal center will have designated days throughout the month to focus on certain areas of law such as Veteran’s law, family law, and probate law. The legal center will also have a full-time social service worker and full-time Spanish speaker to assist clients. The legal center and the law school plan to open in August of 2016.

IV. REPORT ON THE COMMITTEE ON CIVIL JUSTICE REFORM

Don Bivens, chair of the Committee on Civil Justice Reform, reported the committee is made up of 24 members of the judicial bench and the Arizona State Bar; they are divided into four work groups to focus on certain areas: 1) options to compulsory arbitration; 2) case management reforms; 3) reforms to court operations; and 4) civil discovery reforms. The committee will submit a report, together with proposed rule changes, to the Arizona Judicial Council no later than October 1, 2016.

V. REPORT ON FAIR JUSTICE FOR ALL TASK FORCE

Dave Byers, Director of the Arizona Administrative Office of the Courts, reported the goal of the task force is to:

- a) Recommend statutory changes, if needed, court rules, written policies, and processes and procedures for setting, collecting, and reducing or waiving court imposed payments;
- b) Develop suggested best practices for allowing citizens unable to pay the full amount of a sanction at the time of sentencing options for reasonable time payment plans or by the performance of community service.
- c) Recommend best practices for making release decisions that protect the public, but do not keep people in jail solely for the inability to pay bail.
- d) Review the practice of suspending driver’s licenses and consider alternatives to license suspension.
- e) Recommend educational programs for judicial officers, including pro tem judges and court staff who are part of the pretrial decision making process.
- f) Identify technological solutions and other best practices that provide defendant notifications of court dates and other court-ordered deadlines using mobile applications to reduce the number of defendants who fail to appear for court and to encourage citizens who receive a citation to come to court.

Some of the proposals the task force is considering are changes to statutes, rules of court, enhanced training (especially for part-time judges), and the development of policy and best-practices. The task force will vet their recommendations with identified AJC standing committees starting in late summer, culminating in presentations at the Arizona Leadership Conference and October AJC meeting.

VI. REPORT ON SRL-FAMILY COURT WORKGROUP

A. Update on AmeriCorps Program

Judge Barton updated the commission members regarding the AmeriCorps program in the Maricopa County Superior Court. Judge Barton stated that the AmeriCorps volunteers are currently limited to directing litigants to court facilities and providing assistance with identifying which forms to fill out. There are plans to expand the program to include more volunteer training and to partner with the Joel Shephard Family Law Clinic, Sandra Day O’Connor College of Law (ASU), Arizona Summit Law

School, and Community Legal Services. The focus of this training will provide the volunteers with understanding how to provide legal information to self-represented litigants.

B. Update on Maricopa County’s Law Library Resource Center

Judge Barton reported that the renovation of the Maricopa County Law Library Resource Center is scheduled to open at the end of October, 2016.

C. Update on Law4AZ Library Project

Judge Barton informed the commission members that the Law4AZ program has completed the training for public library staff to assist them with providing legal information to the public. The State Library continues to promote engagement and partnership of local attorneys to provide free training sessions to the public. A collaborative effort between the State Library and Maricopa County’s Law Librarian is in the planning stages to develop a legal information versus legal advice session for a statewide meeting of court staff.

D. Update on Response/Answer Handbook and AZCourtHelp Project

Theresa Barrett presented on the status of the question and response document and stated that a statewide memorandum was sent out notifying court leadership of the new document and its location on the AJINWeb. Additionally, Ms. Barrett mentioned there is a tremendous interest in the use of this document and it that it will subsequently be posted in English and Spanish on the court’s public-facing website after it is translated into Spanish.

VII. REPORT FROM SRL-LIMITED JURISDICTION COURTS WORKGROUP

A. Update on SRL-LJC WG Meeting

Judge Carrillo reported the workgroup discussed the use of video and teleconferencing in limited jurisdiction courts and that the workgroup developed an action plan.

- a) Determine the need for increased use of video or teleconferencing.
- b) Research the types of hearings or case types that would be appropriate for video or teleconferencing.
- c) Determine if it would be beneficial to develop best practices for using video or teleconferencing.
- d) Research the minimum infrastructure requirements to support videoconferencing and determine what technology the courts are already using.
- e) Seek guidance from all rules - local, procedural, Supreme Court rules or codes – that govern remote appearances.
- f) Encourage the use of video and teleconferencing and develop an education component to inform litigants and lawyers when this resource becomes available.

B. Update on Resources Sub-Workgroup

Mr. Olm reported that the “GoAnimate” software program was purchased to finish the animated information videos for landlord-tenant matters. Additionally, Anthony Young and SALA have created a video script that informs tenants what they can do when landlords are not complying with the terms of the lease.

C. Update on forms and instruction packets for landlord-tenant matters

Mr. Olm reported that the landlord and tenant forms have been finalized and the informational packets are due to be completed in the next few weeks.

D. Next steps for landlord-tenant forms

Mr. Baumstark requested that the commission endorse the mandatory use of the forms to promote impartiality and support the Supreme Court's access to justice initiatives. If supported, he informed members that the next steps would include posting the rule change petition electronically on the Supreme Court's Rules Forum to receive comments and suggestions and vetting the petition to appropriate Supreme Court standing committees, such as the Committee on Limited Jurisdiction Courts.

Motion: Mr. Baumstark moved for the commission to approve the filing of a rule change petition that will ask the Supreme Court to require the use of Supreme Court approved forms and notices for eviction actions. In addition, Mr. Baumstark moved to have the petition, forms, and notices circulated to the appropriate standing committees of the Supreme Court for further input. **Second:** John Phelps. **Vote:** Unanimous.

E. Training for Judicial Officers/Staff

Jeff Fine, Court Administrator for Maricopa County Justice Courts, announced a training conference for the Maricopa County Justice Court staff. This three-day conference is scheduled in mid-July at Grand Canyon University. Mr. Fine stated he will be soliciting volunteers to present at this conference on a variety of topics as one of the commission's recommendation is training frontline court and judicial staff.

F. Presentation on Rule Change Petition for Change of Judge in Eviction Actions (R-16-0022)

Ellen Katz presented on the rule change petition that would allow a change of judge in eviction actions. Ms. Katz reported that this petition came from the Legal Services Committee of the State Bar of Arizona and the petition has been filed electronically on the Supreme Court's Rules Forum. Ms. Katz stated that the Justice Court Rules of Civil Procedure permits a change of judge in other civil cases heard by the Justice Courts; however, the Rules of Procedure for Eviction Actions has not been revised to permit a change of judge as a matter of right and for cause in eviction actions in Justice Court. Ms. Katz mentioned that landlord attorneys continue to oppose this petition as has been the case in previous years.

Mr. Hirsch mentioned that the Arizona State Bar Rules Committee originally voted to oppose this petition but the State Bar Governing Board subsequently voted to approve it after limited approval period of one year was added.

Mark Meltzer, Senior Court Policy Analyst for the AOC, summarized the history of this rule petition and similar petitions from previous years. He noted this same petition was presented at the Committee on Limited Jurisdiction Courts (LJC) and that committee voted unanimously to oppose it. There are nine standalone justice courts that are not co-located, which may be an administrative challenge if the change of judge rule is in effect. Lastly, Mr. Meltzer mentioned there was a comment that prominent landlord attorneys served as Justice of the Peace *pro tempore* on eviction calendars; however, this practice has ceased after ethical concerns were raised.

Members had the following additional comments:

- There are concerns that this rule change could affect the time standards for eviction cases.
- This rule change will lead to public perception that the courts are trying to do well for tenants.
- This rule change could be abused by landlord attorneys who could request a judge they believe is more favorable to them.

Motion: Judge Berning moved to have the Arizona Commission on Access to Justice approve the filing of a comment supporting this rule change petition with the emphasis that this rule would be a one-year trial period. **Seconded:** Janet Regner. **Vote:** 15 in favor; 2 opposed.

Judge Winthrop noted that committee staff from the AOC will submit the comment in support of this rule change petition.

VIII. ADDITIONAL CHAIR REPORT

Judge Winthrop reported he met with Joe Sciarrotta from the Arizona Attorney General's Office. They discussed a proposal to present an educational program to talk about the ethical restrictions on public lawyers that currently exist while performing *pro bono* activities. This program would be a joint presentation from Chief Justice Bales and Mark Brnovich, Attorney General of Arizona. More information about this collaborative conference will be provided at the next ACAJ meeting.

IX. PRO BONO SERVICES WORKGROUP

Judge Kreamer reported the following efforts of the *Pro Bono* Services Workgroup:

- Corporate counsel partners report that the Arizona Association of Corporate Counsel has voted to establish its own commission regarding *pro bono* services. The focus will be on providing *pro bono* services for new business or non-profit startups.
- Regarding the law firm *pro bono* network – Judge Kreamer and Steve Hirsch continue efforts to strategize and reach out to law firms to participate.

X. AMERICAN BAR ASSOCIATION TELEPHONE WORKGROUP UPDATE

Kevin Ruegg updated the commission on the Self-Help Services and Courtroom Innovations Working Group that was established by the American Bar Association and the Self-Represented Litigant Network. Ms. Ruegg is the Arizona representative participating in the national and regional conference calls each month for this workgroup.

Ms. Ruegg reports this group envisions 100 percent access that ensures each participating state has the beginning steps to a continuum of services through self-help services and statewide portals available for all people.

The workgroup discussed self-help centers as the pipeline for unbundled services and models for setting up unbundled legal services. Arizona is leading the way in this regard through the Steering Committee for Legal Aid, providers who collaborate with the Arizona Foundation for Legal Services and Education, and the involvement of the Arizona Commission on Access to Justice. The workgroup also discussed providing more education regarding the parameters of unbundled legal services for attorneys and court clerks.

Finally, the workgroup explored remote services and the importance of integrating this technology into the court. It is important to have accessible and standardized forms and to have alternatives to appearing in court; especially for those with geographic constraints.

XI. OTHER BUSINESS

A. Good of the Order/Call to the Public

There was no response to a call to the public

B. Adjournment

Meeting adjourned at 2:01 p.m.

C. Next Commission Meeting Date

August 17, 2016

10:00 a.m. to 2:00 p.m.

State Courts Building, Conference Room 119A/B

1501 W. Washington, Phoenix, Arizona 85007

Gerald A. Williams
Arizona Bar No. 018947
North Valley Justice Court
14264 West Tierra Buena Lane
Surprise, AZ 85301

IN THE SUPREME COURT OF THE STATE OF ARIZONA

In the Matter of:	)	Supreme Court
	)	No. R-16-0040
PETITION TO AMEND)	
RULES 5(a), 5(b)(6), 5(b)(7) and	)	Objection to Proposed Rule
Add Rules 13(h) and 20 of the	)	Changes, to Proposed Mandatory
RULES OF PROCEDURE FOR	)	Summons and Complaint, to
EVICITION ACTIONS	)	Proposed Mandatory Notice
	)	Forms, and Suggested
	)	Alternative Language for Forms

BACKGROUND

The author of this pleading is a justice of the peace in Maricopa County. He has served on three rule writing committees, the State Bar’s Civil Jury Instruction Committee, and knows the level of effort and compromise that goes into producing the type of work product that has been completed; but he has significant and serious concerns about what has been proposed in the petition, especially the proposed mandatory eviction forms. They were not recently circulated among the justices of the peace and he did not see the proposed forms in final form until the week before this petition was filed. Concerns with the proposed forms were muted somewhat based on a belief that they were going to be optional rather than mandatory.

Some of the numerous problems with the forms will be detailed in this pleading. At a minimum, please do not force justice courts to use a two page judgment form, with check off boxes for items that appear in perhaps one out of every five-hundred cases (e.g. counterclaims, non-waiver agreements). In addition, the notice forms should be in the form of a cure notice from a landlord to a tenant. Instead, the proposed forms contain both cure notice language and also third person language, almost as if it was coming from a court order. The proposed notice forms are significantly more wordy than the forms currently on the Maricopa County Justice Courts' web page and the proposed notice forms are also truly confusing. In contrast, some of the proposals in the petition, especially a requirement that the complaint identify whether the case involves government subsidized housing, are genuinely good ideas.

I.

MANDATING SPECIFIC FORMS FOR NOTICES, BUT ESPECIALLY FOR COMPLAINTS, IS UNNECESSARILY RESTRICTIVE AND WILL GENERATE TENUOUS PROCEDURAL DUE PROCESS ARGUMENTS

While a mandatory form for a summons is often appropriate,¹ requiring landlord attorneys to file their complaints only on a court approved

¹ JCRCP 112(b); JCRCP, Appendix I.

form is unnecessarily restrictive and arguably insulting. There is certainly no proposal that attorneys representing tenants be restricted either to a court approved answer form or to a court approved counterclaim form. If the complaint complies with the numerous requirements of the applicable statutes and rules,² then it should be legally sufficient.

It is also somewhat ridiculous to require landlords and attorneys representing landlords to use a complaint form containing language for causes of action that they are not even alleging, only to leave those portions of the complaint form blank. Even so, a larger problem concerns potential remedies if a landlord used a notice form that contains substantially similar but not identical language.

If the required forms, especially in their current form, are made mandatory, then it will provide a basis for tenants to claim that their case should be dismissed simply because the form used in their case does not exactly match the form required by the Administrative Office of the Courts. Doing so is contrary to modern notice pleading requirements and to generally established principles of law. Procedural due process requires simply that a party have a meaningful opportunity to be heard, at a

² RPEA 5(b), 5(c) & 5(d).

meaningful time in the process, and in a meaningful manner.³ If the proposed mandatory notice forms are adopted without any opportunity for flexibility, then it would be possible for a tenant to argue that their case should be dismissed even though the landlord complied with the requirements of the statutes, any case law, and the Rules of Procedure for Eviction Actions (RPEA), and even though the tenant clearly understood what he or she needed to do to cure the alleged breach of the lease.⁴

American courts once followed a code pleading format that drew distinctions between merely alleging that someone is “entitled to possession of specific property” (which was inadequate) and alleging that someone is the owner and is entitled to possession (which was sufficient).⁵ We do not need to return to a system that values format over substance, especially since it is already clear that only a proper plaintiff can prevail in an eviction action⁶ and since it is already clear that only the property owner or his or her attorney can appear in court on behalf of the plaintiff.⁷ In short, proposed

³ *Comeau v. Ariz. St. Bd. of Dental Examiners*, 196 Ariz. 102, 107-108, 993 P.2d 1066, 1071-1072 (Ct. App. 1999)(Investigative interview was adequate).

⁴ Judges may hear similar arguments to the following: “But your honor, clearly the notice was defective because it only advised my client once that he should get any settlement agreement with his landlord in writing and the rules now require that a notice form be used that tells him that twice.”

⁵ Clark, *The Complaint in Code Pleading*, 35 Yale L.J. 259, 262 (1926).

⁶ RPEA 5(b)(1).

⁷ RPEA 11(a)(1).

Rule 20 should be modified to read simply, “When applicable,⁸ landlords should use forms that are substantially similar to the notice forms in the appendix to these rules.”

III.

PROPOSED LANGUAGE IN THE NOTICE FORMS MISLEADS TENANTS AS TO WHAT WILL HAPPEN IN COURT AND AS TO WHETHER THEY CAN REQUEST A COURT ORDER FOR MORE TIME TO CURE ANY ALLEGED BREACH OF THE LEASE

The proposed forms share some of the same common problems. For example, nearly every proposed form instructs the tenant to get any settlement in writing, not just once, but twice. This unnecessary duplication adds little, if any, value. However, there is a problem that goes well beyond elements of style.

Nearly every proposed form contains this problematic sentence: “After a hearing, the judge will decide if you have to move or can remain in the rental.” There are two major errors in that sentence.

Hearing is a term of art that involves some type of litigated procedure where a judicial officer makes either a factual or legal determination (or both) after hearing evidence (usually in the form of witness testimony). In

⁸ The “when applicable” language is designed to avoid a need to create an additional set of official forms for the Arizona Mobile Home Parks Residential Landlord and Tenant Act. A.R.S. §§ 33-1401 - 33-1501. It also avoids needing to create either a set of forms or additional language for month-to-month leases concerning a landlord’s duty to mitigate damages.

contrast, eviction actions are summary proceedings. If the tenant cannot articulate a legal defense to the landlord's allegations, then a judgment will be entered in favor of the landlord.⁹ If the tenant is able to do so, then the case is immediately set for a trial, but no hearing will occur.¹⁰ In addition to misrepresenting the law, the proposed sentence inaccurately describes the judge's role.

If a tenant is in a courtroom because of an eviction action, the judge will not "decide if [the tenant has] to move or can remain in the" residence. In reality, the judge will decide whether the landlord has met his or her burden of proof.

At least weekly if not daily, tenants appear in justice courts in Maricopa County for eviction actions with a false hope that the judge will give them additional time to pay their rent based on a sudden financial hardship. There is no legal authority to do so; but the proposed language at least infers that there is and sets judges up to fail. Tenants who appear with that false hope will leave thinking that the judge, and perhaps the judicial branch as a whole, did not care about them. A judge politely explaining that

⁹ RPEA 11(b)(1).

¹⁰ The only time a hearing is held in connection with eviction actions is if there is an issue concerning the writ of restitution. RPEA 14(b)(2). The North Valley Justice Court has set perhaps two since the rules were adopted in 2009.

the law is different than what is suggested on the mandatory form will appear nonsensical. Any explanation at that point will also be largely irrelevant to the emotions tenants feel as they leave the courtroom.

IV.

THE PROPOSED FIVE-DAY NOTICE FOR NONPAYMENT OF RENT IS IN A CONFUSING FORMAT AND CONTAINS CONFUSING LANGUAGE

Prior to filing an eviction action for nonpayment of rent, the landlord must give the tenant a five-day cure notice. This notice must: (1) state the amount of any unpaid rent and any other amount due; (2) notify the tenant of the landlord's intent to terminate the lease if the amount due is not received within five days after the notice is given to the tenant, and (3) inform the tenant that if the amount due is not paid, that the tenant must then surrender possession of the residence.¹¹ On day six, the landlord can file suit.

The five day notice for nonpayment of rent and the ten day non-compliance notice are by far the most frequent types of notice forms used in residential landlord tenant actions. Suggested alternative forms for both of these documents are attached to this pleading.

¹¹ A.R.S. § 33-1368(B). The sufficiency of the notice is a question of law. If the allegation alleges non-payment of rent for a space in a mobile home park, then the landlord must give the tenant a seven-day notice. *See generally*, Williams, *Representing Residential Tenants in Eviction Actions*, 28 Ariz. Attorney 12 (Nov. 2011).

There are numerous problems with the proposed five day notice. The entire format of the document invites the reader to set it aside and to read it later. It contains random parenthetical commentary (e.g. “Must be listed in rental agreement” or “if allowed in rental agreement”). There is also no information presented stating that the security deposit cannot be used to pay the rent, which is one of the more common misunderstandings frequently expressed by tenants. In addition, the proposed form refers the tenant to five sources of reference material, none of which is the RPEA.

CONCLUSION

Access to justice issues for tenants often have little to do with tenants not understanding why they are facing eviction. Instead, they are more likely to concern either repair and maintenance issues or how to get their security deposit back. (Sample letters and forms for those issues are also on our justice court web page.)¹² For example, they know that they have not paid their rent, but incorrectly believe that they can “rent strike” by withholding rent until their landlord makes the repair.

As a matter of public policy, it is a mistake to use a set of mandatory forms to change the law in an effort to make it more difficult for landlords to

¹² In addition, our bench Best Practices Committee recently requested input on draft sample complaint forms that can be given to tenants who wish to file a cause of action against their landlord under A.R.S. § 33-1367, either for an unlawful ouster or for a failure to supply essential services.

evict tenants. It also harms the target population because if you make it more difficult to evict tenants who are not complying with the terms of their lease, then landlords will be forced to raise the rent on the tenants who are. Phoenix and Tucson currently have reasonably affordable housing when compared to similar cities around the United States.¹³ Perhaps one of the reasons for that is that Arizona has a set of statutes and rules governing residential landlord and tenant matters that provide clear and quick remedies for an obvious breach of a lease. If that system is going to be significantly changed, then those changes should come either in the form of statutory changes or in the form of deliberate substantive changes to the RPEA. The RPEA uses clear and simple language that is understandable to a self represented litigant and its' provisions are unambiguous. There is no need for some type of implied repeal of them or implied amendment to them.

While the objectives behind the proposed forms are noble, the actual language of the forms must be, and can easily be, improved.

¹³ One survey of apartment rent found rent in Phoenix to be less expensive than several major cities (e.g. Austin, Baltimore, Charlotte, Dallas, Denver, Indianapolis, Nashville, Portland, Seattle) and found rent in Tucson to be equally less expensive than other arguably comparable locations (e.g. Albuquerque, Columbus, El Paso, Las Vegas, Louisville, Memphis, Milwaukee, San Antonio). DePietro, *Here's What the Typical One-Bedroom Apartment Costs in 50 U.S. Cities*, Business Insider (Jun. 17, 2016).

I respectfully request that this Court either reject this petition or remand it to a committee where all stakeholders have equal representation and where consensus language will be achieved.

RESPECTFULLY SUBMITTED, this 5th day of August 2016.

/s/ Gerald A. Williams
GERALD A. WILLIAMS
Justice of the Peace
North Valley Justice Court
14264 West Tierra Buena Lane
Surprise, AZ 85374

Copy Mailed To:
Hon. Lawrence Winthrop
Arizona Court of Appeals
1501 West Washington, Suite 401
Phoenix, AZ 85007

**NOTICE OF INTENT TO END LEASE
FOR FAILURE TO PAY RENT
(Five Day Notice)**

[Date]

To: [Tenant's Name and Address]
And Any and All Occupants

You have not paid your rent on time. You owe the following amount:

This Month's Rent: _____
Late Fees: _____
Additional Amount: _____

Total as of the date of this notice: \$ _____

The additional amount is for _____. The late fees are increasing at a rate of \$_____ per day.

Your landlord is seriously considering filing an eviction action against you but would like to give you a chance to solve this problem without the need for anyone to go to court. Please contact us immediately. You will need to make arrangements to pay the money you owe. If you cannot do so, then we demand that you move out, and that you return the keys to the residence, five calendar days from the day you received this notice.

After you move out (either now or at the end of your lease), your landlord may apply some or all of your security deposit toward any unpaid rent, but your security deposit will not be used to pay your rent now.

Even if you move out, you are still responsible for all of the rent that is due until the property can be rented again to a new tenant. You may also be required to refund any discount you received (called a rental concession) and may be required to pay other charges stated in the lease.

If your landlord files an eviction action in court against you, then you may also be required to pay court costs and attorney's fees. If your landlord files an eviction case against you, as part of that case, you will receive a handout that explains your rights and obligations.

*[Landlord or Property Manager's Name]
[Address and Telephone Number]*

Additional Information: The law for these kind of cases can be found in Arizona Revised Statutes sections 33-1368(B) and 12-1171 and in the in the Arizona Rules of Procedure for Eviction Actions. Additional help may be available at [*insert local or state bar web pages or lawyer referral services*].

This notice was served by: <input type="checkbox"/> Hand delivery to by giving it to (name): _____ who is a <input type="checkbox"/> tenant <input type="checkbox"/> occupant <input type="checkbox"/> By certified mail
--

**NOTICE OF INTENT TO END LEASE
(Ten Day Notice)**

[Date]

To: [Tenant's Name and Address]
And Any and All Occupants

You are not following the terms in your lease. If you do not fix the following problems within ten days, then your lease will end. The problems are [*unauthorized pet, unauthorized occupant, too much clutter on balcony*] _____

Your landlord is seriously considering filing an eviction action against you but would like to give you a chance to solve this problem without the need for anyone to go to court. Please contact us immediately.

If this problem, or something similar, happens again, then you will receive a second notice and, at that point, your landlord can legally file an eviction action against you.

If your landlord files an eviction action in court against you, then you may also be required to pay court costs and attorney's fees. If your landlord files an eviction case against you, as part of that case, you will receive a handout that explains your rights and obligations.

*[Landlord or Property Manager's Name]
[Address and Telephone Number]*

Additional Information: The law for these kind of cases can be found in Arizona Revised Statutes sections 33-1368(A) and 12-1171 and in the in the Arizona Rules of Procedure for Eviction Actions. Additional help may be available at [*insert local or state bar web pages or lawyer referral services*].

This notice was served by: <input type="checkbox"/> Hand delivery to by giving it to (<i>name</i>): _____ who is a <input type="checkbox"/> tenant <input type="checkbox"/> occupant <input type="checkbox"/> By certified mail

Arizona Commission on Access to Justice

Meeting Date: August 17, 2016	Type of Action Requested: <input type="checkbox"/> Formal action or request <input checked="" type="checkbox"/> Information only <input type="checkbox"/> Other	Subject: Presentation on the Institute for Justice Chicago Entrepreneur Clinic
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From: Beth Kregor, Director of the Institute of Justice Clinic on Entrepreneurship

Presenter: (same)

Discussion:

Beth Kregor will talk about a program based in Chicago, which may provide some ideas for what we can do in Arizona to assist those with innovative business ideas but who cannot afford legal assistance.

Recommended Action or Request (if any): None at this time.

Arizona Commission on Access to Justice

Meeting Date: August 17, 2016	Type of Action Requested: <input checked="" type="checkbox"/> Formal action or request <input type="checkbox"/> Information only <input type="checkbox"/> Other	Subject: Presentation on the Michigan Online Court Project
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From: MJ Cartwright, CEO and Director of Court Innovations, Inc.

Presenter: (same)

Discussion: Judicial systems exist to provide a way for societies to organize themselves around the rule of law. In order to accomplish this goal, courts need to be (1) accessible; (2) fair; and (3) cost-effective. Unfortunately, due to their reliance on antiquated, non-technological processes, courts in the United States have seen little improvement on these three measures in recent decades.

Led by U-M Law School professor J.J. Prescott, the Michigan Online Court Project seeks to revolutionize how the public interacts with courts. Its technology-driven approach has the potential to create an entirely new case resolution process, one that improves performance and accessibility along numerous dimensions and makes courts better suited for the information age.

MJ Cartwright will brief us on the Michigan experience and how this technology platform has been expanding beyond Michigan into other states, expanding to include small claims and family matters, and resulting in significant success in terms of faster case clearance, increased efficiency for courts, and meaningful opportunity for litigants.

Recommended Action or Request (if any): To support that the SRL-Limited Jurisdiction Courts Workgroup explore this type of technology platform.

COURT INNOVATIONS

ONLINE CASE RESOLUTION BRIEFING FOR
ARIZONA COMMISSION ON ACCESS TO JUSTICE

MJ CARTWRIGHT



Matterhorn™

BY COURT INNOVATIONS

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WHY ONLINE PROCESS?



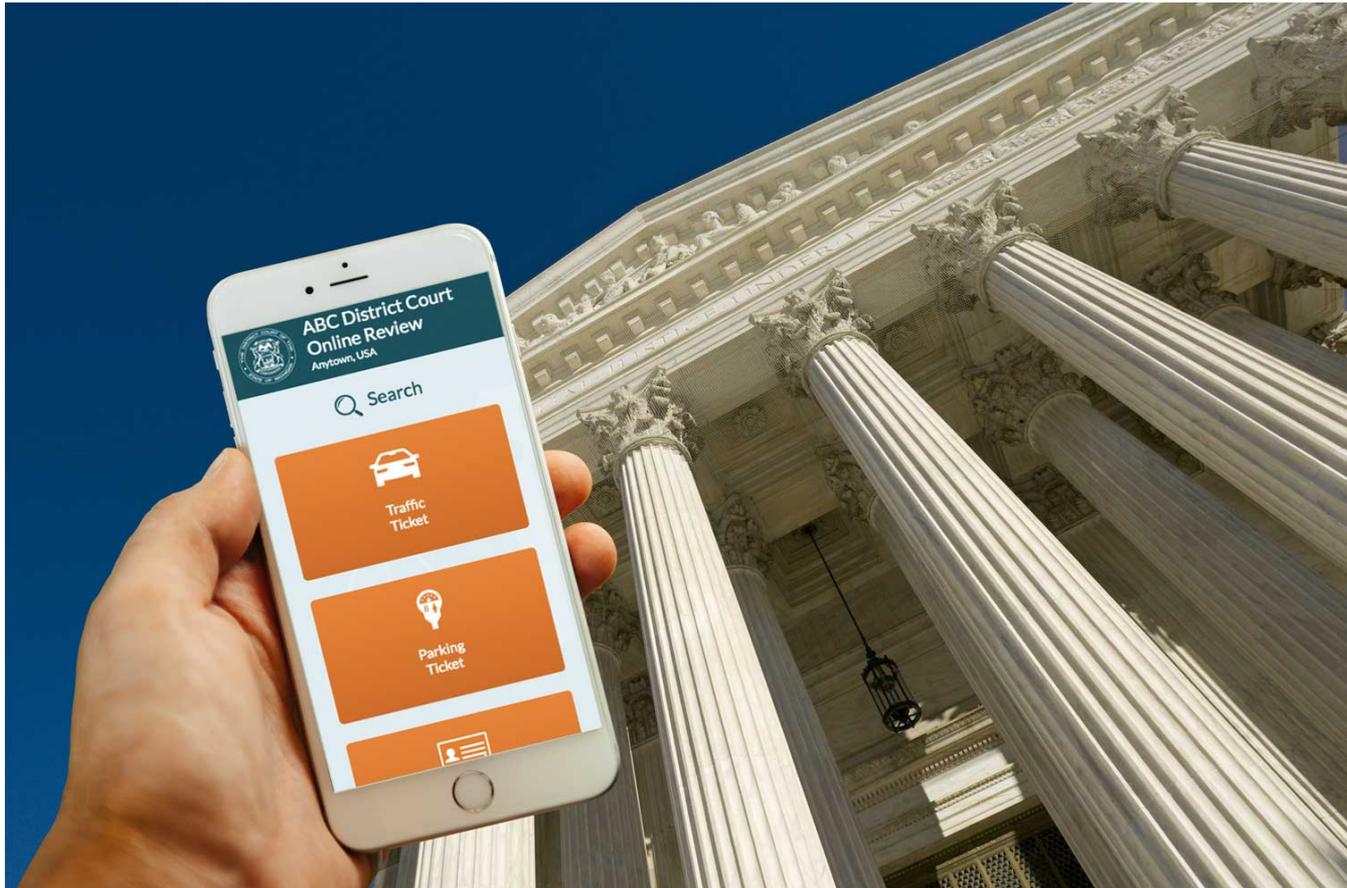
PARTNERSHIP



STAKEHOLDERS



MATTERHORN PLATFORM SOLUTION



MATTERHORN PLATFORM SOLUTION



Traffic
Ticket



Parking
Ticket



Warrant



Amnesty



Prevention



Suspended
License



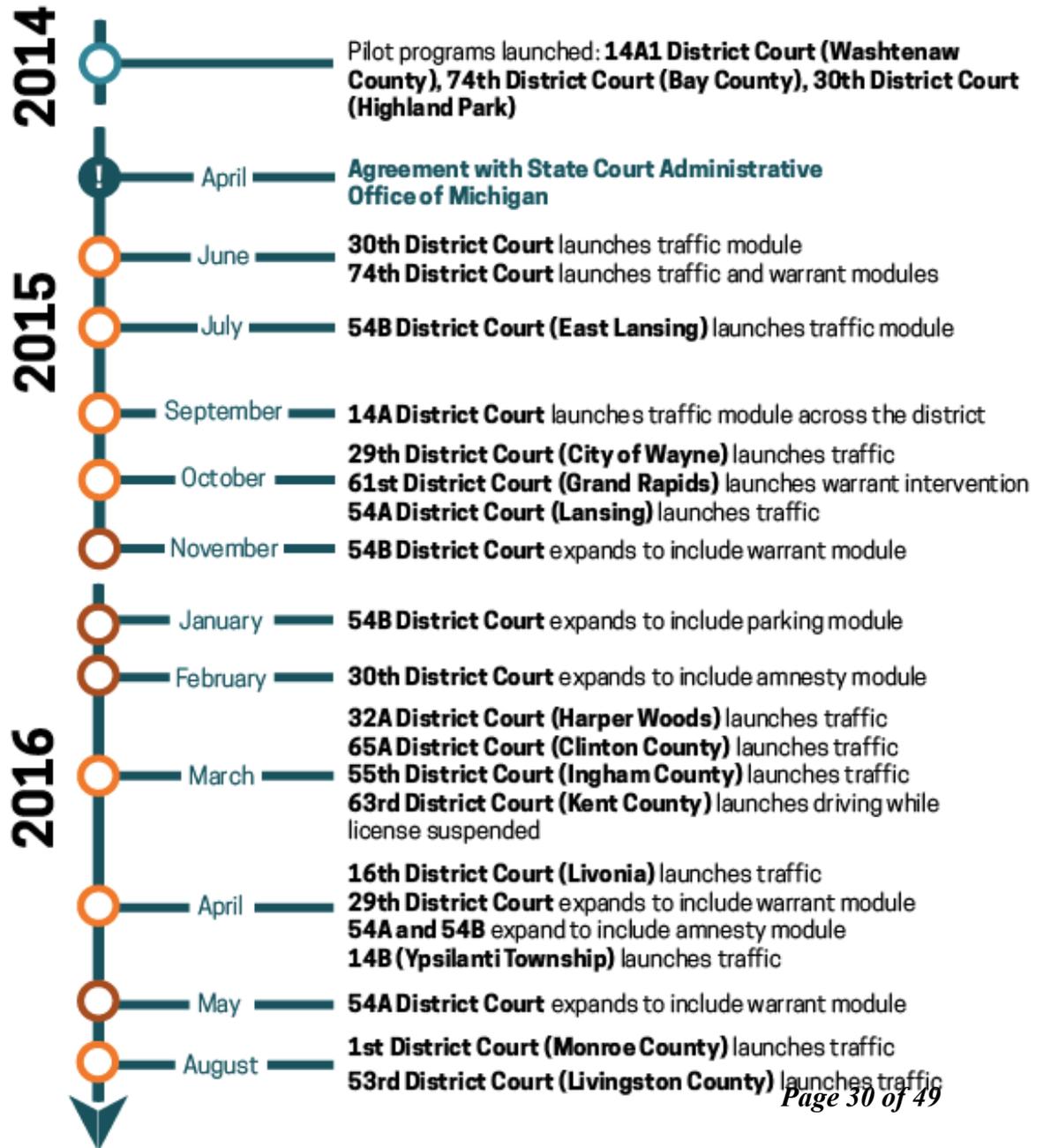
Family Court
Solutions



Small Claims



MOMENTUM WITH COURTS



WARRANT AND CIVIL INFRACTION / MISDEMEANOR ONLINE RESOLUTION

USING THE MATTERHORN PLATFORM

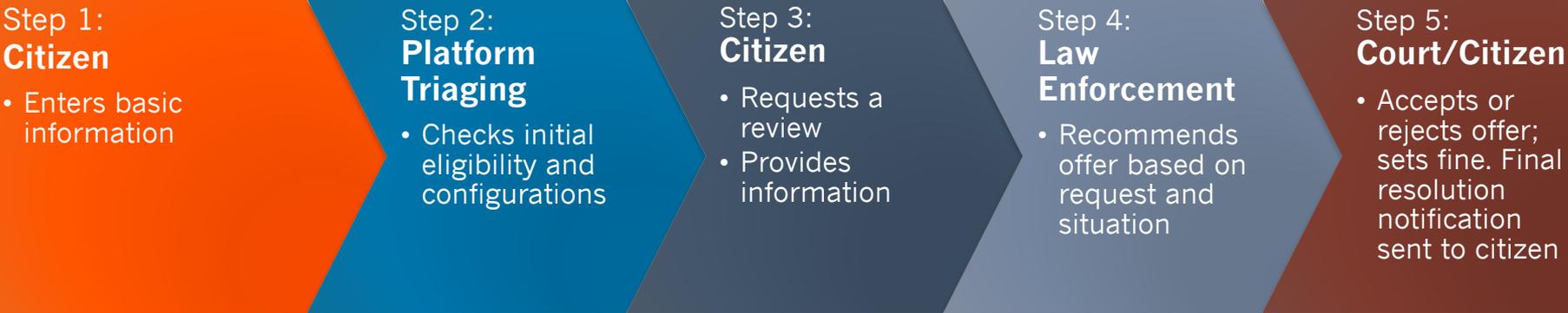


Matterhorn™

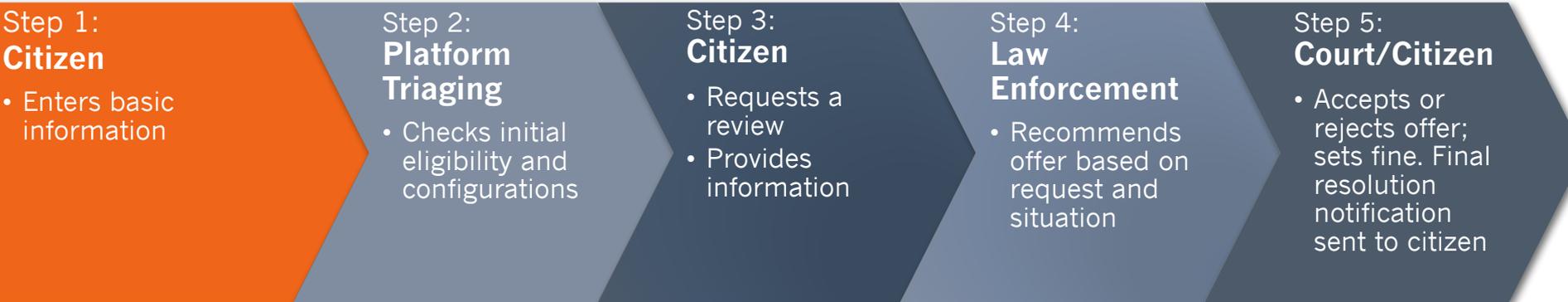
BY COURT INNOVATIONS

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ONLINE/MOBILE PROCESSES



ONLINE/MOBILE PROCESSES



ABC District Court Online Review
Anytown, USA

Traffic Ticket Search

Driver's License Number: Driver's State:

Date of Birth:

[Cancel](#)

Warrant Search

Date of birth:

Case Number: - OR - Drivers License Number:

[Cancel](#)

Don't have a drivers license or case number? [Search by name.](#)

ONLINE/MOBILE PROCESSES



ABC District Court Online Review
Anytown, USA

[Home](#) [About](#) [FAQs](#)

Case Details

Name
MARY ARCHER BROWN

Offense Date
2/16/2015

Offense
SPEEDING/SPD 5 OVER

Fine
\$126

Points
2

Eligible for review!

