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10 IN THE SUPREME COURT
11 OF THE STATE OF ARIZONA

12 In the Matter of:

13 Supreme Court No. R-16-0040

14 PETITION TO AMEND THE RULES OF
15 PROCEDURE EVICTION ACTIONS

16 **COMMENTS ON PROPOSED RULE**

17 Manufactured Housing Communities of Arizona ("MHCA"), by and through
18 undersigned counsel, hereby object to the proposed rule change on the basis that it is a
19 policy issue that the Petitioner is improperly asking this Court to decide. The Petition
20 itself, and all of the supporting comments, set forth policy arguments why this rule would
21 lead to a positive outcome for residents, but such decisions are to be left to the legislature,
22 not the Court. Two of the Commentors even write that the rule "and makes Arizona's
23 eviction process more fair and just." Susan Hallett, 4/22/22 Comment; Jean Moreno
24 4/18/22 Comment. This is a policy argument about the rights of Arizona citizens. If the
25 legislature wishes to vacate valid eviction judgments for policy reasons, it is free to do so.
26 It is improper for Petitioner to ask this Court to do so.

This response will only address the request by Petitioner for this Court to Amend
Rules of Procedure for Eviction Action ("RPEA") Rule 9, to allow either party to move to



vacate a judgment, once it has been satisfied.

APPLICABLE LAW

I. CREATING A NEW MEANS TO VACATE A JUDGMENT, BASED UPON A COMPLETELY DISCRETIONARY STANDARD, IS A POLICY DECISION TO BE LEFT FOR THE LEGISLATURE.

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 authorizes the Supreme Court to adopt rules of procedure:

A. The supreme court, by rules or administrative orders, shall regulate pleading, practice and procedure in judicial proceedings in all courts of this state to simplify pleading, practice and procedure and promote speedy determination of litigation on its merits.

B. The rules and administrative orders shall not do any of the following:

1. Abridge, enlarge or modify substantive rights of a litigant.

2. Abridge, enlarge or modify statutory, contractual or common law real property rights or questions of substantive law.

The Supreme Court analyzed substantive rights from procedural matters in *Daou v. Harris*, 678 P.2d 934 (Ariz. 1984). ***Substantive rights*** created by statute cannot be enlarged or diminished by rules promulgated by the court. 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

1 substantive rights for both landlords and residents regarding validly entered
2 judgments. It is a legal axiom, that needs no citation, that once a judgment is paid
3 in full, it is to be satisfied. This is codified in Rule 4, RPEA, wherein its stated,
4 “Once a judgment has been satisfied by the payment of the monetary award, or the
5 parties have entered into a new rental agreement or created a novation of the prior
6 rental agreement, the party in whose favor the judgment was entered shall file a
7 Satisfaction of Judgment with the court that entered it and serve a copy on the
8 judgment debtor.” On the other hand, RPEA Rule 15 provides instances when a
9 judgment should be vacated. Each and every instance under Rule 15 sets forth a
10 factual scenario where the judgment was improperly entered and is void or
11 voidable. For example, the following are current reasons to vacate an eviction
12 judgment: the court did not have jurisdiction; payment was made in full before
13 court; proper notice was not served; newly discovered evidence which constituted a
14 legal defense; bankruptcy and the judgment is contrary to law. See Rule 15, RPEA.

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19 Petitioner wishes to change this standing principle, and provide a means by
20 which a validly entered judgment may be vacated, not because of some legal defect
21 in the judgment, solely because such a position would help residential residents.
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23 Petitioner is asking that this Court create a new mechanism by which a resident in
24 an eviction action can have a judgment vacated, merely because the judgment is
25 satisfied. They are trying to nullify the difference between a satisfaction and a
26 judgment being vacated.
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1 The Petitioner and supporting comments, all focus on policy reasons this
2 proposed rule should be adopted. For example:

