

HULL, HOLLIDAY & HOLLIDAY P.L.C.
7000 North 16th Street, Suite 120-#484
Phoenix, Arizona 85020-5547
(602) 230-0088 *office*; (602) 230-7421 *fax*
attorney@h3landlordlaw.com
Andrew M. Hull, AZ Bar 004153
Denise M. Holliday, AZ Bar 017275
Kevin W. Holliday, AZ Bar 017276
Matthew R. Schlabach, AZ Bar 034118
Christopher T. Hoynicki, AZ Bar 034118
Judy Drickey-Prohow, AZ Bar 005796
Attorneys for

IN THE SUPERME COURT OF STATE OF ARIZONA

IN THE MATTER OF :

PETITION TO AMEND RULES OF
PROCEDURE FOR EVICTION ACTIONS

4(D) AND (9)

Plaintiff,

v.

Defendant.

Supreme Court

No. R-22-0004

Hull, Holliday & Holliday PLC is a law firm in Maricopa County, Arizona, whose practice substantially involves matters relating to landlord and tenant issues. For the reasons articulated below, we formally file our Response to the Rule Change Petition filed by the Petitioners. Additionally, we join in the reasons stated in the Responses filed by several Maricopa County Justices of the Peace.

Petitioners, who represent or advocate for tenants in eviction cases, have proposed amending Rules 4(d) and 9, RPEA, purportedly in order to remove barriers to tenants who have been evicted for a variety of issues. In order to accomplish this purpose, Petitioners urge the Court to (1) amend Rule 4(d) to require landlords to file a satisfaction of judgment with the Court within thirty (30) days after the judgment has been satisfied; (2) permit a judgment debtor to file a motion to compel entry a satisfaction of judgment in situations where the judgment debtor asserts that the debt has been paid and landlord cannot be found, regardless of whether the judgment debtor has exercised due diligence in attempting to locate the landlord, and (3) amend Rule 9 in order to allow a judgment debtor to file a motion with the Court to be relieved from the judgment when (a) the judgment has been satisfied, released or discharged, or (b) for “any other reason justifying relief.”

Petitioners assert that these rule changes will bring the RPEA in *pari materia* with rules regarding small claims actions and the Arizona Rules of Civil Procedure.

There is a reason why the Court has created different rules relating to different causes of action. In doing so the Court has recognized that different policy and other considerations affect different kinds of claims. Indeed, while an eviction action is by its nature a claim asserting breach of contract, there is a greater urgency in eviction actions to obtain a fast and legally sound remedy than, e.g., disputes between large corporations where the primary issue is obtaining monetary relief or small claims cases where the only matters at issue involve monetary claims.

In contrast eviction actions generally seek two (2) kinds of remedies: (1) a monetary judgment when rent is unpaid, and (2) possessory judgments for a variety of reasons, including criminal activity, health and safety reasons, material falsifications, and other substantial breaches of the lease agreement. Petitioners' proposal to amend the RPEA appears to take into account the first reason for eviction filings, but not the second.

As a starting point then, the fact that these proposed changes create the same standards for eviction actions as for small claims or general contractual disputes is not a reason to change the rules. Any rule changes to the RPEA should be made only if those changes are necessary in order to ensure fairness to both parties to a residential landlord and tenant dispute.

The proposed rule changes advocated by Petitioners do not meet these criteria or accomplish these goals.

The first change they propose is to require landlords to file a satisfaction of judgment within thirty (30) days of the date that the judgment has been paid in full. This proposed change presupposes that the judgment can be "satisfied" as long as the monetary amount identified on the judgment are paid. It fails to take into account that "judgments" usually require more than the payment of back rent and other assessed fees. Among other things, judgments in eviction cases almost always involve issues of possession and the fact that a tenant has paid a monetary judgment in full does not mean that the judgment is satisfied if the tenant still resides in the premises and/or refuses to leave.

This proposed change also imposes a heavy burden upon small landlords, including landlords who may own only one or two properties. These landlords are often as ignorant of the rule requirements as the tenants for whom Petitioners advocate. Imposing this kind of requirement on small landlords will disproportionately result in confusion and distress to small landlords who are the largest providers of low income housing, with the likely result that more of them will need to hire attorneys and pass those costs on to all of their residents, harming both the landlord, whose resources are already limited, and the tenant who will likely incur experience higher rents commensurate with the landlord's routine legal fees and/or loss of housing, as many small landlords decide to go out of business rather than expend their limited resources attempting to comply with the court's rules changes.

The second proposed change is to permit a judgment debtor to file a motion to compel entry of a satisfaction of judgment in situations where the judgment debtor asserts that the debt has been paid and landlord cannot be found, *regardless of whether the judgment debtor has exercised due diligence in attempting to locate the landlord*. Rule 4(d) already permits a tenant or attorney to seek a satisfaction of judgment when he or she has exercised due diligence in attempting to locate the landlord.

This change unbalances the current balance protecting the rights of both landlords and tenants, as it permits tenants – without having to show that they made reasonable efforts to find the landlord and serve notice upon him or her – to clear their records and satisfy the judgments against them.

Just as landlords are required to prove that they provided notice to tenants about lease violations, or to demonstrate that they made reasonable efforts to do so, the existing rule requires tenants to provide reasonable notice to landlords if they want to satisfy their judgments, giving the landlord an opportunity to come into court to oppose the tenant's action if the judgment has not, indeed, been completely satisfied. Under the proposed changes, Petitioners would permit tenants to essentially appear *ex parte* and present their request without notice to the landlord who obtained the judgment if the tenant merely asserts that the debt has been paid and that the landlord cannot be found. Under the proposed changes, no proof of satisfaction or attempted notice to the landlord is required.

Petitioner's final proposal is that the Court amend Rule 9, RPEA, to allow a judgment debtor to file a motion with the Court asking to be relieved from the judgment when (a) the judgment has been satisfied, released or discharged, or (b) for "any other reason justifying relief."

Rule 9, RPEA already permits motions for reconsideration (Rule 9(g)), motions to dismiss (Rule 9(f)), motions for judgment on the pleadings (Rule 9(e)), motions to amend a judgment (Rule 9(d)), and "other appropriate motions" (Rule 9(h)). It is not clear what Petitioner's proposed amendment would do that Rules 9(d)(e)(f) and (g) do not do other than create confusion and ambiguity, and in the process, increase the burdens already imposed on an overworked court system. One can imagine a multitude of reasons why a tenant would desire a judgment to be completely removed from their record, but this

proposed rule change fails to insert any guard rails into this procedure. As articulated by the response filed by several Justices of the Peace, future creditors and landlords rely in part on court records when determining whether to lease their asset to an applicant. The decision to remove that Judgment completely from court record simply because someone has determined that the tenant may experience some consequences for past actions will harm that application decision process and likely result in a negative impact to all future tenants as the risk created by this new rule impacts the entire industry. Future landlords and other creditors should continue to be able to review court actions that resulted in either monetary awards or rulings that the tenant engaged in illegal acts or otherwise breached their contracts. This proposed rule, while likely well-intentioned, fails to address the various types of eviction actions that result in Judgments and fails to protect all parties' rights equally. Finally, there are numerous reasons why a Judgment should not be vacated even if one aspect of the order has been performed by the tenant.

Based on the above, Respondents strongly encourage the Court to deny Petitioner's proposed amendments in full.

Respectfully submitted this 29th day of April 2022.

/s/Denise
Holliday
Denise Holliday
And
/s/ Judy Drickey-Prohow
Judy Drickey-Prohow

For, Hull, Holliday & Holliday