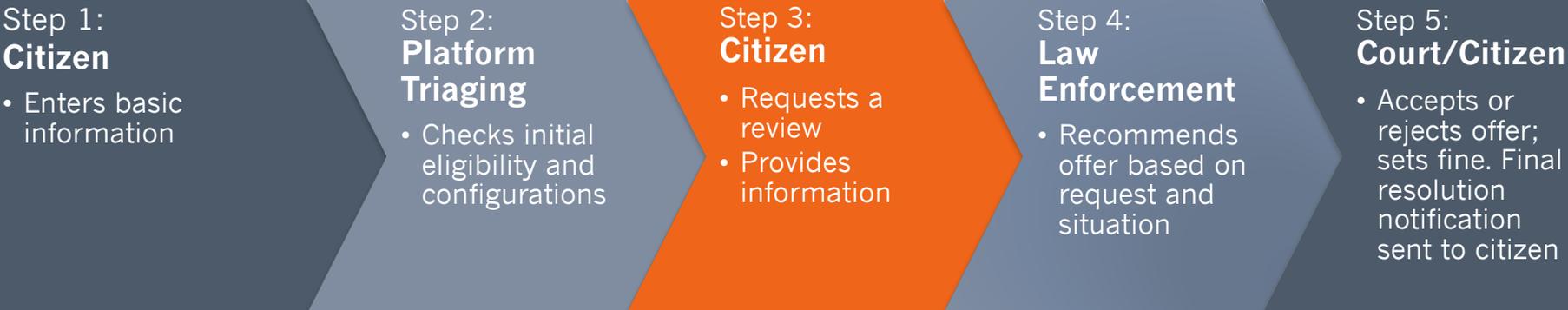
The court is willing to review your case. They may extend you an offer for a lesser offense – one that ca

[REQUEST REVIEW](#)

2 Results Found

<p>Warrant - Failure to Pay SPEEDING 5-10 OVER</p> <p>You can contest your ticket by</p> <p>Call 989.895.4232 989.895.4049 TDD/TTY Weekdays 8am to 5pm</p> <p>1st District Court 123 Main St.</p>	<p>Name: MARY ARCHER BROWN Case ID: 12 30585BSI 1 Date: 7/16/2016 Amount Due: \$140.00</p>	<p>GET STARTED</p>
<p>Warrant - Failure to Appear SUSPENDED OPS</p>	<p>Name: MARY ARCHER BROWN Case ID: 12 30585BSO 2 Date: 7/16/2016 Amount Due: \$140.00</p>	<p>GET STARTED</p>

ONLINE/MOBILE PROCESSES



ABC District Court Online Review Anytown, USA

Home About FAQs

Case Details

Name
MARY ARCHER BROWN

Offense Date
2/16/2015

Offense
SPEEDING/SPD 5 OVER

Fine
\$126

Points
2

Request Review

Law enforcement and the court will review your request and you provide below to determine if you qualify for a review.

Your Statement

I affirm that I am MARY ARCHER BROWN and my information is true and complete.

We will notify you once the judge has reached a decision.

Your email Confidential

Resolve Your Warrant

i You have a warrant for failing to pay. When you owe the court fines or fees, you must make every effort to pay them. The court may be willing to offer you a payment plan. You can also pay in full now by going to the 74th District Court's [online pay site](#).

Why haven't you paid the court? Choose one.

- I forgot.
- I figured I would just pay later.
- I didn't have the money.
- Other

What is your monthly income (not including welfare benefits)?

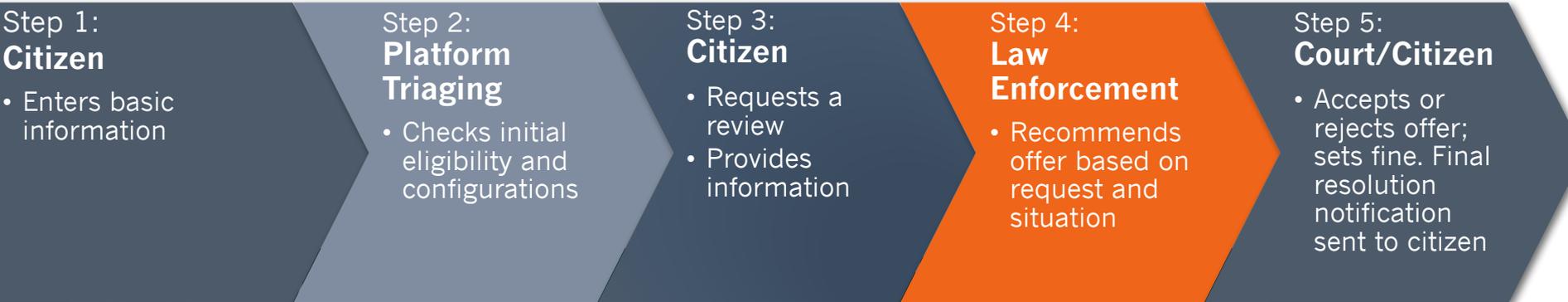
- \$0 (unemployed)
- \$1 - \$1,000
- \$1,001 - \$2,500
- \$2,501 - \$5,000
- Over \$5,000

I am interested in voluntary wage garnishment to help make payments.

How much are you able to pay per month?

\$

ONLINE/MOBILE PROCESSES



 **Online Case Review**
Bay City, MI

Home Traffic Tools

 **KENNETH LANNY BOUCHARD** #16 C119418OI 1

Original Offense

Offense
SPEEDING 1-5 OVER - BAY C

Offense Codes
2000 / 1805-OB

Amount Ordered
\$120.00

Points
2

Filing Date
May 2, 2016

Case Number
16 C119418OI 1

Ticket Number
C119418

Recommend Approve

Select Offer

- Select ---
- Fail To Yield, \$140.00, 2 points
- Avoid Traffic Control Device, \$140.00, 2 points
- Speeding - Limited Access 1-5, \$120.00, 0 points
- Speeding - Limited Access 6-10, \$120.00, 1 points
- Speeding - Limited Access 11-15, \$140.00, 2 points
- Impede Traffic, \$120.00, 0 points
- Violation of Basic Speed Law, \$140.00, 2 points

[My Templates](#)

Add a note (not shared with defendant unless you check the box below)

Share this note with the defendant.

SUBMIT [Cancel](#)

ONLINE/MOBILE PROCESSES



KENNETH LANNY ROUCHARD #14 C1194180I 1

--- Select ---

- Fail To Yield, \$140.00, 2 points
- Avoid Traffic Control Device, \$140.00, 2 points
- Speeding - Limited Access 1-5, \$120.00, 0 points
- Speeding - Limited Access 6-10, \$120.00, 1 points
- Speeding - Limited Access 11-15, \$140.00, 2 points
- Impede Traffic, \$120.00, 0 points
- Violation of Basic Speed Law, \$140.00, 2 points

Attend Traffic School?

Fine

\$ 120.00

Reject

Note [My Templates](#)

Add a note (not shared with defendant unless you check the box below)

Share this note with the defendant.

[Cancel](#)

Recommend Approve

Offense
Impede Traffic

Fine
\$120.00

Points
0

Traffic School
Yes

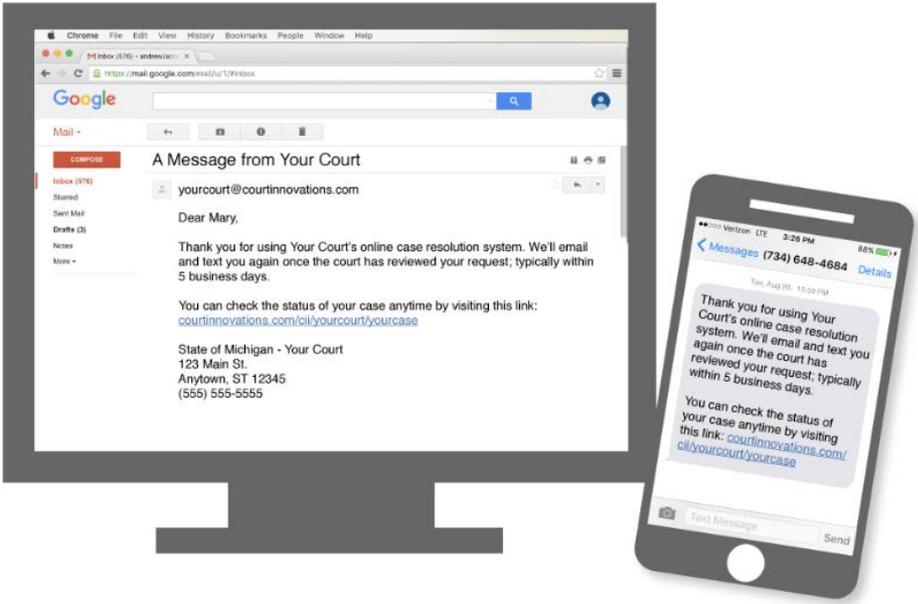
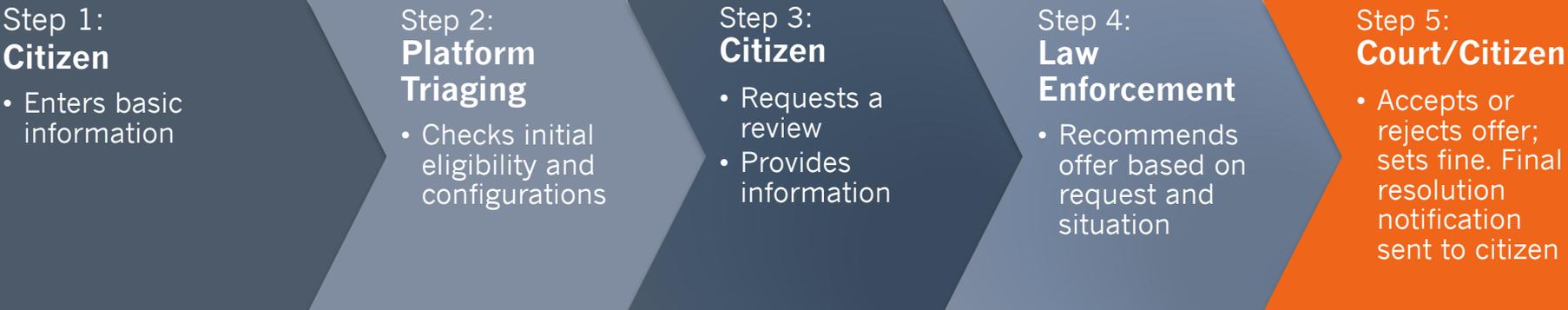
Original Offense

Offense
SPEEDING 1-5 OVER - BAY C

Offense Codes
2000 / 1805-OB

Amount Ordered

ONLINE/MOBILE PROCESSES



IMPACT AND COST SAVINGS

Cost Reduction

Combined court staff
time per hearing

before

157
minutes

after

27.36
minutes

Combined court staff
time with Matterhorn

Cost Reduction

10%
reduction
warrants
issued

**4 hours per
each warrant**

Time to Collection

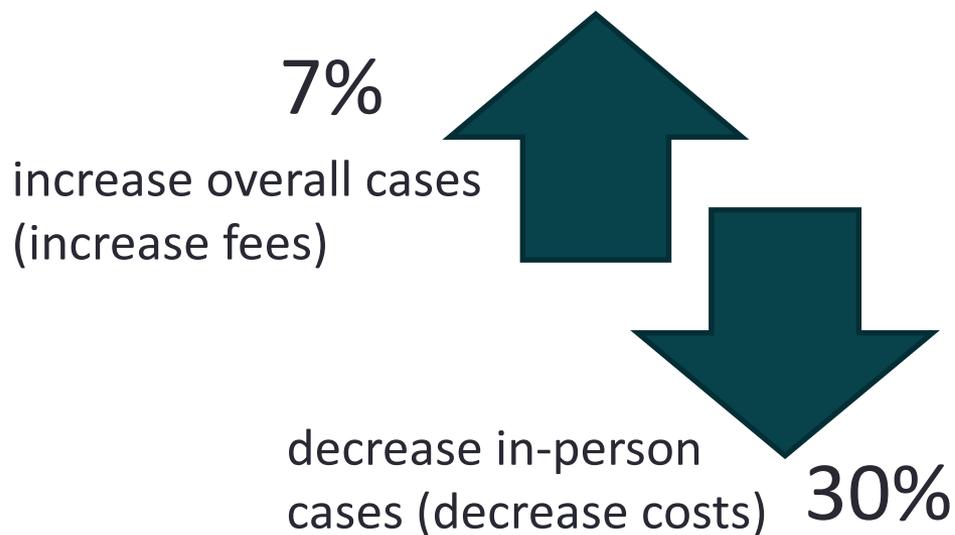
Before:
Up to 2 months



After: Less
than 8 days

INCREASE ACCESS TO JUSTICE

43% would not have been able to come to court



WHAT COURTS ARE SAYING



Honorable Brigette Officer-Hill
30th District Court Judge

Animation/video segment (not embedded)

COURT INNOVATIONS

ONLINE CASE RESOLUTION BRIEFING

MJ CARTWRIGHT

mj@courtinnovations.com

734.878.3665



Matterhorn[™]

BY COURT INNOVATIONS

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Arizona Commission on Access to Justice

Meeting Date: August 17, 2016	Type of Action Requested: <input checked="" type="checkbox"/> Formal action or request <input type="checkbox"/> Information only <input type="checkbox"/> Other	Subject: Update on the Fair Justice for All Task Force and Final Report
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From: Dave Byers, Executive Director, Administrative Office of the Courts and Chair of the Fair Justice for All Task Force

Presenter: Dave Byers

Discussion: Mr. Byers will update the ACAJ on the efforts of the Fair Justice Task Force and present the final report and recommendations for the ACAJ's consideration.

Recommended Action or Request: Recommend that the Arizona Commission on Access to Justice support the recommendations of the Fair Justice for All Task Force and approve the filing of a rule petition to implement the recommendations and approve the inclusion of the legislative proposals in the AJC package for next session.

Arizona Commission on Access to Justice

Meeting Date: August 17, 2016	Type of Action Requested: <input type="checkbox"/> Formal action or request <input checked="" type="checkbox"/> Information only <input type="checkbox"/> Other	Subject: Report on Law4AZ Project
----------------------------------	--	--------------------------------------

From: Jonathan Voigt, State Library of Arizona

Presenters: (same)

Discussion: Jonathan Voigt will update the commission on the Law4AZ Library Project.

Recommended motion: none at this time.

Arizona Commission on Access to Justice

Meeting Date: August 17, 2016	Type of Action Requested: <input checked="" type="checkbox"/> Formal action or request <input type="checkbox"/> Information only <input type="checkbox"/> Other	Subject: Proposed rule change petition regarding stipulated judgments in eviction actions
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From: Ellen Katz, William E. Morris Institute for Justice

Presenters: (same)

Discussion:

The potential issues with stipulated judgments in eviction cases were discussed at a previous Commission meeting with Pamela Bridge from CLS. The legal services organizations have since been working on a proposed rule change, which has been discussed with the SRL-Limited Jurisdiction Court Workgroup and further amended by a sub-workgroup. Ellen Katz will present this proposed rule change and request that it be filed under the Commission's name.

Recommended motion: To move the Arizona Commission on Access to Justice to support the proposed rule change regarding stipulated judgments in eviction actions.

Proposed Amended Rule

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;
- 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!** 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, 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).

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 13(c)(2), if all the requirements for a stipulated judgment are met, including 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. [Note: We did not discuss the last paragraph]

Arizona Commission on Access to Justice

Meeting Date: August 17, 2016	Type of Action Requested: <input type="checkbox"/> Formal action or request <input checked="" type="checkbox"/> Information only <input type="checkbox"/> Other	Subject: Report from <i>Pro Bono</i> Service and Funding Workgroup
----------------------------------	--	---

From: Pro Bono Service and Funding Workgroup

Presenters: Judge Joseph Kreamer

Discussion: Judge Kreamer will update the commission on the workgroup's meeting that took place on August 10.

Recommended motion: Informational only

PROMOTING
ACCESS
 TO JUSTICE

Arizona Commission on Access to Justice

Meeting Agenda

November 9, 2016 - 10:00 a.m. to 2:00 p.m.

State Courts Building ♦ 1501 West Washington ♦ Conference Room 119 ♦ Phoenix, Arizona

Conference call-in number: 602-452-3288 Access code: 0305

[ACAJ WEBPAGE](#) [WebEx link](#)  

TIME	AGENDA ITEM	PRESENTER
10:00 a.m.	Welcome and Opening Remarks	<i>Judge Lawrence F. Winthrop, Chair</i>
	Approval of minutes from August 17, 2016 <input type="checkbox"/> <i>Formal Action/Request</i>	
10:05 a.m.	Chairperson's report	<i>Judge Winthrop</i>
	<ul style="list-style-type: none"> • http://www.arizonalegalcenter.org/ • Updated tax credit flyer 	
10:30 a.m.	Report from <i>Pro Bono Service and Funding Workgroup</i> Judge Kreamer will update the members on the most recent meeting	<i>Judge Joseph Kreamer, Pro Bono Service and Funding Workgroup Chair</i>
11:00 a.m.	Update on the AZCourtHelp.org website	<i>Judge Winthrop Kevin Ruegg</i>
11:15 a.m.	Report from the Self-Represented Litigants in Limited Jurisdiction Workgroup	<i>Mike Baumstark Paul Julien</i>
	<ul style="list-style-type: none"> • Rule Petition R-16-0040 regarding mandatory eviction forms <input type="checkbox"/> <i>Formal Action/Request</i> 	

ARIZONA COMMISSION ON ACCESS TO JUSTICE

Draft Minutes

Wednesday, August 17, 2016

10:00 a.m. to 2:00 p.m.

Conference Room 119A/B

1501 W. Washington Street, Phoenix, AZ 85007

Present: Judge Lawrence Winthrop (chair), Kip Anderson, Judge Janet Barton, Mike Baumstark, Judge Thomas Berning, Judge Maria Elena Cruz, Steven A. Hirsch, Chris Kelly (proxy for Michael Jeanes), Ellen Katz, Judge Joseph C. Kreamer, John Phelps, Kevin Ruegg, Judge Rachel Torres Carrillo, Anthony Young

Absent/Excused: Millie Cisneros, Michael T. Liburdi, Judge James Marner, Janet K. Regner, Steve Seleznow, Lisa Urias

Presenters/Guests: Justice Clint Bolick, Pamela Bridge, Dave Byers, MJ Cartwright, Karl Eckhart, Shawn Friend, Kevin Groman, Chris Groninger, Paul Julien, Beth Kregor, Eric Menkhus, Heather Murphy, Philip Potter, Kathy Schaben, Prof. Alan Sternstein, Jonathan Voigt

AOC Staff: Theresa Barrett, Kathy Sekardi, Julie Graber, Karla Williams

I. REGULAR BUSINESS

A. Welcome and Opening Remarks

The August 17, 2016, meeting of the Arizona Commission on Access to Justice (ACAJ) was called to order at 10:02 a.m. by Judge Lawrence Winthrop, Chair.

B. Approval of Minutes from May 18, 2016

The draft minutes from the May 18, 2016, meeting of the ACAJ were presented for approval.

Motion: Steven Hirsch moved to approve the May 18, 2016, minutes, as presented.

Seconded: Judge Thomas Berning. **Vote:** Unanimous.

II. BUSINESS ITEMS AND POTENTIAL ACTION ITEMS

A. Chairperson's Report

- Several members were thanked for their efforts of advancing the ACAJ's goals by presenting to groups on access to justice issues.
- The [ACAJ annual report](#) was presented to the Arizona Judicial Council (AJC) in June regarding the ACAJ's efforts and issues over the last year.
- The State Tax Credit video was updated to include the new legislative changes thanks to Chief Justice Bales, Judge Winthrop, and AOC staff.

- Judge Winthrop noted international efforts, including the [return of the Nepal Supreme Court](#) members in June and the creation of a Nepal Access to Justice Commission.
- The SRL-Limited Jurisdiction Court Workgroup is discussing the expanded use of videoconferencing and teleconferencing in limited jurisdiction courts and will begin work developing best practices.
- A rule change petition ([R-16-0040](#)) regarding mandatory court-approved eviction forms was filed on July 6 on behalf of the ACAJ. The deadline for comments is September 23, 2016 and the deadline for the ACAJ's reply is November 4, 2016, if needed.

B. Presentation on the Institute for Justice Chicago Entrepreneur Clinic

Justice Bolick introduced Beth Kregor, Director of the Institute of Justice Clinic on Entrepreneurship, to talk about her successful entrepreneur program and to provide some ideas for what Arizona can do to assist low-income entrepreneurs who have innovative business ideas but cannot afford legal assistance. Ms. Kregor provided a brief overview of the clinic, which provides free legal representation, presents educational workshops and events, and advocates for economic liberty in Chicago. In addition, the clinic trains University of Chicago Law School students to provide legal assistance to low-income entrepreneurs to help pursue their dreams, build their families, their neighborhoods, and the economy. These efforts allow entrepreneurs to gain access to the world of contracts, legal and property protections, while students learn the impact of legal rules, statutory interpretation, local government, case management, client service, contract drafting, and counseling.

Several additional barriers for low-income entrepreneurs were illustrated:

- Many low-income entrepreneurs have difficulty complying with complex laws due to rigid and outdated regulations.
- Setting up a business and complying with the regulations can be overwhelming for any small-budget business.
 - The cost of federal regulations per employee is 36 percent higher for businesses with fewer than 20 employees.
 - For small manufacturers with less than 50 employees, compliance costs per employee are more than three times the average of all firms.
- According to PRI's 50-state small business regulation index, Arizona is rated 18th in burdensome regulations for small business, and second highest for low-income occupations that are licensed. Furthermore, individual cities may add another layer of barriers.

Ms. Kregor identified several *pro bono* opportunities for practicing attorneys, including serving interesting clients; structuring unusual deals; sharing expertise; learning about a new sector or community; making a difference; and remapping the course for future start-ups.

Member comments:

- The University of Arizona is working with different intellectual property programs regarding start-ups: 1) a clinic to help entrepreneurs get started and protect their intellectual property; and 2) an Arizona hub for the United States Patent and Trademark Office's *Pro Bono* Program that will assist with searches and patent applications.
- Ms. Kregor noted that political challenges are overcome by acting as an advocate for entrepreneurs who are too nervous to complain about an inspector or the amount of time it takes to get an inspection.
- Judge Winthrop noted that engaging transactional attorneys in *pro bono* initiatives would fit with the efforts from the Promoting *Pro Bono* Service and Funding Workgroup.

C. Presentation on the Michigan Online Court Project

MJ Cartwright, CEO and Director of Court Innovations, Inc., provided background information regarding the Matterhorn platform solution, which was originally developed in 2014 at the University of Michigan Law School and later launched by Court Innovations for use by courts and individuals. This online case resolution solution is a tool intended to promote meaningful access, fairness, accuracy, and efficiency by supplementing traditional courtroom access and services, giving people additional options, and maintaining discretion for law enforcement, prosecutors, and judges. The collaborative platform allows people to use the Internet and have their voices heard without having to go to court in person to resolve routine traffic tickets, parking tickets, misdemeanor warrants, suspended licenses, family court, and small claims.

Ms. Cartwright presented a demonstration of the dashboard and the steps involved in the online and mobile processes: 1) the person enters basic information (which is meant to interface with the case management system); 2) platform triaging occurs; 3) the person requests a review and provides information; 4) law enforcement recommends an offer based on the request and situation; and 5) the court and person accept or reject the offer. A final resolution notification is sent to the individual.

She discussed the platform's impact and cost savings:

- The combined court staff time per hearing decreased from 157 minutes to 27.36 minutes.
- The number of warrants issued was reduced by ten percent.
- The time to collection was reduced from up to two months to less than eight days.
- 43 percent of people would not have been able to come to court and resolve their case.
- The overall caseload increased by seven percent while decreasing costs by 30 percent for in-person cases.
- Preliminary findings have shown that fines are paid off faster and cases are resolved with very little defaulting.

Member comments:

- How is this software integrated with the different court systems? *The interface is kept as simple as possible and focuses on what is needed to reach a decision, whether it requires a real time interface or simple file transfers. To keep matters simple, the platform also links through the State's online payment system.*
- How are people informed about the platform's availability? *The information can be disseminated in the press and included on the citation, court websites, and social media.*
- Who uses the platform? *Over 50 percent of users are mobile users. In poorer areas, there are multiple access points, such as libraries, and many people use smartphones belonging to family and friends.*
- Can a person stop the process to obtain legal advice or choose to appear in person? *The platform offers an additional option for people and is not intended to limit the ability to appear in person or to cancel out of the platform to obtain legal advice.*
- How is the platform funded in Michigan? *Some courts have justified the costs through their operating budget and some share the cost with law enforcement agencies.*
- When resolving a case, does a person using the Internet pay more or less than someone appearing in person? *Data is not yet available that compares the offers and payments.*
- What are the payment options for those without checking accounts? *People have the option to pay in person, pay in cash at some convenience stores, and pay by credit card.*

Motion: Kevin Ruegg moved to request the SRL-Limited Jurisdiction Court Workgroup investigate the technological and cost issues of this type of software and to determine whether it is in Arizona's best interest to pilot this type of technology in some jurisdictions.

Seconded: Judge Kreamer. **Vote:** Unanimous.

D. Report on the Fair Justice for All Task Force

Dave Byers, AOC Executive Director and Chair of the [Fair Justice for All Task Force](#), presented a summary of the task force's recommendations that are necessary to effectuate statewide changes and to reform the current criminal justice system. Mr. Byers outlined core values and introduced a two-component solution to achieve justice for all by creating reasonable sanctions and implementing pretrial bail reform.

Mr. Byers reviewed the average cost of a traffic ticket and illustrated how a small ticket can become a big problem later and have catastrophic consequences for low-income individuals. Although there should be consequences if a person breaks the law, criminal fines and penalties should not promote a cycle of poverty by imposing excessive amounts or unduly restricting people's ability to be gainfully employed. Mr. Byers highlighted the following principles to create reasonable sanctions as the first part to achieving justice for all:

1. Judges need discretion to set reasonable penalties–Legislative changes are needed for judges to mitigate mandatory minimum fines, fees, surcharges, and penalties for those it would cause undue economic hardship.
2. Provide convenient payment options and reasonable time payment plans–Test techniques that make it easier for defendants to make payment.
3. Provide alternatives to paying a fine–Allow judges additional discretion to convert fines into restitution hours and apply to sentences imposed by Superior Courts.
4. Employ practices that promote voluntary appearance–Implement an interactive messaging system that reminds defendants of court dates and missed payments.
5. Suspension of a driver’s license should be a last resort–The first offense of driving on a suspended license should be a civil violation rather than a criminal offense.
6. Non-jail enforcement alternatives should be available–Restitution court and the FARE program provide non-jail and less costly compliance alternatives.
7. Special needs offenders should be addressed appropriately–People suffering from mental illness or drug addiction should be handled differently.

He noted that even short periods of pretrial incarceration cause collateral damage in terms of loss of employment, economic hardship, loss of place of residence, and inability to care for children or family, as well as the likelihood to commit new crimes before trial.

The second part to achieving justice for all is to implement pretrial reforms by eliminating money for freedom to the greatest extent possible and shifting from bail and bond to risk-based release criteria.

8. Detaining low- and moderate-risk defendants causes harm and higher rates of new criminal activity–Eliminate the use of non-traffic criminal bond schedules.
9. Only defendants who present a high risk to the community or individuals who repeatedly fail to appear in court should be held in custody–Amend the Arizona Constitution to expand the use of detention without the requirement for money bail.
10. Money bond is not required to secure appearance of defendants–The bond should be actual cash with the amount paid returned to the defendant if charges are not filed, the person is found innocent, or if no violations of the release conditions occur.
11. Release decisions must be individualized and based on a defendant’s level of risk–Expand the use of the Public Safety Assessment (PSA), a validated pretrial risk assessment tool, to limited jurisdiction courts.

Motion: Judge Winthrop moved to recommend that the ACAJ support the recommendations of the Fair Justice for All Task Force and approve the filing of a rule petition to implement the recommendations and approve the inclusion of the legislative proposals in the AJC package for next session.

Seconded: Judge Cruz. **Vote:** Unanimous.

E. Report on Law4AZ Project (*item out of order*)

Jonathan Voigt, State Library of Arizona, reported on the progress of the Law4AZ project, which trains public library staff to answer law-related questions from the public. The training has occurred in all counties, except La Paz, and consists of in-person and webinar sessions that differentiate between legal information v. legal advice, and help locate

available resources. Mr. Voigt outlined the plan for next year to continue trainings to maintain the knowledge base; establish a lawyers-in-the-library program; and establish a mini self-help center to help the public access forms and court information.

Member Comments:

- Judge Winthrop thanked Shawn Friend for her assistance with training the librarians and followed up on John Phelps' previous offer for the State Bar to help libraries connect with attorneys for clinics and programs.

F. Proposed rule change petition regarding stipulated judgments in eviction actions

Ellen Katz and Pamela Bridge, Community Legal Services, Inc., presented a proposed rule change regarding stipulated judgments in eviction actions, which was previously discussed with the SRL-Limited Jurisdiction Courts Workgroup and further amended by a sub-workgroup. The proposal is intended to protect tenants who sign a stipulated judgment. The proposal will require the tenant to physically appear in front of the judge who will determine if the tenant understands what they signed since the tenant is waiving the right to appeal. The presenters requested that the proposed rule change be filed under the ACAJ's name.

Member comments:

- Members raised procedural questions and concerns about the timing of the proposal and whether tenants signing stipulated judgements without understanding their rights is a problem only in Maricopa County justice courts.

Motion: Mike Baumstark moved to support the proposed rule change in concept, however, to continue to circulate to stakeholders for more vetting, and to be reconsidered at the November meeting.

Seconded: John Phelps. **Vote:** Unanimous.

G. Update on the AZCourtHelp.org website

Judge Winthrop reported that the website is proceeding forward but is not yet operational.

H. Report from *Pro Bono* Service and Funding Workgroup

This agenda item was tabled to the next meeting.

III. OTHER BUSINESS

A. Good of the Order/Call to the Public

None present.

B. Next Committee Meeting Date

Wednesday, November 9, 2016
10:00 a.m. to 2:00 p.m.
State Courts Building, Room 119
1501 W. Washington Street
Phoenix, AZ 85007

The meeting adjourned at 2:10 p.m.



Support Access to Justice through the Arizona Charitable Tax Credit

Roughly 25% of Arizonans have an income stream that qualifies them for free civil legal aid services. But, for every 3 people in Arizona who realize they have a legal problem and contact a legal aid office, **2 must be turned away because of a lack of resources.**



YOU CAN DECIDE HOW YOUR TAX DOLLARS ARE SPENT

Charitable Tax Credit donations directly reduce the amount you owe and let you direct where your funds go!

You can help more people receive services by designating where \$400 (single) or \$800 (married filing jointly) of your taxes owed go! **Give to an approved legal aid agency** (see other side) and the amount you give will reduce the tax you owe.

That simple.



For more information on the Charitable Tax Credit visit the Arizona Department of Revenue at www.azdor.gov. This credit is in addition to the school tax credits. Please consult your tax advisor for details

Page 9 of 158

To make a donation go online to www.azflse.org/legalaid

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Arizona Women's Education & Employment Inc.

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Tucson Family Advocacy Program (SALA)

William E. Morris Institute for Justice



I am joining the Campaign– Justice with Arizona Charitable Tax Credit!

Donate online at www.azflse.org/legalaid

Donate by April 15th and you'll have the added satisfaction of knowing your money is helping Arizona's working poor get the legal assistance they need to solve housing, health care and benefits challenges. You no longer need to itemize deductions to claim this credit!

2016-17 State Tax Credit Presentation

(5 minutes)

1. Our poverty population numbers have improved somewhat over the last year, but still are persistently higher than the national average (14-15% nationally; 17-18 per cent, Arizona). In all, **over 1 million Arizonans live at or below the federal poverty level.**
2. Our numbers are higher because of **demographics**: a significant percentage of Arizona's population is both very young and very old, and we have a larger percentage of Native Americans, many of whom have incomes significantly below the federal poverty level.
3. This population has all the same civil legal challenges that the rest of us may face, affecting our access to housing, health care, employment, education, protection from unscrupulous businesses, and entitlement to applicable government benefits. The difference here is that these folks have no margin for error, and the loss of one or more of these basic necessities can mean homelessness or worse.
4. At the same time, the trend that started 5-6 years ago with the advent of the recession where a greatly increased number of litigants are self-

represented, has persisted. In 80% of the family court cases across the state (and nationally) one of both parties are representing themselves.

5. What about legal aid lawyers? Don't many of these litigants qualify for free legal services? We have relatively few legal aid lawyers to serve the civil legal needs of this population, and those entities just don't have the financial resources to meet the burgeoning need.

6. **Traditional funding for legal aid** comes from Congress via the Legal Services Corporation, and from interest on lawyer trust accounts (IOLTA). **Congressional funding** has been politicized since President Reagan came to Washington in the 80's, and has not seen meaningful increases since then. **IOLTA funding**, tied to the federally-imposed interest rate dropped during the recession to essentially zero, and the Federal Reserve has been exceptionally cautious about raising it, although the tea leaves suggest a tiny increase may come our way in December. IOLTA revenues in Arizona dropped from \$225,000 per month in 2009 to \$40,000 a month today.

7. But the **good news** is that the legislature has created a **state income tax credit** for donations made to **qualifying charitable organizations**, many of whom provide legal services to the poor.

8. In its 5-year Strategic Agenda, the Supreme Court made **access to justice its number one goal**. When it then created the Arizona Commission on Access

to Justice, it specifically directed us to promote the state tax credit available for these types of donations.

