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11 IN THE SUPREME COURT  
12 STATE OF ARIZONA

13 Supreme Court No. R-22-0027

14 PETITION TO AMEND RULES 7, 11,  
15 AND APPENDIX A, AND ADD RULE  
16 20 TO THE RULES OF PROCEDURE  
17 FOR EVICTION ACTIONS

18 **PETITION TO AMEND RULES 7, 11,  
19 AND APPENDIX A, AND ADD RULE  
20 20 TO THE RULES OF PROCEDURE  
21 FOR EVICTION ACTIONS**

22 Pursuant to Rule 28 of the Rules of the Supreme Court, Community Legal  
23 Services (“CLS”), DNA People’s Legal Services (“DNA”), Southern Arizona Legal Aid  
24 (“SALA”), and the William E. Morris Institute for Justice (“MIJ”) submit these  
25 comments in support of the Petition to Amend the Rules of Procedure for Eviction  
26 Actions (“RPEA”). The Petition, filed by David K. Byers, Administrative Director,  
27 Administrative Office of the Courts, asks this Court to amend the RPEA to implement  
28 legislative enactments affecting the RPEA from the 2022 legislative session.  
Specifically, Petitioner requests the expedited consideration and emergency adoption of  
[1] RPEA amendments to Rules 7, 11, and Appendix A, to prohibit eviction answer filing  
fees, and [2] a new Rule 20 to mandate the sealing of the public record of eviction case  
court files upon the occurrence of one of three events, including [a] entry of an order  
dismissing an eviction action; [b] entry of judgment in favor of an eviction defendant; or  
[c] the filing of a stipulation “to set aside the order of eviction and seal the eviction case.”

1 CLS, DNA, SALA, and MIJ generally support the Petition, with one  
2 recommended refinement of the proposed new Rule 20, and state the following:

3 **I. Statement of Interest**

4 CLS, DNA, and SALA are federally funded civil legal services law firms that  
5 represent low-income Arizonans. Together, CLS, DNA, and SALA deliver free, direct  
6 legal services statewide to low-income Arizonans in a variety of priority civil practice  
7 areas affecting their most basic life needs and their most basic legal rights, including  
8 eviction litigation and other civil cases affecting housing health, safety, and stability.

9 MIJ is a non-profit organization established to advocate and to litigate on behalf of  
10 the interests of low-income and other vulnerable Arizonans on a statewide basis. MIJ  
11 works closely with the three federally funded legal services law firms, other legal  
12 advocacy organizations, and community groups on a variety of systemic poverty law and  
13 public interest issues, including ensuring that all Arizonans facing eviction have a chance  
14 at justice and equal access to the legal system and the courts.

15 **II. House Bill 2484 Prohibits the Imposition and Collection of Any Fees for the**  
16 **Filing of Answers in Eviction Actions and Requires the Amendment of Rules**  
17 **7, 11, and Appendix A of the Rules of Procedure for Eviction Actions.**

18 Governor Doug Ducey signed House Bill 2484 on March 30, 2022, after it passed  
19 with nearly unanimous support in both houses of the Arizona Legislature. House Bill  
20 2484, as enacted, states, “No court shall either impose or collect a fee for filing an answer  
21 to a complaint for forcible entry or detainer.”

22 The Petition correctly explains that this Court must amend Rules 7, 11, and  
23 Appendix A of the RPEA to implement the blanket prohibition against imposing or  
24 collecting any fee for the filing of an answer to a complaint for forcible entry or detainer,  
25 and to align the RPEA with the new state law. Here are Rules 7 and 11, with the  
26 proposed amendments reflected with strikethrough text and underlined text:

27 **Rule 7. Answers**

28 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

1 the complaint is true, the defendant shall so state. The defendant’s answer shall  
2 also state in short and plain terms any defenses the defendant wishes to assert to  
3 the plaintiff’s claims. No fee shall be imposed for filing an answer.

4 **Rule 11. Initial Appearance and Trial Procedures**

5 a. and b. [No Change]

6 c. Defendant’s Plea.

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

18 (2) No Change  
19 d. through f. [No Change]

20 The proposed amendments to Rule 7 and 11 communicate to court administrators,  
21 parties in eviction actions, and the public that there shall be no fee for a tenant to answer  
22 an eviction action. Further, the amendments to Rules 7 and 11 effectively implement the  
23 new law’s blanket prohibition against the imposition and collection of any fee for the  
24 filing of an eviction answer.

25 The proposed amendments to Appendix A reflect these principles. Amendment A  
26 is a form instruction sheet, published and distributed by the Judicial Branch to parties in  
27 eviction actions. Here is the relevant excerpted section of Appendix A, with the proposed  
28 amendments reflected in strikethrough text and underlined text:

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

1           is no fee to file an answer.

2  
3           The proposed amendments to Appendix A clarify in plain language that there is no  
4 fee to file an eviction answer, providing helpful instructions to eviction litigants and  
5 members of the public who receive the form instruction sheet.

