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CLERK SUPREME COURT

IN THE SUPREME COURT
STATE OF ARIZONA

IN THE MATTER OF:

Supreme Court No. R-22-0004

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

Comment of Stanley Silas

I. History of Eviction Judgments in Maricopa County Justice Courts

My name is Stanley Silas. I was employed by Community Legal Services ("CLS") from April 1, 2001 through September 30, 2021. My title upon retirement was Lead/Senior Staff Attorney. I practiced exclusively in CLS' housing unit in their Mesa and Phoenix offices. I participated in numerous eviction trials, landlord/tenant negotiations and administrative hearings regarding the termination of housing rights afforded under federal law. I represented CLS clients in almost every justice court in Maricopa County during my twenty-year tenure.

I have reviewed Petition No. R-22-0004 and the proposed amendments to Rules 4(d) and Rule 9 of the Rules of Procedure for Eviction Actions, regarding procedures to satisfy and vacate eviction judgments ("RPEA"). It is certainly true that the proposed amendments will bring the Rules into conformity with Arizona Revised Statutes and harmonize them with Arizona Rules of Civil Procedure and the Arizona Rules of Small Claims Procedure. However, I wish to point out that the need for these proposed amendments is predicated upon the unending number of eviction judgments issued against residential tenants daily in justice courts.

First, let us address the very fact that in Arizona, tenants come before justice court judges unrepresented by competent legal counsel in the vast majority of eviction matters. Landlords and property managers are usually represented by the well-known group of eviction law firms and attorneys. Tenants tend to lose these cases with predictability usually not found in the law. Legal

Aid organizations throughout Arizona and CLS specifically in Maricopa County are typically the only source of direct legal representation for low-income tenants. Private attorneys often do not represent tenants in eviction actions. So, to be clear, tenants facing eviction in Maricopa County's Justice Courts will usually forfeit their housing because they cannot adequately challenge the eviction when forced to represent themselves and confront the trained legal advocate hired by the landlord/property manager. They must often cannot convince the justice court judge of the merits of their legal position. The end result is the issuance of a judgment for possession to the landlord.

"... [L]andlords were represented by attorneys in an even higher percentage (than in the previous study) of cases. 94% of landlords were represented. Tenants who came to court remained almost entirely unrepresented." Citation: What's Justice Got to do With It? The Experience of Tenants in Maricopa County Justice Courts, William Morris Institute for Justice, May 2020. From 2014-2020, there were an average of 63,787 Forcible Detainer/Eviction Actions filed according to "Justice of the Peace Courts County Case Activity by Fiscal Year" data.

Second, let us now address the other compelling reason for the alarming number of eviction judgments issued against tenants in Maricopa County. When an unrepresented tenant seeks to have a trial on the merits to contest the landlord's allegations, the matter is set for trial, typically within three days. The landlord attorney and the justice court judge are well aware of Rule 10. Disclosure, as found in the RPEA. It is safe to say most tenants are not. The courts typically do not demand disclosure by both parties in these contested trials and the landlord's legal representative will usually not inform the tenant of their rights under this rule. My experience, as the CLS attorney, was to insist upon disclosure from the landlord attorney as the matter was being set for trial.

I want the Court to consider this disturbing fact. Unrepresented tenants must defend themselves in justice court from an eviction brought for example under A.R.S. § 33-1368(A)(2) for an "alleged material and irreparable breach," which would result in the immediate

termination of the rental agreement. Yet they are not aware under Rule 10. Disclosure, that they are entitled to the following:

1. A complete copy of the any lease agreement and any addendums;
2. A list of witnesses and exhibits;
3. Copies of any documents the party intends to introduce as an exhibit at trial.

Legal aid attorneys would always insist upon said disclosure from the landlord attorney and they in turn would request the same. This ethical exchange which ensures procedural due process does not often occur between landlord attorneys and unrepresented tenants.

The eviction judgments issued by the justice courts as a result of the numerous eviction complaints brought throughout Maricopa County are often obtained in the manner and circumstance described above. With this information in mind, I would urge the Court to have no hesitancy in correcting this injustice, as these amendments are designed to accomplish.