9. And, the **even better news** is that, in the last legislative session, the legislature **doubled** the amount we can donate and qualify for the credit (from \$200 to \$400 for a single filer, and from \$400 to \$800 for joint filers), and they **extended the time** we can make that donation from December 31 to April 15, and we can choose which taxable year we want to utilize the credit.

10. And, this credit is **separate and apart** from the tax credits available for donations to schools and to foster care organizations.

11. You have in front of you the **flyer** that briefly describes the tax credit program, identifies those non-profit entities that have been qualified by ADOR under this program, and provides the web link you can utilize to make the donation, or donations, as you can split this up any way you choose.

12. Please consider taking advantage of this tax credit opportunity, and persuade your family and friends to do the same. Your donations may well make the difference in our neighbor's ability to stay in their home, to keep a job, to have access to health care, obtain the educational and other governmental benefits that they and their families are entitled to.

Arizona Commission on Access to Justice

Meeting Date: November 9, 2016	Type of Action Requested: <input type="checkbox"/> Formal action or request <input checked="" type="checkbox"/> Information only <input type="checkbox"/> Other	Subject: Report from <i>Pro Bono</i> Service and Funding Workgroup
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From: Pro Bono Service and Funding Workgroup

Presenters: Judge Joseph Kreamer

Discussion: Judge Kreamer will update the commission on the workgroup's meeting that took place on August 10.

Recommended motion: Informational only

Arizona Commission on Access to Justice

Meeting Date: November 9, 2016	Type of Action Requested: <input type="checkbox"/> Formal action or request <input checked="" type="checkbox"/> Information only <input type="checkbox"/> Other	Subject: Update on the AZCourtHelp.org website
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From: Judge Winthrop and Kevin Ruegg

Presenters: (same)

Discussion: Judge Winthrop and Kevin Ruegg will update the commission on the AZCourtHelp.org website.

Recommended motion: none at this time.



“Soft opening” Oct 1, 2016
Actual launch scheduled for Jan 2017

Google analytics for October: 194 unique users; 320 sessions; 2,247 page views; 278 sessions using desktops, 40 mobile devices, and 2 tablets; 139 page views for forms and 66 for find-my-court

Highlighted Features

- Chat function with law librarians
- Find my court
- Translation automatic and ‘enhanced’ for legal terms
- Glossary: highlighted in text and allows for multiple glossaries
- Legal Talks publicized and accessed

Arizona Commission on Access to Justice

Meeting Date: November 9, 2016	Type of Action Requested: <input checked="" type="checkbox"/> Formal action or request <input type="checkbox"/> Information only <input type="checkbox"/> Other	Subject: Report from the Self-Represented Litigants in Limited Jurisdiction Workgroup
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From: Mike Baumstark and Paul Julien

Presenters: (same)

Discussion: The presenters will update the commission on the pending rule petition R-16-0040 regarding mandatory eviction forms, the comments received and reply to submit. The deadline for comments was November 4, 2016. The Court is anticipated to consider this petition in December.

Recommended motion: To support the filing of the proposed commission's reply, as presented.

Hon. Lawrence Winthrop
1501 W Washington, Suite 410
Phoenix, AZ 85007

IN THE SUPREME COURT STATE OF ARIZONA

PETITION TO AMEND RULES	)	Supreme Court No. R-_____
5(a), 5(b)(6), 5(b)(7) AND ADD	)	(Expedited Adoption
RULES 13(h) AND 20, OF THE	)	Requested)
RULES OF PROCEDURE FOR)	
EVICITION ACTIONS)	

Petitioner is the Arizona Commission on Access to Justice (hereinafter “ACAJ”) through its Chair undersigned. Petitioner requests this Court amend Rules 5(a), 5(b)(6), and 5(b)(7), and add new Rules 13(h) and 20 to the Rules of Procedure for Eviction Actions. Most significantly, the new Rule 20 would require litigants to use court-approved eviction action forms and authorizes the Administrative Director of the Administrative Office of the Courts (AOC) to approve and modify eviction action forms in response to changes in state laws or procedures, to make other necessary amendments or technical corrections, and to add or delete eviction action forms as may be appropriate. The new Rule 20 will apply to the following forms in eviction actions:

- Eviction Action Complaint;
- Eviction Action Summons;

- Eviction Action Judgment;
- 5-Day Notice to Move - Health and Safety Violation;
- 5-Day Notice to Move - Failure to Pay Rent;
- 10-Day Notice to Move - Material Breach;
- 10-Day Notice to Move - Repeat Material or Health and Safety Breach;
and
- Immediate Notice to Move - Material and Irreparable Breach
- Other notices that are later approved by the Administrative Director

Petitioner also proposes changes and additions to Rules 5(a) and (b), and 13 addressing the summons, complaint, and form of judgment to reference the new Rule 20 requirements for mandatory forms.

I. Background and Purpose 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 and the efficient processing of eviction cases. The Supreme Court's access to justice initiative also sought to ensure that court forms and information, whether in electronic or paper form, are easily understandable. In March 2015, the Arizona Judicial Council

approved in concept an ACAJ revision to eviction action forms to make them easier to read and understand. Thereafter, the Self-Represented Litigant in Limited Jurisdiction Courts Workgroup (SRL-LJC WG) of the ACAJ worked with justice court managers, judicial staff, and tenant and landlord attorneys, all with subject-matter expertise in landlord-tenant matters, to create forms for use statewide.

The proposed forms are based on the most frequently used forms available in Maricopa County Justice Courts. The workgroup vetted them for feedback and suggestions through, among others, the Arizona Justice of the Peace Association and other Maricopa County Justices of the Peace.

At its May 18, 2016 meeting, ACAJ concluded the forms should be mandated rather than optional to better promote improved readability of and consistency in forms used by attorneys, landlords and judges; and to allow for standardized and timely updating. These benefits are all in keeping with the Supreme Court's access to justice initiative.

The ACAJ unanimously approved the filing of this petition and authorized AOC staff to circulate the petition and forms among the appropriate AJC and State Bar standing committees for further comment. Petitioner is attaching the draft forms proposed for adoption by the Administrative Director as Appendix B to aid in the court's deliberations and allow public comment on the forms as well as the rule amendments. Public comments on the forms will be provided to the

Administrative Director for his consideration.

II. Request for Expedited Adoption

In fiscal year 2015, almost 84,000 eviction actions were filed in Justice Courts in Arizona; almost 64,000 were filed in Maricopa County alone. The overwhelming majority of these actions concern residential leases with most tenants and many landlords appearing without legal representation. This means that every month that passes, approximately 7,000 eviction actions are being filed in Arizona. In light of the Supreme Court's emphasis on increasing fairness and justice in eviction actions, the ACAJ believes use of the proposed mandatory forms is an urgent need that warrants expedited consideration and adoption of the proposed new rules and amendments outside of the annual rule processing cycle, as permitted by Supreme Court Rule 28(G).

Accordingly, Petitioner respectfully requests the Court modify the usual comment schedule as follows:

September 23: Comments to the petition due

November 4: Petitioner's reply to comments due

This proposed schedule will then allow the Court to address the petition, comments, and replies in December 2016. Additionally, Petitioner recognizes the need for and requests a delayed effective date of July 1, 2017 in order to allow courts,

lawyers, and the public sufficient time to transition to using the newly adopted forms.

III. Conclusion

For the reasons stated above, the ACAJ respectfully requests the Supreme Court to adopt the amendments contained in Appendix A as proposed on an expedited basis.

RESPECTFULLY SUBMITTED this ____ day of _____, 20__.

By: _____
Judge Lawrence Winthrop
Chair, Arizona Commission on
Access to Justice

APPENDIX A

Rules of Procedure for Eviction Actions

Rule 5. Summons and Complaint: Issuance, Content and Service of Process

a. Summons. The summons in an eviction action shall be a document separate from the complaint, shall be issued in accordance with applicable statutory provisions, ~~and~~ shall identify the defendants to the action, and shall be in the approved form referenced in Rule 20 of these rules. If the name of a defendant is unknown, the summons and complaint may name a fictitious defendant and any occupants of the property. The court shall liberally grant leave to amend the complaint and summons to reflect the true names of defendants if they become known to the plaintiff. The summons shall also include the following:

- (1) Name of the court and its street address, city, and telephone number;
- (2) Date and time set for the trial of the matter;
- (3) Notice that if the tenant fails to appear, a default judgment will likely be entered against the tenant, granting the relief specifically requested in the complaint, including removing the tenant from the property; and
- (4) A disclosure in substantially the following form: “Requests for reasonable accommodation for persons with disabilities should be made to the court as soon as possible.”
- (5) In residential property actions only, on a separate page served upon the tenant, the information contained in the Residential Eviction Procedures Information Sheet substantially in the form included as Appendix A to these Rules.

b. Complaint. The complaint shall:

- (1) Be brought in the legal name of the party claiming entitlement to possession of the property.
- (2) Include the business name, if any, and address of the property;
- (3) If an attorney represents the plaintiff, state the name, address, telephone number, and Bar number of the attorney in the upper left hand corner;
- (4) If the plaintiff is unrepresented, state the plaintiff's address, name and telephone number in the upper left hand corner;
- (5) State that the property in question is located within the judicial precinct where the complaint is filed;
- (6) ~~State in bold print, capitalized, and underlined at the top center of the first page, below the case caption, “YOUR LANDLORD IS SUING TO HAVE YOU EVICTED. PLEASE READ CAREFULLY”;~~ Be in the approved form referenced in Rule 20 of these rules;
- (7) State the specific reason for the eviction; that the defendant was served a proper notice to vacate, if applicable; the date the notice was served; and what manner of service was used. A copy of the notice shall be ~~attached as an exhibit to the complaint in the approved form as referenced in Rule 20 of these rules shall be attached as an exhibit to the complaint.~~
- (8) Be verified. This means that the attorney signing the complaint shall verify that the attorney believes the assertions in the complaint to be true on the basis of a reasonably diligent inquiry.

c. – g. [no change]

Rule 13. Entry of Judgment and Relief Granted

a. – g. [no change]

h. The judgment must be in the approved form referenced in Rule 20 of these rules.

Rule 20. Forms.

- a. **Mandated Forms.** Attorneys representing landlords, landlords filing *pro per*, and judges and court staff must use, as appropriate, the eviction forms approved by the Administrative Director of the Administrative Office of the Courts, listed in subsection (b) and made available at www.azcourts.gov. The Administrative Director of the Administrative Office of the Courts is authorized to modify these forms in response to changes in state laws or procedures, to make other necessary administrative amendments or technical corrections, or to add or delete forms as may be appropriate. Upon a showing of good cause and in the interest of justice in a particular case, the court may permit use of a form other than the approved form the court finds to be consistent with law as the approved form.
- b. **Types of Forms.**
- (1) Eviction Action Complaint;
 - (2) Eviction Action Summons;
 - (3) Eviction Action Judgment;
 - (4) 5-Day Notice to Move - Health and Safety Violation;
 - (5) 5-Day Notice to Move - Failure to Pay Rent;
 - (6) 10-Day Notice to Move - Material Breach;
 - (7) 10-Day Notice to Move - Repeat Material or Health and Safety Breach; and
 - (8) Immediate Notice to Move - Material and Irreparable Breach
 - (9) Other notices that are approved by the Administrative Director of the AOC.
- c. **No Charge for Forms.** Courts must provide all eviction action forms without charge.

() - _____
Attorney for Plaintiff / Address / Phone / Bar Number

Justice Courts, Arizona

CASE NUMBER: _____

() - _____
Plaintiff(s) Name / Address / Phone

() - _____
Defendant(s) Name / Address / Phone

COMPLAINT (Eviction Action)

Immediate Residential Mobile Home Commercial

YOUR LANDLORD IS SUING TO HAVE YOU EVICTED, PLEASE READ CAREFULLY THE ALLEGATIONS AGAINST YOU LISTED BELOW.

1. This court has jurisdiction to hear this case. The rental is within this court's judicial precinct and is located at: _____ . The business name of the property, if any, is _____ .
2. The Plaintiff wants you evicted and wants possession of the rental because of the reasons in section 5.
3. Any required written notice was served on the Defendant on _____ and was served: by hand, or by certified mail.
4. A copy of the notice that was served is attached.
5. The Plaintiff is the owner or is authorized by law to file this case on behalf of the owner.

The Plaintiff claims (check and complete all that apply):

Subsidized Housing. Total rent per month is \$ _____ . Tenant's portion of rent per month is \$ _____ .

RENT OWED: The Defendant has failed to pay the rent owed. The rent is unpaid since _____. There is a prior unpaid balance of \$ _____. The rental agreement requires rent of \$ _____ to be paid on the _____ day of each month week. The rental agreement provides for late fees calculated in the following manner: _____ .

Notice: If you are a residential tenant and the only claim your landlord makes is that you have not paid your rent, you may contact your landlord or your landlord's attorney and offer to pay all of the rent due, plus any reasonable late fees, court costs and attorney's fees. If you pay these amounts before a judgment is entered, then this case will be dismissed and your rental agreement will be reinstated and will continue.

NON-COMPLIANCE: After getting a notice, the Defendant failed to do the following:

_____ on this date: _____ , at the following location _____ .

IRREPARABLE BREACH: The Defendant has committed a material and irreparable breach.

Specifically, on this date _____ , at the following location _____ the Defendant did the following: _____

[] OTHER: State the date, place and reason for eviction:

6. As of the filing date the Defendant owes the following:

Rent (Current and Prior Months) Totaling....	\$ _____
Late Fees: (if any in written agreement).....	\$ _____
Concessions (if any in written agreement)....	\$ _____
Reimbursable Court Costs.....	\$ _____
Attorney's Fees (if allowed).....	\$ _____
Other (as authorized by law).....	\$ _____
Total Amount Requested.....	\$ _____

7. The Plaintiff requests a Judgment for the amounts owed above and for possession of the rental.

8. WRIT OF RESTITUTION: The Plaintiff requests the court issue a Writ of Restitution returning the rental to the Plaintiff's possession 5 calendar days after the date the Judgment. If the eviction is for the material and irreparable breach explained above, return of possession is requested 12 to 24 hours from the time of the Judgment.

9. By signing this complaint, I am agreeing that the allegations written are true and correct to the best of my knowledge.

Date: _____

Plaintiff

Justice Courts, Arizona

CASE NUMBER: _____

() _____ - _____
Plaintiff(s) Name / Address / Phone

() _____ - _____
Defendant(s) Name / Address / Phone

SUMMONS (*Eviction Action*) [] Amended

THE STATE OF ARIZONA TO THE DEFENDANT(S) NAMED ABOVE. YOU ARE HEREBY SUMMONED TO APPEAR.

An **Eviction Case** has been filed against you. A court hearing has been scheduled.

Date: _____ Time: _____
At the (*court name*): _____
Courtroom: _____ Floor: _____
Please arrive early.

REQUESTS FOR REASONABLE ACCOMMODATIONS FOR PERSONS WITH DISABILITIES SHOULD BE MADE TO THE COURT AS SOON AS POSSIBLE.

If an interpreter is needed, please contact the court listed above as soon as possible.

1. You have a right to come to court.
2. If you do not agree with the claims against you on the attached complaint, you must come to court at the date, time, and location listed above and explain your reasons to the judge.
3. If you do not agree with the claims in the complaint, you also may file a written answer admitting or denying some or all the claims and pay the answer fee. (see number 5)
4. If you want to file a counterclaim, it must be in writing.
5. If you cannot afford the filing fee, you may apply for a deferral or waiver of the filing fee at the court.
6. **IF YOU FAIL TO APPEAR**, a judgment will likely be entered against you, granting the relief specifically requested in the complaint, including removing you from the rental.
7. To learn more see the attached Residential Eviction Information Sheet or contact the court.

The laws about this case are found in the Arizona Residential Landlord and Tenant Act. For more information on the Act, eviction actions, and your rights, please visit the Arizona Department of Housing website at <https://Housing.AZ.Gov>, the Maricopa County Justice Courts website at www.JusticeCourts.Maricopa.Gov, or AZLawHelp.org

Date: _____ Justice of the Peace _____

Justice Courts, Arizona

CASE NUMBER: _____

() -
Plaintiff(s) Name / Address / Phone

() -
Defendant(s) Name / Address / Phone

JUDGMENT (Eviction Action) [] Amended

This matter was heard by the Court on this date: _____

Plaintiff appeared [] in person [] by counsel [] failed to appear

Defendant appeared [] in person [] by counsel [] failed to appear

If required by law, Defendant [] was [] was not given proper notice and the opportunity to cure.

Defendant [] was [] was not properly served with the Summons and a copy of the complaint at least two (2) days prior to Court date.

If a partial rent payment was accepted, [] a non-waiver was produced [] a non-waiver was NOT produced.

Defendant pleads [] NOT GUILTY/NOT RESPONSIBLE [] Defendant has filed a counterclaim.
[] GUILTY/RESPONSIBLE

Defendant was found [] GUILTY/RESPONSIBLE [] NOT GUILTY/NOT RESPONSIBLE of:
[] RENT OWED [] NON-COMPLIANCE [] IRREPARABLE BREACH
[] OTHER

[] IT IS HEREBY ORDERED granting judgment on the complaint to [] Plaintiff [] Defendant

[] IT IS FURTHER ORDERED granting judgment on the counterclaim to [] Plaintiff [] Defendant

[] IT IS FURTHER ORDERED granting possession of the rental to [] Plaintiff [] Defendant

[] **IT IS FURTHER ORDERED granting monetary judgment to:**

[] Plaintiff(s)

1. \$ _____ Rent
 2. \$ _____ Late charges
 3. \$ _____ Court cost
 4. \$ _____ Rental Concessions
 5. \$ _____ Damages
 6. \$ _____ Attorney fees
 7. \$ _____ Other _____
- \$ _____ **TOTAL**

[] Plaintiff awarded nothing

[] Defendant(s)

1. \$ _____ Court cost
 2. \$ _____ Damages
 3. \$ _____ Attorney fees
 4. \$ _____ Other: _____
- \$ _____ **TOTAL**

[] Defendant awarded nothing

With interest at the rate of _____% per annum from the date of judgment until paid in full.

A Writ of Restitution (order to vacate rental) shall be granted upon request of the Plaintiff on:

Date: _____ Time: _____
(No sooner than five (5) calendar days after date of judgment)

The court finds that the defendant has committed a material and irreparable breach, in violation of A.R.S. §33-1368A, and a Writ of Restitution (order to vacate rental) shall be granted on:

Date: _____ Time: _____
(No sooner than 12 - 24 hours from the time of judgment)

WARNING: After service of the Writ of Restitution (order to vacate rental), if you remain on or return unlawfully to the rental, you will have committed criminal trespass in the third degree.

IT IS ORDERED dismissing this case with prejudice without prejudice

Date: _____ Signature: _____
Justice of the Peace

I CERTIFY that I delivered/mailed a copy of this document to:

Plaintiff at the above address Plaintiff's attorney Defendant at the above address

Date: _____ By: _____
Clerk

**Notice of Health and Safety Violation(s)
5 Day Notice to Move**

() _____ - _____
Tenant(s) Name / Address / Phone

() _____ - _____
Landlord(s) or Agent's Name/ Address / Phone

Notice Date: _____

You have violated your rental agreement. The following is what happened, where it happened and when. Attach additional sheet(s) if needed. _____

Your landlord may file an eviction action asking the judge to order you to move unless you do one of the following:

1. Fix the violation(s) within 5 calendar days of receiving* of this notice.
2. Move out of the rental and **return the keys** to the landlord within 5 calendar days of receiving* this notice.
3. Contact the landlord and settle this matter. It is best to get this agreement in writing signed by both you and the landlord.

**If this notice was hand-delivered, you have 5 calendar days to act from the date you or members of your household received the notice. If this notice was sent by certified mail, you have 5 calendar days to act from the date you signed the postal service green card or 10 calendar days from the date the envelope was post-marked, whichever comes first.*

If you do not fix the violation(s), move out of the rental and return the keys, or settle this matter (it is best to get this agreement in writing), the landlord may file an eviction action. If an eviction is filed, you have the right to appear in court and dispute the eviction action. After a hearing, the judge will decide if you have to move or can remain in the rental. If a judgment is entered against you, you may remain in the rental property only if the landlord agrees in writing to let you stay.

WARNING: If there is **another or similar violation** during the rest of the rental agreement, your landlord may give you a notice requiring you to move within 10 calendar days. If you do not move, the landlord may file an eviction action.

Date: _____ Signature: _____
[] Landlord [] Agent

This notice is served by:
[] Hand delivery to (name): _____ who is the [] tenant [] occupant
[] By certified mail (mail receipt #): _____

**Notice for Failure to Pay Rent
5 Day Notice to Move**

() _____ - _____
Tenant(s) Name / Address / Phone

() _____ - _____
Landlord(s) or Agent's Name/ Address / Phone

Notice Date: _____

You have not paid your rent. You owe the following rent:

Total owed \$ _____ **as of this date:** _____. *If late fees are allowed in the rental agreement, this amount will increase by \$_____ each day the rent is not paid.*

The total includes:

A. Rent \$ _____

- 1. Current month/week \$ _____
- 2. Prior month \$ _____
- 3. Other \$ _____ why _____ . (Must be listed in rental agreement.)

B. Late Fees (if allowed in rental agreement) are \$ _____ **per day for** _____ **days, which is a total of \$** _____ **as of the date of this notice.**

Your landlord may file an eviction action asking the judge to order you to move unless you do one of the following:

- 1. Pay the total owed within 5 calendar days of receiving* this notice.
- 2. Move out of the rental and **return the keys** to the landlord within 5 calendar days of receiving* this notice. (You may still be responsible for the total owed.)
- 3. Contact the landlord and settle this matter. It is best to get this agreement in writing signed by both you and the landlord.

**If this notice was hand-delivered, you have 5 calendar days to act from the date you or members of your household received the notice. If this notice was sent by certified mail, you have 5 calendar days to act from the date you signed the postal service green card or 10 calendar days from the date the envelope was post-marked, whichever comes first.*

If you do not pay the amount owed, move out of the rental and return the keys, or settle this matter (it is best to get this agreement in writing), the landlord may file an eviction action. If an eviction is filed, you have the right to appear in court and dispute the eviction action. The judge will decide if you have to move or can remain in the rental. If a judgment is entered against you, you may remain in the rental property only if the landlord agrees in writing to let you stay.

Date: _____ Signature: _____
[] Landlord [] Agent

This notice is served by:
[] Hand delivery to (name): _____ who is the [] tenant [] occupant
[] By certified mail (mail receipt #): _____

() - _____
Tenant(s) name/address/phone

() - _____
Landlord(s) or Agent name/address/phone

Notice Date: _____

You have violated your rental agreement. The following is what happened, where it happened and when.
Attach additional sheet(s) if needed.

Your landlord may file an eviction action asking the judge to order you to move unless you do one of the following:

1. Fix the violation(s) within 10 calendar days of receiving* this notice.
2. Move out of the rental and **return the keys** to the landlord within 10 calendar days of receiving this notice.
3. Contact the landlord and settle this matter. It is best to get this agreement in writing signed by both you and the landlord.

**If this notice was hand-delivered, you have 10 calendar days to act from the date you or members of your household received the notice. If this notice was sent by certified mail, you have 10 calendar days to act from the date you signed the postal service green card or 15 calendar days from the date the envelope was post-marked, whichever comes first.*

If you do not fix the violation(s), move out of the rental and return the keys, or settle this matter (it is best to get this agreement in writing), the landlord may file an eviction action. If an eviction is filed, you have the right to appear in court and dispute the eviction action. After a hearing, the judge will decide if you have to move or can remain in the rental. If a judgment is entered against you, you may remain in the rental property only if the landlord agrees in writing to let you stay.

WARNING: If there is **another or similar violation** during the rest of the rental agreement, your landlord may give you a notice requiring you to move within 10 calendar days. If you do not move, the landlord may file an eviction action.

Date: _____ Signature: _____
[] Landlord [] Agent

This notice is served by:
[] Hand delivery to (name): _____ who is the [] tenant [] occupant
[] By certified mail (mail receipt#): _____

() _____ - _____
Tenant(s) name/address/phone

() _____ - _____
Landlord(s) or Agent name/address/phone

Notice Date: _____

You have violated your rental agreement again. **This violation cannot be fixed. Your landlord wants you to move out now and return the keys within 10 calendar days.**

The first violation was on this date _____. Attached is a copy of the first notice. The second same or similar violation was on this date _____.

This is what happened, when it happened and where it happened (Attach additional sheet(s) if needed):

Your landlord is ending your rental agreement and your right to live in the property.

If you do not move out of the rental and return the keys within 10 calendar days of receiving* this notice, your landlord may file an eviction action against you. If an eviction is filed, you have the right to appear in court and dispute the eviction action. After a hearing, the judge will decide if you have to move or if you can remain in the rental. If a judgment is entered against you, you may remain in the rental property only if the landlord agrees in writing to let you stay.

**If this notice was hand-delivered, you have 10 calendar days to act from the date you or members of your household received the notice. If this notice was sent by certified mail, you have 10 calendar days to act from the date you signed the postal service green card or 15 calendar days from the date the envelope was post-marked, whichever comes first.*

Date: _____ Signature: _____
[] Landlord [] Agent

This notice is served by:
[] Hand delivery to (name): _____ who is the [] tenant [] occupant
[] By certified mail (mail receipt #): _____

() _____ - _____
Tenant(s) name/address/phone

() _____ - _____
Landlord(s) or Agent name/address/phone

Notice Date: _____

You have violated your rental agreement. **The violation(s) cannot be fixed. Your landlord wants you to move out now and return the keys immediately.** The following is what happened, where it happened and when. Attach additional sheet(s) if needed.

_____.

An eviction action may be or has been filed against you. If an eviction action has been filed, you have the right to appear in court to dispute the eviction action. After a hearing, the judge will decide if you have to move or if you can stay in the rental. If a judgment is entered against you, a Writ of Restitution (a court order to have you removed from the rental) may be issued between 12-24 hours from the date a judgment is signed.

Date: _____ Signature: _____

This notice is served by:
[] Hand delivery to (name): _____ who is the [] tenant [] occupant
[] By certified mail (mail receipt #): _____



September 20, 2016

Arizona Supreme Court
1501 West Washington
Phoenix, Arizona 85007

Re: R-16-0040 Petition to Amend Rules 5(a), 5(b)(6), 5(b)(7) and add Rules 13(h) and 20 of the Rules of Procedure for Eviction Actions

Dear Justices:

The Arizona Association of REALTORS® (“AAR”) is deeply concerned with the pending Petition to Amend Rules 5(a), 5(b)(6), 5(b)(7) and add Rules 13(h) and 20 of the Rules of Procedure for Eviction Actions (the “Petition”), which would require Arizona litigants to use court-approved eviction action forms. These amendments, if adopted, would: (1) deprive Arizona REALTORS® and their clients of the right to use established and proven forms that have stood the test of time; and (2) require the use of forms that are deficient in many ways.

AAR is the largest professional trade association in the state and represents approximately 45,000 real estate brokers, agents, and other individuals involved in the real estate industry. As a member benefit, AAR has created and standardized over 70 forms, including several eviction action forms that would be eliminated under the Petition advanced by the Arizona Commission on Access to Justice (“ACAJ”).

AAR’s standardized property management forms have been successfully used by thousands of REALTORS® in thousands of transactions over the span of many years. In crafting these carefully designed forms, REALTORS®, along with legal counsel, spent countless hours ensuring that the forms are easy to understand, yet comply with eviction laws and Arizona’s Residential Landlord and Tenant Act. Based on the proven effectiveness of these forms, there is no good reason to prohibit their use as a matter of law.

The goals of ACAJ are commendable, including its desire to assist self-represented litigants navigate what can prove to be a challenging process. However, it is unclear why this goal must be achieved at the expense of REALTORS®, their clients, and Arizona attorneys. Why does assisting self-represented litigants necessitate preventing others from using established forms on which they have come to know and rely?

According to the Petition, mandating ACAJ’s proposed forms will “promote improved readability.” However, AAR is of the opinion that its forms are clearer, more effective, and ensure a greater level of compliance than those forms prepared by ACAJ. Arizona REALTORS® receive training on how to use AAR’s landlord-tenant and eviction action forms. This training ensures that they have an in-depth understanding of the forms; knowledge that they are able to share with their clients. Since ACAJ will not be training Arizona’s approximately 45,000 REALTORS® on how to use and understand the forms they have created, it will necessarily result in a level of service to the public lower than what is currently being provided.

As is the case with other respondents who are opposed to the mandatory use of ACAJ's eviction action forms, AAR believes that many of the forms ACAJ has prepared are deficient. So as not to inundate the Court with arguments that have already been advanced by other respondents, I will simply note that AAR is of the position that: (1) the forms are deficient in legal requirements; (2) the "easier to read" language is often misleading; and (3) mandatory forms will discourage the use of third-party professionals.

At first glance, it would appear that many of the notice forms prepared by ACAJ are modeled after the forms utilized by Arizona REALTORS®. But upon closer examination, it is evident that in an effort to make the forms more "readable," ACAJ has removed critical language or simplified the language to the point where its effectiveness is compromised. For example, in reviewing ACAJ's Notice for Failure to Pay Rent 5 Day Notice to Move, several issues quickly become evident.

AAR's concerns with the form begin with its title, which is misleading in nature. The title of the form contains two phrases. They are "Notice for Failure to Pay Rent," and "5 Day Notice to Move," neither of which is appropriate. The intent of the form is not to notify the tenant of their "failure to pay rent." It can safely be assumed that tenants in default are already aware of this fact. The purpose of the form is to notify the tenant of the landlord's intentions in the event that rent is not paid within the stated timeframe. More specifically, the form should act as a notice of the landlord's intention to terminate the lease if payment is not made. It is therefore unclear why the term "Notice for Failure to Pay Rent" appears in the form's title.

As for the second portion of the title, it includes the verbiage "5 Day Notice to Move." This clearly implies that the Landlord is instructing the tenant to vacate the property within five days. However, that is not the intention of the notice, nor does it reflect the wishes of the landlord. In delivering this form, the landlord's desire is to obtain the rent that is due, not instruct the tenant to vacate the property. Unfortunately, the title of the form suggests otherwise.

The Notice for Failure to Pay Rent 5 Day Notice to Move also fails to notify the tenant that after a special detainer action is filed, in order to reinstate the lease they may be required to pay damages, attorney fees and court costs. In an effort to "promote improved readability," ACAJ has failed to include this critical language. As a result, tenants are not advised of the important fact that they may be responsible for more than unpaid rent and late fees. While simplicity can prove beneficial in certain circumstances, it is not advantageous when it results in the elimination of material information.

The aforementioned form is just one of several problematic forms ACAJ seeks to make mandatory. While I will not point out the deficiencies in each and every form, AAR echoes the concerns raised by several of the other respondents.

Finally, all Arizona REALTORS® subscribe to and are bound by the National Association of REALTORS® Code of Ethics. Under Article 11 of the Code of Ethics, REALTORS® are prohibited from providing professional services outside their field of competence. Similarly,

Article 13 prohibits the unauthorized practice of law and requires REALTORS® to recommend the retention of legal counsel when the interest of any party to the transaction requires it.

Based in part on these Articles, Arizona REALTORS® routinely advise landlords to retain legal counsel should they wish to pursue an eviction action, and believe that doing so is in the landlord's best interest. AAR is concerned that the formation and required use of a standard eviction action complaint and summons will decrease the use of attorneys. After all, why would a landlord retain counsel if that attorney were required to use the very same complaint and summons that is already available to them? However, if attorneys are permitted to continue to craft their own complaints specific to the individual landlord's case, the use of an attorney would be more likely, resulting in landlords who better understand their legal rights and obligations.

Given the foregoing reasons, AAR respectfully requests that the Supreme Court decline to amend Rules 5(a), 5(b)(6), and 5(b)(7), and decline to add new Rules 13(h) and 20 to the Rules of Procedure for Eviction Actions. Thank you for giving this letter your attention.

Sincerely,

Scott M. Drucker, Esq.



General Counsel
Arizona Association of REALTORS®

cc: K. Michelle Lind, CEO, Arizona Association of REALTORS®

Cynthia Zwick
Executive Director
Arizona Community Action Association
2700 North Third Street, Ste. 3040
Phoenix, Arizona 85004

IN THE SUPREME COURT STATE OF ARIZONA

PETITION TO AMEND RULES	)	Supreme Court No. R-16-0040
5(a), 5(b)(6), 5(b)(7) AND ADD)	
RULES 13(h) AND 20, OF THE	)	Comments of Arizona
RULES OF PROCEDURE FOR	)	Community Action
EVICITION ACTIONS	)	Association in Support of
_____	)	Petition

Arizona Community Action Association (“ACAA”) submits its comments in support of the petition in this proceeding. The Petitioner has requested that this Court amend Rules 5(a), 5(b)(6), and 5(b)(7), and add new Rules 13(h) and 20 to the Rules of Procedure for Eviction Actions. In particular, new Rule 20 would require litigants to use court-approved eviction action forms and authorizes the Administrative Director of the Administrative Office of the Courts (AOC) to approve and modify eviction action forms in response to changes in state laws or procedures, to make other necessary amendments or technical corrections, and to add or delete eviction action forms as may be appropriate. ACAA believes the proposals set forth in the Petition will benefit the low-income families and individuals served by ACAA’s member organizations.

I. Background on ACAA.

ACAA is a non-profit organization that advocates on behalf of Community Action Agencies and the low-income community throughout Arizona. ACAA works to realize economic equity in the state and works with community partners throughout the State to: educate the community about issues related to poverty, improve public policy, and ensure low-income families have access to the tools needed to become and sustain self-sufficiency.

A large majority of the constituents served by ACAA's members must rent their place of residence. Moreover, having a stable residential address is important in facilitating employment, access to support services and sustaining self-sufficiency. ACAA believes fair and equitable processes designed to reduce evictions are critical in helping to maintain stability for low-income families in many aspects of their lives.

II. ACAA's Comments

As noted in the Petition, standard forms for the eviction process should be mandated rather than optional to better promote improved readability of and consistency in forms used by attorneys, landlords and judges; and to allow for standardized and timely updating. The Petition further notes that in fiscal year 2015, almost 84,000 eviction actions were filed in Justice Courts in Arizona; almost 64,000 were filed in Maricopa County alone. The overwhelming majority

of these actions concern residential leases with most tenants and many landlords appearing without legal representation.

The families and individuals served by ACAA's members struggle every day to put food on the table and pay their bills. Losing their place of residence through eviction can be the last straw leading to homelessness. The eviction process is a daunting process, particularly given the other challenges facing these families and individuals. Having a standard, more understandable eviction process would allow a better opportunity to understand their rights and help mitigate the potential that they be evicted simply because they did not follow the correct process.

Conclusion

ACAA respectfully requests the Supreme Court to adopt the amendments contained in Appendix A to the Petition.

RESPECTFULLY SUBMITTED this 19th day of September, 2016.

By: _____/S/_____
Cynthia Zwick, Executive Director
Arizona Community Action Association

Scott M. Clark (Ariz. Bar No. 6759)
Law Offices of Scott M. Clark, P.C.
3008 N. 44th Street
Phoenix, Arizona 85018-7206
(602) 957-7877
(602) 957-7876 (Facsimile)

IN THE SUPREME COURT OF THE STATE OF ARIZONA

In the Matter of:

**PETITION TO AMEND RULES 5(a),
5(b)(6), 5(b)(7) and ADD RULES 13(h) and
20 of the Rules of Procedure for Eviction
Actions**

No. **R-16-0040**

Comment to Proposed Rule Amendments

Pursuant to Rule 28(D), Rules of the Supreme Court, Scott M. Clark, as counsel for the Arizona Multihousing Association (hereinafter "AMA"), respectfully submits this Comment for the Court's consideration. The AMA opposes the adoption of this petition.

I. STATEMENT OF INTEREST.

The Arizona Multihousing Association ("AMA") is a professional trade association representing over 2,200 members and more than 233,000 rental units in the State of Arizona. Its members include owners of large multi-family properties, property management companies, developers, individual rental owners and the vendors that serve this vital industry. The AMA, which just celebrated its fiftieth anniversary, was formed in 1966 to promote industry professionalism, create educational opportunities, and engage in government relations.