- 3 • “The proposed amendments also provide tenants, who have paid off their
4 eviction judgments in full, an opportunity to rehabilitate their credit and
5 tenant history so that they have a path to obtain decent, stable housing.”
6 Petition, page 1, ln. 15-19.
- 7 • “This rule amendment also encourages the repayment of the debt, which is
8 beneficial to landlords. Moreover, an eviction judgment, just like any civil
9 judgment, remains a part of the public record for 10 years (see A.R.S. § 12-
10 1551) impacting a tenant’s ability to find good housing, and often, results in a
11 denial of housing and homelessness, even if the judgment is dismissed or
12 satisfied.” Petition, page 7, ln. 13-17.
- 13 • “Significantly, Maricopa County data shows that thousands of tenants could
14 benefit from this rule amendment.” Petition, page 7, ln. 20-21.
- 15 • “This Rule Change Petition is important because tenants have difficulty
16 locating housing after an eviction judgment, in part because of their past
17 eviction judgment. Arizona tenants who pay their past debts should not
18 continue to bear the consequences of eviction by living in unstable or poor
19 housing conditions.” Susan Hallett, 4/22/22 Comments.
- 20 • “Our staff work every day to help families stay housed. This is one more way
21 to provide support to those families doing the right thing.” Susan Hallett,
22 4/22/22 Comments.
- 23 • “Additionally, the proposed amendments in the Rule Petition provide an
24 incentive for the payment of a rental debt, which is also a good thing for
25 landlords.” Susan Hallett, 4/22/22 Comments.
- 26 • “The Rule Petition creates a path forward for tenants after an eviction
27 judgment, incentivizes the payment of a debt, **and makes Arizona’s eviction**
28 **process more fair and just.**” Susan Hallett, 4/22/22 Comments (emphasis
added).
- “This Rule Change Petition is important because tenants have difficulty
locating housing after an eviction judgment, in part because of their past
eviction judgment. Arizona tenants who pay their past debts should not

1 continue to bear the consequences of eviction by living in unstable or poor
2 housing conditions.” Moises Galessgos, 4/19/22 Comments.

- 3 • “The rental world is currently a very unforgiving system and we need
4 changes like this to assist at risk households in having an opportunity to move
5 forward.” Moises Galessgos, 4/19/22 Comments.
- 6 • “This issue is critical in our community because many times tenants with an
7 eviction judgment are forced to accept housing of last resort in unsafe or poor
8 living conditions and do not know their rights as tenants. This contributes to
9 predatory leasing practices, reinforces bad ownership behavior, and
10 disproportionately affects vulnerable populations. The proposed amendments
11 will provide an incentive for payment of rental debts and will help families
12 overcome future barriers to housing which can ultimately contribute to
13 homelessness.” Jean Moreno, 4/18/22 Comments.
- 14 • “This Rule Petition creates a path forward for tenants after an eviction
15 judgment, incentivizes the payment of debt, **and makes Arizona's eviction**
16 **process more fair and just.**” Jean Moreno, 4/18/22 Comments (emphasis
17 added).
- 18 • “The proposed amendments also provide tenants, who have paid off their
19 eviction judgments in full, an opportunity to rehabilitate their credit and
20 tenant history so that they have a path to obtain decent, stable housing.”
21 Judge Samuel Thumma, Chair, Arizona Commission on Access to Justice on
22 behalf of Access to Justice, page 2, ln. 3-5.

23 It is patently obvious that each and every one of these arguments addresses
24 policy arguments about the benefit residents will receive after they have been
25 evicted pursuant to a lawfully entered judgment. Each of these arguments focuses
26 on the fact that a resident will be able to have a previously valid judgment vacated,
27 so it is not to be viewed by a prospective landlord. Whether a business, which rents
28 out properties to residents, has the full scope of information about a prospective
resident, is a policy decision. Whether a valid eviction judgment should remain

1 against a defendant, is a decision for the legislature to make, taking into account not
2 only benefit to residents, but also the owner's interests. It is a balancing decision of
3 the rights of different citizens of Arizona.

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5 It is suspected that the Petitioner will argue that because other court rules already
6 allow such action, its only right that the Rules of Procedure for Eviction Actions be
7 amended accordingly. However, its possible that this point of view (that it's a policy
8 decision) has not previously been considered and the fact that previous policy decisions
9 were made, is not justification for such action now.

