

1 ANDREW P. SCHAFFER, AZ Bar. No. 037352
2 BRENDA MUÑOZ FURNISH, AZ Bar. No. 027280
3 MICHELLE J. SIMPSON, AZ Bar. No. 020199
4 WILLIAM E. MORRIS INSTITUTE FOR JUSTICE
5 3707 North Seventh Street, Suite 300
6 Phoenix, Arizona 85014-5095
7 (602) 252-3432
8 dpschaffer@mijaz.org
9 bmfurnish@mijaz.org
10 mjsimpson@mijaz.org

11 PAMELA BRIDGE, AZ Bar No. 018252
12 COMMUNITY LEGAL SERVICES
13 305 S. 2nd Avenue
14 Phoenix, Arizona 85003
15 (602) 253-1536
16 pbridge@clsaz.org

17 CHARLES W. DOUGHTY, AZ Bar No. 027403
18 DNA PEOPLE'S LEGAL SERVICES
19 2323 E. Greenlaw Ln., Ste. 1
20 Flagstaff, AZ 86004
21 (928) 774-0653
22 cwdoughty@dnalegalservices.org

23 ALAN R. SOLOT, AZ Bar No. 006587
24 SOUTHERN ARIZONA LEGAL AID
25 2343 E. Broadway Road, #200
26 Tucson, Arizona
27 (520) 623-9461
28 asolot@sazlegalaid.org

IN THE SUPREME COURT
STATE OF ARIZONA

**PETITION TO AMEND RULE 11(b)(1),
ARIZONA RULES OF PROCEDURE
FOR EVICTION ACTIONS**

Supreme Court No.

PETITION

1 Pursuant to Rule 28 of the Rules of the Supreme Court, Community Legal
2 Services (“CLS”), DNA People’s Legal Services (“DNA”), Southern Arizona Legal Aid
3 (“SALA”) (collectively “legal services”), and the William E. Morris Institute for Justice
4 (“MIJ”) respectfully petition this Court to amend the Rules of Procedure for Eviction
5 Actions (“RPEA”), Rule 11(b)(1), by adding a requirement for the court to re-call at the
6 end of a calendar, or after an hour for longer calendar calls, any case in which the
7 plaintiff or defendant did not appear or respond after an initial call of the case during a
8 court calendar. In support of this Petition, Petitioners state the following:
9
10

11 **I. Statement of Interest**

12 CLS, DNA, and SALA (collectively “legal services”) are federally-funded civil
13 legal services law firms that represent low-income Arizonans. Together, CLS, DNA, and
14 SALA deliver free, direct legal services statewide to low-income Arizonans in a variety
15 of priority civil practice areas affecting life’s most basic needs and legal rights, including
16 eviction litigation and other civil cases affecting housing health, safety, and stability.
17

18 MIJ is a non-profit organization established to advocate and litigate on behalf of
19 the interests of low-income and other vulnerable Arizonans statewide. MIJ works closely
20 with the three federally-funded legal services law firms, other legal advocacy
21 organizations, and community groups on a variety of systemic poverty law and public
22 interest issues, including ensuring that all Arizonans facing eviction have a chance at
23 justice via equal access to the legal system.
24

25
26 **II. Background and Purpose of the Proposed Rule Amendment**

27 In 2008, the Arizona Supreme Court approved the RPEA. The current rules
28 provide direction on initial appearances and trial procedures in eviction actions. The

1 rules provide the following:

2 **Rule 11(b). Preliminary Procedures**

3 On the date and at the time set for the initial appearance, and after
4 announcing the name of the plaintiff and the defendant, the court shall:

5 (1) Call the case, identify the parties and any attorneys or representatives
6 present and ascertain that they are properly authorized to represent the
7 parties to the action. As provided by Arizona Supreme Court Rule 31,
8 no property manager or other agent shall be allowed to represent a party
9 unless he or she is the property owner, a sub lessor entitled to
possession, or an attorney licensed to practice law and in good standing
in Arizona.

10 (2) State or summarize the material allegations contained in the complaint.

11 (3) Ask the defendant whether the defendant contests the allegations
12 contained in the complaint.