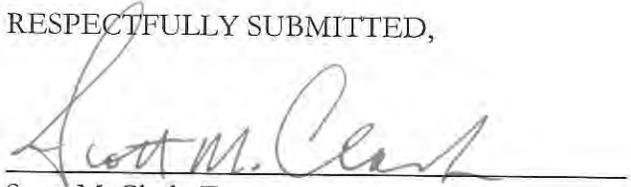
Scott M. Clark is counsel to the AMA and is a member of its Board of Directors. He has represented landlords and property owners for thirty years. He was also one of the participants in the State Bar Landlord/Tenant Task Force, the working group that produced the draft Rules of Procedure for Eviction Actions that this Court reviewed, modified, and subsequently adopted.

//

II. THE AMA JOINS IN THE COMMENT FILED BY ATTORNEYS HENDERSON AND HOLLIDAY.

The AMA hereby joins the comment filed by attorneys Paul A. Henderson and Denise M. Holliday and supports the position they have taken in regard to this matter.

RESPECTFULLY SUBMITTED,



Scott M. Clark, Esq.

9/19/16

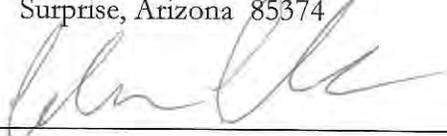
Date

Mailing Declaration

The original of this Comment was filed electronically at rules.azcourts.gov.

Copies of this Comment were mailed to the following recipients:

- Arizona Commission on Access to Justice
c/o Honorable Lawrence Winthrop
1501 W. Washington Street, Suite 410
Phoenix, Arizona 85007
- Honorable Gerald A. Williams
North Valley Justice Court
14264 W. Tierra Buena Lane
Surprise, Arizona 85374

By  _____

On 9-19-16 _____

Pamela M. Bridge (AZ Bar 18252)
COMMUNITY LEGAL SERVICES
305 South Second Avenue
Phoenix, Arizona 85006
(602)258-3434, extension 2650
pbridge@clsaz.org

IN THE SUPREME COURT

STATE OF ARIZONA

**Petition to Amend Rules 5(a), 5(b)(6),
5(b)(7) and ADD RULES 13(h) and 20
of the Rules of Procedure for Eviction
Actions**

Supreme Court No. R-16-0040

**COMMENTS IN SUPPORT OF
PETITION TO AMEND AND ADD TO
THE RULES OF PROCEDURE FOR
EVICTION ACTIONS**

Pursuant to Rule 28 of the Rules of the Supreme Court, Community Legal Services submits these comments in support of the Petition to Amend Rules 5(a), 5(b)(6), 5(b)(7) and ADD RULES 13(h) and 20. The Petition was filed by the Arizona Commission on Access to Justice (hereinafter “ACAJ”). The purpose of the amendments are to assist self-represented litigants by making eviction forms and notices understandable and to facilitate access and the efficient processing of eviction cases. The vast majority of the self-represented litigants in evictions hearings are low income tenants who are denied access to justice unless they are able to meaningfully understand the notices, pleadings and judgments. These comments will also respond to the objections submitted by Denise Holliday, Paul Henderson and Michael Parham.

I. Statement of Interest

Community Legal Services (hereinafter “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. Background

Stanley Silas, CLS Housing Lead Attorney, and Pamela Bridge, CLS Director of Advocacy and Litigation, were asked to participate in the work group to develop notices, pleadings and judgment forms that will further access to justice for self-represented litigants in eviction actions. The group worked extensively on all of the proposed notices, pleadings and judgment. While many of the meetings produced friendly debates about proper wording or interpretation of certain statutes, ultimately, every member of the work group agreed to the notices, pleadings and judgment for use in the special detainers based upon the Arizona Residential Landlord and Tenant Act (hereinafter "ARTLA") before the documents were presented to the ACEJ for their approval.

III. The Notices and Forms should be Mandatory for ARTLA Special Detainers.

A. The notices are only meant to be used for certain ARTLA violations.

There are four residential landlord tenant laws in Arizona: ARTLA applies to the rental of landlord owned dwelling units (ARS § 33-1301 *et seq.*); the Mobile Home Parks Act applies to the rental of a mobile home space in a mobile home park (ARS § 33-1401 *et seq.*); the Long Term RV Rental Space Act applies to the rental of spaces for RV's under rental agreements over of 180 days (ARS § 33-2101 *et seq.*); and the general landlord tenant laws ("the Innkeeper Laws") apply to the rental of RV spaces for short

terms as well as any residential tenancies not otherwise covered by the preceding three laws (ARS § 33-301 *et seq.*).

While there are extensive Mobile Home Park Act cases in eviction proceedings, the majority are ARTLA cases. For this reason, the work group only focused upon ARTLA and the notices are only meant for ARTLA cases.

Additionally, this Petition only involves five notices. The Petition asks that only the following notices be mandatory:

- 5-Day Notice to Move - Health and Safety Violation;
- 5-Day Notice to Move - Failure to Pay Rent;
- 10-Day Notice to Move - Material Breach;
- 10-Day Notice to Move - Repeat Material or Health and Safety Breach;
- Immediate Notice to Move - Material and Irreparable Breach

Of course, outside of this list are other notices such as a non-renewal of lease, etc. The work group focused on these five notices because they are, by far, the most commonly utilized. For any notice outside of these five, landlords will be able to continue to use their own notices.

B. The notices, pleadings and judgment forms must be mandatory.

CLS strongly supports the ACAJ's decision to petition that the proposed forms be mandatory in ARTLA cases.

While CLS may represent tenants in evictions if they have applied for services before the hearing date, unfortunately, many tenants do not ask for assistance until after the hearing. Many of these tenants do not understand the notices and speedy eviction process and as a result, lose their housing. Further, most self-represented tenants cannot

afford an attorney, while most landlords can afford and have an attorney. Without an attorney, it is extremely difficult for tenants to understand and navigate the eviction process within the short time frames.

The notices and pleadings vary from one landlord to the other. Regardless of whether the landlord is represented or not, the notices and complaints currently used by landlords are confusing. They use terms of art and the language requires a higher reading level than many of CLS' clients. Therefore, the current notices and complaints by landlords are creating a barrier to tenants to access the eviction process. While the information on the Residential Eviction Procedures Information Sheet is important and needed, it does not provide all of the critical information for tenants in a clear, accessible manner.

Self-represented tenants' inability to understand the currently used notices and complaints is evidenced by the well documented amount of tenant defaults in Arizona. These are tenants who, for one reason or another, have decided not to access the courts and defend themselves. Surely, the Courts should make sure tenants have all the needed information in a clear, concise manner before they make such a life changing decision.

It is for these important reasons that the ACAJ asked the work group to draft improved notices, pleadings and judgment. If the forms are not mandatory, only the tenants whose landlord chose to use the form will be lucky enough to receive the information in a way they can understand. Don't all tenants in Arizona, regardless of whether they or the landlord are being represented, deserve to be given the same

information? Shouldn't all tenants in Arizona who are facing eviction be given the same, meaningful information?

IV. The Notices are Legally Correct pursuant to ARTLA.

As stated above, the proposed notices are limited to ARTLA violations. By far, the most common reason for evictions are nonpayment of rent under ARTLA.

A. The proposed 5 Day notice allows landlords to make appropriate claims for rent.

In their Comment upon and Objection to Proposed Rule Amendment, Paul Henderson and Denise Holliday allege that the proposed 5 Day Notice to Move- Failure to Pay Rent fails to allow landlords to make certain claims against tenants. Pursuant to A.R.S. § 33-1310 (11), rent "...means payments to be made to the landlord in full consideration for the rented premises." A.R.S. § 33-1310 (11) provides that, premises "...means a dwelling unit and the structure of which it is a part and existing facilities and appurtenances therein, including furniture and utilities where applicable, and grounds, areas and existing facilities held out for the use of tenants generally or whose use is promised to the tenant." As such, payments for the use of the dwelling unit and facilities are defined as rent. A.R.S. § 33-1368 (B) spells out the requirements for evicting a tenant for nonpayment of rent.

If rent is unpaid when due and the tenant fails to pay rent within five days after written notice by the landlord of nonpayment and the landlord's intention to terminate the rental agreement if the rent is not paid within that period of time, the landlord may terminate the rental agreement by filing a special detainer action pursuant to [§ 33-1377](#). Before the filing of a special detainer action the rental agreement shall be reinstated if the tenant tenders all past due and unpaid periodic rent and a reasonable late fee set forth in a written rental agreement. After a

special detainer action is filed the rental agreement is reinstated only if the tenant pays all past due rent, reasonable late fees set forth in a written rental agreement, attorney fees and court costs. After a judgment has been entered in a special detainer action in favor of the landlord, any reinstatement of the rental agreement is solely in the discretion of the landlord.

The proposed 5 Day Notice to Move/Nonpayment of Rent clearly explains this process to the tenant and what he or she must do in order to cure the violation in order to not be evicted. Contrary to the comments by Mr. Henderson and Ms. Holliday, a landlord cannot use this process to make other financial claims against a tenant. For instance, financial administrative fees and charges from dishonored checks do not fall within the definition of rent under the ARTLA and so, the landlord could not include those fees in the 5 Day Notice. Landlords can still make these claims against tenants, but must seek remedies through normal civil remedies or if the fee was required in the rental agreement, could claim it was a material noncompliance with the rental agreement and give the tenant a 10 day notice pursuant to A.R.S. § 33-1368 (A).

Mr. Henderson and Ms. Holliday argue the proposed 5 Day Notice does not allow landlords to make claims for rent based upon “the repair, replacement of a damaged item or cleaning,” within the residence pursuant to A.R.S. § 33-1369 and utilities pursuant to A.R.S. § 33-1314.01 (B). Both of these items are specifically listed in the ARTLA as being included in the definition of rent. A.R.S. § 33-1369 specifically states these fees must be considered rent and the definition of rent at A.R.S. § 33-1310 provides utilities may be considered rent if applicable. Therefore, these items are distinct from administrative fees or charges that have no statutory basis for being considered rent. More importantly, the proposed 5 Day Notice allows for any item in which the statute has

already defined as rent. On the proposed Notice, the landlord will simply list anything that is defined by statute to be rent on the line that requests the amount of rent due that month. Currently, tenants receive 5 day notices with no way of knowing how the landlord calculated the amount due or a clear explanation of what the tenant must pay to stop from being evicted. The proposed 5 Day Notice provides the tenant this information so hopefully, the landlord will be able to receive the correct amount due immediately and the eviction will be prevented.

B. The proposed 5 day notice allows landlords to claim appropriate late fees.

In their comments, Mr. Henderson and Ms. Holliday claim that the proposed 5 Day Notice fails to allow landlords to claim late fees beyond the date the notice was provided to the tenant. As stated above, A.R.S. § 33-1368 (B) provides reasonable late fees can be claimed by the landlord if it is set forth in a written rental agreement. The proposed 5 Day Notice states clearly, “Total owed \$_____ as of this date_____ If late fees are allowed in the rental agreement, this amount will increase by \$_____ each day the rent is not paid.”

V. The Pleadings are Legally Correct.

The rules concerning pleadings in eviction actions under ARTLA are set forth in Rule 5 of the Rules of Procedures for Eviction Actions. The proposed pleadings comply with both ARTLA and Rule 5. More importantly, they are more accessible and understandable than the pleadings currently used by the landlords.

A. Complaint

Contrary to the argument by Mr. Henderson and Ms. Holliday, the complaint allows for more than one cause of action. The proposed complaint advises landlords to check all claims that apply. Additionally, rent can be claimed in cases outside nonpayment of rent. Because landlords can still claim additional fees under “Other (as authorized by law),” they can still claim utilities outside of rent. Rule 5 (b) (7) provides that a complaint must state the reason for the eviction and the proposed complaint requires the landlord to state the reason for the eviction. Further, Rule 5 (c) provides the requirements for monetary damages and again, the proposed complaint complies with every requirement.

B. Summons

In his Comments to Proposed Rule, Michael Parham objects to the Summons because it informs tenants, “If you want to file a counterclaim, it must be in writing.” Mr. Parham concedes that counterclaims can be filed in nonpayment of rent cases under ARTLA. As discussed, nonpayment of rent ARTLA cases are the most common eviction actions in Arizona. So often, the tenants who do appear at court have no idea how to bring counterclaims in eviction actions. This simple instruction on the summons at least informs them of the first requirement that it must be in writing. Surely, informing tenants counterclaims must be in writing does not prejudice the landlord’s case.

VI. CONCLUSION

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. 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.

Courts have a duty to make sure tenants at least understand why they are facing this life changing event in a meaningful way. Making sure the information given to tenants is clear and consistent and not contingent on which form a landlord chooses to give the tenant is critical. A system in which a landlord who wants to evict a tenant also is the decision maker concerning the amount of rights and information given to tenant is an unbalanced system. If all tenants in Arizona cannot be provided the same accurate and clear information, they are being blocked before they enter the court's doors and denied access to justice in its most fundamental form.

For these reasons, Community Legal Services supports the Petition by the Arizona Commission on Access to Justice and asks that the proposed forms be adopted as mandatory.

Respectfully submitted this 23rd day of September, 2016.

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Electronic copy filed with the Clerk
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IN THE SUPREME COURT OF THE STATE OF ARIZONA

In the Matter of:

**PETITION TO AMEND RULES 5(a),
5(b)(6), 5(b)(7) and ADD RULES 13(h)
and 20 of the Rules of Procedure for
Eviction Actions**

No. **R-16-0040**

**Comment upon and Objection to
Proposed Rule Amendments**

Pursuant to Rule 28(D), Rules of the Supreme Court, Paul A. Henderson and Denise M. Holliday respectfully submit this Comment for the Court's consideration. For the reasons set forth below, the proposed amendments to the Rules of Procedure for Eviction Actions should not be adopted and this petition should be denied.

I. BACKGROUND.

Paul A. Henderson and Denise M. Holliday, the authors of this comment, are attorneys who regularly represent landlords and property owners in residential eviction proceedings before the Justice Courts and Superior Courts in the State of Arizona. They participated in the working group organized by Maricopa County Justice Courts Administration and chaired by West McDowell Justice Court Justice of the Peace Rachel Torres Carrillo. Of the approximately twenty participants in the working group, they were the sole individuals who represented the interests of landlords and property owners.

II. EXPLICIT PROMISES WERE MADE THAT THE FORMS WOULD NEVER BECOME MANDATORY FOR REPRESENTED PARTIES.

The working group was convened with the stated intention to revise pleadings made available to the general public and create sample notices for general availability. It was expressly declared to the working group and agreed by all participants – judicial officers and court employees, attorneys aligned with the tenant’s perspective, and those attorneys who represent landlords – that the purpose of the working group’s efforts would be to generate and prepare documents that were to be used solely on a voluntary basis. It was further agreed that the documents were never to become mandatory for use by any litigant, especially those who were represented by counsel or who were sufficiently sophisticated to prepare their own notices and pleadings.

It is important to reiterate that from the very beginning of the working group, all factions agreed that the forms produced would never be made mandatory-use items. The two attorneys who represented landlords were assured by the three attorneys who represented tenants that the forms were being made available for *pro se* parties’ voluntary use. Further declarations were made that the forms would never be needed for landlords who used the services of attorneys, due to those landlords having legal counsel to aid and assist in preparing their own notices. Discussions on forms design were predicated upon those promises. Had these reassurances not been made, the inequitable representation of parties in the working group would have led to a decision of landlords’ counsel to withdraw or to insist upon equitable representation for all stakeholders, including the judicial officers who will hear the eviction actions. It is further important to note that adoption of the forms broke down on strict factional lines, with the lesser-represented side (landlords) outnumbered by the greater-represented side (tenants).

The petitioner admits that the stated purpose of the working group, to produce conceptual forms and information that are “easily understandable,” was changed between the Commission’s March 2015 meeting and the May 18, 2016 meeting. Petition, p. 3. This changed purpose was not a spur-of-the-moment decision; the Commission’s agenda for the May 18, 2016 meeting of the Commission contained a “Formal Action/Request” line item under the Limited Jurisdiction Courts Workgroup section. The agenda made it clear that at least one Commission member intended for this change to occur. Moreover, at least two Commission members were participants in the working group, yet there is no indication within that meeting’s minutes that express guaranties were given to the participants of the working group that the forms would never be considered for mandatory use. See Minutes of May 18, 2016 Meeting.

There is also the petitioner’s comment declaring that the Arizona Judicial Council “approved in concept an ACAJ revision to eviction action forms to make them easier to read and understand.” Petition, pp. 2-3. If it is true that the working group was convened with the intention of the Commission to create mandatory forms, then the participants were not simply laboring under false pretenses, they were the victims of intentional acts.

As such, the veneer of “full participation” by all parties was built upon a falsehood.

III. THE PETITION IGNORES DIFFERENCES BETWEEN TYPES OF EVICTIONS.

It was well-settled, even before the adoption of the Rules of Procedure for Eviction Actions (“RPEA”), that forcible and special detainer lawsuits were different from “normal” civil litigation. The “forcible detainer was created by our legislature to provide ‘a summary, speedy and adequate remedy for obtaining possession of the premises.’” Mason v. Cansino, 195 Ariz. 465, 466, 990 P.2d 666, 667 (Ct.App. 1999), citing Olds Bros. Lumber

Co. v. Rushing, 64 Ariz. 199, 204, 167 P.2d 394, 397 (1946). In addition to these specific statutes that authorize, describe, and constrain these actions, the RPEA set forth rules that “shall govern the procedure in the superior courts and justice courts involving forcible and special detainer actions.” Rule 1, RPEA.

Eviction actions include residential (see A.R.S. §§ 33-1304 and 1308), mobile home park (A.R.S. §§ 33-1402 and 33-1406), recreational vehicle long-term storage (A.R.S. § 33-2101), innkeeper and other forms of commercial tenancy (A.R.S. § 33-381), and forcible entry and detainer proceedings (A.R.S. §§ 12-1172 through 1173.01). They also include actions with different rules for service (see A.R.S. § 33-1377) and timeframes for the execution of the writ of restitution (*cf.* A.R.S. § 12-1178 and A.R.S. § 33-1377(E)).

The petitioner requests that the Supreme Court compel all persons with the right to control private property (both landlords and victims of forcible entry or detainer) to use notice forms that only cursorily align with the residential statutes and which fail to satisfy the requirements of Title 33, Chapters 3, 11, and 19, and Title 12, Chapter 8, Article 4, Arizona Revised Statutes. Moreover, the petitioner requests compulsion of landlords to use only forms created by the Administrative Office of the Courts, when the petition’s five forms fail to account for a myriad of required notices and specialized versions of those notices necessary for appropriate practice in landlord-tenant actions. These forms do not account, for example, for non-payment of rent caused by non-sufficient funds tender of rent (including inclusion of relevant language from A.R.S. § 12-671) or partial payment rejection (which the landlord is not required to accept; see A.R.S. § 33-1371); repeated material breach or repeated health-and-safety breach (A.R.S. § 33-1368(A)); material falsification (*ibid.*); or non-renewal of month-to-month tenancies (A.R.S. § 33-1375), an action different from non-renewal of a term lease (which is contractual in duration).

The examples above address only a few of these issues in residential cases. Other types of cases and their relevant statutes have been wholly ignored by the petition.

IV. THE PROPOSED NOTICES ARE DEFECTIVE.

A. The actual legal requirements of notice are set forth by statute.

In residential eviction actions, “[a] person ‘notifies’ or ‘gives’ a notice or notification to another by taking steps reasonably calculated to inform the other in ordinary course whether or not the other actually comes to know of it.” A.R.S. § 33-1313(A). The nature of mobile home park notices is not materially different (see A.R.S. § 33-1412(B)), even if the notices themselves are (*cf.* A.R.S. §§ 33-1368(B) and 33-1476). In an eviction action, the landlord must allege proper statutory grounds for proceeding. Prior to commencing that action, the landlord usually must inform the resident of the nature of the breach of the lease. For a non-payment of rent action in a residential setting, for example, the landlord’s written notice must include declaration that “rent is unpaid when due” and demands that the resident “pay rent within five days after written notice by the landlord of nonpayment” while making clear the landlord’s “intention to terminate the rental agreement if the rent is not paid within that period of time.” A.R.S. § 33-1368(B).

Notices must reflect the requirements of these relevant statutes.

B. The notice forms, as a whole, are misleading.

The notice forms that petitioner desires to be made mandatory-use documents are replete with language issues that mislead the reader. The errors are as simple as the naming of the document: a “Notice for Failure to Pay Rent [¶] 5 Day Notice to Move,” for example, implies the landlord-plaintiff simply desires the resident to vacate the dwelling. Aside from being a gross oversimplification of the end-result of an uncured notice, it

actually suggests a goal that is simply not true. The purpose of a notice of non-payment of rent, which is a material breach of the lease agreement, is to enforce the obligation to pay the rent. If the resident pays the past-due rent and appropriate late fees in full within the cure period, the leasehold will not terminate and the landlord has been satisfied. The notice is a notice of intention to terminate the lease, not a “notice to move.” There is a distinct difference in the language, and technical language is not fungible. Similar words do not provide the same meaning, and a “notice to move” is not the same thing as a “notice of intention to terminate.” Moreover, speaking (or writing, as it were) down to the reader is worse than writing in an overly complicated manner; it treats the reader as incapable of comprehending the notice, which is a grave injustice to the reader.

C. The proposed mandatory forms are factually and legally defective for actions not brought pursuant to Chapter 10 of Title 33, Ariz.Rev.Stat.

The petition blithely claims that “the forms should be mandated [...] to promote improved readability of and consistency in forms.” Petition, p. 3. Most of these forms are five-day and ten-day notices. Petition, Appendix A, p. 2 (Rule 20(b)). In no location in the petition is there acknowledgment that the notice requirements of the Arizona Mobile Home Parks Residential Landlord and Tenant Act (A.R.S. §§ 33-1401 *et seq.*) and the Recreational Vehicle Long Term Rental Space Act (A.R.S. §§ 33-2101 *et seq.*) are not identical to those in the Arizona Residential Landlord and Tenant Act (A.R.S. §§ 33-1301 *et seq.*). The timeframes for mobile home park rent (seven days versus five; A.R.S. § 33-1476(E)), material breach (fourteen to cure or thirty to surrender possession versus ten to cure or quit; A.R.S. § 33-1476(D)(1)), and health-and-safety material breach (ten to cure or twenty to quit versus five to cure or quit; A.R.S. § 33-1476(D)(2)) differ from the residential matters. A notice that provides the shorter residential timeframe is invalid in

mobile home park matters, and should the landlord edit the notice to comply with the statutory requirements, the landlord will have a void notice under the petition's proposed rules change. Timeframes under the recreational vehicle act are similarly different.

Commercial (or innkeeper) evictions also do not correlate with these residential-based notices. Non-payment notices are required only if the contract so demands them, and the contract can insist upon longer timeframes than five days. If the contract is silent, then the statute places no requirement upon the landlord for written notice:

When a tenant neglects or refuses to pay rent when due and in arrears for five days, or when a tenant violates any provision of the lease, the landlord or person to whom the rent is due, or the agent of the landlord or person to whom the rent is due, may reenter and take possession or, without formal demand or recently, commence an action for recovery of possession of the premises.

A.R.S. § 33-361(A). If the form non-payment of rent notice (or any notice) must be used in order to perfect an eviction action under the RPEA, landlords who exercise their rights under statute will find their commercial eviction filings deemed defective. Additionally, there is no right to immediate termination of the lease in a commercial action; immediate termination is a creation of statute (see A.R.S. §§ 33-1368(A) and 33-1476(D)(3)).

The petition draws no distinction between these blatant legal differences.

D. The proposed non-payment of rent notice is both deficient in its compliance with statutory requirements and replete with extraneous and erroneous information.

1. The theory advanced in the notice concerning "rent" is wrong.

The form notice of non-payment of rent advances a theory of the law that the landlord is entitled only to the monthly rent and late fees. Section "A" of this form allows the landlord to claim "current month/week \$," "prior month \$," and "other \$" – but only

where it is “listed in rental agreement.”

The form fails to account for lawful claims that do not fall under these limited interpretations. In non-payment notices, landlords may make claims against residents of “an itemized bill for the actual and reasonable cost or the fair and reasonable value” of the “repair, replacement of a damaged item or cleaning” within the residence (A.R.S. § 33-1369); for utilities, “charges imposed on the landlord by the utility provider plus an administrative fee for the landlord for actual administrative costs” (A.R.S. § 33-1314.01(B)); and “a service fee of not more than twenty-five dollars plus any actual charges assessed by the financial institution” charged to the landlord “as a result of the dishonored instrument” (A.R.S. § 44-6852). None of these items require the rental agreement to authorize their specific monetary amounts.

These charges may be due and payable as additional rent, but the intention of the RPEA at the time of its drafting was to put more information into the hands of the tenant-defendant. By handcuffing the landlords in presenting the balances that are due, the form hinders the open exchange of information between the parties – or operates to prevent the landlord from making lawful claims against their lease-breaching tenants.

Moreover, there is a consequence to their omission if they are not pled: claims that are omitted and which properly should have been included in the lawsuit (and which the statutes decree are items a landlord-plaintiff may claim) may be barred from recovery in a later action under the principle of claim preclusion (*res judicata*).

2. The landlord is discouraged from making claim to all late fees.

Landlords may seek late fees that comply with the lease contract, and most contracts contain a provision that the late fees accrue until all sums – including the late fees – are paid in full. Section “B” does not allow the landlord to claim late fees beyond

the date of the notice. Instead, the continuing process is referenced above Section “A,” which is an illogical placement for this term.

Section “B” also sets forth only a single mechanism for charging late fees. Late fees in common usage in Arizona include daily charges, one-time “flat” fees, percentage late fees, and a mixture thereof. According to the inalterable notice, landlords may charge only for daily late fees, even if the lease contract does not support such a charge.

3. The “conversation” presented to the notice’s reader is misleading.

The law requires, in most cases, that the landlord present a demand for cure to the tenant. The notice operates as that demand, and any language that discourages the reader from considering the notice as a serious instrument is a disservice. The landlord will not “file an eviction action asking the judge to order you to move;” the landlord will file an eviction action to recover possession of the leased premises. The payment of rent is not conditional upon surrendering possession prior to the expiration of the cure period of the notice (“You may still be responsible for the total owed”); instead,

Rent shall be payable without demand or notice at the time and place agreed upon by the parties. Unless otherwise agreed, rent is payable at the dwelling unit and periodic rent is payable at the beginning of any term of one month or less and otherwise in equal monthly installments at the beginning of each month.

A.R.S. § 33-1314(C). The judicial officer will also not “decide if you have to move or can remain in the rental;” the judge, commissioner, or justice of the peace will decide if the tenant-defendant is detaining the premises and whether legal right of possession will be granted to the landlord-plaintiff. Additionally, it is not within judicial authority to determine “if [the tenant-defendant has] to move or can remain,” as “any reinstatement of the rental agreement is solely in the discretion of the landlord.” A.R.S. § 33-1368(B).

The conversation misleads the reader of any notice, whether it appears within the

rent notice or a material breach notice. It allows the reader to conclude, erroneously, that this is not a serious process, or that the problem may be fixed simply by moving out of the dwelling unit. Any notice of intent to terminate the lease should not be viewed as a desultory effort by the landlord. Paradoxically, those affiliated with the tenant argued that current notices encouraged the resident to vacate without fighting the case, yet these notices, with their “notice to move” language and the comment that the resident may cure the breach by “mov[ing] out of the rental and return[ing] the keys to the landlord,” actually encourage the resident to give up and move out, perhaps to the residents’ detriment.

The conversation further misleads the reader as to the power of the courts. The language used creates a false impression that the judicial officer has the discretion to ignore the law and enter an order permitting the tenant-defendant to remain regardless of the facts. On a daily basis our courts engage with a public that does not understand the role of the judicial branch. Just as crime procedurals have corrupted the public’s understanding of police investigations, legal dramas have influenced the opinion of their viewers as to how the courts operate. The conversation implies that the judicial officer will be able to act like a television judge, and a tenant-defendant may feel slighted or deprived of “rights” when informed that the judicial officer’s options are not so extensive.

V. THE PROPOSED COMPLAINT IS FATALLY DEFECTIVE.

A. The one-size-fits-all approach to litigation pleadings produces a product that fails to satisfy the requirements of statute or the RPEA.

The RPEA in its current form sets forth goals in broad brush strokes, setting certain elements that the landlord-plaintiff must satisfy to proceed forward in an eviction action. These goals ostensibly require the parties to provide sufficient notice to the opposing

tenant-defendant so that the tenant-defendant has ample knowledge concerning the allegations raised by the landlord-plaintiff. The proposed, mandatory-use complaint form cannot satisfy these goals, and to change the RPEA to require its use eviscerates the very intent of the RPEA. The proposed complaint lacks both adaptability and specificity, rendering it incapable of properly advancing legal averments. The flaws are numerous:

1. The form presents a large quantity of extraneous allegations. Most eviction actions are single-breach cases; i.e., the average case solely concerns only one claim, whether non-payment of rent or a material term of the lease. The form presents every single available option for bringing an eviction (at least in the drafters' eyes, but not necessarily those that the legislature contemplated). The unsophisticated end-user of the form may very well be encouraged to fill in every possible space, even where inapplicable. Landlords are already compelled to eradicate blanks within a lease (A.R.S. § 33-1322(E): "A written rental agreement shall have all blank spaces completed.") and therefore are averse to leaving areas incomplete. The Maricopa County Justice Courts, where a form of complaint is currently available to *pro se* litigants, are familiar with *pro se* litigants who complete all these "select-an-allegation" fields even when not applicable to their cases.

2. The form permits only one cause of action to be pled. While there are multiple check-boxes for alleging various breaches, the form itself does not permit a multiple-allegation action to be pled properly. Section 3, which discusses the issuance of notice, allows the description of a single notice and the choices for describing the notice's delivery method do not permit the landlord to indicate two separate delivery methods (or even two separate dates). Under Arizona law, there are four timeframes for notices (one day for immediate termination, five days for rent and health-and-safety breaches, ten days for other material breaches, and thirty days for discontinuation of month-to-month

tenancies) and two mechanisms for their delivery (hand-delivery, where the “clock” starts running upon delivery, and certified mail, where the “clock” doesn’t start ticking until five days after mailing). A two-element eviction action, of rent (five days to cure or quit) and a material breach (ten days), may see a wild variance between the delivery dates and the effective dates of those notices. The form, however, fails to take this into account.

3. The rent for the leased premises, a material issue in nearly every action, cannot be properly pled in actions where the non-payment of rent was not the triggering issue. The opportunity to plead the material elements of the rent obligation occurs only within “Subsidized Housing” and “Rent Owed” allegations. If the eviction is not based upon the issuance of a notice of non-payment of rent, the landlord is effectively precluded from the opportunity to plead the specifics of rent. Section 6 of the form may be completed without the specific information available in Section 5’s “Rent Owed” allegation, but such a claim will be unsubstantiated without the previous section’s information, and thus the complaint will be vulnerable to attack on technical grounds. For a pleading that clearly values form over function, this flaw in its structure gives rise to many opportunities for failure – thereby imposing a significant barrier to justice upon the landlord-plaintiff.

4. The non-payment of rent allegation in the form is flawed. Rule 5(c), RPEA allows the landlord to plead for “the total amount of rents, late fees, and other fees, charges or damages permitted by law that are due on the date of filing.” The form, however, allows the landlord-plaintiff to pray for “unpaid balance,” “rent,” and “late fees.” Permissible “other fees” have been excluded without any rational basis.

While not explicitly stated in the RPEA, notice and complaint specificity is the goal of the Rules. The form discourages, if not outright prohibits, the landlord-plaintiff from explaining how the monetary damages are calculated. Utilities, month-to-month

premiums, and charges permissibly assessed and aggregated into rent through A.R.S. § 33-1369 cannot be described in this form, leaving the tenant-defendant at a distinct disadvantage in determining the nature and composition of the landlord-plaintiff's monetary damages claim. A line in this section stating "Other (as authorized by law)" does not satisfy Rule 5(b)(7)'s requirement to "state the specific reason for the eviction."

The most egregious omission is the ability to plead utilities charges separately from the rent. While utilities charges are generally due and payable as additional rent where the contract permits such charges, fluctuating utilities charges (either actual usage billing or ratio utility billing under A.R.S. § 33-1314.01) will cause the "rent" allegation to change monthly. Only those contracts where the price of the utilities is fixed to a specific amount will the rent stay the same each month. Variances in consumption for ratio or actual billing denies the tenant-defendant the ability to know, with certainty, what the landlord-plaintiff is seeking in the complaint.

Such lack of specificity will cause more disputes, leading to delays in eviction proceedings which the delivery of additional information could avoid.

5. The language of the "Non-Compliance" cause of action fails to properly permit allegations that arise under A.R.S. § 33-1368(A). Aside from the material-and-irreparable breach allegation, which is segregated into its own cause of action in the form, claims may be brought under this statute for violations relating to material falsification (of which there are two separate varieties of breach, curable and non-curable), health-and-safety material breach (which has a cure period of five days, half that of any other curable material breach notice), material breach (which is curable), and repeated material breach (of either a health-and-safety or "regular" variety, neither of which are curable).

The form's allegation further requires the landlord-plaintiff to perform mental

gymnastics when completing the allegation paragraph. The form-required language states that the tenant-defendant “failed to do the following.” To make the facts fit the allegation, the landlord may have to torture the language used in the notice in order to satisfy the lack-of-performance allegation (especially for material falsification claims, unless the landlord simply states the insulting “failed to do the following: tell the truth”).

6. The form bars the landlord-plaintiff from seeking all its damages. Rule 13(c)(2)(A) allows the award of “any additional rent that has accrued since the complaint was filed.” Rule 13(c)(2), however, decrees that “[t]he court shall not award any amount for damages or categories of relief not specifically stated in the complaint or counterclaim.” If this form is adopted, the landlord-plaintiff may not seek the new month’s rent in the all-too-common event when the action is filed in one month but the date upon which the action is called (or when the trial occurs) is in the following month. The form, therefore, constitutes a judicial taking from the landlord-plaintiff.

B. Technical pleading has long been abolished in Arizona, yet the proposed form of complaint seeks to revive “style over substance.”

Rule 8(e)(1), Ariz.R.Civ.P. mandates that “[e]ach averment of a pleading shall be simple, concise, and direct” and that “[n]o technical forms of pleading or motions are required.” While most of the Rules of Civil Procedure were declared inapplicable in eviction actions (see Rule 1, RPEA), this guiding spirit of legal practice is uniform throughout Arizona – unless the petitioner’s petition succeeds. The end-result of the petition would contravene the very goal of the Commission – to improve access to justice.

A mandatory form of complaint does not permit the filing party to adjust the language when needed to satisfy the elements of and the facts alleged therein. With the exception of protective orders proceedings, Arizona legal practice does not require the

use of court-mandated complaints. Protective orders in the Maricopa County Justice Courts (injunctions against harassment and orders of protection) utilize a single form of pleading as there is a logical need for obtaining information in an unchanging format. Eviction actions are not analogous; the facts and legal issues vary between actions. The form cannot accommodate all scenarios presentable, and presented, in eviction actions.

Moreover, this form defeats the ability of landowners from bringing effective forcible detainer actions. Those who commit forcible entry and/or detainer of real property are not “tenants,” yet the form complaint regularly references “tenant.” Commercial eviction actions – also forcible detainer cases – do not fall under the RPEA and, unless required by the contract, lack notice requirements, yet the form complaint mandates that notices are served and that this form be utilized.

This form-over-function pleading cannot be made to fit every eviction action, and its use will be fatal to eviction proceedings as a whole. If the intention is to abolish evictions, or to make them exceedingly difficult, the form notices and the form complaint advance this goal nicely. The legislature, and the courts, however, have previously declared the intention to have “a summary, speedy and adequate remedy for obtaining possession of the premises.” Olds Bros. Lumber Co., *supra*.

VI. THE FORM OF JUDGMENT THE PETITION SEEKS TO USE IS ONE THAT IS BOTH OVERLY SIMPLISTIC AND UNNECESSARILY COMPLICATED.

A. The judgment form is defective.

There are many problems present in this form:

1. Attorneys are omitted. There is no space allotted upon the form for attorney information, including their names, Bar numbers, address, and telephone number – all of

which are important to the tenant-defendant who might wish to reach out to counsel in an attempt to resolve the action short of trial. Rule 5(b)(3) requires this language.

