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24 **IN THE SUPREME COURT**
25 **STATE OF ARIZONA**
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1 In the matter of:

2 PETITION TO AMEND RULE 4(d) and
3 RULE 9, ARIZONA RULES OF PROCEDURE
4 FOR EVICTION ACTIONS
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Supreme Court No. R-

**PETITION TO AMEND RULES 4 and 9 OF
THE RULES OF PROCEDURE FOR EVICTION
ACTIONS**

7 Pursuant to Rule 28 of the Rules of the Supreme Court, Wildfire: Igniting
8 Community Action to End Poverty in Arizona, Community Legal Services, Southern
9 Arizona Legal Aid, DNA People's Legal Services, Southwest Fair Housing Council, and the
10 William E. Morris Institute for Justice, hereby petition this Court to amend Rule 4(d) (in
11 two respects) and Rule 9 of the Rules of Procedure for Eviction Actions. The proposed
12 amendments, regarding procedures to satisfy and vacate eviction judgments after
13 tenants have paid judgment debts, will bring the Rules into conformity with Arizona
14 Revised Statutes, as well as harmonize them with the Arizona Rules of Civil Procedure
15 and the Arizona Rules of Small Claims Procedure. The proposed amendments also
16 provide tenants, who have paid off their eviction judgments in full, an opportunity to
17 rehabilitate their credit and tenant history so that they have a path to obtain decent,
18 stable housing.

19 This Petition describes the requested amendments; briefly explains the critical
20 need for the requested amendments; and provides additional information about the
21 Petitioners, which include entities with significant experience in representing individuals
22 in eviction actions and studying evictions in Arizona. A full text of the requested
23 revisions to Rules 4 and 9 are included in the attached Appendix.
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1 **I. The Court Should Amend Rule 4(d) in Two Respects to Conform with Other**
2 **Arizona Rules, Statutes, and Supreme Court Administrative Orders.**

3 **A. The Amendments Requested**

4 This petition seeks to amend Rule 4(d) by making the following addition and
5 deletion so that the amended rule would read as follows¹:

6 **Satisfaction of Judgments.** Once a judgment has been satisfied by the
7 payment of the monetary award, or the parties have entered into a new
8 rental agreement or created a novation of the prior rental agreement, the
9 party in whose favor the judgment was entered shall file a Satisfaction of
10 Judgment with the court that entered it **within thirty days after the**
11 **judgment has been paid in full** and serve a copy on the judgment debtor.
12 The duty to file the satisfaction of judgment is on the prevailing party and
13 not on the attorney who represented the party. In the event that a
14 prevailing party fails to satisfy a judgment rendered ~~and cannot be located~~
15 ~~with a showing of reasonable diligence~~, the judgment debtor may file a
16 motion to compel satisfaction of judgment and the court may, after an
17 opportunity for a hearing, order that the judgment shall be deemed
18 satisfied.

16 **B. Rule 4(d) Should Be Amended to Include a 30-Day Time Period for the**
17 **Landlord to File a Satisfaction of Judgment.**

18 Setting forth a 30-day deadline from the time the tenant pays the debt to the
19 time when the landlord must file a satisfaction of judgment would bring Rule 4(d) into
20 compliance with A.R.S. §22-525(A). The lack of a deadline in the current rule for the
21 landlord to file a Satisfaction of Judgment leaves open the question as to when or
22 whether a landlord will comply with the Rule and resulting uncertainty. Eviction records
23 are prohibitive for tenants trying to find new housing, and often result in homelessness
24 and living in unstable housing. So, the absence of a deadline for filing a Satisfaction of
25 Judgment hampers a tenant's ability to file a motion to compel promptly, often at a
26 critical time in the tenant's search for new housing, and when improving their credit or
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28 ¹ A full text revision of Rule 4 is included in the attached Appendix.

1 tenant record is most important. A 30-day deadline for landlords to comply with the rule
2 is fair and reasonable, as evidenced by Arizona law and procedure currently in place.

3 A.R.S. §22-525(A), a parallel law that controls satisfaction of judgments in Small
4 Claims Court, states “[t]he prevailing party [in a small claims action] must file a
5 satisfaction of judgment in the small claims division of the justice court *within 30 days*
6 after a judgment has been paid in full.” (emphasis added). This statutory mandate
7 promotes a reasonable and timely filing of a Satisfaction of Judgment. Amending Rule
8 4(d) to conform with A.R.S. §22-525 allows for eviction judgments to be resolved in the
9 same way as other Arizona judgments. Moreover, such a timeframe then instructs
10 whether the tenant needs to file a motion to compel satisfaction of judgment, subject to
11 the second revision of this rule.
12

13 **C. The Court Should Amend Rule 4(d) to Remove the Requirement that a**
14 **Landlord Cannot be Located in Order to Compel Satisfaction of the**
15 **Judgment and Bring Rule 4(d) into Compliance with A.R.S § 22-252(b) and**
16 **Arizona Supreme Court Administrative Order 2021-120.**

17 As currently written, Rule (4)(d) provides that

18 In the event that a prevailing party fails to satisfy a judgment rendered, **and**
19 cannot be located with a showing of reasonable diligence, the judgment
20 debtor may file a motion to compel satisfaction of judgment and the court
21 may, after an opportunity for a hearing, order that the judgment shall be
22 deemed satisfied. (emphasis added).