13 The rule puts forth instructions on how a court must handle preliminary procedures for
14 eviction actions. However, Rule 11(b), and the rest of the RPEA, is silent on what a
15 court must do if either the plaintiff or defendant fails to respond as present or misses the
16 court calling their case initially. Some courts make it a practice of re-calling the case at
17 the end of the calendar, but other courts immediately dismiss the case if a plaintiff fails to
18 show or issue a default judgment if a defendant is not present. The dismissals or default
19 judgments stand even if the plaintiff or defendant arrives after the court calls their case
20 but before the calendar ends. The proposed rule amendment seeks to formalize the
21 practice of recalling cases at the end of each initial calendar call, or after an hour for
22 longer calendar calls, to allow all parties to have their day in court and to conserve
23 judicial resources. The proposal is in line with past Arizona Supreme Court
24 administrative orders that limit eviction calendar calls to 25 cases in an hour. *See Admin.*
25
26
27
28

1 Order No. 2021-47. The amendment adds on a matter of minutes to a court’s calendar,
2 but those extra minutes can mean the difference between someone having a home and
3 experiencing homelessness. Without recalling cases where a party may have arrived after
4 their case was called, the court will have to expend staff resources both to process a
5 dismissal or default judgment, as well as to schedule and hear any post-judgment motion
6 from a party initially found in default in eviction litigation.
7

8
9 **III. Proposed Rule Amendment**

10 Legal services and MIJ propose the following rule amendment, in bold:

11 **Rule 11(b). Preliminary Procedures**

12 On the date and at the time set for the initial appearance, and after
13 announcing the name of the plaintiff and the defendant, the court shall:

14 (1) Call the case, identify the parties and any attorneys or representatives
15 present and ascertain that they are properly authorized to represent the
16 parties to the action. **If a plaintiff or defendant does not appear or**
17 **answer as present in response to the initial case call, the court shall**
18 **call the case a second time later in the calendar before proceeding to**
19 **the material allegations of the case. The court shall recall such**
20 **cases either after one hour has passed or at the end of the calendar,**
21 **whichever happens first.** As provided by Arizona Supreme Court
22 Rule 31, no property manager or other agent shall be allowed to
23 represent a party unless he or she is the property owner, a sub lessor
24 entitled to possession, or an attorney licensed to practice law and in
25 good standing in Arizona.

22 (2) State or summarize the material allegations contained in the complaint.

23 (3) Ask the defendant whether the defendant contests the allegations
24 contained in the complaint.

25 **IV. Explanation of Need for the Proposed Rule Amendment**

26 Although this practice can affect both plaintiffs and defendants, it
27 disproportionately impacts defendants. In most eviction actions, the defendant is the
28

1 tenant and is unrepresented. MIJ published two studies on eviction practices and trends
2 in Maricopa County, the first in 2005¹ and the second in 2020.² In the 2020 report, MIJ
3 reported that out of 1,097 cases observed, 94% of landlords were represented by an
4 attorney in court, while only 2 tenants were represented by an attorney. This means that
5 tenants largely must navigate the court system and the eviction process by themselves,
6 which puts them at a disadvantage compared to landlords who are represented by
7 attorneys skilled in court procedures and hearing calendar processes. Petitioners have
8 observed many eviction actions in court where the defendant tenant shows up to court a
9 few minutes late, shortly after their case has been called, and the court is made aware of
10 the tenant's arrival but does not recall the case. When this happens, the landlord (or more
11 likely, the landlord's attorney), is still in the courtroom, waiting for other matters to be
12 called. Tenants are late to court for many reasons, but common explanations include that
13 they were held up at security, they could not find the courtroom, they had car trouble or
14 delayed public transportation, they had trouble getting childcare, or they could not get
15 time off from work soon enough.

20 During the COVID-19 pandemic, many courts proceeded to have telephonic or
21 virtual hearings. The switch to remote court hearings only exacerbated problems for
22

23
24 ¹ William E. Morris Institute for Justice, *Injustice In No Time: The Experience of*
25 *Tenants in Maricopa County Justice Courts*, June 2005,
[https://morrisinstituteforjustice.org/helpful-information/landlord-and-tenant/4-final-
eviction-report/file](https://morrisinstituteforjustice.org/helpful-information/landlord-and-tenant/4-final-eviction-report/file).

26
27 ² William E. Morris Institute for Justice, *What's Justice Got To Do With It? The*
28 *Experience of Tenants in the Maricopa Justice Courts*, May 2020,
[https://morrisinstituteforjustice.org/helpful-information/landlord-and-tenant/47-institute-
maricopa-county-justice-courts-eviction-report-5-21-2020/file](https://morrisinstituteforjustice.org/helpful-information/landlord-and-tenant/47-institute-maricopa-county-justice-courts-eviction-report-5-21-2020/file).