Similarly, identification blanks for *pro se* landlord-plaintiffs are omitted. Rule 5(b)(4) requires the *pro se* plaintiff to make a similar declaration in the top left corner of the first page of the complaint.

2. The judgment form includes many extraneous fields. The Court is required to review certain elements: method of service (Rule 13(a)(1)), delivery of appropriate information (*ibid.*), delivery of notice (Rule 13(a)(2)), the legal basis for the actions (Rule 13(a)(3)), and whether a partial payment was accepted (Rule 13(a)(4)). However, judgment may be entered *only* if all elements are satisfied. The Court need only conclude that all elements were either satisfied or not; the multiple checkboxes unnecessarily complicate the form without providing any benefit to the post-judgment reviewing party.

3. The partial payment field is legally deficient. This field implies that a partial payment was accepted; no provision is made to indicate that there was no partial payment. In compelling the trial court to complete this form, the petitioner presents with judicial officer with a question to which an answer cannot be provided in the vast majority of actions. A judgment form that does not reflect an answer will be subject to post-judgment attack in the hyper-technical environment created by the petition.

4. The language used is frequently wrong. The statutes discuss “guilty” and “not guilty” decisions by the trial court. The Legislature chose to maintain the traditional language. In the judgment, however, the courts are presented with both the civil and criminal language, when the criminal language (even though not a criminal proceeding) is the only language permitted by law. The judgment also uses the term “rental,” which is not legally sufficient. The term of art is either “dwelling unit” (A.R.S. § 33-1310(4)) or

“premises” (A.R.S. § 33-1310(10)). A “rental” is not defined by the Act except as part of the term “rental agreement” (A.R.S. § 33-1310(12)) and is not used within the Act. Additionally, the Writ of Restitution is not an “order to vacate rental;” it is the order of the court to the Constable or Sheriff to remove the detaining occupants, by force if necessary, from the leased premises. The non-prevailing tenant-defendant might assume, reasonably, that under the language of the judgment he/she did not have to vacate the dwelling unit until the writ of restitution is served, yet legal possession is conveyed by the judgment and physical possession is conveyed, if necessary, by that writ.

B. The judgment form lacks language required by statute.

Eviction actions are brought for the primary goal of restoring possession of the leased premises (or real property) to the landlord-plaintiff. To enforce the restoration of the legal right to possession thereto, the forcible detainer and special detainer statutes permit the successful landlord-plaintiff to obtain the writ of restitution to return physical possession of the property.

The trial court must give notice to the non-prevailing tenant-defendant that the decision to remain in or return to the property shall be construed as trespass.

If the defendant is found guilty of forcible entry and detainer or forcible detainer, the court shall give the defendant notice that a defendant who is lawfully served with a writ of restitution and who remains in or returns to the dwelling unit or remains on or returns to the mobile home space or the recreational vehicle space without the express permission of the owner of the property or the person with lawful control of the property commits criminal trespass in the third degree pursuant to section 13-1502.

A.R.S. § 12-1178(E). The language which is traditionally appended to the bottom of the judgment form is that which appears in A.R.S. § 12-1178(D). The proposed judgment fails to include the statutory warning; simplification does not meet its legal requirements.

//

C. The judgment impermissibly abolishes the ability of the parties to enter into stipulation or otherwise renders them void.

Parties to a lawsuit traditionally have the right to settle litigation prior to trial. The ability to do so is even codified in the Rules of Evidence, which prohibit the disclosure of the negotiations for settlement. Rule 408, Ariz.R.Evid. Rule 13(b)(4), RPEA recognizes the right to settle and to enter into stipulated judgments, and only requires that certain warning language be included at the place of the indication of acceptance:

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 form judgment omits this clause, eliminating the creation of valid settlements. Alterations to the judgment form, to manually add the language, would render the judgment void due to it not being the exact format required by the petition.

VII. EVICCTIONS ARE NOT ELECTIONS, AND ITS STYLE-OVER-SUBSTANCE APPROACH SHOULD NOT BE APPLIED TO THESE ACTIONS.

There is one field of Arizona law that values style over substance: elections. A candidate's petition signatures must be collected on a form that satisfies the exact requirements, down to the margins, of the format of the petition. Candidates regularly sue each other over technicalities to have their opponents' petitions thrown out in order to disqualify those electoral foes and deny them participation in the coming election. Adoption of mandatory forms will produce a similar result in eviction actions, where the tenant-defendant seeks to attack the form of the case rather than litigate the facts.

Arizona – and American – law has long held a preference for matters to be resolved

upon their merits. The end-result of the petition encourages technical battles. While this might serve some short-sighted plans, in the long run it will only harm the very people the Access to Justice Commission is charged to assist.

VIII. THE END-GOAL OF THE PETITION APPEARS TO SEEK SLOWING THE EVICTION PROCESS, WHICH DOES NOT SERVE JUSTICE.

It is clear that the end-goal of the petition is the imposition of mandatory-use forms that increase inefficiencies and raise the probability of fatal errors appearing in eviction actions. Eviction actions are designed by statute to be swift proceedings, focused upon the merits of landlord-plaintiff's case and permitting only those claims that are supported by fact and law. The petition introduces forms that cannot satisfy the requirements of statute, and simply decreeing that the notices and complaint forms are sufficient does not make them so at law.

Should this petition succeed, eviction actions will become drawn-out affairs, vulnerable to attacks for defective forms and improper allegations. It will increase costs of these matters, and these increased costs will ultimately be borne not only by the residents who face the eviction proceedings but also those individuals who abide by their contracts and satisfy their obligations without issue. This does not serve justice.

IX. CONCLUSION.

The petition seeks to advance "access to justice," but it does no such thing. Mandatory notices will never be sufficient to meet the requirements of the authorizing statutes and real-life events. A mandatory form of complaint is insulting to attorneys, who are legally trained and are competent to prepare their own pleadings, and this form is

replete with errors that will render any eviction action defective. The proposed form of judgment is inefficient, unwieldy, and deficient.

All told, the petition advances a solution in search of a problem. There is no reason why parties cannot draft their own notices that comply with the statutes. Precluding them from doing so denies them access to justice, and when the forms presented are deficient, landlord-plaintiffs are doubly denied justice.

RESPECTFULLY SUBMITTED,

/s/ Paul A. Henderson
Paul A. Henderson, Esq.

/s/ Denise M. Holliday
Denise M. Holliday, Esq.

September 9, 2016
Date

September 9, 2016
Date

Mailing Declaration

The original of this Comment was filed electronically at rules.azcourts.gov.

Copies of this Comment were mailed to the following recipients:

- Arizona Commission on Access to Justice
c/o Honorable Lawrence Winthrop
1501 W. Washington Street, Suite 410
Phoenix, Arizona 85007
- Honorable Gerald A. Williams
North Valley Justice Court
14264 W. Tierra Buena Lane
Surprise, Arizona 85374

By */s/ Paul A. Henderson*

On *September 9, 2016*

Gerald A. Williams
Arizona Bar No. 018947
North Valley Justice Court
14264 West Tierra Buena Lane
Surprise, AZ 85301

IN THE SUPREME COURT OF THE STATE OF ARIZONA

In the Matter of:	)	Supreme Court
	)	No. R-16-0040
PETITION TO AMEND)	
RULES 5(a), 5(b)(6), 5(b)(7) and	)	Objection to Proposed Rule
Add Rules 13(h) and 20 of the	)	Changes, to Proposed Mandatory
RULES OF PROCEDURE FOR	)	Summons and Complaint, to
EVICITION ACTIONS	)	Proposed Mandatory Notice
	)	Forms, and Suggested
	)	Alternative Language for Forms

BACKGROUND

The author of this pleading is a justice of the peace in Maricopa County. He has served on three rule writing committees, the State Bar’s Civil Jury Instruction Committee, and knows the level of effort and compromise that goes into producing the type of work product that has been completed; but he has significant and serious concerns about what has been proposed in the petition, especially the proposed mandatory eviction forms. They were not recently circulated among the justices of the peace and he did not see the proposed forms in final form until the week before this petition was filed. Concerns with the proposed forms were muted somewhat based on a belief that they were going to be optional rather than mandatory.

Some of the numerous problems with the forms will be detailed in this pleading. At a minimum, please do not force justice courts to use a two page judgment form, with check off boxes for items that appear in perhaps one out of every five-hundred cases (e.g. counterclaims, non-waiver agreements). In addition, the notice forms should be in the form of a cure notice from a landlord to a tenant. Instead, the proposed forms contain both cure notice language and also third person language, almost as if it was coming from a court order. The proposed notice forms are significantly more wordy than the forms currently on the Maricopa County Justice Courts' web page and the proposed notice forms are also truly confusing. In contrast, some of the proposals in the petition, especially a requirement that the complaint identify whether the case involves government subsidized housing, are genuinely good ideas.

I.

MANDATING SPECIFIC FORMS FOR NOTICES, BUT ESPECIALLY FOR COMPLAINTS, IS UNNECESSARILY RESTRICTIVE AND WILL GENERATE TENUOUS PROCEDURAL DUE PROCESS ARGUMENTS

While a mandatory form for a summons is often appropriate,¹ requiring landlord attorneys to file their complaints only on a court approved

¹ JCRCP 112(b); JCRCP, Appendix I.

form is unnecessarily restrictive and arguably insulting. There is certainly no proposal that attorneys representing tenants be restricted either to a court approved answer form or to a court approved counterclaim form. If the complaint complies with the numerous requirements of the applicable statutes and rules,² then it should be legally sufficient.

It is also somewhat ridiculous to require landlords and attorneys representing landlords to use a complaint form containing language for causes of action that they are not even alleging, only to leave those portions of the complaint form blank. Even so, a larger problem concerns potential remedies if a landlord used a notice form that contains substantially similar but not identical language.

If the required forms, especially in their current form, are made mandatory, then it will provide a basis for tenants to claim that their case should be dismissed simply because the form used in their case does not exactly match the form required by the Administrative Office of the Courts. Doing so is contrary to modern notice pleading requirements and to generally established principles of law. Procedural due process requires simply that a party have a meaningful opportunity to be heard, at a

² RPEA 5(b), 5(c) & 5(d).

meaningful time in the process, and in a meaningful manner.³ If the proposed mandatory notice forms are adopted without any opportunity for flexibility, then it would be possible for a tenant to argue that their case should be dismissed even though the landlord complied with the requirements of the statutes, any case law, and the Rules of Procedure for Eviction Actions (RPEA), and even though the tenant clearly understood what he or she needed to do to cure the alleged breach of the lease.⁴

American courts once followed a code pleading format that drew distinctions between merely alleging that someone is “entitled to possession of specific property” (which was inadequate) and alleging that someone is the owner and is entitled to possession (which was sufficient).⁵ We do not need to return to a system that values format over substance, especially since it is already clear that only a proper plaintiff can prevail in an eviction action⁶ and since it is already clear that only the property owner or his or her attorney can appear in court on behalf of the plaintiff.⁷ In short, proposed

³ *Comeau v. Ariz. St. Bd. of Dental Examiners*, 196 Ariz. 102, 107-108, 993 P.2d 1066, 1071-1072 (Ct. App. 1999)(Investigative interview was adequate).

⁴ Judges may hear similar arguments to the following: “But your honor, clearly the notice was defective because it only advised my client once that he should get any settlement agreement with his landlord in writing and the rules now require that a notice form be used that tells him that twice.”

⁵ Clark, *The Complaint in Code Pleading*, 35 Yale L.J. 259, 262 (1926).

⁶ RPEA 5(b)(1).

⁷ RPEA 11(a)(1).

Rule 20 should be modified to read simply, “When applicable,⁸ landlords should use forms that are substantially similar to the notice forms in the appendix to these rules.”

III.

PROPOSED LANGUAGE IN THE NOTICE FORMS MISLEADS TENANTS AS TO WHAT WILL HAPPEN IN COURT AND AS TO WHETHER THEY CAN REQUEST A COURT ORDER FOR MORE TIME TO CURE ANY ALLEGED BREACH OF THE LEASE

The proposed forms share some of the same common problems. For example, nearly every proposed form instructs the tenant to get any settlement in writing, not just once, but twice. This unnecessary duplication adds little, if any, value. However, there is a problem that goes well beyond elements of style.

Nearly every proposed form contains this problematic sentence: “After a hearing, the judge will decide if you have to move or can remain in the rental.” There are two major errors in that sentence.

Hearing is a term of art that involves some type of litigated procedure where a judicial officer makes either a factual or legal determination (or both) after hearing evidence (usually in the form of witness testimony). In

⁸ The “when applicable” language is designed to avoid a need to create an additional set of official forms for the Arizona Mobile Home Parks Residential Landlord and Tenant Act. A.R.S. §§ 33-1401 - 33-1501. It also avoids needing to create either a set of forms or additional language for month-to-month leases concerning a landlord’s duty to mitigate damages.

contrast, eviction actions are summary proceedings. If the tenant cannot articulate a legal defense to the landlord's allegations, then a judgment will be entered in favor of the landlord.⁹ If the tenant is able to do so, then the case is immediately set for a trial, but no hearing will occur.¹⁰ In addition to misrepresenting the law, the proposed sentence inaccurately describes the judge's role.

If a tenant is in a courtroom because of an eviction action, the judge will not "decide if [the tenant has] to move or can remain in the" residence. In reality, the judge will decide whether the landlord has met his or her burden of proof.

At least weekly if not daily, tenants appear in justice courts in Maricopa County for eviction actions with a false hope that the judge will give them additional time to pay their rent based on a sudden financial hardship. There is no legal authority to do so; but the proposed language at least infers that there is and sets judges up to fail. Tenants who appear with that false hope will leave thinking that the judge, and perhaps the judicial branch as a whole, did not care about them. A judge politely explaining that

⁹ RPEA 11(b)(1).

¹⁰ The only time a hearing is held in connection with eviction actions is if there is an issue concerning the writ of restitution. RPEA 14(b)(2). The North Valley Justice Court has set perhaps two since the rules were adopted in 2009.

the law is different than what is suggested on the mandatory form will appear nonsensical. Any explanation at that point will also be largely irrelevant to the emotions tenants feel as they leave the courtroom.

IV.

THE PROPOSED FIVE-DAY NOTICE FOR NONPAYMENT OF RENT IS IN A CONFUSING FORMAT AND CONTAINS CONFUSING LANGUAGE

Prior to filing an eviction action for nonpayment of rent, the landlord must give the tenant a five-day cure notice. This notice must: (1) state the amount of any unpaid rent and any other amount due; (2) notify the tenant of the landlord's intent to terminate the lease if the amount due is not received within five days after the notice is given to the tenant, and (3) inform the tenant that if the amount due is not paid, that the tenant must then surrender possession of the residence.¹¹ On day six, the landlord can file suit.

The five day notice for nonpayment of rent and the ten day non-compliance notice are by far the most frequent types of notice forms used in residential landlord tenant actions. Suggested alternative forms for both of these documents are attached to this pleading.

¹¹ A.R.S. § 33-1368(B). The sufficiency of the notice is a question of law. If the allegation alleges non-payment of rent for a space in a mobile home park, then the landlord must give the tenant a seven-day notice. *See generally*, Williams, *Representing Residential Tenants in Eviction Actions*, 28 Ariz. Attorney 12 (Nov. 2011).

There are numerous problems with the proposed five day notice. The entire format of the document invites the reader to set it aside and to read it later. It contains random parenthetical commentary (e.g. “Must be listed in rental agreement” or “if allowed in rental agreement”). There is also no information presented stating that the security deposit cannot be used to pay the rent, which is one of the more common misunderstandings frequently expressed by tenants. In addition, the proposed form refers the tenant to five sources of reference material, none of which is the RPEA.

CONCLUSION

Access to justice issues for tenants often have little to do with tenants not understanding why they are facing eviction. Instead, they are more likely to concern either repair and maintenance issues or how to get their security deposit back. (Sample letters and forms for those issues are also on our justice court web page.)¹² For example, they know that they have not paid their rent, but incorrectly believe that they can “rent strike” by withholding rent until their landlord makes the repair.

As a matter of public policy, it is a mistake to use a set of mandatory forms to change the law in an effort to make it more difficult for landlords to

¹² In addition, our bench Best Practices Committee recently requested input on draft sample complaint forms that can be given to tenants who wish to file a cause of action against their landlord under A.R.S. § 33-1367, either for an unlawful ouster or for a failure to supply essential services.

evict tenants. It also harms the target population because if you make it more difficult to evict tenants who are not complying with the terms of their lease, then landlords will be forced to raise the rent on the tenants who are. Phoenix and Tucson currently have reasonably affordable housing when compared to similar cities around the United States.¹³ Perhaps one of the reasons for that is that Arizona has a set of statutes and rules governing residential landlord and tenant matters that provide clear and quick remedies for an obvious breach of a lease. If that system is going to be significantly changed, then those changes should come either in the form of statutory changes or in the form of deliberate substantive changes to the RPEA. The RPEA uses clear and simple language that is understandable to a self represented litigant and its' provisions are unambiguous. There is no need for some type of implied repeal of them or implied amendment to them.

While the objectives behind the proposed forms are noble, the actual language of the forms must be, and can easily be, improved.

¹³ One survey of apartment rent found rent in Phoenix to be less expensive than several major cities (e.g. Austin, Baltimore, Charlotte, Dallas, Denver, Indianapolis, Nashville, Portland, Seattle) and found rent in Tucson to be equally less expensive than other arguably comparable locations (e.g. Albuquerque, Columbus, El Paso, Las Vegas, Louisville, Memphis, Milwaukee, San Antonio). DePietro, *Here's What the Typical One-Bedroom Apartment Costs in 50 U.S. Cities*, Business Insider (Jun. 17, 2016).

I respectfully request that this Court either reject this petition or remand it to a committee where all stakeholders have equal representation and where consensus language will be achieved.

RESPECTFULLY SUBMITTED, this 5th day of August 2016.

/s/ Gerald A. Williams
GERALD A. WILLIAMS
Justice of the Peace
North Valley Justice Court
14264 West Tierra Buena Lane
Surprise, AZ 85374

Copy Mailed To:
Hon. Lawrence Winthrop
Arizona Court of Appeals
1501 West Washington, Suite 401
Phoenix, AZ 85007

**NOTICE OF INTENT TO END LEASE
FOR FAILURE TO PAY RENT
(Five Day Notice)**

[Date]

To: [Tenant's Name and Address]
And Any and All Occupants

You have not paid your rent on time. You owe the following amount:

This Month's Rent: _____
Late Fees: _____
Additional Amount: _____

Total as of the date of this notice: \$ _____

The additional amount is for _____. The late fees are increasing at a rate of \$_____ per day.

Your landlord is seriously considering filing an eviction action against you but would like to give you a chance to solve this problem without the need for anyone to go to court. Please contact us immediately. You will need to make arrangements to pay the money you owe. If you cannot do so, then we demand that you move out, and that you return the keys to the residence, five calendar days from the day you received this notice.

After you move out (either now or at the end of your lease), your landlord may apply some or all of your security deposit toward any unpaid rent, but your security deposit will not be used to pay your rent now.

Even if you move out, you are still responsible for all of the rent that is due until the property can be rented again to a new tenant. You may also be required to refund any discount you received (called a rental concession) and may be required to pay other charges stated in the lease.

If your landlord files an eviction action in court against you, then you may also be required to pay court costs and attorney's fees. If your landlord files an eviction case against you, as part of that case, you will receive a handout that explains your rights and obligations.

*[Landlord or Property Manager's Name]
[Address and Telephone Number]*

Additional Information: The law for these kind of cases can be found in Arizona Revised Statutes sections 33-1368(B) and 12-1171 and in the in the Arizona Rules of Procedure for Eviction Actions. Additional help may be available at [*insert local or state bar web pages or lawyer referral services*].

This notice was served by: <input type="checkbox"/> Hand delivery to by giving it to (name): _____ who is a <input type="checkbox"/> tenant <input type="checkbox"/> occupant <input type="checkbox"/> By certified mail
--

**NOTICE OF INTENT TO END LEASE
(Ten Day Notice)**

[Date]

To: [Tenant's Name and Address]
And Any and All Occupants

You are not following the terms in your lease. If you do not fix the following problems within ten days, then your lease will end. The problems are [*unauthorized pet, unauthorized occupant, too much clutter on balcony*] _____

Your landlord is seriously considering filing an eviction action against you but would like to give you a chance to solve this problem without the need for anyone to go to court. Please contact us immediately.

If this problem, or something similar, happens again, then you will receive a second notice and, at that point, your landlord can legally file an eviction action against you.

If your landlord files an eviction action in court against you, then you may also be required to pay court costs and attorney's fees. If your landlord files an eviction case against you, as part of that case, you will receive a handout that explains your rights and obligations.

[Landlord or Property Manager's Name]
[Address and Telephone Number]

Additional Information: The law for these kind of cases can be found in Arizona Revised Statutes sections 33-1368(A) and 12-1171 and in the in the Arizona Rules of Procedure for Eviction Actions. Additional help may be available at [*insert local or state bar web pages or lawyer referral services*].

This notice was served by: <input type="checkbox"/> Hand delivery to by giving it to (<i>name</i>): _____ who is a <input type="checkbox"/> tenant <input type="checkbox"/> occupant <input type="checkbox"/> By certified mail

1 ELLEN SUE KATZ, AZ Bar. No. 012214
2 WILLIAM E. MORRIS INSTITUTE FOR JUSTICE
3 3707 North Seventh Street, Suite 220
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5 (602) 252-3432
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7 **IN THE SUPREME COURT**

8 **STATE OF ARIZONA**

9 **Petition to Amend Rules 5(a), 5(b)(6),**
10 **5(b)(7) and Add Rules 13(h) and 20, of**
11 **the Rules of Procedure for Eviction**
12 **Actions**

Supreme Court No. R-16-0040

13 **COMMENTS IN SUPPORT OF**
14 **PETITION TO AMEND AND ADD TO**
15 **THE RULES OF PROCEDURE FOR**
16 **EVICION ACTIONS**

17 Pursuant to Rule 28 of the Rules of the Supreme Court, the William E. Morris
18 Institute for Justice (“Institute”) submits these comments in support of the Petition to
19 Amend Rules 5(a), 5(b)(6), 5(b)(7) and add Rules 13(h) and 20 to the Rules of Procedure
20 for Eviction Actions and in response to comments submitted in opposition to the Petition.
21 The Petition was filed by the Access to Justice Commission and would make mandatory
22 the use of three eviction pleadings and five eviction notices. These comments will
23 respond to some of the objections submitted by two active Access to Justice Commission
24 workgroup members, Paul Henderson and Denise Holliday, who helped draft the
25 proposed notices and pleadings but who now oppose the workgroup’s product.

26 **I. Formation of the Eviction Workgroup:**

27 The Access to Justice Commission (“Commission”) was established by Chief
28 Justice Bales in 2014. One part of the initial work of the Commission was to “examine
and make recommendations” on: “Assisting self-represented litigants and revising court
rules and practices to facilitate access and the efficient processing of family court and
eviction cases.” In carrying out this mandate, one focus of the Commission’s work was
to look at information provided and the forms and pleadings used in eviction cases in

1 justice courts. These are cases where few tenants are represented and the overwhelming
2 majority of landlords are represented. The cases move quickly and because housing is at
3 issue, are very important. The result of an eviction may be homelessness as explained in
4 comments submitted by the Arizona Community Action Association.

5 The Commission established a subcommittee to look at aspects of the eviction
6 process, including information on the justice court websites and eviction forms and
7 pleadings. A subcommittee workgroup was formed with the specific purpose to draft
8 informational materials, eviction forms and eviction pleadings. Four Commission
9 members were on the subcommittee workgroup; a Maricopa County Justice of the Peace,
10 a Maricopa County Justice Court Administrator, a management employee with the
11 Administrative Office of the Court and the Director of the Institute. Invited to participate
12 with the workgroup were two landlord attorneys, Paul Henderson and Denise Holliday,
13 and two Community Legal Services attorneys. The rest of the workgroup was made up
14 of approximately 12 justice court personnel invited by the workgroup chair, the Maricopa
15 County Justice of the Peace. Thus, the workgroup's composition of approximately 20
16 persons was 75% court personnel.

17 The workgroup met on numerous occasions during the spring and summer of
18 2015. During the meetings, there was no objection to the composition of the workgroup
19 in general or to the number of landlord and tenant attorneys in particular. Moreover,
20 Attorneys Henderson and Holliday's claim now that the workgroup composition was
21 unbalanced in favor of attorneys who represent tenants is not correct.

22 **II. The Workgroup's Product was Consensus Driven**

23 Before the workgroup started our work, we looked at the eviction information and
24 form pleadings currently on the Maricopa County Justice Court website and at a 5-day
25 notice used by a prominent landlord firm that is posted on its website. The consensus of
26 the group was that we could and should do better.

27 The five notices under review in the Petition were consensus products. A sixth
28 notice was drafted for the termination of a month to month tenancy but the workgroup

1 could not agree on the wording for the notice and that draft notice was not passed on to
2 the full Commission for review. For the notices, the workgroup identified some specific
3 goals. We wanted a notice that complied with the law that landlords, especially
4 unrepresented landlords, could use. We also wanted to give the tenant adequate
5 information to know what were the landlord's claims; how the tenant could resolve the
6 situation - the options; what in general to expect if there was no resolution; where the
7 tenant could obtain additional information about landlord and tenant rights; and
8 importantly we wanted the notices to be in "plain" English. We wanted to avoid the use
9 of unnecessary "legalese." The Commission had asked that we try to keep the reading
10 level of the notices to a sixth grade level.

11 Much of our discussion focused on the kinds of questions tenants often ask the
12 justice court clerks. Over a period of several months, the five notices were drafted with
13 the full and active participation of Attorneys Henderson and Holliday. Although there
14 were workgroup members who wanted to work on notices that tenants might give to the
15 landlord, the group started with the most frequent landlord notices and did not get beyond
16 those notices. After the workgroup disbanded, the Administrative Office of the Court
17 reviewed the notices to be sure there were no typographical errors, grammatical issues
18 and the notices were consistent.

19 It is correct that the five proposed notices do not cover every situation or notice
20 that may be needed. The workgroup accomplished what it could. The Institute
21 understands that additional notices will be developed in the future. For those other
22 situations landlords and tenants may continue to use their own product. The fact that the
23 Commission only proposes five notices is not a valid reason to reject the proposed
24 notices.

25 For the three pleadings, the workgroup wanted to be sure that the pleadings
26 were drafted without the inference that the tenant would lose. We looked at the current
27 pleadings posted on the Maricopa County Justice Court website and there was agreement
28 that those pleadings were not adequate. The three pleadings were drafted over several

1 meetings with the full and active participation of Attorneys Henderson and Holliday. The
2 proposed pleadings were not controversial except there was a strong difference of opinion
3 about how to refer to a waiver when the landlord accepts a partial payment. The
4 Administrative Office of the Courts resolved that conflict when they made the finishing
5 edits. Here, as well, the workgroup expected that other pleadings would be drafted in the
6 future. The workgroup accomplished what it could in the allotted time.

7 During this process, the draft documents were circulated to the legal services
8 housing advocates throughout the state for comments. The Institute's understanding is
9 that the workgroup chair circulated the draft documents to other justices. The workgroup
10 received comments and suggestions from the justices and considered those comments and
11 suggestions at one of our meetings.

12 **III. Specific Objections to the Proposed Pleadings**

13 The Institute will respond to some of the objections to the pleadings. Attorneys
14 Henderson and Holliday do not appear to object to the summons.

15 **A. The Complaint:**

16 As explained above, this pleading was a consensus product. The workgroup
17 continually reviewed the Rules of Procedure for Eviction Actions as well as the Arizona
18 Residential Landlord and Tenant Act as we drafted our work product. Attorneys
19 Henderson and Holliday argued forcefully for the changes they wanted. Quite frankly,
20 had it not been for the consensus building process, the pleadings would have been
21 different. Despite the consensus building process, they now criticize the complaint for
22 the use of boxes for the landlord to check for the issues in the case. The boxes are for
23 "rent owed," "non-compliance," "irreparable breach," and "other." They initially argue
24 that unrepresented landlords will fill in too many boxes. Then they incorrectly claim that
25 the complaint only allows for one cause of action. The wording of the complaint that
26 "Plaintiff wants you evicted and wants possession of the rental because of the **reasons** in
27 section 5," (emphasis added) certainly allows for more than one issue to be raised. The
28 wording of the complaint that "**any** required notice was served" (emphasis added) is

1 broad enough to include more than one notice if appropriate and required. There is
2 nothing is the form complaint that would preclude a landlord from bringing an eviction
3 based on rent owed and the tenant's breach of the lease if proper notice(s) was served and
4 the landlord can prove up those issues.

5 Attorneys Henderson and Holliday complain that the manner in which the rent
6 owed is stated is not in compliance with Rule 5(c)(1)-(7) of the Rules of Procedure for
7 Eviction Actions. That is incorrect. The complaint includes a place to state each of the
8 seven facts that are required by the rule.

9 While conceding that mandatory pleadings are used in order of protection and
10 injunction against harassment cases, the attorneys claim that evictions have more
11 "scenarios" than order of protection and harassment cases. The Institute suggests that
12 eviction cases are rather straightforward and are the perfect type of case to have uniform
13 pleadings and notices. The Institute encourages the Court to approve the mandatory use
14 of the proposed complaint.

15 **The Judgment:**

16 Here as well, this pleading was a consensus product. Rule 13 (a) of the Rules of
17 Procedure for Eviction Actions requires the justice to make several determinations prior
18 to entering judgment, except when there is a stipulated judgment. Those requirements
19 are: (a)(1) whether the summons and complaint were served properly and whether the
20 pleadings contained the information required; (a)(2) whether proper notice was given
21 with any applicable opportunity to cure; (a)(3) whether the facts alleged, if proven are
22 sufficient to determine if the plaintiff has a superior right of possession; and (a)(4) and if
23 the landlord accepted a partial payment, whether a partial payment agreement and waiver
24 was signed by the tenant. Since these are matters the justices are required by rule to
25 review, the workgroup consensus was these matters should be listed in the judgment.

26 Attorneys Henderson and Holliday now fault the pleading because it requires the
27 justice to check the boxes that correspond to the findings he or she is required to make.
28 These findings are predicates to any judgment and are properly in a form judgment. The

1 attorneys claim that having boxes to check on the judgment form for what the justice is
2 required to review in the rules is “unnecessary.” If the judge is required to review those
3 facts, then it is a best practice to include them.

4 The attorneys incorrectly claim the partial payment line is “legally deficient.”
5 They imply that having the line in the judgment “implies” a partial payment was
6 accepted. That is not what the wording says. The lead in sentence is “If a partial
7 payment was accepted” Moreover, as noted above, Rule 13(a)(4) requires the justice
8 to inquire about a partial payment if it “appears” that a landlord accepted one.

9 As explained above the Commission wanted the workgroup to use “plain English.”
10 The attorneys claim that using the term “rental” is not sufficient and that the words
11 “dwelling unit” or “premises” are terms of art that must be used. The word rental is a
12 word that is easy to understand by all parties and certainly encompasses or is
13 synonymous with the other terms.

14 The attorneys also complain about the use of the terms “guilty” and “not guilty”
15 with the terms “responsible” and “not responsible.” Since the Arizona Residential
16 Landlord and Tenant Act and the Forcible Entry and Detainer Act use the terms
17 guilty/not guilty, the workgroup kept those terms but also added the terms responsible/not
18 responsible since these are civil cases.

19 Attorneys Henderson and Holliday object that the notice required by A.R.S. § 12-
20 1178(E) is not sufficiently described in the judgment. Here, as well, they are incorrect.
21 The required notice starts with a bold **WARNING** and follows with this text. “After
22 service of the Writ of Restitution (order to vacate rental), if you remain on or return
23 unlawfully to the rental, you will have committed criminal trespass in the third degree.”
24 The attorneys incorrectly claim that this wording is not adequate. The workgroup wanted
25 to explain what a “writ of restitution” is in plain English and if that explanation, in fact,
26 needs some tweaking, then the Institute would support that endeavor. The attorneys
27 appear to prefer that the statutory section be attached to the form judgment but inserting
28 or attaching a complete statutory section, goes against the goal to use “plain” English.

1 The attorneys also fault the Commission for not including the stipulated judgment
2 warning required by Rule 13(b)(4) in the judgment. The two judgment forms are used in
3 different situations. As the Institute understands the practice, use of a stipulated
4 judgment is different from use of the judgment form and the current usage does not
5 conflict with the proposed wording of the judgment. It appears inconsistent for the
6 landlord attorneys to suggest that the stipulated judgment warning be included in every
7 judgment even when if it is not a stipulated judgment when in other situations they object
8 that too much information is contained on the judgment form.

9 Finally, Attorneys Henderson and Holliday also fault the judgment form for not
10 having a place for the attorneys' contact information, relying on the requirements in Rule
11 5 (b)(3). That rule applies to the complaint, not the judgment form. The proposed
12 complaint does include a place for the attorney and his or her contact information as
13 required by the rule.

14 The Institute encourages the Court to approve the mandatory use of the proposed
15 judgment.

16 **The Goal of the Petition:**

17 Attorneys Henderson and Holliday assert that the “clear” end goal of the Petition
18 is to increase inefficiencies, raise the probability of errors and slow down the eviction
19 process. While the process to draft these pleadings and documents did not always go
20 smoothly, the Institute believes the final products submitted by the Commission will not
21 cause the purported harms the attorneys describe but rather will assist the justice court
22 eviction process to be more transparent, efficient and more understandable to the
23 unrepresented litigants who are overwhelmingly low-income tenants. That is the real
24 end goal of the Petition.

25 In addition, the Institute supports the mandatory use of proposed notices as well as
26 the pleadings discussed above.¹

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28 ¹ The Institute has not commented on the specific objections to the five notices. The
Institute believes that those objections are unfounded but has left the response to others.

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Conclusion

For all the above reasons, the Institute requests that the Court approve the Petition. The Institute understands that change can be hard for those who are comfortable and satisfied with the ways things currently function. This Petition is a good start to improving the eviction process.

Respectfully submitted this 23rd day of September 2016.

WILLIAM E. MORRIS INSTITUTE FOR JUSTICE

By /s/ Ellen Sue Katz
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Electronic copy filed with the Clerk of the Supreme Court of Arizona this 23rd day of September 2016

Copy of the foregoing emailed to:

Honorable Lawrence Winthrop
Chair
Access to Justice Commission
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Phoenix, Arizona 85007
LWinthrop@appeals.az.gov

By /s/ Ellen Sue Katz

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IN THE SUPREME COURT OF THE STATE OF ARIZONA

In the Matter of:

PETITION TO AMEND THE
RULES OF PROCEDURE FOR
EVICTION ACTIONS

Supreme Court No. R-16-0040

COMMENTS ON
PROPOSED RULE
Notice of Intent to File Response
to Petitioners "Reply"

INTRODUCTION

This proposal covers two kinds of forms: notice forms provided by landlords to tenants as required by pertinent landlord tenant statutes as a predicate for filing an eviction action; and pleading forms filed with the Court in the eviction action.

It fails to identify the legal authority for the Supreme Court to dictate what notice forms private landlords must use to notify tenants of defaults.

The proposal states "the ACAJ worked with justice court managers, judicial staff, and tenant *and landlord attorneys* . . . to create forms for use statewide". But no landlord attorneys were consulted on this proposal in *any meaningful way*.

WHO WE ARE

Michael Parham has represented landlords for 39 years and from 1987-2016 was legal counsel for the Manufactured Housing Communities of Arizona ("MHCA"). His work includes evictions and legislative drafting involving the residential landlord tenant matters and the Title 12 forcible detainer statutes. He is a Registered Authorized Lobbyist for MHCA.

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He has prepared publications for MHCA including forms books containing notice forms tailored to each kind of tenancy. These are considered Arizona standards for these tenancies. He served on the State Bar Landlord Tenant Task Force and on the Subcommittee that drafted the Eviction Rules. Many of them originated with him. He is the primary author of these comments.

Melissa Parham was named legal counsel for MHCA in June 2016. She was an Assistant Attorney General in Criminal Appeals for over four years. Using skills developed in that position she researched most of the legal issues for these comments. She currently authors the MHCA forms publications.

