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23 **IN THE SUPREME COURT**

24 **STATE OF ARIZONA**

25
26 In the matter of:

27 PETITION TO AMEND RULE 4(d) and
28 RULE 9, ARIZONA RULES OF PROCEDURE
FOR EVICTION ACTIONS

Supreme Court No. R-16-0040

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

1 Pursuant to Rule 28 of the Rules of the Supreme Court, Wildfire: Igniting
2 Community Action to End Poverty in Arizona; Community Legal Services; Southern
3 Arizona Legal Aid; DNA People’s Legal Services; Southwest Fair Housing Council; and the
4 William E. Morris Institute for Justice (“Petitioners”), hereby submit this Reply in
5 response to the public comments regarding the Petition to Amend the Rules of
6 Procedure for Eviction Actions (“RPEA”). The Petition requests two amendments to the
7 RPEA regarding satisfaction of judgments under Rule 4(d), and new language in Rule 9 to
8 clarify available legal standards for vacating eviction judgments. The proposed changes
9 will bring the RPEA into conformity with Arizona Revised Statutes, as well as harmonize
10 them with the Arizona Rules of Civil Procedure and the Arizona Rules of Small Claims
11 Procedure.

12
13 Three separate comments were submitted to the Court by private landlord
14 interests or attorneys representing landlords that objected to the Petition, including
15 comments from the Manufactured Housing Communities of Arizona (“MHCA”), the Law
16 Offices of Hull, Holliday & Holliday (“HH&H”), and the Arizona Multihousing Association
17 (“AMA”).¹ The Maricopa County Justice Court also filed a comment regarding the
18 Petition referred to herein as the “Justice Court Comment.” Petitioners’ Reply Brief
19 addresses specific public comments outlining concerns with the proposed changes to
20 the RPEA.

21 **I. The Proposed Amendment to Rule 9 Is Procedural.**

22
23 “The supreme court, by rules or administrative orders, shall regulate pleading,
24 practice and procedure in judicial proceedings in all courts of this state to simplify
25 pleading, practice and procedure and promote speedy determination of litigation on its
26 merits.” A.R.S. § 12-109(A). Petitioners’ request to add a specific reference to a Motion

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¹ Ten comments were filed in support of the Petition.

1 to Vacate Judgment in the RPEA meets the goals and satisfies the plain and
2 unambiguous language of A.R.S. § 12-109(A).

3 Procedural rules governing relief from judgments in civil cases are ubiquitous in
4 federal and state courts throughout the United States of America, including Arizona.
5 *See, e.g.*, Rule 60, Rules of Civil Procedure for the Superior Courts of Arizona; Rule 60,
6 Federal Rules of Civil Procedure. In fact, motions to vacate judgments are *already filed*²
7 in eviction cases in Arizona. Additionally, this Court specifically required justice courts to
8 order motions to vacate be filed when tenants paid their eviction debts in its series of
9 recent Administrative Orders entitled “Disposition of Residential Eviction Cases Related
10 to the Public Health Emergency.”³

11 The proposed amendment adding a motion to vacate rule is necessary because,
12 even though these motions are filed with some frequency, there is no procedural rule in
13 RPEA that guides litigants or the courts as to the appropriate legal standards for
14 determining such motions. Moreover, amending the RPEA to include a Motion to Vacate
15 is critical because of the historic imbalance of legal representation between landlords
16 and tenants in eviction cases. For example, in 2021, out of 41,429 evictions filed, only
17 349 tenants (or 0.8%) had representation in Maricopa County in eviction cases, which
18 hears 80% of the eviction matters in Arizona. *See* MCJC 2021 Final Eviction Data,
19 attached hereto as Exhibit A. Unrepresented tenants have almost no understanding of
20 the RPEA, let alone any knowledge that an unwritten, yet utilized, motion to vacate rule
21 which exists in other courts, could be brought in eviction court. The lack of a Motion to
22 Vacate rule in RPEA leaves tenants at a significant disadvantage in understanding their
23 right to have a judgment vacated and to adequately access a procedural motion that, if
24
25

26 ² Motions to Vacate Filed in Maricopa County: 1,921 filed in 2019; 1,149 filed in 2020, 757 Motions to
27 Vacate filed through August 2021. *See* Rule Petition, Exhibit A, MCJC Motion to Vacate Data.

28 ³See Administrative Orders 2021- 47(III)(4), 2021-53(III)(4); 2021-120 (III)(2), and 2021-129. The
Petitioners are unaware of any objections to this Court’s Order requiring the vacation of judgments.

1 successful, can have a significant impact on their credit and consumer history, and
2 future life and housing opportunities.