1 some low-income litigants, who often have limited access to the internet and other
2 technology.³ Many courts in Arizona continue to conduct remote hearings in eviction
3 actions. Petitioners’ proposed rule change applies to remote hearings as well as in-person
4 hearings.
5

6 Regardless of the reason a party may not be present when a case is initially called,
7 a party who is late to court should not be penalized unjustly and substantially by a default
8 judgment, especially when it may result in eviction and the loss of one’s home, and
9 particularly if the court is still moving through the calendar and the landlord or landlord’s
10 attorney is still in the courtroom.
11

12 A default judgment, or a judgment of any kind in an eviction action, can be
13 devastating to a tenant, particularly a low-income tenant. In Arizona, eviction actions are
14 expedited proceedings, so tenants are usually required to move out with only a few days’
15 notice – a writ of restitution may be issued five days after a landlord obtains an eviction
16 judgment. A.R.S. § 12-1178(C). This can be extremely difficult for a low-income
17 tenant, especially given the reported shortage of affordable housing.⁴ The inability to
18 find replacement housing on short notice can, in turn, lead to other consequences for
19 evicted tenants, such as the disruption of children’s education, interruption of
20 employment, dislocation from health care providers, loss of personal belongings, and
21
22
23
24

25 ³ See, e.g., Emily A. Vogels, *Digital Divide Persists Even as Americans with Lower*
26 *Incomes Make Gains in Tech Adoption*, Pew Research Center, June 22, 2021,
27 [https://www.pewresearch.org/fact-tank/2021/06/22/digital-divide-persists-even-as-](https://www.pewresearch.org/fact-tank/2021/06/22/digital-divide-persists-even-as-americans-with-lower-incomes-make-gains-in-tech-adoption/)
[americans-with-lower-incomes-make-gains-in-tech-adoption/](https://www.pewresearch.org/fact-tank/2021/06/22/digital-divide-persists-even-as-americans-with-lower-incomes-make-gains-in-tech-adoption/).

28 ⁴ National Low Income Housing Coalition, *Housing Needs By State: Arizona*,
<https://nlihc.org/housing-needs-by-state/arizona>.

1 homelessness.⁵ A study of evictions in New York City found that evictions cause “large
2 and persistent increases in risk of homelessness, elevate long-term residential instability,
3 and increase emergency-room use.”⁶ In addition to being displaced from their home, a
4 tenant with an eviction order may also have to pay a monetary judgment, creating
5 economic instability and financial insecurity for the tenant. Further, when tenants are
6 evicted, the judgment against them appears on their records, raising a “red flag”
7 whenever they apply for housing in the future. Thus, the consequences of a judgment in
8 evictions cases are far-reaching.

11 The proposed rule amendment would act as a safekeeping measure to help ensure
12 that everyone, including unrepresented tenants, has their day in court. The proposed rule
13 amendment would also prevent unnecessary and potentially devastating dismissals and
14 default judgments in eviction actions, in which constitutionally protected property
15 interests are universally at stake for both plaintiffs and defendants.

17 **V. Conclusion**

18 We request that the Court approve this Petition and implement the Petition’s
19 recommendation requiring courts to recall cases at the end of their calendar, or after an
20 hour for longer calendar calls, if the plaintiff or defendant does not appear or answer as
21 present after an initial calling of the case on the calendar. For the above reasons, we

24 ⁵ See, e.g., National Law Center on Homelessness & Poverty, *Protect Tenants,*
25 *Prevent Homelessness* at 15-18 (Mar. 2018), [https://homelesslaw.org/wp-](https://homelesslaw.org/wp-content/uploads/2018/10/ProtectTenants2018.pdf)
26 [content/uploads/2018/10/ProtectTenants2018.pdf](https://homelesslaw.org/wp-content/uploads/2018/10/ProtectTenants2018.pdf)

27 ⁶ Robert Collinson and David Reed, *The Effects of Eviction on Low-Income*
28 *Households* at 1, New York University (Dec. 2018), [https://www.law.nyu.edu/sites/default/files/upload_documents/evictions_collinson_reed.](https://www.law.nyu.edu/sites/default/files/upload_documents/evictions_collinson_reed.pdf)
[pdf](https://www.law.nyu.edu/sites/default/files/upload_documents/evictions_collinson_reed.pdf).

1 respectfully request that the Court approve this petition to amend Rule 11(b)(1) of the
2 Rules of Procedure for Eviction Actions.

3
4 Respectfully submitted this 10th day of January 2023.

5 COMMUNITY LEGAL SERVICES
6 DNA PEOPLE'S LEGAL SERVICES
7 SOUTHERN ARIZONA LEGAL AID
8 WILLIAM E. MORRIS INSTITUTE FOR JUSTICE

9 By /s/ Andrew P. Schaffer
10 Andrew P. Schaffer
11 Brenda Muñoz Furnish
12 Michelle J. Simpson
13 3707 North Seventh Street, Suite 300
14 Phoenix, Arizona 85014-5095

15 /s/ Pamela Bridge
16 Pamela Bridge
17 COMMUNITY LEGAL SERVICES

18 /s/ Charles W. Doughty
19 Charles W. Doughty
20 DNA PEOPLE'S LEGAL SERVICES

21 /s/ Alan R. Solot
22 Alan R. Solot
23 SOUTHERN ARIZONA LEGAL AID

24 Original electronically filed with the
25 Clerk of the Supreme Court of Arizona
26 this 10th day of January 2023.

27 By: /s/ Andrew P. Schaffer
28