BACKGROUND

There are four residential landlord tenant laws in Arizona: The Residential Act applies to the rental of landlord owned dwelling units (ARS § 33-1301 *et seq.*); the Mobile Home Parks Act applies to the rental of a mobile home space in a mobile home park (ARS § 33-1401 *et seq.*); the Long Term RV Rental Space Act applies to the rental of spaces for RV's under rental agreements over of 180 days (ARS § 33-2101 *et seq.*); and the general landlord tenant laws ("the Innkeeper Laws") apply to the rental of RV spaces for short terms as well as any residential tenancies not otherwise covered by the preceding three laws (ARS § 33-301 *et seq.*).

Each requires unique forms for terminating tenancies and notifying tenants of default and each has different provisions for what constitutes a default.

APPLICABLE LAW

Article 6, Section 5 (5) of the Arizona Constitution grants the Supreme Court the “power to make rules relative to all procedural matters in any court”. ARS § 12-109 (A) authorizes the Supreme Court to adopt rules of procedure:

A. The supreme court, by rules promulgated from time to time, shall regulate pleading, practice and procedure in judicial proceedings in all courts of the state for the purpose of simplifying such pleading, practice and procedure and promoting speedy determination of litigation upon its merits. **The rules shall not abridge, enlarge or modify substantive rights of a litigant.**

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The Court analyzed substantive rights and procedural matters in *Daou v. Harris*, 678 P.2d 934 (Ariz. 1984). **Substantive rights** created by statute cannot be enlarged or diminished by court rules. The power to govern **procedural matters** for all courts, however, is vested exclusively with the court. The substantive law is that part of the law which creates and defines rights. The procedural law prescribes the method by which a substantive law is enforced or made effective. *Id.*

This proposal violates these restrictions. It abridges, enlarges and modifies substantive rights derived from the landlord tenant acts identified above.

Nothing in ARS § 12-109(A) can even remotely be interpreted to authorize (1) the Supreme Court to dictate to landlords the forms of default notices given to their customers--their tenants; and (2) to require inclusion of information in Court mandated forms not required by relevant statutes. This is all the more egregious when one considers that of the default notices given, probably fewer than ten percent wind up in court. In the overwhelming number of cases, tenants come into compliance with the notice long before the time to file an eviction rolls around.

In addition ARS § 41-2752 provides as follows:

A. A state agency shall not engage in the manufacturing, processing, sale, offering for sale, rental, leasing, delivery, dispensing, distributing or advertising of goods or services to the public that are also offered by private enterprise unless specifically authorized by law other than administrative law and executive orders.

B. A state agency shall not offer or provide goods or services to the public for or through another state agency or a local agency, including by intergovernmental or interagency agreement, in violation of this section or section 41-2753.

The proposal violates the policy of this statute by pre-empting to the government (the courts) the publication of landlord tenant notice forms now published and sold by trade associations, private publishers and law firms.

Finally, ARS § 41-1001.01 provides in part as follows:

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A. To ensure fair and open regulation by state agencies, a person:

. . . .

7. Is entitled to have an agency not base a licensing decision in whole or in part on licensing conditions or requirements that are not specifically authorized by statute, rule or state tribal gaming compact as provided in section 41-1030, subsection B.

While not directly on point, the Consumer Bill of Rights of which this is a part expresses a strong state policy that agencies act strictly within the limits of their statutory authority.

THE PROCESS UNDER WHICH THESE FORMS EVOLVED

Why is this important? The proposal claims these forms were developed in a collaborative effort that included knowledgeable landlord attorneys. This is a misleading statement as an examination of the background of the proposal reveals.

In 2014 a Workgroup on Eviction Forms and Instructions was created. Members included at least four legal aid attorneys or affiliates and alumni of legal aid. There were no landlord attorneys on this Workgroup.

Subsequently a decision was made to reach out and include two “guest members”, Denise Holliday and Paul Henderson. These are senior attorneys with the two largest eviction firms in the state, probably accounting for more than 50% of all evictions filed. Each of them has described to the undersigned their involvement. Denise Holliday reported:

Paul Henderson and I were on this task force and we were outvoted at every turn by the 4 tenant advocates. In fact the very last day, they passed several changes over Paul's objection and I could not be there because they notified me 24 hours in advance of the meeting.

Here is the first and most important point. When we strongly objected to language on the forms, we were shut down by assurances that these forms would never be used by lawyers. The head of the committee was Judge Rachel Carrillo. She can verify this absolute promise.

1 Now the tenant advocates are falsely claiming everyone on the committee
2 agreed, that we agreed these forms should be mandatory for everyone, and
3 are not even disclosing that they outnumbered landlord representatives 2 to
4 1.¹

5 Paul Henderson reported:

6 The absolute promise was made that these forms would never become
7 mandatory for the court system, and that the attorneys for landlords (and the
8 landlords themselves) would be free to draw up their own forms for use in
9 landlord-tenant matters. Had this assurance not been given, Denise and I
10 would have walked out at that moment.

11 There was never any balance and every time we thought we had some sort of
12 agreement on a moderate, voluntary-use form notice, CLS would come back
13 and demand additional changes. The end-product you see attached to the
14 petition is the point by which there was no compromise, only a victory by
15 CLS and its advocates.²

16 Rachel Carrillo was the Chair of the Workgroup. She is familiar with the
17 RPEA having served on the original task force that developed them.³

18 Judge Carrillo attended meetings from April 2014 through November 2015 to
19 work on developing the forms. During that time it was her understanding that use of
20 the forms was **not** going to be mandatory. The idea was that the forms would be based
21 in part on input from a number of knowledgeable landlord attorneys; that landlord
22 attorneys "were always involved in this process (emphasis in original)." But she also
23 acknowledges "I asked several landlord attorneys to be in this committee only got (2)
24 who would agree" (sic).⁴

25 When Denise Holliday and Paul Henderson became involved in the project they
26 became frustrated since they were outnumbered four to two by legal aid affiliated
27 attorneys. Judge Carrillo states that she encouraged the landlord attorneys to stay
28 involved since the forms would be subject to a further review process.⁵

¹ E-mail dated August 12, 2016 from Denise Holliday to Michael A. Parham.

² Two e-mails dated August 12, 2016 from Paul Henderson to Michael A. Parham.

² Two e-mails dated August 12, 2016 from Paul Henderson to Michael A. Parham.

³ E-mail dated August 15, 2016 from Rachel Carrillo to Michael A. Parham.

⁴ E-mail from Rachel Carrillo to Michael A. Parham summarizing telephone discussion of August 16, 2016 ("Carrillo Summary").

⁵ Carrillo Summary.

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In May 2016 a policy change was announced. The forms had to be finalized as quickly as possible by the ACAJ and then transmitted to the AOC. At this time Judge Carrillo continued to believe that use of the forms would not be mandatory.⁶

A vote was taken on submission of the forms to the AOC. At this time Judge Carrillo learned that use of the forms was to be mandatory. It is her recollection that she did not vote in favor of the proposal to make the forms mandatory.⁷ Judge Carrillo understands that the forms are now with the AOC; their use is to be mandatory; the ACAJ role in revising them has ended; and that once the forms went to the AOC, they assumed responsibility.⁸

Judge Carrillo is unhappy that use of the forms was made mandatory. She didn't know the reason and knew the landlord attorneys would be upset about the mandatory forms or would believe they had no voice regarding the changes in the forms. It was Judge Carrillo's understanding that immediate responsibility for AOC processing of these forms was to be with Paul Julien, Judicial Education Officer of the AOC.⁹

Mr. Julien confirmed the forms had been referred to AOC, and advised that the Court Services Division would likely be responsible for them as it is with other Court forms. He advised that he was not aware that anyone in the Division has any knowledge or expertise in landlord tenant matters.¹⁰

Asked if consideration was given to the effect this proposal would have on private businesses that publish these forms, the response was that they were developed on the assumption that notice forms were prepared by attorneys for clients. The ACAJ does not seem to have been aware that private enterprise such as trade associations and private publishing companies had substantial investments in development and sale of landlord tenant notice forms.¹¹

Finally it was confirmed that a cost benefit analysis had not been conducted on the effect of this proposal on the residential landlord industry. It appears that ACAJ was not aware that there could be substantial costs to landlords.

⁶ Carrillo Summary.
⁷ Carrillo Summary; E-mail dated August 15, 2016 from Rachel Carrillo to Michael A. Parham.
⁸ Carrillo Summary.
⁹ Carrillo Summary.
¹⁰ Telephone call between Michael A. Parham and Paul Julien, 8/25/26
¹¹ Telephone call between Michael A. Parham and Paul Julien, 8/25/26

1 It does not seem to have known that (1) major landlords had their notice forms
2 cooked into their proprietary software systems or into a variety of off the shelf
3 systems available to landlords in which five-day notice forms are auto populated with
4 rents, late fees and other charges due and the notice is produced for service or that the
5 proposed forms would require changes in the software at considerable cost; (2) Trade
6 associations have spent large sums developing and updating notice forms libraries and
7 these can often be completed on line with a copy printed out by a landlord. Pre-
8 emption by the courts means that investment is lost; (3) Some law firms use
9 sophisticated software systems for landlords to process evictions and notices.
10 Changing notice forms and summons and complaint forms will require extensive re-
11 programming of the system at a very large expense; (4) private forms publishers that
12 cater to small mom and pop operators will be put out of the notice forms business.

10 At the conclusion of a one hour phone call, Mr. Julien, remarked, “you are
11 bringing up issues not considered” by the ACAJ or the Working Group.¹²

12 Mr. Julien advised that in a couple of days Judge Winthrop and he would be
13 meeting with the Committee on Limited Jurisdiction Courts to review the proposal.
14 He asked for the then existing draft of these comments so he could review them with
15 Judge Winthrop in the expectation that the presentation would contain criticisms not
16 in the original proposal. This was provided but at that presentation no mention was
17 made of any of these objections. Nevertheless the LJCC did not approve the proposal
18 but instead voted to adopt the forms as optional, not mandatory, for similar reasons to
19 those presented here.¹³

18 *Counterpart forms in California are optional, not mandatory.*¹⁴ A review of the
19 California optional counterpart forms reveals that they are professional and prepared
20 by people who are competent, a sharp contrast with what is presented in the instant
21 proposal. California law however is quite different and Arizona cannot simply
22 plagiarize its forms.

FAILURE TO CONDUCT COST BENEFIT ANALYSIS

23 A cost benefit analysis is used to evaluate the total anticipated cost of a project
24 compared to the total expected benefits in order to determine whether the proposed
25 implementation is worthwhile for a company or project team. If the results of this
26 comparative evaluation method suggest that the overall benefits of a proposed action

27 ¹² Telephone call between Michael A. Parham and Paul Julien, 8/25/26

28 ¹³ E mail from participant in LJCC briefing, 9/1/16

¹⁴ <http://www.courts.ca.gov/forms.htm?filter=UD>

1 outweigh the incurred costs, then a business or project manager will most likely
2 choose to follow through with the implementation.

3 Generally speaking, a cost-benefit analysis has three parts. First, all potential
4 costs that will be incurred by implementing a proposed action must be identified.
5 Second, one must record all anticipated benefits associated with the potential action.
6 And finally, subtract all identified costs from the expected benefits to determine
7 whether the positive benefits outweigh the negative costs.

8 The cost of this proposal to landlords and landlord attorneys are self-evident.
9 They include (1) the cost of reprogramming management information systems for
10 those that include preparation of notices in the system. The replacement of a form in
11 such a system entails reprogramming the system to complete the new form and that is
12 a substantial expense; (2) the lost investment costs to trade associations in the business
13 of developing and publishing notice forms when the government (Courts) pre-empts
14 that private business; (3) the costs that will be incurred by eviction law firms in
15 reprogramming their computer based eviction systems to replace forms designed into
16 them and ultimately passed on to landlords; (4) training costs incurred by landlords as
17 they train their thousands of employees in the completion and use of the new forms.;
18 and (5) costs to be incurred by small mom and pop landlords facing dismissal of cases
19 and ultimately loss of their properties due to failure to use correct forms (see *infra* for
20 explanation). Undersigned estimates these costs alone to be in the millions of dollars.

21 There are other costs of implementing these forms. The costs to the courts in
22 training staff in their use. The costs to the AOC of staffing up to undertake a new line
23 of work. The costs to lower courts of filing multi-page forms instead of the current
24 single page forms now in use.

25 But what of the benefits expected from implementation of this proposal? No
26 monetary figure was attached to this in the proposal and nothing in the proposal even
27 hints at how anyone would financially benefit from it. If one were to believe that
28 tenants would benefit from it, nothing appears that can serve as the basis for assigning
a dollar value to it. And no such reason is expressed anyway.

The obligation to perform a meaningful cost benefit analysis before imposing
requirements of this sort has worked its way into our case law. For example
in *Chamber of Commerce v. SEC*, 412 F.3d 133 (D.C. Cir. 2005) the D.C. Circuit held
that the SEC acted arbitrarily and capriciously for failing to undertake some effort to
quantify the costs of the mutual fund governance rule changes it had adopted.

FAILURE TO CONSIDER EFFECTS ON PRIVATE BUSINESS

ARS § 41-2753 prohibits the government from engaging in a business when

1 private enterprise is already engaged in it. A review of all minutes on line from
2 committees and subcommittees involved in this proposal fails to reveal that this
3 subject was ever discussed, and Mr. Julien confirmed that it had not been.

4 In fact discussions with him indicated that no one was even aware that the
5 notice forms were already being published and distributed by trade associations,
6 private publication publishers, and by several private law firms.

7 **NOTICE FORMS**

8 **1. Legal Authority**

9 As pointed out above, Article 6, Section 5 (5) of the Arizona Constitution grants
10 the Supreme Court the “power to make rules relative to all procedural matters in any
11 court”, and ARS § 12-109 (A) limits the Supreme Court's authority to adopt rules of
12 procedure.

13 **2. General**

14 The proposal requires, *initially*, the use of the following forms by Attorneys
15 representing landlords and landlords filing *pro per*:

- 16 5-Day Notice to Move - Health and Safety Violation;
- 17 5-Day Notice to Move - Failure to Pay Rent;
- 18 10-Day Notice to Move - Material Breach;
- 19 10-Day Notice to Move - Repeat Material or Health and Safety Breach;
- 20 Immediate Notice to Move - Material and Irreparable Breach

21 These forms are appropriate for use only in evictions brought under the
22 Residential Landlord Tenant Act. The footers on the forms identify them as
23 Residential Landlord Tenant Act forms, but the use of legal jargon is not likely to
inform *pro per* landlords that they should be using something else.

24 Each form is designated as a "Notice to Move." That is incorrect. Each is a
25 notice of termination of tenancy with a cure period (with limited exceptions). Indeed
26 the most commonly used forms, the non payment of rent form and the five and ten day
27 violation forms have specific cure periods meaning tenants do *not* need to move if
28 they timely cure the violation.

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While the bodies of the forms do identify a cure privilege, one reading no further than the title (a common occurrence) will simply think he needs to vacate.

3. The Five Day Non-Payment of Rent Notice

(a) Form Exceeds Statutory Requirements.

ARS § 33-1368 (B) (the non payment of rent provision in the Residential Landlord Tenant Act) states:

If rent is unpaid when due and the tenant fails to pay rent *within five days after written notice by the landlord of nonpayment and the landlord's intention to terminate the rental agreement if the rent is not paid within that period of time*, the landlord may terminate the rental agreement by filing a special detainer action pursuant to section 33-1377. Before the filing of a special detainer action the rental agreement shall be reinstated if the tenant tenders all past due and unpaid periodic rent and a reasonable late fee set forth in a written rental agreement.

The emphasized statutory language is clear what this form is required to say. But the architects of this form have gone beyond the statutory requirements and added some extra requirements:

1. An explanation of how late fees may increase if rent is not paid;
2. An explanation of other fees due under the rental agreement;
3. Advice that the keys must be returned to the landlord when the property is vacated;
4. Advice on contacting the landlord to settle the matter.

These may be informative things and many landlords already use forms that cover them. But relevant statutes do not mandate them. And they have substantive effect since failure to include the information will result in dismissal of the action.

The ACAJ would effectively use forms to legislate requirements for these notices far beyond what the law requires with a prohibition on the use of forms that do not meet these standards. A landlord filing an eviction with a notice form meeting the legal requirements but not of these rules would have that eviction action rejected and be told to start all over again with the use of a court sanctioned form.

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(b) Form Precludes Provisions Required by Other Laws.

The proposal requires the use of these forms by lawyers as well as landlords. A lawyer for example filing an eviction action based on a five-day non-payment of rent notice who does not use the court approved form faces having that eviction rejected until the correct form is used. But use of that form could violate the federal Fair Debt Collection Practices Act (FDCPA).

The FDCPA may treat lawyers seeking to collect consumer debts for clients as “debt collectors”. See 15 U.S.C. § 1692 *et seq.* The FDCPA requires at 15 U.S.C. § 1692g that debt collectors include validation notices in their debt collection letters. The FDCPA also applies to some other third party debt collectors. Depending on circumstances, these debt collector and landlord attorney notices may need to contain FDCPA validation notices. But the proposed five-day non-payment of rent notice fails to include one.

Under this proposal an Attorney filing an eviction using a form containing the FDCPA validation notice faces having it rejected because it varies from the Court prescribed form this proposal would mandate.

4. The Rest of the Notice Forms

They too suffer from similar defects, in particular the proclivities of the drafters to add things not required by the statues creating the need for the form. With respect to all of them, a plaintiff filing an eviction action using a notice form fully complying with the requirements of the statute but not on the form called for in this proposal would face having it rejected. As with the five-day notice, this has substantive effect since failure to include the information will result in dismissal of the eviction action.

PLEADING AND PRACTICE FORMS

1. General

The Supreme Court can adopt rules and forms related to pleading and practice. But the restrictions in ARS § 12-109 (A) apply to such forms.

The proposed forms violate those restrictions since they too abridge, enlarge and modify substantive rights derived from the landlord tenant acts identified above.

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In addition they are contradictory and confusing.

2. The Complaint

(a) Form Exceeds Statutory Requirements.

High volume eviction landlord attorneys prepare eviction filings by the use of technology. Cases are processed and legal costs are held to a minimum that not only pleases their clients but saves money for tenants.

Most eviction filings result in tenants reinstating their tenancies and the case either being dismissed or judgment satisfied after entry. To reinstate, however a tenant must reimburse the landlord's legal fees. Every extra dollar resulting from changes in court rules ultimately comes out of the pocket of the tenant.

Under the heading "COMPLAINT (*Eviction Action*)" there are four boxes to be checked, including "Mobile Home" and "Commercial." This is confusing since mobile home park and commercial evictions are supposedly not covered by this proposal.

ARS § 12-1175 (B) sets forth the statutory requirements for the contents of an eviction complaint:

B. The complaint shall contain a description of the premises of which possession is claimed in sufficient detail to identify them and shall also state the facts which entitle the plaintiff to possession and authorize the action.

This form exceeds what the law requires. Section 5 starting with the second line calls for information concerning whether this is subsidized housing.

The "Notice" provision in section 5 consists of advice to a tenant on how to reinstate the tenancy. That goes far beyond the statutory requirement. That information is already in the second paragraph of the Residential Eviction Information Sheet that is served with the Complaint. All of this has substantive effect since failure to include the information will result in dismissal of the eviction action.

3. The Summons

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(a) Form Contains Wrong Information About Counterclaims.

Section 4 says, "If you want to file a counterclaim, it must be in writing."

Rule 8(a), RPEA, states:

Basis. Unless specifically provided for by statute, no counterclaims, cross claims, or third party claims may be filed in eviction actions. Any counterclaim filed without a statutory basis shall be stricken and dismissed without prejudice. All counterclaims must be filed in writing and served upon the opposing party.

Arizona courts have repeatedly held that the object of a forcible detainer action is "to afford a **summary, speedy and adequate remedy for obtaining possession of the premises** withheld by a tenant in violation of the covenants of his tenancy or lease, or otherwise withheld within the meaning of the statute defining forcible entry and detainer." *Olds Bros. Lumber Co. v. Rushing*, 64 Ariz. 199, 203, 167 P.2d 394, 397 (1946). For that reason, "**counterclaims, offsets and cross complaints are not available either as a defense or for affirmative relief in such an action, as indicated by our statutes and the statutes of most states.**" *Olds Bros.*, 64 Ariz. at 205, 167 P.2d at 397.

There is no statutory basis for a counterclaim in an eviction action with one very limited exception in the Residential Landlord Tenant Act. Under ARS § 33-1365, **in a Residential Act non-payment of rent case only**, a tenant may counterclaim for damages resulting from the landlord's breach of the lease or violation of the Act. There are no comparable provisions in any of the other landlord tenant statutes. Section 4 thus gives misleading legal advice by saying you can file "if you want" and can be expected to result in the filing of many wrongful counterclaims.

Section 5 is gratuitous advice and goes beyond statutory requirements. The same information already appears in the Residential Eviction Information Sheet.

4. The Judgment

This should be a one-page form. It has metastasized into two pages as the result of the inclusion of misleading and extraneous verbiage. The legal insufficiencies of this form include:

(a) Form Contains Wrong Information On Partial Payments.

This form states: "If a partial rent payment was accepted, [] a non-waiver was

1 produced [] a non-waiver was NOT produced". The requirement of a non-waiver
2 agreement appears only in the Residential Act. A similar requirement was repealed
3 from the Mobile Home Parks Act in 1987 (*see* former ARS § 33-1479) and the
4 requirement has never appeared in any of the other Acts. Rule 13(a) (4), RPEA,
5 states:

(4) If it appears that a landlord has accepted a partial payment in a case
6 claiming non-payment of rent ***under the Arizona Residential Landlord and***
7 ***Tenant Act***, the court shall inquire whether the landlord accepted the partial
8 payment, and if so, can produce a partial payment agreement and waiver
9 signed by the defendant as required by the statute. If the landlord is unable
10 to prove that the waiver was signed, the court shall dismiss the action.

The judgment is thus inconsistent with both the law and the eviction rules.

(b) Form Is Too Long.

Judgments are generally issued with an original that goes into the court file and
12 three copies (one for tenant, one for landlord, one for landlord attorney). The standard
13 for high volume eviction attorneys is to use color coded multi copy forms where the
14 judge signs the original and the copies are automatically conformed since the copies
15 are embedded with ink that makes a copy of the signature.

This will not work with a two-page form meaning all copies will need to be
16 manually conformed by court staff. This will slow down eviction calendars and
17 require a clerk to be in the courtroom.

The biggest problem with this form is not the substantive content, but with how
19 that content is set forth. There is no need for two pages, especially in light of the extra
20 expense to Courts, landlords and ultimately tenants of making it more time consuming
21 for attorneys to prepare these cases. And the form is simply muddled. It is not clear
22 and straightforward.

(c) Form Omits Provisions Required by RPEA.

Finally, this form omits a key requirement of the RPEA. A majority of cases in
24 which tenants show up at court are really uncontested. They acknowledge owing the
25 rent claimed or whatever other default is the basis for the action.

In these cases the standard of practice is for the landlord attorney to review
27 what is claimed and if there is no disagreement, to obtain a stipulation. This
28 economizes on judicial resources by avoiding appearances where the court reviews

1 these same matters with the tenant. Overall it helps to minimize landlord legal fees.

2 RPEA 13 (b) (4) contains the following provision:

3
4 (4) Stipulated Judgments. The court may accept a stipulated judgment,
5 but only if the court determines that the conditions of Rule 13(a)(1)-(2) have
6 been satisfied and the form to which the defendant stipulated contains the
7 following warning:

8 **Read carefully! By signing below, you are consenting to the terms of a**
9 **judgment against you. You may be evicted as a result of this judgment,**
10 **the judgment may appear on your credit report, and you may NOT stay**
11 **at the rental property, even if the amount of the judgment is paid in full,**
12 **without your landlord's express consent.**

13 **LOGISTICAL PROBLEMS**

14 **1. Major Landlords**

15 Many landlords have the notice forms already built into their software systems.
16 These systems automatically identify rental delinquencies and trigger termination
17 notices at the earliest possible time. This gives tenants the opportunity to bring rental
18 accounts current before late fees, court costs and attorney fees can accumulate to
19 unaffordable balances. The requirement to undergo extensive re-programming of
20 information and management systems for no good reason simply increases the cost of
21 management to landlords and will ultimately be passed on to tenants.

22 In addition there will be down time to reprogram these systems during which
23 balances will need to be hand calculated at considerable expense, one that is
24 ultimately borne by tenants. Additional training on how to complete irrational forms
25 will be necessary both for IT personnel making system design changes and
26 management staff will add to this expense.

27 **2. Mom and Pop Landlords**

28 Access to justice commissions across the country focus entirely on tenants. It is
almost unheard of for one to pay any attention to the problems of the unrepresented
small landlord. In 2007, however the District of Columbia Bar made note of these
problems:

Unrepresented landlords, who usually own a single dwelling or a small
number of units, also face difficulties in court, specifically on technical
matters such as filling out a complaint form correctly or not understanding

1 their obligations under the District’s rental housing statutes and regulations,
2 said King.¹⁵

3 The Boston Bar Association has stated:

4
5 The Task Force also recognized that a landlord might be vulnerable and
6 included a proposal for representation for landlords for whom shelter was at
7 stake and where the tenant was represented.¹⁶

8 There are tens of thousands of individuals in Arizona who have invested in
9 small rental operations--perhaps a fourplex or maybe a single-family house rental. A
10 morning at a Justice Court *pro per* calendar reveals how many fall into this category.

11 These are often retirees who have invested their life savings in rental properties
12 looking for the returns no longer available from bonds or other securities to finance
13 their retirements. Among other things they cannot afford attorneys to handle their
14 evictions since their margins are so narrow.

15 In their files are old notice forms they have been using for years that still meet
16 the basic requirements of what the law provides. But the new forms will impact them
17 also. They face having their cases dismissed for failure to use the correct form. And if
18 that form is one of those proposed here, it is counter intuitive and irrational. Many
19 will face having their cases repeatedly dismissed over technical failures having to do
20 with correct form completion. Meanwhile tenants will be able to continue living in
21 their properties rent-free thanks to these technical changes.

22 It will take years to cycle old but still legally sufficient notice forms out of
23 these property owner files and replace them with new ones. How many of these folks
24 face the loss of their properties and much of their retirements due to this exercise?

25 The summons and complaint forms call for a great deal of information not
26 required by statute. One of the supposed goals of the ACAJ was to simplify the forms
27 down to a fifth grade reading level. But that goal has been abandoned. Imagine the
28 confusion of the *pro per* landlord having to complete the section of the Complaint
dealing with subsidized housing. Typically he will not have a clue what the form is
referring to. And most courts will not give advice on how to complete the form.

¹⁵ Justice to All: The Continuing Work of the Access to Justice Commission, *Washington Lawyer*, April 2007

¹⁶ *The Importance of Representation in Eviction Cases and Homelessness Prevention*, Boston Bar Association, March 2012, page 10:

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Also imagine her trying to figure out how to complete section 6 detailing what he is owed. What is a "Concession"? What is a "reimbursable" court cost? Does she fill out the entire form or is she alert enough to catch the fact that she only checks and completes the parts that apply? Many will not be able to figure this out.

In a Court that requires plaintiffs to complete the judgment form, a *pro per* landlord is going to be completely bewildered. Even if the Court completes the form and the landlord prevails, the judgment will make no sense to many and they will not know what they have accomplished.

3. Private Forms Publishers

There are a number of professional form publishers that prepare and distribute notice forms. This includes organizations like MHCA; the Arizona Multihousing Association; and the Arizona Association of Realtors.

Commercial forms publishers also participate in the Arizona market. Firms like U.S. legal Forms; EZ Landlord Forms; Rental Lease.net; and Alpha Publications. These forms all satisfy statutory requirements but do not contain the information called for in this proposal. They have been prepared by professionals at considerable expense and marketed to *pro per* landlords for many years.

Finally, most major eviction firms have a stable of notice forms they make available to clients. Many clients keep using them after their relationship with the firm has ended. The forms still meet statutory requirements but will not meet the requirements of the forms proposed for use in this proposal.

4. Eviction Law Firms

Eviction attorneys operate on narrow margins, keeping costs and fees to a minimum through technology. Many charge major clients as low as \$75 in legal fees for a routine eviction. How is this done? Undersigned's law firm is an example.

After serving the termination notice the client will refer the case for eviction. Upon receipt the responsible legal assistant will review the submission and determine if all necessary paperwork has been received; and that the proper notice was given. Then the case is entered into the eviction processing system resulting in the printing of a one-page summons and a one-page complaint after the notice has matured. Multiple copies of each on different colored pages are printed.

All information is auto-populated in the forms from information supplied by the

1 client. At the time this is done the system also prints out process server instructions.
2 After a final review by one of the firm attorneys and a senior legal assistant, the
3 package is picked up by the process server for filing and service.

4 One page forms keep expenses to a minimum by eliminating as much manual
5 processing of the case as is possible. Simplicity minimizes process server expense
6 (generally process server expense runs \$36.00 plus \$10.00 per page in Maricopa
7 County).

8 If the tenant fails to reinstate the tenancy, the day before the initial court
9 appearance a similar process is followed in preparing the judgment, with a single page
10 form consisting of multiple copies in different colors being printed. This too is auto-
11 populated with information in the system.

12 Expanding these forms to two pages will result in the need for system
13 reprogramming; in additional manual processing since now two pages will need to be
14 collated with the attachments; and in a more diligent review process to ensure both
15 pages are accurate and matched up. This will add to the expense to eviction attorneys
16 and ultimately the costs to landlords (and tenants). A rough estimate of the cost to our
17 firm of necessary system modifications is \$50,000 to \$100,000.

18 Current one page forms contain all information required by statute and the
19 RPEA. Process server fees will increase since process servers charge by the page and
20 since they will need to verify the correct copies are attached to the correct forms. This
21 expense will also be borne by landlords and ultimately tenants.

22 The institutional burden on the Courts of suddenly doubling the size of eviction
23 files would seem self-evident.

24 **CONCLUSION**

25 Why is all this necessary? The current practices work well considering the high
26 volume of cases being processed through our Justice Courts. No reason for the
27 proposal is given in the Petition other than this:

28 At its May 18, 2016 meeting, ACAJ concluded the forms should be
mandated rather than optional *to better promote improved readability of and
consistency in forms used by attorneys, landlords and judges; and to allow
for standardized and timely updating.* These benefits are all in keeping with
the Supreme Court's access to justice initiative.
That verbiage is vacuous and meaningless. The current practices work well.

1 The system operates efficiently and at minimum expense. The upheavals created by
2 this exercise will slow the process down, and will be difficult and time consuming to
3 implement, both for landlords and the Courts themselves.

4 No problems are identified that this dislocation will remedy. About the only
5 thing the proposal will accomplish is to temporarily turn the eviction process chaotic,
6 and this benefits only tenants who wish to eke out a few more weeks of rent free
7 living by delaying cases due to violations of new technicalities created by it.

8 The forms disregard legal restrictions imposed on the Supreme Court limiting
9 what is appropriate for rules and forms and pre-empting private business. They do not
10 appear to have been prepared by anyone with an understanding of landlord tenant and
11 eviction laws. The two landlord attorneys who could have remedied some of these
12 problems were ignored.

13 The proposal is deeply flawed. In part that is probably the result of a conscious
14 decision to exclude landlord attorneys from any *meaningful* participation in this
15 exercise. The ACAJ has no one on it even remotely familiar with landlord business
16 operations. Right now decisions are made on the basis of one point of view, that of
17 legal aid attorneys. That needs to change.

18 The LCJC and the landlord attorneys live in the real world of evictions. Despite
19 stereotypes, landlord attorneys are held to the same standards and ethics as other
20 members of the Bar. The stereotypes are offensive and insulting. Landlord attorneys
21 are committed to representing their clients but in an honest and ethical manner. They
22 oppose this for these simple reasons:

- 23 1. It is unlawful;
- 24 2. It simply takes a private businesses' source of income away by seizing
25 the right to create notice forms without compensating it;
- 26 3. The Court system lacks the expertise and ability to do the job;
- 27 4. The forms themselves do not satisfy statutory requirement;
- 28 5. The proposal was made with no consideration of costs or benefit and is
arbitrary and capricious;
6. And finally, it arises out of uninformed stereotypes of the eviction
process and landlord attorneys.

29 The two groups with front line experience in this area, landlord lawyers and
30 lower court judges, object to this proposal. To substitute their experience and
31 knowledge with that of a Committee composed of people who know nothing of this

1 area and people hostile to landlords may serve someone’s idea of justice, but certainly
2 does not serve justice in any sense of the word in the American legal system.

3 The Star Chamber was an English court of law that sat from the late 15th
4 century to the mid-17th century. In modern usage, legal or administrative bodies with
5 strict, arbitrary rulings and secretive proceedings are sometimes called,
6 metaphorically or poetically, Star Chambers.

7 Star Chamber proceedings so grossly violated standards of “due process”
8 because a party was denied a fair hearing. The unfair predetermined judgments that
9 sent the accused to The Tower of London or to the chopping block made “Star
10 Chamber” synonymous with unfairness from the bench.

11 This is not mere hyperbole. A review of the history of this proposal reveals
12 more than a few characteristics of Star Chamber practices. Essentially an industry
13 facing an unauthorized regulatory take over by the Supreme Court has been excluded
14 from all proceedings leading to the proposal being recommended. The proposal was
15 created by the ACAJ that is composed in equal portions of members who are ignorant
16 in landlord tenant matters, and those who as legal aid attorneys or tenant/consumer
17 advocates are implacably hostile to the interests of landlords.

18 Landlords were given no meaningful opportunity to appear, give their views
19 and attempt to rebut the stereotypes of them by hostile ACAJ members that ultimately
20 resulted in this proposal. At least the Star Chamber allowed the accused to appear.

21 **RESERVATION OF RIGHT TO FILE REPLY**

22 Because this proposal is so flawed, undersigned envisions that unless it is
23 abandoned, the Petitioner in its Reply due November 4, 2016 will try and create a
24 complete revision of it. In that event undersigned reserves the right to file a response
25 to any such new proposal.

26 **DATED:** September 23, 2016

27 **Williams Zinman & Parham, P.C.**

28 */s/ Michael A. Parham*

By: Michael A. Parham

Melissa A. Parham

A copy of this comment has been e-mailed
this 23rd day of September 2016 to:
Hon. Lawrence Winthrop

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8 Attorneys for Commenting Party
9 Arizona Real Estate Investors Association

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

11 In the Matter of:

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

Supreme Court No. R-16-0040

COMMENTS ON
PROPOSED RULE

15 The Arizona Real Estate Investors Association (“AZREIA”) hereby submits
16 its Comments on the Petition to Amend the Rules of Procedure for Eviction Actions
17 (“Petition”) regarding the use of mandated forms for notices and court pleadings.
18 As demonstrated below, AZREIA members will suffer financial harm if the
19 proposed Rule passes, without having an opportunity for meaningful input.

