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**ARIZONA SUPREME COURT**

In the matter of:	)	
	)	
PETITION TO AMEND RULES 7, 11,	)	Supreme Court No. 22-_____
AND APPENDIX A, AND ADD RULE	)	(expedited consideration
20 IN THE RULES OF PROCEDURE	)	and emergency adoption
FOR EVICTION ACTIONS	)	requested)
_____	)	

Pursuant to Rule 28 of the Rules of the Supreme Court, David K. Byers, Administrative Director, Administrative Office of the Courts, respectfully petitions this Court to amend the rules specified above as proposed in Appendix 1. The proposed amendments implement legislative enactments affecting the eviction rules from the 2022 legislative session as more particularly described below.

**I. Purpose of the Proposed Rule Amendments.**

**A. HB 2484, Forcible Entry; Detainer; Filing Fee (Laws 2022, Ch. 97)**

HB 2484 prohibits courts from imposing or collecting a fee for filing an answer to a complaint for forcible entry or detainer. Proposed rule amendments would amend Eviction Rules 7 and 11 to specifically state that a fee cannot be imposed to file an answer and would remove from Rule 11 a requirement that upon

ordering a written answer to be filed, that the court advise the defendant that an answer fee must be paid or deferred.

Proposed amendments would also replace on the Residential Eviction Information Sheet (Appendix A of Eviction Rules) a statement indicating that an answer fee must be paid or deferred with a statement indicating that there is no fee to file an answer.

**B. HB 2485, Eviction Dismissal; Sealed Records (Laws 2022, Ch. 286)**

HB 2485 creates A.R.S. § 33-1379 and requires a court to seal eviction case records when (1) the court dismisses an eviction action prior to the entry of judgment, (2) the court enters judgment in favor of the tenant, or (3) the parties file a written stipulation to set aside an order of eviction and seal the eviction case file. Under this bill, sealed records include all records relating to the action that are maintained by the court, including the complaint, any other pleading, proof of service, any findings and orders of the court, and all papers, records, proceedings and evidence, including exhibits and transcripts of testimony. Addition of a new rule, Rule 20, is being proposed for this purpose. Records sealed under A.R.S. § 33-1379 may be made available only to the parties, an attorney who has made an appearance in the case, the court, and the clerk of court or department responsible for maintaining records. The proposed new rule sets forth the three scenarios where the court must seal records and when the records may be made available.

## **II. Preliminary Comments.**

This petition has not been sent to the court community for pre-filing comments because of its technical nature and due to the short period of time since the enactment of the new statutory provisions.

## **III. Request for Emergency Adoption.**

All the legislation identified in this petition will become effective on the general effective date, which is likely to fall sometime in September. Therefore, as permitted by Supreme Court Rule 28(h), petitioner requests expedited consideration of all proposed rule and form amendments at the court's next Rules Agenda with a comment period to follow, and emergency adoption of all proposed rule and form amendments.

Respectfully submitted this \_\_\_\_ day of June, 2022.

By /s/\_\_\_\_\_  
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## APPENDIX 1

### Arizona Rules of Procedure for Eviction Actions

(deletions shown with ~~strikethrough~~, new language is underlined)

#### Rule 7. Answers

On or before the initial return date, the defendant shall answer, indicating whether the defendant admits or denies the allegations of the complaint. If the defendant does not have sufficient information to determine whether or not an allegation of the complaint is true, the defendant shall so state. The defendant's answer shall also state in short and plain terms any defenses the defendant wishes to assert to the plaintiff's claims. No fee shall be imposed for filing an answer.

#### Rule 11. Initial Appearance and Trial Procedures

##### a. and b. [No Change]

##### c. Defendant's Plea.

(1) If the defendant appears and contests any of the factual or legal allegations in the complaint or desires to offer an explanation, the judge should determine whether there is a basis for a legal defense to the complaint either by reviewing a written answer filed pursuant to Rule 7 or by questioning the defendant in open court. If the court determines that a defense or proper counterclaim may exist, the court shall order a trial on the merits. If the trial is to be continued to a later date, the court may require the defendant to file a written answer. ~~If the court orders a written answer to be filed, the court should advise the defendant of both the requirement of an answer fee and the defendant's right to apply for a waiver or deferral of the fee.~~ No fee shall be imposed for filing an answer.