23 Removing the requirement that a tenant must show that landlord cannot be located
24 without a showing of reasonable diligence would bring Rule 4(d) into alignment with
25 A.R.S. § 22-525(b), governing the satisfaction of judgments in small claims proceedings,
26 which states, in pertinent part,

27 If the prevailing party fails to file a satisfaction of judgment **or** cannot be located
28 after the opposing party has exercised due diligence in attempting to locate the
prevailing party, the opposing party may file a motion to compel satisfaction of
the judgment. If the motion is granted, the judgment is deemed satisfied.
(emphasis added).

1 If a landlord refuses to file a Satisfaction of Judgment, as is required by Rule 4,
2 whether the landlord's location is known to the tenant is irrelevant. The tenant should
3 not be prevented from filing a motion to compel the satisfaction of judgment if the
4 tenant paid off the debt and the landlord fails to comply with the rule. Not only will this
5 revision bring Rule 4(d) into conformity with an existing and analogous Arizona law, but
6 it will allow tenants to compel satisfaction of a judgment when the landlord does not
7 abide by the Rule.

8
9 Amending Rule 4(d) by removing this requirement also comports with this Court's
10 Administrative Order 2021-120, Section VI(4), which specifically eliminated the
11 requirement for the landlord to be unlocatable, as follows:

12 For cases where a judgment was entered for rent owed during a
13 moratorium, the amount owed was fully paid through a rental
14 assistance agreement, and that judgment has not already been
15 amended or vacated as permitted by this order, a defendant may
16 file a motion to compel satisfaction of judgment. **The defendant
17 may file the motion to compel without showing the plaintiff
18 cannot be located, as described in Rule 4(d), Rules of Procedure
19 for Eviction Procedures.** The motion shall be served on the plaintiff.
20 The court may, after an opportunity for a hearing, order that the
21 judgment shall be deemed satisfied. (emphasis added).

22 Accordingly, Petitioners request deleting this requirement so that Rule 4(d) comports
23 with A.R.S. 22-525(b), and Administrative Order 2021-120.

24 **II. The Court Should Amend RPEA Rule 9 to Include a Specific Provision to Allow
25 Both Tenants and Landlords to File a Motion to Vacate the if the Judgment is
26 Satisfied, Reversed, or Discharged.**

27 **A. Specific Authority for a Motion to Vacate Judgment Should be Included in
28 Rule 9 of RPEA.**

This petition proposes to amend Rule 9² by adding a new subsection as follows:

² Petitioners request that this new subsection be included as 9(g), and that the remaining subsections of Rule 9 be re-ordered as (h)-(k). The proposed Rule 9 is included in the attached Appendix.

Motions to Vacate Judgment

Any party can file a motion with the court asking to be relieved from judgment. The motion does not affect the finality of the judgment or suspend operation of the judgment. The court may vacate the judgment for the following reasons:

- 1) The judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or
- 2) Any other reason justifying relief.

Rule 9 of RPEA provides for the general authority to file motions and provides a list of specific motions authorized under the Rule. Rule 9 does not specify, nor does any other rule under RPEA, that either party can file a motion to vacate a judgment for any reason. The proposed amendment to Rule 9 conforms to existing Rule of Small Claims Procedure 16(a)(4) and Rule of Civil Procedure 60(b)(5), both of which allow for either party to file a motion to vacate a judgment when the judgment is satisfied, reversed, or discharged.

The proposed amendment to include a new subsection in Rule 9 is identical to the pertinent sections of Rule 16(a)(4) and (5), of the Arizona Small Claims Rules of Procedure, which state:

(a) Filing a Motion to Vacate Judgment. Any party can file a motion with the court asking to be relieved from judgment. The motion does not affect the finality of the judgment or suspend operation of the judgment. The court may relieve a party from a judgment for the following reasons:

(4) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or

5) any other reason justifying relief

In addition, Rule 60(b)(5) and (6) of the Arizona Rules of Civil Procedure states:

1 ***Relief from Final Judgment, Order or Proceeding:***

2 (b) On motion and just terms, the court may relieve a party or its legal
3 representative from a final judgment, order, or proceeding for the following
4 reasons:

5 (5) the judgment has been satisfied, released, or discharged; it is based on an
6 earlier judgment that has been reversed or vacated; or applying it prospectively is
7 no longer equitable; or

8 (6) any other reason justifying relief.

9 The inclusion of a rule in the RPEA that allows any party to file a motion to vacate
10 a judgment is both fair and necessary. Tenants who pay off the entirety of their debt
11 should be afforded the same rule allowing them to move the court to vacate the
12 judgment just as any other judgment debtor in Arizona. Landlords should also have the
13 same clarity of a rule. This rule amendment also encourages the repayment of the debt,
14 which is beneficial to landlords. Moreover, an eviction judgment, just like any civil
15 judgment, remains a part of the public record for 10 years (*see* A.R.S. § 12-1551)
16 impacting a tenant's ability to find good housing, and often, results in a denial of
17 housing and homelessness, even if the judgment is dismissed or satisfied. *See*
18 *Prejudged, The Stigma of Eviction Records*, Housing Action Committee Illinois, Lawyer's
19 Committee for Better Housing, March 2018.