20 The Petition sets forth proposed court rules that should be addressed in the
21 legislature, not the judicial system. The fact that the Arizona Commission on
22 Access to Justice (“ACAJ”) did not mandate any forms for tenants serving notices
23 or filing counterclaims in evictions, shows that the Commission’s intent was not to
24 create equal access among litigants but to burden landlords with technical
25 obligations not set forth by statute. The unequal treatment of landlords and tenants
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1 by the ACAJ underscores the fact that the proposal is a legislative determination
2 and not a judicial one. AZREIA hereby incorporates the Comments submitted by
3
4 undersigned counsel’s firm on behalf of the Manufactured Housing Communities of
5 Arizona, as well as the comments submitted by Paul Henderson and Denise
6 Holliday.
7

8 AZREIA

9 AZREI is a professional membership association of over 2,000 independent
10 real estate investors. AZREIA chapters in Phoenix, Tucson, and Prescott serve the
11 educational, informational, networking, and support needs of its members to further
12 their success in providing housing to their local communities. AZREIA members
13 invest in residential, small multi-family, and commercial property. AZREIA is a
14 member of the National Real Estate Investors Association, which represents over
15 40,000 independent real estate investors throughout the United States. AZREIA
16 has repeatedly received the National REIA Award of Excellence for Overall Best
17 REIA in the Country.
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21 AZREIA members are separate and distinct from many institutional investors
22 in that they are more actively involved in the day-to-day management of their
23 properties, and many are referred to as “mom and pop” landlords. Members consist
24 of both landlords that handle their legal needs themselves based upon education that
25 AZREIA provides, as well as landlords that retain attorneys to draft their notices
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1 and legal pleadings, including evictions. These landlords are regular people who
2 invest in real estate to provide housing for tenants, and rely upon the income stream
3 it creates.
4

5 **INTRODUCTION**

6 Several of the Comments set forth the history of the ACAJ regarding the lack
7 of meaningful input from entities representing landlords. These comments imply
8 an unfair process by which the current Petition was created, and raises questions
9 about the intent of the ACAJ. This is partially evidenced by the ACAJ's failure to
10 propose mandatory forms for tenants to use. The complete absence of any
11 requirements for tenants, while mandating technical forms for landlords,
12 demonstrates the inherent bias in the proposed Rule. The proposed Rule treats
13 litigants different based upon their status in a given class without any legislative
14 consideration to public policy.
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19 In its brief, the ACAJ stated, "ACAJ concluded the forms should be
20 mandated rather than optional to better promote improved readability of and
21 consistency in forms used by attorneys, landlords and judges." Petition to Amend
22 Rules, page 3. If this were the case, the ACAJ should have primarily been
23 concerned with the forms used by tenants serving landlords notices or filing
24 counterclaims in eviction actions. It is more common for a tenant to handwrite a
25 notice or pleading, whereas landlord attorneys and private notice providers already
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1 have standardized forms and pleadings for landlords to use. If the true intent is to
2 facilitate “readability and consistency” as alleged, mandatory forms would be
3 required for tenants instead of, or in addition to, landlords. Rather, it appears that
4 the purpose of the Petition is to create impediments for landlords seeking to regain
5 possession from defaulting tenants. If landlords, however, were to propose that
6 forms be mandated for tenants to use, tenant advocates would undoubtedly argue
7 that it was an attempt to deny tenants their right to provide notice by creating
8 unnecessary burdens.
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12 Under the Arizona Residential Landlord and Tenant Act, a tenant has a right
13 to serve several notices to a non-compliant landlord. *See* A.R.S. §§ 33-1341(8),
14 -1361, -1362, -1363 and -1364. Furthermore, in a non-payment of rent eviction
15 action, pursuant to A.R.S. § 33-1365, a tenant may raise permissible counterclaims
16 which are founded in statute. Despite the plethora of notices and counterclaims a
17 tenant may serve or file, the ACAJ was not concerned with “improved readability
18 of and consistency in [these] forms.”
19
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21 Requiring forms for landlords, but not tenants, raises concerns regarding (1)
22 creating unnecessary burdens for landlords, and (2) equal protection issues.
23

24 **I. THE PETITION WILL VICTIMIZE AZREIA MEMBERS**
25 **AND ALL SELF-REPRESENTED LANDLORDS.**

26 Administrative Order 2014-83 directed “the ACAJ to make
27 recommendations on assisting self-represented litigants and revising court rules and
28

1 practices to facilitate access and the efficient processing of eviction cases.” Petition
2 to Amend Rules, page 2. Despite this, the ACAJ Petition does not facilitate access
3 to the courts by self-represented landlords, but rather creates technical impediments
4 that will only serve to needlessly delay self-represented landlords from obtaining
5 possession of property from defaulting tenants.
6

7
8 As cited in the Comments filed by the Manufactured Housing Communities
9 of Arizona:

10 In 2007, however, the District of Columbia Bar made note of these problems:

11
12 Unrepresented landlords, who usually own a single dwelling or a
13 small number of units, also face difficulties in court, specifically on
14 technical matters such as filling out a complaint form correctly or not
15 understanding their obligations under the District’s rental housing
16 statutes and regulations, said King.¹

17 The Boston Bar Association has stated:

18 The Task Force also recognized that a landlord might be vulnerable
19 and included a proposal for representation for landlords for whom
20 shelter was at stake and where the tenant was represented.²

21 It is clear that self-represented landlords are at a unique disadvantage
22 compared to other litigants. Many AZREIA members, like thousands of other
23 “mom and pop” landlords, rely upon their rental properties as part of, or as their
24 sole stream of, their monthly revenue. To ensure that they are able to pay their
25

26
27 ¹ Justice to All: The Continuing Work of the Access to Justice Commission, *Washington Lawyer*, April
28 2007

1 mortgage, they rely upon the streamline eviction process created by the legislature
2 to enable them to get possession from defaulting tenants. *See Olds Bros. Lumber*
3
4 *Co. v. Rushing*, 64 Ariz. 199, 204, 167 P.2d 394, 397 (1946)(“the object of such an
5 action is to afford a summary, speedy and adequate remedy for obtaining
6 possession of the premises withheld by a tenant in violation of the covenants of his
7 tenancy or lease.”) It is because of this legislation that thousands of investors flock
8 to Arizona, as opposed to other states, to own rental properties.
9

10
11 Due to narrow profit margins, many such landlords represent themselves to
12 avoid spending needless attorneys’ fees to evict a tenant when it is undisputed the
13 rent has not been paid. Further, AZREIA members who use an attorney to file an
14 eviction may still potentially face delay or having their evictions dismissed if they
15 use the same notice they used for years that meets the statutory mandate but not the
16 new rule.
17

18
19 If the Petition is adopted, it will cause irreparable harm to many AZREIA
20 members for years to come. This will happen in two ways. First, landlords will
21 have their cases dismissed for mere technicalities, which will result in lost rent and
22 affect their ability to pay their mortgage. Second, other AZREIA landlords who
23 handle their cases themselves will be forced to expend additional resources by
24 hiring an attorney for their notices and evictions to ensure compliance, despite
25
26

27 ² *The Importance of Representation in Eviction Cases and Homelessness Prevention*, Boston Bar
28 Association, March 2012, page 10.

1 wanting to do the work on their own. This is because the proposed Complaint is
2 confusing, and will deter landlords from representing themselves. In other words, it
3 prevents the access to justice that is the mission statement of the ACAJ.
4

5 Many AZREIA members have used use their own statutorily-compliant
6 notices for years. The Petition will require that evictions filed predicated on such
7 notices will be dismissed, even when each statutory element for an eviction action
8 has been met. While AZREIA understands the serious nature of evictions for
9 tenants, it also understands the critical importance that the eviction process plays
10 for investors. If the eviction process is delayed to accommodate new technicalities,
11 it will simply enable tenants to stay in member properties for longer time without
12 paying rent. This will directly result in an unnecessary financial burden for making
13 mortgage payments for both AZREIA members and similarly situated individual
14 landlords throughout Arizona. It is also likely that such action will result in rents
15 being increased to account for extended periods of time when rent is not paid,
16 which is the case in other states.
17
18
19
20

21 AZREIA members have selected Arizona to invest in real estate due to the
22 statutory nature of evictions. The hastily drafted Petition has not considered the full
23 implications in imposing new requirements without sufficient justification, and the
24 overall effect it will have on the residential rental market. These issues are public
25 policy decisions that the legislature needs to make, and not this Court.
26
27
28

1 **II. THE PROPOSAL RAISES EQUAL-PROTECTION**
2 **ISSUES BY CREATING MANDATORY FORMS FOR**
3 **LANDLORDS, BUT NOT FOR TENANTS.**

4 When landlords and tenants are treated unequally, it raises equal protection
5 issues. It further highlights the Rule’s impermissibility because it requires public
6 policy considerations, which are a legislative, not judicial, function.
7

8 “The equal protection clauses of the state and federal constitutions generally
9 require that all persons subject to state legislation shall be treated alike under
10 similar circumstances.” *Vong v. Aune*, 235 Ariz. 116, 123, ¶ 32, 328 P.3d 1057,
11 1064 (App. 2014).
12

13 To establish an equal protection violation, a party must establish two
14 facts. First, the party must show that it was treated differently than
15 other people in the same “similarly situated” class. Second, when, as
16 here, that disparate treatment does not “trammel fundamental personal
17 rights or implicate a suspect classification,” the party needs to show
18 that the classification bears no rational relation to a legitimate state
19 interest.”

20 *Aegis of Arizona, L.L.C. v. Town of Marana*, 206 Ariz. 557, 570–71, ¶ 54, 81 P.3d
21 1016, 1029–30 (App. 2003), as corrected (Dec. 22, 2003)(internal citation omitted).

22 In determining the rational state interest, “[C]ourts are compelled under rational-
23 basis review to accept a legislature's generalizations even when there is an
24 imperfect fit between means and ends.” *Vong*, 235 Ariz. at 123, ¶ 32, 328 P.3d at
25 1064 (emphasis added).
26

27 ...
28

1 “It is well-established that **legislation** may discriminate among classes as
2 long as the burden imposed on the affected class is justifiable.” *Standhardt v.*
3
4 *Superior Court ex rel. County of Maricopa*, 206 Ariz. 276, 289, ¶ 43, 77 P.3d 451,
5 464 (App. 2003)(emphasis added). In other words, when litigants in a case are
6 treated differently, it is a legislative determination, not a judicial one, if there is a
7 justifiable public policy reason underlying the disparate treatment. When the
8 determination is based upon a social or economic reason, such as presumed herein,
9 the court’s only duty is to determine where the rule “rationally related to a
10 **legitimate government purpose.**” *Church v. Rawson Drug & Sundry Co.*, 173
11 Ariz. 342, 350, 842 P.2d 1355, 1363 (App. 1992)(emphasis added).
12
13

14 The proposal by the ACAJ is an attempt to make a legislative determination
15 without involving the legislature by circumventing the regular policy analysis used
16 to enact statutes. The ACAJ is attempting to force landlords to use mandated, court
17 approved forms and pleadings, and no such requirement is imposed upon tenants
18 and is not required by law.
19
20

21 As noted in the Comments submitted by this firm on behalf of the
22 Manufactured Housing Communities of Arizona, there is no evidence that a cost-
23 benefit analysis was undertaken; there was a complete failure by the ACAJ to
24 consider the financial impact on private businesses engaged in selling forms as well
25 as the financial impact upon self-represented landlords. *See* ARS § 41-2752 (A
26
27
28

1 state agency shall not engage in the manufacturing, processing, sale, offering for
2 sale, rental, leasing, delivery, dispensing, distributing or advertising of goods or
3 services to the public that are also offered by private enterprise unless specifically
4 authorized by law other than administrative law and executive orders”). These
5 policy determinations can only be made by the legislature.
6

7
8 **CONCLUSION**

9 The Petition demonstrates raises significant public policy considerations that
10 were not properly vetted and which are exclusively reserved for the legislature. It is
11 clear that no meaningful review was given as to the effect the Petition would have
12 upon individual landlords. In the event that the Petition is approved, it will have
13 immediate and irreparable harm to AZREIA members without meaningful review
14 and input.
15

16
17 RESPECTFULLY SUBMITTED this 23rd day of September, 2016.
18

19 **Williams, Zinman & Parham, P.C.**
20 (Electronically Signed)

21 

22 By: Mark B. Zinman

23
24 A copy of this comment has been e-mailed
this 23rd day of September 2016 to:

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

Arizona Commission on Access to Justice

Meeting Date: November 9, 2016	Type of Action Requested: <input type="checkbox"/> Formal action or request <input checked="" type="checkbox"/> Information only <input type="checkbox"/> Other	Subject: Effective Public-Private Collaboration: Arizona Domestic Violence Legal Assistance Project
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From: Chris Groninger

Presenters: Chris Groninger, Arizona Bar Foundation & Laura Guild, DES

Discussion: Ms. Groninger will describe the partnership between the Bar Foundation, the LSC entities and their Volunteer Lawyer Programs, and the Arizona Department of Economic Security, and report on year-end statistics, successes, and plans moving forward.

Recommended motion: none at this time.

Executive Summary

As a result of the Domestic Violence Legal Assistance Project (“Project”), an initiative of the Arizona Foundation for Legal Services & Education, 13 Arizona Domestic Violence Shelter Providers, three Legal Services Agencies and their Volunteer Lawyer Programs, and the Arizona Department of Economic Security, 1,862 TANF eligible and 1,713 Non-TANF eligible domestic violence victims were assisted during the fourth quarter of state fiscal year 2016. During the contract term, the Domestic Violence Legal Assistance Project served 7,279 TANF eligible and 6,581 Non-TANF eligible victims of domestic violence.

Of the 3,575 domestic violence victims served during April 1st through June 31st:

- 984 TANF-eligible and 1,151 Non-TANF eligible victims began services during the fourth quarter.
- 878 TANF-eligible and 562 Non-TANF eligible victims began services previously, but also received assistance during the fourth quarter.

Of the 3,575 domestic violence victims served during the fourth quarter:

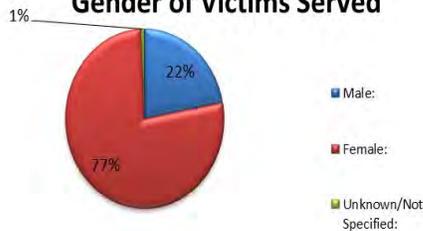
- 546 victims were served in 363 self-help clinics and legal workshops.
- 1,959 victims were provided with direct legal representation or assistance.*
- 535 victims received assistance from the Volunteer Lawyer Program (VLP).
- 874 new victims were served by lay legal advocates.

During the fourth quarter, the Project:

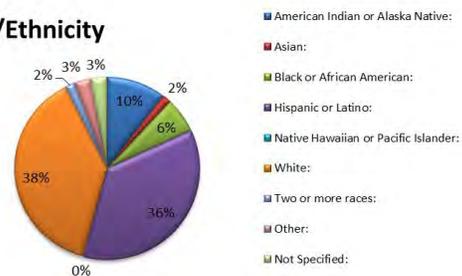
- Recruited 26 new volunteer attorneys and law school students to provide legal assistance to the Project.
- Collaborated with 118 volunteer attorneys who donated 702 hours of their time specifically to victims of domestic violence; the financial equivalent of \$140,700.
- Distributed 43,854 informational brochures.
- Reached 6,247 people through 154 community based educational presentations about the law.

Year End Demographics

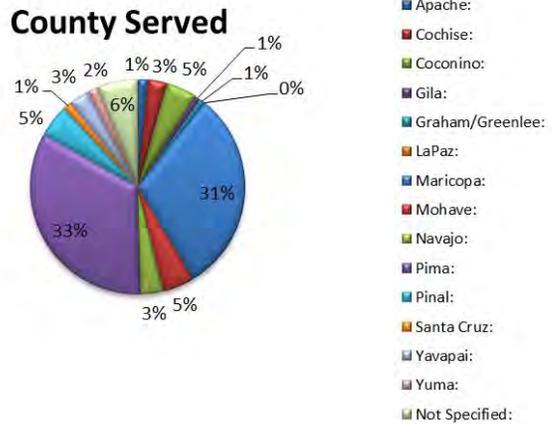
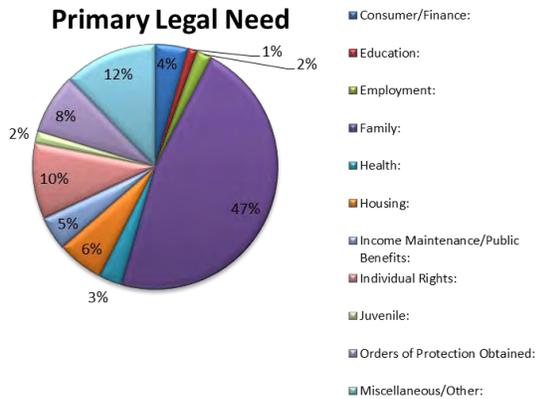
Gender of Victims Served



Race/Ethnicity



* This figure indicates those reported receiving direct legal assistance from both paralegals and attorney staff at legal aid organizations and may represent a victim or victims that received assistance from both a paralegal and an attorney.



Project Goals & Objectives

Goal #1: To address the immediate and long-term safety of domestic violence victims by providing comprehensive and holistic legal services. In order to ensure the safety of victims, Project staff will provide immediate emergency legal assistance, as well as long-term representation, to victims and their families. Project staff obtain Orders of Protection when necessary to protect victims and their children from their abuser, and secure temporary orders of support and custody. Legal staff also provide direct representation for separation and divorces, child and spousal support, custody and visitation, and related cases to ensure the family’s long-term safety. Victims are provided referrals and assistance in obtaining access to criminal justice, health care services, immediate shelter provisions, and other advocacy services as needed.

- **Outcome #1: Provide legal assistance to 1,000 victims of domestic violence in self-help clinics and workshops each year.**

During the fourth quarter of FY16, legal aid organizations hosted 363 self-help clinics and workshops, assisting 546 victims of domestic violence with their civil legal needs. The 2,675 victims served to throughout FY16 represents 268% of the annual goal.

Legal Self Help Clinic Topics	Q1 Served	Q2 Served	Q3 Served	Q4 Served	YTD
General Family Law	314	243	216	180	953
Divorce w/o Children	361	429	350	284	1,424
Divorce w/ Children	34	42	50	37	163
Child Custody	2	0	1	3	6
Child Support	0	0	1	0	1
General Law	18	20	48	42	128
Other Legal Topics (including paternity, guardianship, etc)	0	0	0	0	0
TOTAL	729	734	666	546	2,675

- **Outcome #2: Provide legal assistance by attorneys and paralegals to 3,500 victims of domestic violence each year.**

Project attorneys, staff and paralegals provided direct legal representation to 852 victims of domestic violence and provided brief service and advice to 1,107 victims of domestic violence during the fourth quarter. When totaled year to date, the 7,863 victims provided legal assistance represents 225% of the annual goal. However, as footnoted in the executive summary, this figure may represent a duplication of services provided by multiple staff to the same victim. For example, an attorney and a paralegal may provide different services to the same victim but those services would be reported separately below.

Legal Assistance by Attorneys & Paralegals	Q1 Served	Q2 Served	Q3 Served	Q4 Served	YTD
Brief Service & Advice – Staff/Paralegal	235	244	274	236	989
Direct Representation – Staff/Paralegal	248	253	293	304	1,098
Brief Service & Advice – Staff/Attorney	947	930	853	871	3,601
Direct Representation – Staff/Attorney	580	570	477	548	2,175

As noted in the table below, Family Law continues to be the primary need of domestic violence victims served by the Domestic Violence Legal Assistance Project. Although Family Law represented 47% of the total legal needs reported, the project staff addressed a variety of legal issues:

Primary Legal Issue Presented by Number of Clients [†]	Q1 Totals	Q2 Totals	Q3 Totals	Q4 Totals	YTD	% of Total Need
Consumer/Finance	130	149	105	89	473	4%
Education	23	24	51	34	132	1%
Employment	61	39	60	56	216	2%
Family	1,294	1,172	1,281	1,358	5,105	47%
Health	102	86	80	63	331	3%
Housing	196	131	162	179	668	6%
Income Maintenance/Public Benefits	156	103	98	125	482	4%
Individual Rights	321	193	297	279	1,090	10%
Juvenile	64	28	38	40	170	2%
Orders of Protection Obtained	206	229	210	228	873	8%
Miscellaneous/Other	335	313	350	342	1,340	12%

- **Outcome #3: Provide lay legal advocacy by lay advocates to 1,200 victims of domestic violence each year.**

[†] Although the “Primary” legal need is requested, a victim may be assisted with more than one ‘primary’ need which results in the reporting of legal needs that exceed the number of victims served.

In addition to providing advocacy directly, providing supportive intervention/crisis counseling, educating victims, assisting victims with self-advocacy, and coordinating transportation of victims, specific legal assistance included the following:

Number of clients who received lay advocacy by lay advocates	Q1 Totals	Q2 Totals	Q3 Totals	Q4 Totals	YTD
Total number of victims receiving lay advocacy from lay advocates:	932	773	862	874	3,441
Assisted victims in obtaining protective orders:	219	230	157	182	788
Accompanied clients to court:	292	274	174	154	894
Referred to Project Attorneys:	78	156	84	63	381
Assisted with Housing Services:	88	184	56	36	364
Assisted with Employment Services:	90	70	66	50	276
Assisted with public benefits/social services:	208	160	164	174	706
Assisted with consumer law advocacy:	93	160	87	62	402
Other Services:	332	276	284	233	1,125

During the fourth quarter, the Project’s lay legal advocacy staff reported providing services to 874 new domestic violence victims. The year to date total of 3,441 victims receiving assistance from lay legal advocates represents 287% of the annual goal.

Goal # 2: Increase the number of volunteer (pro bono) attorneys throughout the state who are trained to work with victims of domestic violence. The project recruits, trains, mentors, and supports volunteer attorneys who supplement the work done by Project staff attorneys. Attention is given to retaining and recognizing these attorneys with the long-term goal of continued *pro bono* participation. This is done through free continuing legal education (CLE) opportunities, domestic violence and related in-house legal trainings, and one-on-one mentoring. Legal service *pro bono* organizations provide primary malpractice coverage to volunteer attorneys and cover deductible costs if claims are made.

- **Outcome #1: Continue to implement and maintain a Volunteer Lawyer Program plan for each county in Arizona.**

Volunteer Lawyer Programs (VLP) throughout Arizona continue to implement outreach plans developed during previous contract terms. The Volunteer Lawyers Programs regularly meet in person or via conference call to coordinate activities, organize events and plan outreach activities.

In the fourth quarter of FY16, VLP programs:

- Community Legal Services’ VLP hosted a special recognition award ceremony on April 20th for more than 50 volunteers. The “For Love of Justice” event was emceed by Supreme Court Justice Ann Scott Timmer. Recognition for service to victims of domestic violence included awards for the Family Lawyers Assistance Project (FLAP) Attorneys of the Year for Phoenix and the East Valley. More than 200 individuals from the legal profession attended the event.

- On June 16th, Southern Arizona Legal Aid VLP volunteer, Denice Shepherd, was presented with the Foundation’s William E. Morris Pro Bono Service Award at its annual luncheon. Over the last 20 years, Denice has assisted children and families with minor guardianships. On June 23rd, SALA volunteer attorney Gloria Goldman was recognized by the Arizona Supreme Court. Gloria was presented with the Outstanding Pro Bono Service Award by Chief Justice Scott Bales at the Administrative Office of the Courts annual Judicial Conference. Through her pro bono service, Gloria has dedicated more than 700 hours to assist 76 clients and their children.
- On June 23rd, CLS volunteer attorney Stasy Click presented “Litigants without Lawyers” to 39 self-represented individuals at Maricopa County Superior Court.
- SALA VLP sponsored a CLE in Santa Cruz County entitled “Immigration Remedies for Victims of Abuse or Crime: What Non Immigration Lawyers and Judges Need to Know”.

In addition to these recognition and outreach efforts, the Foundation has continued to work with legal aid volunteer lawyers programs to promote pro bono opportunities and recognize the work of outstanding volunteers. Throughout the spring, the Foundation worked with the State Bar to dedicate April’s Arizona Attorney magazine to the promotion of pro bono service and access to justice. During the State Bar of Arizona’s annual convention, the Foundation recognized Arizona’s Top 50 Pro Bono volunteers. The Top 50 Pro Bono attorneys are nominated by each of the legal aid program’s VLP staff. And, on June 14th, the directors of each VLP and the Executive Director of the Foundation presented a panel on pro bono to the State Bar of Arizona Board of Governors. The VLP and Foundation will be collaborating to provide recommendations for statewide action to promote pro bono opportunities for volunteer attorneys and increase recognition efforts for outstanding volunteer attorneys and students.

- **Outcome #2: Recruit and enroll 200 new VLP attorneys and law school students each year to work on the Project.**

During the fourth quarter, Volunteer Lawyer’s Programs recruited 26 new volunteer attorneys and law school students to join the project. The combined quarterly total of 148 volunteers recruited to date represents 74% of the annual goal. While a large number of those recruited (to date) continue to be law school students, Volunteer Lawyer Programs know that instilling a dedication to and a worthwhile experience while volunteering fosters continued program participation as those students transition into their professional and legal careers.

As a result of a panel discussion to the State Bar Board of Governors, the Foundation and Volunteer Lawyers Programs will increase collaboration to develop recommendations for statewide action to promote pro bono opportunities to existing volunteer attorneys and to recruit new volunteer attorneys and law school students to VLP service.

- **Outcome #3: Volunteer attorneys will provide legal assistance to 1,000 victims of domestic violence each year.**

During the fourth quarter, volunteer attorneys provided direct representation and brief service and advice to 535 victims of domestic violence – the combined year-to-date total (2,017) represents 202% of the annual goal.

- **Outcome #4: Volunteer attorneys will donate over 1,000 pro bono service hours each year to victims of domestic violence.**

Across Arizona, VLP attorneys donated 702 hours of pro bono service specifically to victims of domestic violence during the fourth quarter. The year-to-date total of 3,191 hours represents 319% of the annual goal. The 3,191 hours donated by volunteer attorneys through the fourth quarter is the financial equivalent of \$647,685.

Goal #3: To provide legal education and training to personnel who work with domestic violence victims to increase understanding, cooperation and collaboration among agencies.

- **Outcome #1: Coordinate and facilitate quarterly webinar training opportunities for Project staff.**

During the 4th Quarter, Foundation staff:

- Hosted a webinar on April 20th on Crime Victims' Rights with Jamie Balson, Crime Victims' Rights Attorney at ACESDV. The Crime Victims' Rights webinar was attended by over 25 advocates, legal aid staff, volunteer attorneys and other victim service professionals.
- Hosted a webinar on June 30th on Technology and Survivor Safety facilitated by ACESDV professional development staff. The Tech Safety webinar was attended by 16 advocates, legal aid staff, volunteer attorneys and other victim service professionals.
- Worked with two volunteer attorneys to develop the framework for lay legal advocate document preparation trainings.
- Evaluated potential future training topics including: Unauthorized Practice of Law, Landlord/Tenant, Consumer Rights Advocacy and Effective Communication When Working with Those in Trauma.

Goal # 4: To extend effective local responses in rural and border communities and in Tribal areas to cultivate victim relief that is culturally appropriate and language specific.

- **Outcome # 1: Reach all regions of Arizona through community meetings, press, distribute pamphlets and through the use of web services.**

During the fourth quarter, Project staff reported participating in 162 different community based meetings, appearing in over 165 broadcast or printed news items and distributing 43,854 educational brochures and pamphlets – all of which specifically addressed the legal service needs of the victims they serve.

Additionally, Project staff reported that in an effort to increase awareness among their partners and the community at large, they:

- Increased contributions of written material and news publications.
- Worked to strengthen coordinated responses to victim needs by increased participation in community based task force groups.
- Continued participation in Rural Safe Home Network meetings.
- Increased collaboration with fellow Project staff/organizations.
- Conducted outreach to traditionally underserved communities/populations through targeted trainings and explored creative partnership opportunities.

During the fourth quarter, Project partners also provided a number of community and educational presentations specific to domestic violence related law or legal issues:

	Q1 Totals	Q2 Totals	Q3 Totals	Q4 Totals	YTD
Number of Community/Educational Presentations:	97	134	111	154	496
Number reached through Community/Educational Presentations	3,432	19,734	11,953	43,854	78,973

- Outcome #2: Provide targeted outreach to and participate in community task force groups addressing the needs of victims of domestic violence in rural and tribal communities.**

As previously reported, Project partners stated in their quarterly report how important community-involved collaborations have been to assure that the needs of victims in rural areas are met even as resources and services decrease. In addition to the outreach efforts stated previously, Project staff reported attending community based meetings in the following geographic areas:

Number of Community Meetings/Task Force Meetings Attended	Q1 Totals	Q2 Totals	Q3 Totals	Q4 Totals	YTD
Apache:	0	0	0	0	0
Cochise:	10	10	8	8	36
Coconino:	6	5	4	4	19
Gila:	0	1	0	3	4
Graham/Greenlee:	1	2	1	1	5
La Paz:	2	1	3	3	9
Maricopa:	58	48	43	50	199
Mohave:	12	19	21	11	63
Navajo:	27	15	19	22	83
Pima:	19	24	22	19	84
Pinal:	1	1	3	5	10
Santa Cruz:	0	0	0	1	1
Yavapai:	6	8	5	13	32
Yuma:	17	6	17	22	62
TOTAL	159	140	146	162	607

In addition to each Project partner's overall efforts, some reported examples of legal specific activities to enhance services to rural Arizona domestic violence victims are included in Outcome #3.

- Outcome #3: Assure the cultivation of victim relief that is culturally appropriate and language specific through Project evaluation that assesses client and collaborator feedback.**

During the fourth quarter, Project partners continued to provide and enhance services that are culturally appropriate and language specific. They continued their participation in culture/issue specific taskforce groups such as the Battered Immigrant Women Taskforce, Rural Safe Home Network, Coordinated Community Response Teams (regional) and ongoing collaborations with

tribal nations including: Ak-Chin, Tohono O’odham, Gila River, San Carlos Apache, Navajo, and Hopi. Project partners also expanded their participation and lent their expertise to various child abuse, fatality review, and community housing (including foreclosure and eviction issues) forums and task force groups. In addition to these specific collaborations, during the fourth quarter Project partners:

- Provided updated content and expanded translation of program websites.
- Expanded Community Resource Meetings in reservation communities.
- Expanded the coordination of community based support groups and legal information clinics in English and Spanish.
- Hosted “DNA TV” in the Ft. Defiance/Window Rock, Tuba City and Flagstaff DNA offices. “DNA TV” is a series of community education videos that can be viewed in the office lobby during the intake process.
- Increased participation by staff attorneys from legal aid organizations in regional coordinated community response teams and fatality review taskforce groups.

Beyond the Goals & Outcomes

• **Continued Technical Assistance to Project Partners**

The Foundation diligently supports the partnering organizations in capacities that compliment the funding provided by the Domestic Violence Legal Assistance Project. The Foundation’s technical assistance during this quarter includes, but is not limited to:

- Continued collaboration opportunities for project participants through meetings, written and oral communication, and shared information.
- The Foundation’s staff continually provides technical assistance to Project organizations in the preparation of their quarterly reports and/or monthly invoices.
- Foundation staff work with Project partners through the LegalEARN contact center, the Foundation’s Modest Means program and with representatives on the Arizona Coalition Against Domestic Violence’s Legal Committee.

• **Aiding Domestic Violence Victims through the Internet**

AZLawHelp.org, LawForVeterans.org, and LawForSeniors.org, hosted and coordinated by the Foundation, are websites designed to provide Arizonans with access to legal information and legal services. While the content of the websites reaches a broader audience than victims of domestic violence, it serves as a great resource for both victims and service providers about Arizona laws and legal issues spanning a variety of topics. Visitors are able to browse the websites for information regarding a legal issue or concern or, if the information they seek is unavailable, pose a question about their need to an Arizona attorney. Both lay legal and attorney Project staff contribute information, content and assistance to the website.

In the fourth quarter of FY16, we can report the following visitors to the AZLawHelp.org website:

	Q4 AZLawHelp Most Visited Content <i>Avg Time/Page: 1:42</i>	Q4 DV Specific Most Visited Content <i>Avg Time/Page: 4:14 minutes</i>
1.	AZLawHelp Home Page	Things You Should Know about Protective Orders
2.	Online Intake Application Page	Maricopa County DV Resources
3.	Things You Should Know about Parenting Time	Family & Children: Domestic Violence

4.	Restoring Civil Rights	Pima County DV Resources
5.	AZLawHelp Questions	Domestic Violence Survivor's Guide
6.	Landlord & Tenant Rights & Responsibilities	Pinal County DV Resources
7.	AZ Free Legal Help Directory	Yavapai County DV Resources
8.	AZ Law Help Organizations	Mohave County DV Resources
9.	Housing – Eviction	Yuma County DV Resources
10.	Child Support in Arizona	Victims' Bill of Rights

In addition to coordinating and maintaining content for the AZLawHelp.org, LawforSeniors.org, LawforKids.org and LawforVeterans.org websites, Foundation staff facilitate the Question & Answer feature on each website which allows visitors to post legal questions that are answered by volunteer attorneys. During the fourth quarter, AZLawHelp.org received 22 and answered 21 questions about domestic violence and LawForSeniors.org received and answered two questions regarding elder abuse. Thirty-one individuals identifying themselves as veterans also reported their legal issue was related to domestic violence in the pre-intake application available through the websites. The articles on lawforseniors.org regarding elderly abuse were viewed 42 times by 34 unique viewers. Foundation staff also coordinate the Legal Learn Contact Center and Modest Means program. During the fourth quarter, Foundation staff provided legal information and referrals to 31 callers seeking assistance with a domestic violence related legal issue. Of those callers, 23 were also referred to the Modest Means program, an effort that partners individuals that do not income qualify for free legal assistance with reduced fee attorneys.

Over the last several years, the Foundation and Arizona's legal aid programs worked to implement a statewide online intake system for Arizonans seeking legal assistance from Community Legal Services, DNA People's Legal Services and Southern Arizona Legal Aid. In the fourth quarter,

- 384 victims of domestic violence completed the online intake interview (16% of the total 2,457 applicants)
 - 208 were directed to services at Community Legal Services
 - 11 were directed to services at DNA People's Legal Services
 - 10 were directed to services through the Modest Means program
 - 155 were directed to services at Southern Arizona Legal Aid

Challenges and Opportunities for the Project's Partnering Organizations

Innovative Initiatives

During the fourth quarter of FY16, Project partners reported many new successes for their organizations and the Project:

- On June 29th, Against Abuse collaborated with the Casa Grande Police Department, the Pinal County Sheriff's Office and the Pinal County Attorney's Office to provide an all day training on Domestic Violence for police officers in Pinal County. In attendance were 55 law enforcement professionals from Casa Grande, Eloy, Apache Junction, Tempe, Mesa, Gila River Indian Community, and the Tohono O'odham Nation. Agenda items included: Predominant Aggressor (Chief Monahan), Children Witnesses (Melissa Knight), DV Report Writing, Lethality Task Force Report, DV Case Review, and the Role of Lay Legal Advocates.

- Alice's Place and SALA's White Mountain Legal Aid office hosted a joint training on April 22nd that brought together advocates, attorneys, law enforcement, and community based social workers. In total, 24 professionals from the Navajo and Apache County area attended the training.
- Catholic Community Services' Southeast shelter providers and SALA's Bisbee office collaborated on a new process to expedite the intake process for tri-county victims seeking legal assistance. Part of the implementation process for SALA and shelter programs was a full day of cross training on standard operating procedures and roles & responsibilities.
- On April 14th, CLS's Family Law staff in Maricopa County participated in the Take Back the Night event on campus at Arizona State University. Staff interacted with an estimated 50 event attendees and provided them with legal information, contact information for CLS and legal resources regarding domestic violence and sexual assault.
- CLS's Yuma County Managing Attorney Jim Marshall presented a Divorce/Child Support Informational Forum at the Yuma County Courthouse on May 26th to approximately 20 members of the community in attendance. Additionally, CLS's Yuma Office has partnered with Amberly's Place to provide advice only or limited brief services to qualifying clients on-site.
- Andrea Goddard, attorney in DNA's Flagstaff office, initiated a new project which provides consumer education seminars to residents of Hope Cottage on a monthly basis.
- Emerge! lay legal advocate attended "The Center for Court Innovation's Language Access and Domestic Violence Services" in Seattle Washington during the 4th quarter.
- On April 9th, Kingman Aid to Abused People held an Open House for the new Family and Children's Advocacy Center. The event was well attended with special recognition to the Mohave County Attorney's Office, local law enforcement agencies and the Mohave County Board of Supervisors for their efforts to plan and implement a one-stop victim service center.
- Northland Family Help Center's lay legal advocate partnered with DNA attorney Kristin Fitz-Harris to present on the topic of Grandparent's Rights to the Northern Arizona Council of Governments and the Area Agency on Aging. The training was well attended with the participants and hosts requesting additional trainings in the future.
- In a continued effort to measure the impact of services to victims of domestic violence, Southern Arizona Legal Aid has integrated outcome data into their case management system (CLS and DNA are currently implementing similar changes to their case management systems). This quarter, SALA reports:

SALA Accomplishments in direct representation cases for domestic violence victims during the 4th quarter include:

Obtained federal bankruptcy protection in 1 case affecting 1 person;
 Preserved assets in 1 case affecting 1 person;
 Obtained custody of children in 2 cases affecting 7 persons;
 Maintained custody of children in 8 cases affecting 28 persons;
 Obtained divorce in 5 cases affecting 21 persons;
 Obtained protection from domestic violence in 3 cases affecting 8 persons;
 Obtained OOP in 3 cases affecting 10 persons;
 Obtained child support in 1 case affecting 4 persons and recovered a lump sum of \$5,400;
 Preserved child support in 1 case affecting 5 persons in the amount of \$400 monthly;
 Increased child support in 1 case affecting 2 persons in the amount of \$425 monthly;
 Obtained spousal support in 1 case affecting 5 persons in the amount of \$400 monthly;
 Obtained pension/retirement benefits in 1 case affecting 5 persons;
 Retained assets in 1 case affecting 1 person;
 Obtained equitable division of marital property in 1 case affecting 1 person, recovering \$11,500;
 Avoided protective order in 1 case affecting 1 person;
 Obtained possession of property in 1 case affecting 1 person;
 Obtained relocation from Arizona in 1 case affecting 2 persons;
 Calculated child support in 5 cases affecting 14 persons;
 Prevented eviction from public housing in 1 case affecting 2 persons;
 Prevented eviction from private housing in 1 case affecting 1 person;

Reduced principal in 1 case affecting 2 persons in the amount of \$42,293.84;
Preserved housing voucher in 1 case affecting 3 persons in the amount of \$675 monthly;
Avoided foreclosure and other loss of home in 2 cases affecting 7 persons recovering \$82,746;
Avoided mortgage scam in 1 case affecting 3 persons;
Obtained adjustment of status in 15 cases affecting 38 persons;
Obtained employment authorization in 17 cases affecting 52 persons;
Obtained U-visa (primary and derivative) in 3 cases affecting 11 persons;
Obtained VAWA Self-Petition in 1 case affecting 3 persons;
Obtained removal of conditions on residence in 1 case affecting 1 person;
Granted waiver of admissibility in 3 cases affecting 11 persons; and
Obtained clear title to property in 1 case affecting 2 persons.