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11 As noted in the comments by Justice of the Peace Anna Huberman, in pointing out
12 the lack of clarity in the Petition, "A balancing test between the interests of the former
13 tenant and potential future landlords may be more objective." Justice of the Peace
14 Huberman then cited Minnesota law, Minn. Stat. Ann. § 484.014 (2010), as a potential
15 sample. Regardless of whether that standard is correct or not, that citation shows that it is
16 an issue that should be addressed by the legislature via statute, and not by court rule. It is
17 a policy issue.

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19 Finally, Justice Huberman's comment addressing the balancing act between the
20 resident's interest and that of the future landlord's interests, highlights the practical effect
21 of such a rule. If owners no longer know the significance of a vacated judgment as
22 compared to a satisfied judgment, they may treat vacated judgments the same as satisfied
23 judgments which may increase their rental standards or increase rents. This negatively
24 impacts all residents. It is naïve to think that such a rule change will significantly alter the
25 landscape of eviction judgments without having a practical effect on future landlords and
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1 future residents. While the Petitioner will try to downplay this, it is demonstrated via
2 simple example: if a tenant has had 4 eviction judgments entered against them in a year
3 and is able to get the judgments vacated, owners still want to know about that resident's
4 creditworthiness and quality as a renter. Owners will have to account for this change by
5 modifying their policies or increasing rent to account for a higher likelihood of default.
6 Simply, all renters will then be impacted negatively on the actions of applicants who had
7 their records made unavailable. The balancing of those interests, and the potential
8 ramifications, should be determined by the legislature.
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11 **II. THE PROPOSED RULE IGNORES THE FACT THAT**
12 **EVICTON JUDGMENTS DEAL WITH POSSESSION, NOT**
13 **MERELY MONETARY AWARDS.**

14 Petitioner's only argument that doesn't focus on policy reasons, is Petitioner's
15 argument that the proposed language exists in other civil rules and therefore it should exist
16 in the rules for evictions. While this may have facial appeal, it ignores the fact that an
17 eviction action addresses two issues: (1) a monetary award, as well as (2) possession of the
18 Property. This distinction is critical because payment of the monetary judgment may
19 conclude or resolve a civil action, it does not resolve all issues in an eviction action.
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21 The purpose of an eviction action "is to afford a summary, speedy and adequate
22 remedy for obtaining possession of the premises withheld by a tenant in violation of the
23 covenants of his tenancy or lease." *Olds Bros. Lumber Co. v. Rushing*, 64 Ariz. 199, 204,
24 167 P.2d 394, 397 (1946). A.R.S. § 33-1373 provides: "the landlord may have a claim for
25 possession and for rent and a separate claim for actual damages for breach of the rental
26 agreement." Finally, A.R.S. § 33-1368(B) provides that in an eviction action "After a
27 judgment has been entered in a special detainer action in favor of the landlord, any
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1 reinstatement of the rental agreement is solely in the discretion of the landlord."

2 Under the Petition, a tenant need only pay the amount owed to seek to have a court
3 vacate the judgment. This completely ignores the claim to possession and a landlord's
4 right to a writ of restitution. Petitioner fails to address how the claim to possession will be
5 handled and what will happen to a judgment that has been vacated. In an eviction, a
6 landlord has an absolute right to execution of a writ of restitution, even after a payment
7 has been made. See, Rule 14(B), RPEA ("A party who obtains a judgment for possession
8 in an eviction action shall have up to 45 days to apply for a writ of restitution."). The
9 Petition would force a landlord to reinstate the lease solely because they accepted money,
10 in violation of A.R.S § 33-1368. Petitioner will suggest that a court would still have
11 discretion in such an instance but this needlessly causes a plaintiff to expend additional
12 attorneys' fees to seek enforcement of its statutory right.

13 It is obvious that Petitioner did not consider the practical implications of the
14 proposed rule and there are other peripheral issues that would be raised regarding
15 possession. Given that an eviction deals with possession, while civil rules deal only with
16 monetary awards, it makes logical sense that there would be a difference in the standards
17 upon which a judgment can be vacated.

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RESPECTFULLY SUBMITTED this 2nd day of May, 2022.

By: /s/ Scott A. Baluha
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COPY OF THE FOREGOING
Mailed this 2nd day of May, 2022 to:

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