3 MHCA opposed the adoption of an amendment to Rule 9 because it claims it
4 would allow a tenant who prevails on a motion to vacate to regain their possessory
5 interest in the property. See MHCA Comment, p. 7-8. This is incorrect. A lease is not
6 reinstated upon paying the past due amounts after the judgment is entered. A.R.S. § 33-
7 1368(B) specifically states, “After a judgment has been entered in a special detainer
8 action in favor of the landlord, any reinstatement of the rental agreement is solely in the
9 discretion of the landlord.” A motion to vacate is a post-judgment motion. The justice
10 court has discretion to grant or deny the motion. The ultimate decision on a motion to
11 vacate does not interfere with the landlord’s possessory interest or authority to
12 reinstate a lease agreement in the property. In summary, the Petition’s proposed
13 amendment to Rule 9 does not abridge, enlarge, or modify statutory, contractual, or
14 common law real property rights or questions of substantive law.⁴

15 Just as this Court adopted motion to vacate rules for the Arizona Small Claims of
16 Procedure (Rule 16) and the Arizona Rules of Procedure (Rule 60(c)), A.R.S. § 12-109(A)
17 provides this Court with the authority to amend Rule 9 to include specific reference to a
18 motion to vacate in the RPEA. The Court should adopt Petitioners’ proposed
19 amendment to Rule 9.

20 **II. The Proposed Motion to Vacate Rule Improves the Accuracy of Publicly**
21 **Available Eviction Case Information.**

22 Each of the comments opposing the Rule Petition included objections to the
23 amendment to Rule 9 on the basis that if a Motion to Vacate was granted, the eviction
24 judgment would be “masked,” “intentionally conceal[ed]” or “cover[ed] up” in the
25 public record. However, this is not the result of a Motion to Vacate. These comments
26 are factually and legally incorrect.

27 ⁴ The Justice Court Comment recommends an amendment to Rule 18 of RPEA which would clarify the
28 definition of a satisfied judgment. Petitioners do not oppose this amendment to Rule 18, and, if
adopted, believe it clarifies and resolves any remaining concerns raised by MHCA on this issue.

1 An eviction judgment is not removed from the public record if a Motion to Vacate
2 is granted by the Court. Likewise, a successful Motion to Vacate does not expunge or
3 seal an eviction judgment or associated court file records. In fact, the Maricopa County
4 Justice Court maintains a searchable online database of eviction case court file records.
5 The results, including cases with vacated judgments, appear for anyone to view. See [Find](#)
6 [A Case \(maricopa.gov\)](#).

7 Accordingly, the end result of a granted motion vacating a judgments benefits
8 tenants and landlords, and the public at large, by *changing the disposition* of an eviction
9 case *in the public record*. This change in disposition from “eviction judgment” to
10 “vacated judgment” does not remove the case from public view. Rather, it helps ensure
11 the accuracy of case information documented in civil court files, available for any
12 landlord to review. In the process, it helps tenants demonstrate their efforts at repaying
13 their rental debt and appropriately seeking relief from eviction judgments using recent,
14 updated factual information. Landlords also benefit as they will have more information
15 about the tenant’s efforts to repay the debt after an eviction and will not experience
16 any effects of inaccurate public information indicating that they are judgment creditors
17 in cases where they are not.

18 **III. Procedural Rules Governing Relief from Judgments Should be Universally** 19 **Available to All Litigants.**

20 The Justice Court Comment states that the Petition was “seeking to help” tenants
21 who had difficulty paying rent during the pandemic. See Justice Court Comment, p. 3.
22 This statement mischaracterizes the Petition. The Petition seeks to amend the RPEA to
23 include a procedural rule for motions to vacate judgments that is accessible to all
24 landlords and tenants who qualify under the rule. In its Appendix, the Maricopa County
25 Justice Court goes on to suggest that the motion to vacate limit litigants in certain types
26 of cases from seeking relief from a judgment from the court, and further suggests a rule
27 that would limit the kind of funds a debtor can use to pay off the judgment to be able to
28 access the rule. See Justice Court Comment, Appendix p. 7. Footnote 8. The Petitioners

1 disagree with the proposed motion to vacate rule proposed by the Justice Court in its
2 entirety.

3 No particular group of litigants should be foreclosed from seeking relief in court
4 from a civil judgment. Adopting a rule that distinguishes between case types is contrary
5 to “the primary purpose of our procedural rules [which] is to ‘secure the just, speedy,
6 and inexpensive determination of every action’ preferably on its merits.” (emphasis
7 added). *See Encinas v. Pompa*, 189 Ariz. 157, 160 (Ariz. Ct. App. 1997) citing Rule 1, Ariz.
8 R. Civ. P. In commenting on the Federal Rules of Civil Procedure, after which Arizona’s
9 procedural rules are based, Professors Wright and Miller observed the following:

10 The rules will remain a workable system only as long as trial court
11 judges exercise their discretion intelligently on a case-by-case basis;
12 application of arbitrary rules of law to particular situations only will
13 have a debilitating effect on the overall system.

14 The rules of procedure must promote the most basic function of our court
15 system, which is to promote “a fair system that furthers the legitimate interests of all
16 involved,” *See Lake v. Bonham*, 148 Ariz. 599, 601 (App. 1986), and should not pick and
17 choose who can and cannot seek relief from the court. For this reason, the Court’s
18 proposal should be rejected.

19 Section (e)(3) of the Justice Court’s proposed motion to vacate rule is also
20 problematic. The Justice Court’s proposed section (e)(3) states:

21 If a current or former tenant is the party requesting relief, the court
22 concludes the vacating of the judgment is appropriate when the interests
23 of the tenant are weighed against the interests of potential future
24 landlords being aware of the tenant’s rental history.