Partner Challenges

In their quarterly narrative reports, Project partners across Arizona identified the following concerns as emerging barriers to access to justice for victims of domestic violence:

- Nearly half of Project partners report significant staffing changes during the 4th quarter with most of the vacancies filled and others still unfilled. According to partner reports, staffing fluctuations are primarily due to advocates and attorneys seeking career advancement or to focus on medical/family priorities.
- DCS policies that focus on removing children from parents, especially on the basis of “neglect” due to a parent being a victim of domestic violence. Where no juvenile dependency is filed, legal aid programs report providing advice to domestic violence victims regarding interaction with DCS. An increase in victims seeking assistance with DCS issues has been reported statewide.
- The previously reported issue with fee deferral and waiver applications for filing fees, thought to have resolved, is being reported as reemerging in courts across the state as different courts implement policies that are having unintended consequences. Legal aid programs are working with superior courts to revise and improve policies and lay legal advocates are reporting to legal aid programs as clients have difficulty requesting and receiving assistance. The networking created by the Domestic Violence Legal Assistance Project has expedited communication between programs and facilitated problem solving on this and similar issues.

Systemic and Policy Advocacy

On behalf of legal aid agencies statewide, Community Legal Services staff engage in strategic advocacy to address statewide policy or systems issues that impact all victims of domestic violence. In their role on legal and community based work groups and task forces, CLS staff are able to proactively address emerging and existing issues such as language access and interpreters in civil court processes, fee waivers and deferrals for court costs and family law court forms and instruction development. During the fourth quarter, CLS staff spent nearly 57 hours in meetings addressing issues with importance to domestic violence survivors and service providers, domestic violence trends and services, and related issues. CLS advocates engaged in a number of other types of advocacy during the 4th quarter, including providing over 35 hours of community education and outreach on the availability of legal services, domestic violence and self-representation in family court, as well as networking with other domestic violence service providers in the community.

Conclusion

During the fourth quarter of FY16, The Arizona Domestic Violence Legal Assistance Project provided services to a total of 3,575 domestic violence victims, including: assisting 1,959 victims with direct legal assistance, providing lay legal advocacy to 874 individuals, coordinated 118 volunteer attorneys to provide legal assistance to 535 victims and their families, conducted 154 community and educational presentations, distributed 43,854 brochures about legal assistance to the community and focused great

effort and expertise to serve clients in remote and rural areas. On behalf of the Domestic Violence Legal Assistance Project, we welcome further collaboration with the Arizona Department of Economic Security to strengthen the long-term fidelity of this effort and to increase justice and safety for all Arizona domestic violence victims.

Arizona Commission on Access to Justice

Meeting Date: November 9, 2016	Type of Action Requested: <input checked="" type="checkbox"/> Formal action or request <input type="checkbox"/> Information only <input type="checkbox"/> Other	Subject: Community Legal Services Justice Court Project
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From: Pamela Bridge

Presenters: (same)

Discussion: Ms. Bridge will report on the creation and use of tenant information forms during the recent Community Legal Services Justice Court Project. She will raise the issue of whether these forms could be further improved through evaluation and revision by an ACAJ workgroup and later posted on the AZCourtHelp.org virtual legal information website.

Recommended motion: To support the evaluation and revision of tenant information forms by an ACAJ workgroup, as presented.

Summer Justice Training Agenda

May 26, 2016

8:00 – 8:30 students arrive. Informal meet and greet. (do we want to get some granola bars and water bottles?) Complete any missing forms (applications, confidentiality agreements, etc.

8:30 – walk down to courts

9:00 – watch atty represented FEDs – We are going to fill up more than the jury box. Probably 13- 15 people.

10:00 – watch pro per calendar

11:00 - ? tour and talk to JPs (this is really up to the court)

Lunch

1:00 to 3:30 – Bret and Zac LLT training
Pam - ethics

3:30 – 4:00 – finalize coverage schedule.

End

Date: _____

Courtroom: _____

Session start time: _____

Session end time: _____

Number of default judgments: (Hash marks in the box below are enough. If a defendant appears, there will not be a default judgment; for those, use more detailed account [see next page] for each case.

Default Judgments:

For any immediate and irreparable default judgment – did the court hear evidence before giving judgment?

Stipulated Judgments:

Cases Voluntarily Dismissed:

Case identifiers—such as Plaintiff, Defendant, property name, case number. Whatever you can capture.

Parties

Is Defendant represented by an attorney? Y N Is Plaintiff represented by an attorney? Y N

Was there any indication made that the Defendant’s housing is subsidized (Section 8, etc.)? Y N

Did landlord provide proper notice? Y N

Did Court review/discuss service of process? Y N

Grounds (Circle any that apply.)

What are the grounds the Plaintiff asserts for seeking the eviction?

- Property damage Nonpayment of rent (Other) breach of the lease agreement
- Material breach Immediate Termination

Courthouse assistance indicators

Did the Defendant raise any counterclaims or defenses? Y N
(examples include partial payment of rent, condition of the property, etc.)

Was the Defendant holding onto, or referring to, one of CLS’ information sheets? Y N

Outcomes (Circle any that apply.)

The Parties reached an agreement or stipulated judgment before the Judge called the case.

The Court issued a judgment today. Trial Initial return

The Court set a date in the future for a trial in this case.

The Court dismissed the eviction action.

Comments

Free Eviction

Information

For Tenants

Non-payment of Rent

A.R.S. § 33-1368(B)

The following does not apply to mobile home park evictions, recreational vehicle park evictions, and certain subsidized housing. Below is information that may be helpful to you but is **not a substitute for legal advice**. There are other rules and laws that may be applicable to your situation, but these are common rules and laws that apply in eviction actions. A.R.S. means Arizona Revised Statutes and RPEA means Rules of Procedure for Eviction Actions.

Notice	<ul style="list-style-type: none">• Your landlord must give you written notice that your rent is unpaid and that your rental agreement will terminate if rent is not paid in 5 days. A.R.S. § 33-1368(B).• In an action for non-payment of rent, landlord cannot file the eviction action until after the final day of the notice.• If you did not receive a termination notice and a chance to pay the rent and late fees, or the notice does not comply with the law or was not properly served, the court must dismiss the eviction action. RPEA 13(a)(2).
Service	<ul style="list-style-type: none">• Generally, an eviction action summons and complaint must be served on you in one of two ways; 1) personally served on you, or 2) posted in an obvious place and mailed to you by certified mail. RPEA 5(f).
Answer	<ul style="list-style-type: none">• You may file a written answer or answer orally in open court on the record. If the court sets a trial date, you may be ordered to file a written answer. RPEA 7. If you cannot afford the filing fee, ask the clerk for a fee waiver/deferral application in order to not have to pay the fee when you file.
Reinstating the Rental Agreement	<ul style="list-style-type: none">• If the eviction is only for non-payment of rent, the rental agreement will be reinstated if you pay all past due rent, late fees that appear in a written rental agreement, attorney fees, and court costs before judgment is entered. A.R.S. § 33-1368(B).
Defenses	<ul style="list-style-type: none">• You paid your rent in full and on time (provide proof of payment to the court).• Your landlord accepted rent, or a portion of rent with knowledge of a default by you and did not obtain a writing signed by you at the time of accepting rent informing you of the terms/conditions of accepting the rent. A.R.S. § 33-1371, RPEA 13(a)(4).• You made repairs to the unit after notifying landlord that you would do so at his expense, gave your landlord an opportunity to make repairs, you hired a licensed contractor to perform the work, you provided a lien waiver signed by the contractor and list of work performed to your landlord, and subtracted the actual and reasonable costs of the work from the rent due (up to \$300.00 or half your monthly rent, whichever is greater). A.R.S. § 33-1363.

	<ul style="list-style-type: none"> • You don't pay rent or pay less than what your landlord is claiming because you are in subsidized housing – see separate document related to subsidized housing (Section 8, tax credit, etc.).
Trial	<ul style="list-style-type: none"> • You have a right to a trial if the court determines that you MAY have a defense or proper counterclaim. RPEA 11(b)(1). • You have a right to a jury trial, but you must ask for it the first time you see the judge. The judge will then decide if there are factual matters to be determined by a jury. If there are no factual matters appropriate for a jury, the case will be heard by the judge. RPEA 11(d).
Evidence/ Testimony	<ul style="list-style-type: none"> • Evidence and testimony must be relevant to the proceeding. • A witness must testify from personal knowledge – the witness telling the court what somebody else told the witness is generally not allowed. • You have a duty to make timely objections. If a witness testifies to a fact he or she does not have personal knowledge of or the testimony is not relevant to the proceeding, immediately tell the judge you object to the testimony or evidence.
Judgment	<ul style="list-style-type: none"> • Default judgment will be entered against you if you are not present in the court when your case is called by the judge. RPEA 13. • Stipulated judgment – you are agreeing that the allegations in the complaint are true and judgment will be entered against you. You will not have an opportunity to offer a defense and cannot appeal from this type of judgment. • The judge may award your landlord possession of the property plus rent, late fees (if there is a written rental agreement), attorney fees, court costs, and other damages if there is a legal and factual basis to award these damages. • See separate document related to judgments for important information if the judge rules against you.

Material Breach of the Rental Agreement (10-day notice)

A.R.S. § 33-1368(A)

The following does not apply to mobile home park evictions, recreational vehicle park evictions, and certain subsidized housing. Below is information that may be helpful to you but is **not a substitute for legal advice**. There are other rules and laws that may be applicable to your situation, but these are common rules and laws that apply in eviction actions. A.R.S. means Arizona Revised Statutes and RPEA means Rules of Procedure for Eviction Actions.

Notice	<ul style="list-style-type: none"> • Your landlord must give you a written notice stating what the problem(s) is/are and that your rental agreement will terminate after 10 days if the problem(s) is/are not remedied in 10 days. A.R.S. § 33-1368(A). • In an action for material breach of the rental agreement, your landlord cannot file the eviction action until after the 10 days stated in the notice (at least 11 days after you receive the notice). • If you did not receive a termination notice and an opportunity to fix the problem(s), or the notice does not comply with the law or was not properly served, the court must dismiss the eviction action. RPEA 13(a)(2). • If you fixed the problem(s) identified in a 10-notice, and there is a second 10-day notice claiming problems of the same or similar nature in the same rental agreement period, your landlord may give you a second 10-day notice and then file an eviction action if you remain in the rental unit after the 10th day. Even if you fix the problems specified in the second notice, your landlord can still file the eviction action.
Service	<ul style="list-style-type: none"> • Generally, an eviction action summons and complaint must be served on you in one of two ways; 1) personally served on you, or 2) posted in an obvious place and mailed to you by certified mail. RPEA 5(f).
Answer	<ul style="list-style-type: none"> • You may file a written answer or answer orally in open court on the record. If the court sets a trial date, you may be ordered to file a written answer. RPEA 7. If you cannot afford the filing fee, ask the clerk for a fee waiver/deferral application in order to not pay the fee when you file.
Defenses	<ul style="list-style-type: none"> • Problems stated in the notice and complaint did not occur. • If there was a time period for you to fix the problem(s) specified in the notice, you fixed the problem(s) on or before the final day of the 10-day notice. • Your landlord accepted rent, or a portion of rent with knowledge of an alleged violation by you and did not obtain a writing signed by you at the time of accepting rent informing you of the terms/conditions of accepting the rent. A.R.S. § 33-1371, RPEA 13(a)(4). • Retaliation – If you complained to the landlord or a government agency charged with

	code enforcement about habitability issues materially affecting health and safety within 6 months prior to the eviction being filed, there is a presumption that the eviction is retaliatory. You may be entitled to damages if this happened. See separate form on counterclaims. A.R.S. § § 33-1381.
Trial	<ul style="list-style-type: none"> • You have a right to a trial if the court determines that you MAY have a defense or proper counterclaim. RPEA 11(b)(1). • You have a right to a jury trial, but you must ask for it the first time you see the judge. The judge will then decide if there are factual matters to be determined by a jury. If there are no factual matters appropriate for a jury, the case will be heard by the judge. RPEA 11(d).
Evidence/ Testimony	<ul style="list-style-type: none"> • Evidence and testimony must be relevant to the proceeding. • A witness must testify from personal knowledge – the witness telling the court what somebody else told the witness is generally not allowed. • You have a duty to make timely objections. If a witness testifies to a fact he or she does not have personal knowledge of or the testimony is not relevant to the proceeding, immediately tell the judge you object to the testimony or evidence.
Judgment	<ul style="list-style-type: none"> • Default judgment will be entered against you if you are not present in the court when your case is called by the judge. RPEA 13. • Stipulated judgment – you are agreeing that the allegations in the complaint are true and judgment will be entered against you. You will not have an opportunity to offer a defense and cannot appeal from this type of judgment. • The judge may award your landlord possession of the property plus rent, late fees (if there is a written rental agreement), attorney fees, court costs, and other damages if there is a legal and factual basis to award these damages. • See separate document related to judgments for important information if the judge rules against you.

Material Breach of the Rental Agreement (Immediate and Irreparable)

A.R.S. § 33-1368(A)

The following does not apply to mobile home park evictions, recreational vehicle park evictions, and certain subsidized housing. Below is information that may be helpful to you but is **not a substitute for legal advice**. There are other rules and laws that may be applicable to your situation, but these are common rules and laws that apply in eviction actions. A.R.S. means Arizona Revised Statutes and RPEA means Rules of Procedure for Eviction Actions.

<p>Notice</p>	<ul style="list-style-type: none"> • Your landlord must give you written notice if his intent to immediately terminate your rental agreement. • Your landlord can file the eviction action the same day you receive the notice of immediate termination. • If you did not receive a termination notice, the notice does not comply with the law, or was not properly served, the court must dismiss the eviction action. RPEA 13(a)(2). • <i>If the acts alleged in the eviction action concern <u>criminal activity</u>, anything you say or present at the eviction hearing may be used against you in a criminal case.</i>
<p>Service</p>	<ul style="list-style-type: none"> • Generally, an eviction action summons and complaint must be served on you in one of two ways; 1) personally served on you, or 2) posted in an obvious place and mailed to you by certified mail. RPEA 5(f).
<p>Answer</p>	<ul style="list-style-type: none"> • You may file a written answer or answer orally in open court on the record. If the court sets a trial date, you may be ordered to file a written answer. RPEA 7. If you cannot afford the filing fee, ask the clerk for a fee waiver/deferral application to not have to pay when you file.
<p>Defenses</p>	<ul style="list-style-type: none"> • The conduct your landlord claims you or one of your guests never happened or happened off the property. • Your landlord accepted rent, or a portion of rent with knowledge of a default by you and did not obtain a writing signed by you at the time of accepting rent informing you of the terms/conditions of accepting the rent. A.R.S. § 33-1371, RPEA 13(a)(4). • Retaliation – If you complained to the landlord or a government agency charged with code enforcement about habitability issues materially affecting health and safety within 6 months prior to the eviction being filed, there is a presumption that the eviction is retaliatory. You may be entitled to damages if this happened. See separate form on counterclaims. A.R.S. § § 33-1381. • You are generally responsible for the conduct of your guests that violates the rental agreement, but only if you could reasonably be expected to be aware that

	such actions might occur and you did not attempt to prevent those actions to the best of your ability. A.R.S. § 33-1368(G).
Trial	<ul style="list-style-type: none"> • You have a right to a trial if the court determines that you MAY have a defense or proper counterclaim. RPEA 11(b)(1). • You have a right to a jury trial, but you must ask for it the first time you see the judge. The judge will then decide if there are factual matters to be determined by a jury. If there are no factual matters appropriate for a jury, the case will be heard by the judge. RPEA 11(d).
Evidence/ Testimony	<ul style="list-style-type: none"> • Evidence and testimony must be relevant to the proceeding. • A witness must testify from personal knowledge – the witness telling the court what somebody else told the witness is generally not allowed. • You have a duty to make timely objections. If a witness testifies to a fact he or she does not have personal knowledge of or the testimony is not relevant to the proceeding, immediately tell the judge you object to the testimony or evidence.
Judgment	<ul style="list-style-type: none"> • Default judgment will be entered against you if you are not present in the court when your case is called by the judge. RPEA 13. • Stipulated judgment – you are agreeing that the allegations in the complaint are true and judgment will be entered against you. You will not have an opportunity to offer a defense and cannot appeal from this type of judgment. • The judge may award your landlord possession of the property plus rent, late fees (if there is a written rental agreement), attorney fees, court costs, and other damages if there is a legal and factual basis to award these damages. • See separate document related to judgments for important information if the judge rules against you.

Material Breach of the Rental Agreement (5-day Notice for Health and Safety)

A.R.S. § 33-1368(A)

The following does not apply to mobile home park evictions, recreational vehicle park evictions, and certain subsidized housing. Below is information that may be helpful to you but is **not a substitute for legal advice**. There are other rules and laws that may be applicable to your situation, but these are common rules and laws that apply in eviction actions. A.R.S. means Arizona Revised Statutes and RPEA means Rules of Procedure for Eviction Actions.

Notice	<ul style="list-style-type: none"> • Your landlord must give you a written notice stating what the problem is and that the rental agreement will terminate after 5 days if the problem is not fixed in 5 days. A.R.S. § 33-1368(A). • In an action for material breach of the rental agreement materially affecting health and safety, your landlord cannot file the eviction with the court action until after the 5 days specified in the notice is up (at least 6 days after you receive the notice). • If you did not receive a termination notice and an opportunity to fix the problem(s), or the notice does not comply with the law or was not properly served, the court must dismiss the eviction action. RPEA 13(a)(2). • If you fixed the problem(s) identified in a 5-day notice, and there is a second 5-day notice claiming problems of the same or similar nature in the same rental agreement period, your landlord may give you a second 5-day notice and then file an eviction action if you remain in the rental unit after the 5th day. Even if you fix the problems specified in the second notice, your landlord can still file the eviction action.
Service	<ul style="list-style-type: none"> • Generally, an eviction action summons and complaint must be served on you in one of two ways; 1) personally served on you, or 2) posted in an obvious place and mailed to you by certified mail. RPEA 5(f).
Answer	<ul style="list-style-type: none"> • You may file a written answer or answer orally in open court on the record. If the court sets a trial date, you may be ordered to file a written answer. RPEA 7. If you cannot afford the filing fee, ask the clerk for a fee waiver/deferral application in order to not pay the fee when you file.
Defenses	<ul style="list-style-type: none"> • Problems claimed in the notice and complaint did not occur. • If there was a time period for you to fix the problem(s) specified in the notice, you fixed the problem(s) before the final day of the 5-day notice. • Your landlord accepted rent, or a portion of rent with knowledge of an alleged violation by you and did not obtain a writing signed by you at the time of accepting rent informing you of the terms/conditions of accepting the rent. A.R.S. § 33-1371, RPEA 13(a)(4).

	<ul style="list-style-type: none"> • Retaliation – If you complained to your landlord or a government agency charged with code enforcement about habitability issues materially affecting health and safety within 6 months prior to the eviction being filed, there is a presumption that the eviction is retaliatory. You may be entitled to damages if this happened. See separate document on counterclaims. A.R.S. § § 33-1381.
Trial	<ul style="list-style-type: none"> • You have a right to a trial if the court determines that you MAY have a defense or proper counterclaim. RPEA 11(b)(1). • You have a right to a jury trial, but you must ask for it the first time you see the judge. The judge will then decide if there are factual matters to be determined by a jury. If there are no factual matters appropriate for a jury, the case will be heard by the judge. RPEA 11(d).
Evidence/ Testimony	<ul style="list-style-type: none"> • Evidence and testimony (documents and statements) must be relevant to the proceeding. • A witness must testify from personal knowledge – the witness telling the court what somebody else told the witness is generally not allowed. • You have a duty to make timely objections. If a witness testifies to a fact he or she does not have personal knowledge of or if the testimony is not relevant to the proceeding, immediately tell the judge you object to the testimony or evidence.
Judgment	<ul style="list-style-type: none"> • A default judgment will be entered against you if you are not present in the court when your case is called by the judge. RPEA 13. • Stipulated judgment – you are agreeing that the allegations in the complaint are true and judgment will be entered against you. You will not have an opportunity to offer a defense and cannot appeal from this type of judgment. • The judge may award your landlord possession of the property plus rent, late fees (if there is a written rental agreement), attorney fees, court costs, and other damages if there is a legal and factual basis to award these damages. • See separate document related to judgments for important information if the judge rules against you.

Mobile Home Park Evictions

The following applies to mobile home park evictions where you own the mobile home and rent the lot your home sits on. The information below may be helpful to you but is **not a substitute for legal advice**. There are other rules and laws that may be applicable to your situation, but these are common rules and laws that apply in eviction actions. A.R.S. means Arizona Revised Statutes and RPEA means Rules of Procedure for Eviction Actions.

Notice	<ul style="list-style-type: none"> • Your landlord may not terminate or refuse to renew your space rental agreement without good cause—“good cause” means: <ol style="list-style-type: none"> 1. Noncompliance with the rental agreement 2. Nonpayment of rent 3. Change in use of land 4. Clear and convincing evidence that you have repeatedly violated the Mobile Home Parks Residential Landlord and Tenant Act. A.R.S. § 33-1476(B). • Material noncompliance with the rental agreement – if your landlord thinks you have broken the rental agreement, he must give you a written notice identifying the problems and inform you that the rental agreement will terminate in 30 or more days if you have not fixed the problems in 14 days. • Material noncompliance with the rental agreement affecting health and safety – If your landlord thinks you have broken the rental agreement and the problems materially affect health and safety, he must give you a written notice identifying the problems and inform you that the rental agreement will terminate in 20 or more days if you have not fixed the problems in 10 days. • Immediate Termination – If your landlord thinks you have broken the rental agreement and that the problem is both material and irreparable, and happened on the premises, your landlord can give you a notice for immediate termination of the rental agreement and file the an eviction action the same day. • Nonpayment of rent – Your landlord must give you written notice that your rent is unpaid and that your rental agreement will terminate if rent is not paid in 7 days. • If you did not receive a termination notice and a chance to pay the rent and late fees, or the notice does not comply with the law or was not properly served, the court must dismiss the eviction action. RPEA 13(a)(2).
Service	<ul style="list-style-type: none"> • Generally, an eviction action summons and complaint must be served on you in one of two ways; 1) personally served on you, or 2) posted in an obvious place and mailed to you by certified mail. RPEA 5(f).
Answer	<ul style="list-style-type: none"> • You may file a written answer or answer orally in open court on the record. If the court sets a trial date, you may be ordered to file a written answer. RPEA 7. If you cannot afford the filing fee, ask the clerk for a fee waiver/deferral application in order to not have to pay the filing fee when filing.

Reinstating the rental agreement	<ul style="list-style-type: none"> • If the eviction is only for non-payment of rent, the rental agreement will be reinstated if you pay all past due rent, attorney fees, and court costs <u>before judgment is entered</u>. A.R.S. § 33-1476(E).
Defenses	<ul style="list-style-type: none"> • You paid your rent in full and on time (provide proof of payment to the court). • The problems claimed in the notice and complaint never happened or happened off the property. • Retaliation – If you complained to the landlord or a government agency charged with code enforcement about habitability issues materially affecting health and safety within 6 months prior to the eviction being filed, there is a presumption that the eviction is retaliatory. You may be entitled to damages if this happened. See separate form on counterclaims. A.R.S. § § 33-1491.
Trial	<ul style="list-style-type: none"> • You have a right to a trial if the court determines that you MAY have a defense or proper counterclaim. RPEA 11(b)(1). • You have a right to a jury trial, but you must ask for it the first time you see the judge. The judge will then decide if there are factual matters to be determined by a jury. If there are no factual matters appropriate for a jury, the case will be heard by the judge. RPEA 11(d).
Evidence/ Testimony	<ul style="list-style-type: none"> • Evidence and testimony must be relevant to the proceeding. • A witness must testify from personal knowledge – the witness telling the court what somebody else told the witness is generally not allowed. • You have a duty to make timely objections. If a witness testifies to a fact he or she does not have personal knowledge of or the testimony is not relevant to the proceeding, immediately tell the judge you object to the testimony or evidence.
Judgment	<ul style="list-style-type: none"> • Default judgment will be entered against you if you are not present in the court when your case is called by the judge. RPEA 13. • Stipulated judgment – you are agreeing that the allegations in the complaint are true and judgment will be entered against you. You will not be able to offer a defense and cannot appeal from this type of judgment.
After Judgment	<ul style="list-style-type: none"> • See separate document related to post-judgment activities for discussion on writs of restitution. • A sheriff or constable can execute a writ of restitution by removing all occupants and their possessions from the mobile home. A.R.S. § 14-1481(B). • After removing the occupants and their possessions from the mobile home, the mobile home is deemed abandoned. • You cannot move your mobile home from mobile home space until you get a signed agreement from the mobile home park. This agreement must show clearance (the mobile home park's permission) for removal and that all monies due and owing have been paid. You can also reach some other agreement with the landlord. A.R.S. 33-1478(A)

Section 8 Information Sheet

A.R.S. § 33-1368(A)

The following applies to Housing Choice Vouchers (“Section 8 Vouchers”). Below is information that may be helpful to you but is **not a substitute for legal advice**. There are other rules and laws that may be applicable to your situation, but these are common rules and laws that apply in regarding Section 8 Vouchers. C.F.R. means Code of Federal Regulations.

<p>Tenant’s Portion of the Rent</p>	<ul style="list-style-type: none"> • An individual or family with a Section 8 voucher is only responsible for their portion of the rent. 24 C.F.R. 982.310(b)(1). • A landlord may not demand from the tenant more than the tenant’s portion of the rent as determined by Section 8. 24 C.F.R 982.451(b)(4)(iii).
<p>Section 8’s Portion of the Rent</p>	<ul style="list-style-type: none"> • As long as the tenant remains in the Section 8 program, a landlord cannot evict a tenant if Section 8 has not paid its portion of the rent. 24 C.F.R. 982.310(b)(2). • If a landlord is seeking Section 8’s portion of the rent, you can report your landlord to your Section 8 program or HUD’s Fraud Hotline at 1-800-347-3745. This will not stop the eviction case against you. • If Section 8 fails to pay rent or pays their portion of rent late, the tenant is not responsible for the late fees on the Section 8 portion of the rent. In other words, if a tenant pays his portion of rent on time and Section 8 pays late, the tenant is not responsible for late fees. 24 C.F.R. 451(b)(5)(ii)(A).
<p>Housing Quality Standards (HQS)</p>	<ul style="list-style-type: none"> • HQS inspections are inspections conduct by Section 8 to ensure the unit meets housing quality standards set by HUD. 24 C.F.R. 982.401. • Periodically, Section 8 is required to conduct an HQS inspection of the subsidized unit to make sure it is up to HUD’s Standards. 24 C.F.R. 982.401. • If the unit does not pass the HQS inspection and it is the landlord’s fault, Section 8, by law, cannot pay the landlord for the month the unit failed the HQS inspection. 24 C.F.R 982.404(a)(3). • If the unit has failed due to the landlord and Section 8 has not paid its portion of the rent, a landlord does not have the right to evict the tenant as long as the tenant has paid his portion of the rent. 24 C.F.R. 982.310(b)(2).
<p>Landlord’s Acceptance of Rent</p>	<ul style="list-style-type: none"> • If your landlord accepted rent, either the tenant’s portion or Section 8’s portion of rent with knowledge of a default by you and did not obtain a writing signed by you at the time of accepting rent informing you of the terms/conditions of accepting the rent, the landlord has waived the right evict. A.R.S. § 33-1371, RPEA 13(a)(4).

Claims Against Your Landlord

A.R.S. § 33-1368(B)

The following does not apply to mobile home park evictions, recreational vehicle park evictions, and certain subsidized housing. Below is information that may be helpful to you but is **not a substitute for legal advice**. There are other rules and laws that may be applicable to your situation, but these are common rules and laws that apply in eviction actions. A.R.S. means Arizona Revised Statutes and RPEA means Rules of Procedure for Eviction Actions.

These claims may be brought against your landlord in a separate action or as counterclaims in the eviction action.

Counter-claims	<ul style="list-style-type: none">• Counterclaims in an eviction action must be filed in writing and served upon the opposing party. RPEA 8(a). You can hand it to your landlord or his attorney before your case is called by the judge.• Counterclaims must state specific facts claiming that you landlord violated the rental agreement or statute.• Counterclaims must state when and how any required notices were sent to your landlord and what the notices were about.
Retaliation	<ul style="list-style-type: none">• A.R.S. § 33-1381. If, in the past 6 months, you complained to your landlord or a government agency charged with code enforcement about habitability issues materially affecting health and safety, and then your landlord did any of the following, you may be entitled to damages.<ol style="list-style-type: none">1. Landlord increased rent2. Landlord decreased services3. Your landlord filed an action for possession (eviction action)4. Your landlord threatened to bring an action for possession• Damages are the same as those found in A.R.S. § 33-1367. See Ouster below.
Ouster	<ul style="list-style-type: none">• A.R.S. § 33-1367. If your landlord unlawfully locks you out of your rental unit or intentionally stops providing electric, gas, water, or other essential services you can do the following:<ol style="list-style-type: none">1. Recover possession of the rental unit2. Terminate the rental agreement (landlord must return your security deposit as required by the law)3. Sue or counterclaim for an amount not more than 2 month's

	rent or twice the actual financial harm you suffered, whichever is greater.
Abuse of Access	<ul style="list-style-type: none"> • A.R.S. § 33-1376(B). If your landlord does one of the following: <ol style="list-style-type: none"> 1. Enters your rental unit unlawfully (usually this means not providing proper notice of his intent to enter the rental unit), 2. Enters lawfully in an unreasonable manner; or 3. Makes repeated demands for entry that unreasonably harass you. <p>You can do one of the following:</p> <ol style="list-style-type: none"> 1. Obtain injunctive relief (get the court to order your landlord to stop); or 2. Terminate the rental agreement. <ul style="list-style-type: none"> • In addition to the above, you can also sue for actual damages not less than an amount equal to one month's rent.
Diminution of fair rental value	<ul style="list-style-type: none"> • A.R.S. § 33-1364(A)(2). If your landlord deliberately or negligently fails to provide running water, gas or electrical service, reasonable amount of hot water, heat, air conditioning or cooling (where units are installed), or essential services you can ask the court for a return of part of the rent you have paid. In other words, because your landlord failed to supply one or more of the above, your rental unit was not worth what you were paying for. • This statute requires that you first give your landlord reasonable notice about the problem.
Non-compliance with rental agreement by landlord	<ul style="list-style-type: none"> • A.R.S. § 33-1361. This statute allows for damages against your landlord, but requires previous written notice (either a 10-day notice for material noncompliance with the rental agreement or a 5-day notice for noncompliance materially affecting health and safety) to your landlord and an opportunity for your landlord to fix the problems stated in your notice.

After an Eviction Judgment

The information below may be helpful to you but is **not a substitute for legal advice**.

<p>Judgment</p>	<ul style="list-style-type: none"> • Once your landlord has been awarded a judgment, the only way you can stay in the rental unit is by working out an agreement with your landlord or filing an appeal of the judgment and paying a supersedeas bond (see Bonds below). Any post-judgment agreements should be in writing and signed by your landlord. Keep a copy of any agreement. • Judgments accrue interest from the time of the judgment until paid. • Once a judgment is paid off, the judgment creditor (landlord) must file a satisfaction with the court. A satisfaction lets anybody who looks at the court records know that the judgment has been paid off. • A judgment does not allow your landlord to take possession of the rental unit. See Writ of Restitution below.
<p>Writ of Restitution</p>	<ul style="list-style-type: none"> • In most cases, your landlord can go back to the court after 5 days to get a writ of restitution. A.R.S. § 12-1178. If the eviction action was filed based on an immediate and irreparable breach, your landlord can obtain the writ of restitution the next court day. • Writs of restitution are executed (served on a tenant or the rental unit) by a constable. • Your landlord may not change the locks or enter the rental unit until the writ of restitution has been issued by the court and served by the constable. You can call the police if your landlord changes the locks or enters the rental unit too early. • Once the writ of restitution has been lawfully executed, you may not remain at or return to the rental unit without the express permission of your landlord. If you remain or return to the rental unit without permission, you can be charged with criminal trespass.
<p>Motion to Set Aside Judgment</p>	<ul style="list-style-type: none"> • There 10 specific reasons a motion to set aside judgment may be filed. (e.g. the court did not have jurisdiction to hear the case, you tendered all amounts due prior to judgment being entered, the judgment is contrary to law, etc.). See RPEA 15 for the full list. • For certain reasons, a motion to set aside the judgment must be filed with the trial court not more than 60 days after the judgment. For other grounds, the motion must be filed within a reasonable time. • Filing a motion to set aside the judgment does not prevent the execution of a writ of restitution or allow you to stay in the rental unit.

Appeal	<ul style="list-style-type: none"> • A notice of appeal must be filed within 5 days after the judge has signed the judgment. Filing the notice of appeal will not allow you to remain in the rental unit. • There is a fee to file an appeal, but if you cannot afford the fee, you may request a deferral or waiver. Ask the clerk for a fee deferral/waiver application.
Bonds	<ul style="list-style-type: none"> • There is a cost bond of \$250.00 associated with filing an appeal that can be waived or deferred. • A supersedeas bond can be filed with the trial court to stay the writ of restitution which will allow you to remain in the rental unit while the appeal is being heard. This bond cannot be waived or deferred. In the case of an immediate termination, <u>the supersedeas bond must be paid to the trial court before the writ of restitution is issued.</u> The amount of the bond varies depending on the amount of rent due from the date of judgment until the next periodic rental date, costs, and attorney fees. Additionally, you must pay your monthly rent to the court on or before the monthly due date during the appeal to remain in the property while the appeal is being heard.
Personal Property (does not apply to mobile homes)	<ul style="list-style-type: none"> • Your landlord must hold your personal property for 21 days after the constable serves the writ of restitution, but you must pay the landlord for the cost of removal and storage (NOT the judgment amount) to recover your personal property. Certain personal items are excluded for this requirement. See A.R.S. § 33-1368(E)-(F) for additional information related to personal property left in a rental unit after an eviction.
Security Deposit (does not apply to mobile homes)	<ul style="list-style-type: none"> • Your landlord can apply your refundable security deposit to unpaid rent and other lawful charges after an eviction. See A.R.S. § 33-1321(D) for more information on obtaining a refund of your security deposit from your landlord.