6           The proposed amendments to Rules 7, 11, and Appendix A of the RPEA not only  
7 give effect to the plainly and unambiguously prohibitory language of House Bill 2484 but  
8 also clarify that tenants facing eviction and potential homelessness, summoned to court in  
9 legal proceedings that will decide whether they keep their homes, are able to answer the  
10 allegations they face without experiencing the barrier and burden of paying for access to  
11 Arizona courtrooms in order to preserve their homes. The Court should adopt the  
12 amendments to Rule 7, 11, and Appendix A, and broadly message to tenants facing  
13 eviction – on court forms and at courthouses – that they have the right to answer the  
14 allegations they face without the payment of any filing fee.

15 **III. House Bill 2485 Mandates the Sealing of Records of Eviction Case Court Files**  
16 **in Certain Instances, Supporting the Addition of a New Rule 20 to the Rules**  
17 **of Procedure for Eviction Actions.**

18           Governor Doug Ducey signed House Bill 2485 on June 8, 2022, after it passed  
19 with overwhelming support in both houses of the Arizona Legislature. House Bill 2485,  
20 as enacted, provides, “In any action for eviction pursuant to Section 33-1368 or 33-1377  
21 or pursuant to a forcible entry and detainer action, on the court entering an order that  
22 dismisses the action for eviction prior to entry of a judgment or that enters judgment in  
23 favor of the tenant, the court shall issue an order sealing all records related to the case.”  
24 House Bill 2485 additionally provides, “The court shall also order the sealing of an  
25 eviction case on the filing of a written stipulation by the landlord and the tenant to set  
26 aside the order of eviction and seal the eviction case court file.”

27           The Petition explains that this Court should add a new Rule 20 to implement  
28 record-sealing procedures in eviction actions, and to align the RPEA with the new state  
law. Here is proposed new Rule 20:

1           **Rule 20. Sealing Records**

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

4           (1) the court enters an order that dismisses the case prior to the entry of  
5           judgment;

6           (2) the court enters judgment in favor of the defendant; or

7           (3) the parties file a stipulation to set aside the order of eviction and seal the  
8           eviction case.

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

11           Proposed Rule 20 communicates to court administrators, parties in eviction  
12           actions, and the public that the court “must” seal the records in eviction case court files in  
13           cases the tenant wins or in cases where the parties stipulate to record sealing. To align  
14           Rule 20 with the new statutory language from House Bill 2485, we request that the Court  
15           implement the proposed new Rule 20 using the term *shall* in place of the term *must*.  
16           While the ordinary meaning of both terms is mandatory and directive, using the term  
17           *shall* aligns with the substantive, rights-creating language of House Bill 2485. Moreover,  
18           the term *shall* is used more consistently throughout statutory and rules schemes, so using  
19           it here would maintain consistency and harmony.

20           The proposed new Rule 20 plainly mandates that courts seal all records related to  
21           eviction cases in which tenants win dismissals or judgments in their favor. Proposed  
22           Rule 20 also gives parties to eviction actions a powerful tool to reach mutual agreements  
23           to resolve disputes over their competing property interests in eviction actions by allowing  
24           them to stipulate to the sealing of records in eviction case court files. To give full effect  
25           to proposed new Rule 20, and to ensure that both landlords and tenants take full  
26           advantage of the mutual benefits of the new law and rights established by House Bill  
27           2485, the Court should develop a simple form for parties to use to stipulate to the sealing  
28           of eviction case court files, as well as the setting aside of eviction orders as necessary.

          In short, the Court should adopt the proposed new Rule 20, using the directive  
          term *shall* in place of the term *must* in the draft rule. And the Court should take actions

1 to direct broad messaging to parties in eviction cases – including creating and distributing  
2 a new court form streamlining record-sealing stipulations – that they have the right to  
3 agree to the sealing of all records in eviction court case court files.

4 **V. Conclusion**

5 We request that the Court approve the Petition filed by Administrative Director  
6 Byers and implement the Petition’s recommendations on an expedited basis, using the  
7 term *shall* in place of *must* in proposed Rule 20. Further, we request that the Court  
8 develop and approve a simplified form for parties in eviction actions to stipulate to the  
9 sealing of eviction case court files, as well as the setting aside of eviction orders as  
10 necessary. The amendments to Rules 7, 11, and Appendix A, and the addition of new  
11 Rule 20, will harmonize the RPEA with new state laws and assist judicial officers around  
12 Arizona in ensuring the effective and fair administration of justice. The new legal rights  
13 secured by the Petition’s recommendations will help the legal system operate more fairly  
14 for families and individuals facing the loss of their homes and the associated  
15 consequences for their lives, health, and safety.

16 Respectfully submitted this 17<sup>th</sup> day of August 2022.

17 COMMUNITY LEGAL SERVICES  
18 DNA PEOPLE’S LEGAL SERVICES  
19 SOUTHERN ARIZONA LEGAL AID  
20 WILLIAM E. MORRIS INSTITUTE FOR JUSTICE

21 By /s/ Andrew P. Schaffer

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28 this 17<sup>th</sup> day of August 2022.

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