25 First, the balancing test is based on the faulty premise that a vacated judgment is
26 removed from the public record. As explained in Section II above, a vacated judgment
27 remains in the public record and a future landlord is not deprived of a tenant’s rental
28 history. Based on this alone, the Justice Court’s suggestion should be rejected.

1 More problematic, however, is that the balancing test proposed by the Justice
2 Court weighs the interest of a litigant who satisfied a judgment and presents a motion
3 to vacate to the court against an entity that is not even a party to the case, but rather, a
4 “potential future landlord,” whose interests are not before the court. This proposal
5 oversteps the Justice Court’s authority. There are thousands of landlords in Arizona,
6 each with their own criteria for renting to tenants. It would be impossible to know an
7 unknown hypothetical future landlord interests in a particular tenant’s rental history
8 without assuming that all landlords review tenant histories in the same way for the
9 same reasons. Further, to the Petitioners’ knowledge, no other procedural rules
10 consider the interests of possible, fictional, future persons who *may* want to know the
11 outcome of a particular case.

12 Rather, in deciding a motion to vacate, the Justice Court should consider the
13 record and the interests of the parties before it. The Justice Court should consider the
14 tenant’s motion to vacate and any response to the motion filed by the landlord in the
15 case - just as the judges on the Superior and Small Claims Court benches do. Because
16 the public record contains all information about the case and is not erased, sealed, or
17 masked in any way, a successful motion to vacate does not hamper the awareness of
18 any member of the public to fully consider the tenant’s eviction case. In fact, whether
19 or not a motion to vacate is granted, its existence as part of the public record in an
20 eviction case court file will help members of the public understand updated factual
21 circumstances regarding such cases. For these reasons, the Justice Court’s suggested
22 motion to vacate rule should be rejected.

23 **IV. Satisfied Judgments Should Be Recognized Reasonably Promptly.**

24 In its public comment, HH&H contends that the Petition’s proposed amendments
25 to Rule 4(d), which requires landlords to file a satisfaction of judgment within 30 days of
26 payment, are overly burdensome to landlords. Landlords, however, are already required
27 to file a satisfaction of the judgment. *See* Rule 4(d), RPEA. Requiring them to do so
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1 within 30 days is reasonable and promotes the real-time accuracy of information in
2 eviction case court files. Adding a timeframe to rule 4(d) is reasonable and is supported
3 by existing rules and this Court's previous Administrative Order.

4 Rule 6 of Small Claims Rules of Procedure requires satisfaction to be filed in 30
5 days. Additionally, this Court's recent Administrative Orders requires landlords to file a
6 satisfaction of judgment 15 days from the tenant submitting full payment. *See Arizona*
7 *Supreme Court Administrative Orders 2021-47, IV(2)(h) and 2021-53(IV)(2)(h).* When
8 balanced with a tenant's full payment of the judgment and need for housing, allowing a
9 landlord 30 days to file a simple satisfaction of judgment notice is more than
10 reasonable. Landlords have direct and immediate knowledge regarding when a
11 judgment has been satisfied. Thus, landlords and their counsel are well-positioned to
12 take the simple step of executing a basic filing to confirm the satisfaction of eviction
13 judgments with the court. For these reasons, the Court should adopt a 30-day deadline
14 for filing a satisfaction of judgment.

15 The Justice Court suggests an amendment of the definition of a Satisfaction of
16 Judgment in its Appendix. The Petitioners do not oppose this proposed definition, but
17 the Petition's proposed amendments to Rule 4(d) of RPEA are also necessary to clarify
18 the procedure and to comport with existing satisfaction of judgment procedures in
19 Arizona rules and statutes.

20 Finally, the Justice Court suggests that a motion to vacate and the motion to
21 satisfy the judgment should be combined as one filing. This may be efficient in cases
22 where tenants seek relief from judgments that should have been satisfied previously.
23 However, Petitioners caution that such a procedure may not be efficient if tenants do
24 not obtain confirmation from landlords that their eviction debt is fully paid. Tenants are
25 often not aware of the total amount of interest owed or some additional fee that was
26 charged and make wrong assumptions that the debt is paid in full. Petitioners maintain
27 that a landlord should be strictly required to confirm the satisfaction of a judgment
28 within the reasonable 30-day deadline in the amendments proposed for Rule 4(d).

1 **V. Conclusion**

2 Petitioners respectfully request that the Court approve the proposed rule
3 amendments outlined in their Petition. An eviction judgment should not be a scarlet
4 letter, based on one snapshot in time, that a tenant bear for the remainder of their
5 rental lifetime. The proposed changes will ensure that the rules regarding eviction
6 judgments conform with the Arizona rules and laws that govern small claims and civil
7 judgments, provide a path back to stable housing for tenants after an eviction, and
8 encourage the repayment of eviction debt. Amending the RPEA to include rules for an
9 existing motion to vacate process so that tenants can understand and access this
10 procedure is necessary and just.

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3 this 31_ day of May 2022.

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