(2) No Change

##### d. through f. [No Change]

#### Rule 20. Sealing Records

a. When Required. The court must enter an order sealing all records related to the case if:

- (1) the court enters an order that dismisses the case prior to the entry of judgment;
- (2) the court enters judgment in favor of the defendant; or
- (3) the parties file a stipulation to set aside the order of eviction and seal the eviction case.

**b. Access to Sealed Records.** Records sealed under this rule may be made available only as permitted by A.R.S. § 33-1379.

## APPENDIX A

### RESIDENTIAL EVICTION INFORMATION SHEET (PUBLICATION AND DISTRIBUTION REQUIRED BY THE ARIZONA SUPREME COURT)

**Notice.** A landlord must provide a tenant with written notice saying why the eviction process has started. The tenant should have received this notice before this lawsuit was filed or with the summons.

**Rent cases.** If this lawsuit has been filed for not paying rent, the tenant can stop it and continue living in the residence by paying all rent now due, late fees, attorney's fees and court costs. After a judgment has been granted, reinstatement of the lease is solely in the landlord's discretion. Inability to pay rent is not a legal defense and the judge cannot give more time to pay, even if the tenant is having financial problems.

**Before Court.** Eviction cases move through the court system very quickly. If the tenant disagrees with the landlord's allegations, the tenant is encouraged to file a written answer. The answer form available from the justice court allows the tenant to admit or deny the allegations and explain his or her position. ~~If the tenant cannot afford to pay the answer fee, he or she may apply for a waiver or deferral of that fee.~~ There is no fee to file an answer. If a tenant believes that the landlord owes him or her money, the tenant may under some circumstances file a counterclaim. The summons states that a trial will occur on the date listed, but due to the high volume of cases, a trial may not occur then. A landlord, tenant, attorney, or witness will be permitted to participate at the initial hearing by telephone or video conference and should contact the court at least two hours before the hearing to obtain information about how to connect to the hearing. If the tenant fails to appear, and the landlord or his attorney is present, a judgment will probably be entered against the tenant. Tenants can represent themselves or arrange for lawyers to represent them. The court will not provide a lawyer.

**At Court.** At the time and date listed on the summons, the judge will start calling cases. If both parties are present, the judge will ask the tenant whether the complaint is true. If the tenant says "no", he or she will need to briefly tell the judge why. If the reason is a legal defense, the judge will need to hear testimony from both sides and make a decision after a trial. After talking to the landlord or its attorney, a tenant may wish to agree to what the landlord is requesting by signing a "stipulation". A stipulation is an agreement under which the parties resolve the

dispute on the basis of what the agreement says. Only matters contained in the written agreement can be enforced. These agreements should be clear and understandable by both parties. Most stipulations include judgments tenants.

**Continuances.** Either party may ask that the court date be delayed. The court will agree only if there is a very good reason. A delay will be no more than three business days. There is no assurance a delay will be granted and parties should come to court prepared for trial and bring necessary witnesses and documents.

**After a Judgment.** If a landlord receives a judgment, it may apply for a writ of restitution to remove the tenant(s) and all occupants. Writs of Restitution are served by constables, who will direct the residents to leave. A tenant may avoid the difficulties associated with a writ of restitution by vacating the property and returning the keys to the landlord. This ends the tenants' possession of the residence. A tenant will have five (5) days to vacate the premises unless the court has found a material and irreparable breach of the lease by the tenant, in which case the tenant has only twelve (12) to twenty-four (24) hours to vacate. A judgment will probably appear on a tenant's credit report for several years. Parties wishing to appeal from a judgment have five days to do so after the judgment is entered and can obtain forms and information from the court filing counter. If a tenant wants to remain in the rental home during the appeal, the tenant must also pay an appropriate bond and continue to pay rent into court as it becomes due. If the tenant prevails the court will dismiss the case. Absent an appeal, the tenant will need to obtain the landlord's approval and enter a new lease to continue living in the residence.

**Sources of Additional Information.** You can get copies of the Arizona Residential Landlord Tenant Act, the Arizona Mobile Home Parks Residential Landlord and Tenant Act and the Long Term Recreational Vehicle Rental Space Act from a library or from links on the Arizona Judicial Branch Eviction Actions web page, <https://www.azcourts.gov/eviction>. For information on the Residential Eviction Action process, please visit: <https://www.azcourthelp.org>. If you wish to consult an attorney, you may want to contact the Arizona State Bar Attorney Referrals Line or, in Maricopa County, Community Legal Services. Contact the court in other counties for similar referrals.