II. Unequal Treatment of Residential Tenants Under Arizona Law

I agree with the comments made in the Petition which reference to elimination of language in Rule 4(d), to remove the requirement of “showing that the landlord cannot be located without a showing of reasonable diligence.” The additional burden of having the tenant demonstrate they cannot locate the landlord without a showing of reasonable diligence, reflects a lack of understanding of how hard it would be for tenants to unravel the layers of legal representation which all landlords impose upon residential tenants so as not to be bothered by them directly when it comes to property management matters. In short landlords, as is their legal right, hire property management companies to insulate themselves from their tenants. Tenants will understandably be confused as to who is the landlord. Please note the tenant’s obligation to locate the “Landlord” is governed by A.R.S. § 33-1310(6) listed below:

“Landlord” means the owner, lessor or sub lessor of the dwelling unit or the building of which it is a part, and it also means a manager of the premises who fails to disclose as required by section 33-1322.

Additional statutory disclosure requirements of the landlord and the person authorize to manage the premises are found in A.R.S. § 33-1322(A)-(D). If the tenant is required to sort through documents and chase down residential property management company representatives so that they can demonstrate that the “Landlord’s” location is not known, this will place an unnecessary legalistic and expensive burden on low-income tenants who would seek to file a motion to compel satisfaction. No such requirement is required of other judgment debtors.

The Petition also admirably seeks to provide relief to tenants who would ultimately seek to have their judgment vacated under Rule 9. In my humble estimation this would allow for tenants to mitigate some of the legal, financial and emotional harm which has plagued them post entry of an eviction judgment for possession. Nothing in our legal system has caused residential tenants more adversity than eviction judgments. And no can seriously dispute in good faith that many of them were obtained improperly.

First, let’s address the impact of said judgments. It is a legal requirement of federal housing programs that “a participant may be terminated if any member of the family has been evicted from federally assisted housing in the last five years. See 24 C.F.R. § 982.552(c)(1)(ii). This is a reference to Housing Choice Vouchers under the Section 8 Program. Similarly, under project-based Section 8 contracts, the termination of tenancy is required for certain lease violations set forth primarily at 24 C.F.R. Part 247 (2016) and 24 C.F.R. §§ 5.580-5.861 (2015). With the implementation of a new section to Rule 9, tenants thereafter will be empowered with the ability to file a motion to have the judgment vacated should they desire. Furthermore, some tenants may attempt to have their rights to federal housing reinstated as a result of having the judgment vacated.

Second, let us not lose sight of the fact that the most important reason for the inclusion of an amendment to Rule 9, is the unequal treatment residential tenants have been subjected to under Arizona’s landlord/tenant laws. For example, my former colleagues within the Landlord Bar argued some years ago that tenants should be denied the right to file a motion for “change of judge.” Yet, all other Arizona litigants and defendants were afforded this basic procedural right

under Arizona law. Fortunately, progress was made and RPEA was changed to grant tenants equal treatment as well.

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. This proposed rule is also consistent with Rule 60(b)(5) and (6) of the Arizona Rules of Civil Procedure. It is time to eliminate this intentional discrimination against residential tenants throughout Arizona. If such rights are to be afforded to some judgment debtors in Arizona, then they should be afforded to all. The Court cannot knowingly support the denial of equal treatment to judgment debtors who happen to be tenants and should adopt Petition No. R-22-0004.

III. Conclusion

I urge the Court to accept the rationale for the Petition and approve the Petition as proposed. I can candidly state the issuance of a judgment for possession to residential landlords or property managers is the single most challenging barrier to housing for low-income tenants in Arizona. During my employment with CLS, I was told repeatedly by landlords and property managers that as part of their "selection criteria" they will not accept a tenant for rental housing who within the past year has received an eviction judgment.

This property management standard cannot be changed by the Court; however, the Court can come to terms with the inequality which surrounds the issuance of said judgments and acknowledge that tenants should not be treated differently under Arizona law.

Approving Rule Change Petition No. R-22-0004 would provide tenants with housing opportunities previously denied them and would have a significant impact in reducing the plague of eviction judgments found on "tenant screening reports."

RESPECTFULLY SUBMITTED this 29th day of April 2022.

/s/ Stanley Silas

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Signed this 27th day of April, 2022

/s/ Stan Silas