20 Significantly, Maricopa County data shows that thousands of tenants could
21 benefit from this rule amendment. Since 2019, approximately 30% of tenants in
22 Maricopa County satisfied their eviction judgments.³ *See MCJC Eviction Data 2019-*
23 *Present*, attached hereto as Exhibit A. In contrast, however, approximately only 4% of
24 judgments in Maricopa County were vacated. *Id.* So, even though thousands of tenants
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26 ³ Data from Maricopa County provides as follows: In 2019, 38,536 eviction judgments were entered, 13,685
27 Satisfaction of Judgments were filed and 1,921 Motions to Vacate were filed. In 2020, 26,446 eviction judgments
28 were entered, 7,364 Satisfaction of Judgments were filed and 1,149 Motions to Vacate were filed. Through August
2021, 17,612 eviction judgments were entered, 5,977 Satisfaction of Judgments were filed and 757 Motions to
Vacate were filed. Maricopa County will be updating this information sometime in early 2022 with the remainder
of 2021 data. Wildfire will supplement this brief at that time this updated data becomes available.

1 paid off their judgments, the RPEA do not provide the same rules to vacate their
2 judgment as civil judgment debtors whose cases were adjudicated under the Rules of
3 Civil or Small Claims Procedure.

4 Finally, while Rule 9(g) includes a catch-all category for “other motions,” a rule
5 specifically allowing for a Motion to Vacate is important and necessary in eviction
6 actions. While theoretically, a tenant could bring a Motion to Vacate under Rule 9(g),
7 because the motion is not articulated as an option, unrepresented tenants will not know
8 what a Motion to Vacate is or its significance to their future housing and economic
9 opportunities. Once a rule is established, an appropriate form can be created for
10 landlords and tenants to use, and judges can inform the parties of this option.

11 **III. Sponsors and Co-Sponsors of this Brief**

12 **A. Wildfire**

13 Wildfire is an Arizona nonprofit committed to ending poverty before it starts by
14 advocating for fair practices, promoting access to financial security for all Arizonans, and
15 partnering with over 75 statewide nonprofits to ensure that individuals and families
16 have access to supportive services they need now, and into the future. In response to
17 the Coronavirus pandemic in 2020, Wildfire contracted with the City of Phoenix to assist
18 in the distribution of rent assistance to those impacted by the pandemic. As Wildfire
19 became more deeply involved in landlord/tenant issues, Wildfire learned first-hand
20 about the difficulties tenants have post-eviction, even if their rent debt is paid, in
21 obtaining new housing. Because eviction is a cause of poverty, Wildfire is committed to
22 lessening the durable negative consequences of eviction on tenants.

23 **B. Community Legal Services**

24 Founded in 1952, Community Legal Services (“CLS”) is a nonprofit law firm
25 dedicated to providing equal justice for civil legal issues, for low-income Arizonans. CLS
26 provides civil law support, including self-help assistance, brief advice and counsel, direct
27 legal representation, education, and outreach for the community. CLS practice areas
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1 include housing, consumer protection, health, and economic stability, families and
2 children, employment, tax, and farmworker-related law. CLS expanded its housing
3 practice in 2020 to create the Tenant Eviction Assistance Project, which provided legal
4 representation to City of Phoenix residents facing eviction. That program was recently
5 expanded again and includes tenant legal assistance and representation throughout
6 Maricopa County.

7 **C. Southern Arizona Legal Aid**

8 Southern Arizona Legal Aid (“SALA”), founded in 1951, provides free civil legal aid
9 services to low-income individuals and families in southern and southeastern Arizona,
10 including 11 of Arizona’s Native American tribes. SALA has a housing practice and
11 routinely represents tenants facing eviction. SALA expanded its outreach to tenants and
12 contracted with the Pima County’s Emergency Eviction Legal Services Program to
13 provide legal services and representation for tenants in the eviction process.

14 **D. DNA People’s Legal Services**

15 Since 1967, DNA People’s Legal Services (“DNA”) has provided free legal aid in
16 remote portions of the three states and seven Native American nations, helping
17 thousands of low-income people annually to achieve long-lasting economic stability by
18 providing access to tribal, state, and federal justice systems. DNA provides legal
19 assistance and offers community education programs that promote a greater
20 understanding of the law, including landlord/tenant law. DNA routinely represents
21 tenants facing eviction throughout northern Arizona.

22 **E. Southwest Fair Housing Council**

23 The Southwest Fair Housing Council (SWFHC) is dedicated to eliminating housing
24 discrimination and assisting victims of housing discrimination in exercising their rights.
25 SWFHC also maintains a Landlord and Tenant Resource Center, a self-help resource
26 center that aids those who may have specific Arizona landlord and tenant issues and
27 questions. Removing barriers to housing for tenants is central to the mission of SWFHC.
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IV. Conclusion

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this 4th day of January 2021.

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