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IN THE SUPREME COURT

STATE OF ARIZONA

**PETITION TO AMEND RULES 6(a)(1)
AND 6(a)(5) OF THE SUPERIOR
COURT RULES OF APPELLATE
PROCEDURE-CIVIL**

Supreme Court No. R-23-_____

**PETITION TO AMEND RULES 6(a)(1)
AND 6(a)(5) OF THE SUPERIOR
COURT RULES OF APPELLATE
PROCEDURE-CIVIL**

Pursuant to Rule 28 of the Rules of the Supreme Court, Community Legal Services ("CLS"), DNA People's Legal Services ("DNA"), Southern Arizona Legal Aid

1 (“SALA”) (collectively “legal services”), and the William E. Morris Institute for Justice
2 (“MIJ”) respectfully petition this Court to amend the Superior Court Rules of Appellate
3 Procedure-Civil, Rules 6(a)(1) and 6(a)(5), to conform the rules to A.R.S. § 12-1179 and
4 constitutional law, as well as to ensure meaningful access to justice for eviction
5 defendants challenging the legality of eviction judgments on appeal. In support of this
6 Petition, Petitioners state the following:

7 **I. Statement of Interest**

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

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

20 **II. Background and Purpose of the Proposed Rule Amendment**

21 The Superior Court Rules of Appellate Procedure-Civil (“SCRAP”) govern
22 procedures for appeals to Superior Court from final judgments in justice courts pursuant
23 to A.R.S. § 22-261, or municipal courts pursuant to A.R.S. § 22-425(B). This Petition
24 focuses exclusively on the supersedeas bond requirement set forth in Rule 6(a)(1) of
25 SCRAP on appeals of eviction judgments to Superior Courts from courts of limited
26 jurisdiction, as well as associated requirements of Rule 6(a)(5). Rules 6(a)(1) and 6(a)(5)
27 of SCRAP presently state the following:

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(a) Supersedeas Bond

(1) *Stay Upon Appeal.* An appellant or cross-appellant may obtain a stay of execution of judgment by filing a supersedeas bond in the trial court in an amount equal to the judgment and costs. The bond may be filed before or after the filing of the notice of appeal. The stay is effective when the supersedeas bond, if any, is filed.

The bond, if any, shall be conditioned that appellant or cross-appellant prosecute their appeal and satisfy any judgment which may be rendered against them on the appeal.

The trial court shall retain all supersedeas bonds.

The provisions of this subsection do apply to forcible and special detainer actions.

...

(5) *Periodic Rent Payments in Forcible and Special Detainer Cases.* The payment of periodic rent to stay issuance of a writ of restitution shall be paid to the clerk of the trial court throughout the pendency of an appeal. The trial court shall retain jurisdiction to recall writs of restitution, or to issue a writ when periodic rent payments are not timely received by the clerk of that court. The trial court shall retain periodic rent payments, unless it authorizes disbursement of such payments to the landlord or its designee for good cause.

The last sentence of Rule 6(a)(1) explicitly states that the subsection applies to forcible and special detainer actions (hereinafter “eviction actions”). Read with the first sentence of the subsection, the plain language of Rule 6(a)(1) requires an appellant to post as a supersedeas bond “an amount equal to the judgment and costs” as a precondition for the appellant to stay enforcement of any part of eviction judgment pending appeal. As written, then, Rule 6(a)(1) specifically requires an appellant, who is most likely the tenant, to pay the full amount of money awarded in an eviction judgment they are appealing to stay in their home during the pendency of their appeal. Meanwhile, Rule 6(a)(5) outlines administrative considerations arising out of the ongoing rent

1 payments appellants make to secure the stayed enforcement of writs of restitution
2 pending appeals in which appellants pay bonds for possession stays.

3 Eviction actions are statutory civil actions, the basic procedures for which are
4 established in A.R.S. §§ 12-1171 through 12-1183. Plaintiffs in eviction actions almost
5 universally seek both monetary relief and possessory relief, utilizing justice courts as
6 vehicles to navigate a summary statutory procedure that is fast compared to nearly all
7 other civil litigation. Defendants in eviction actions in justice courts around Arizona face
8 the prospect of judgments that can result in their forced removal from their homes as well
9 as their obligation to pay money debts, subject to legal collection actions.

10 Because of the unique property interests at stake for eviction defendants, *i.e.*, their
11 possessory interests in their homes, there are different supersedeas bond requirements for
12 different stays defendants appealing eviction judgments may seek in their appeals. In
13 short, Arizona statutory law allows a defendant facing an eviction judgment to elect to
14 stop enforcement of the judgment for possession *or* to stop all judgment debt collection
15 activity pending appeal. Specifically, A.R.S. § 12-1179(C), provides, “A party seeking to
16 appeal a judgment may stay the execution of *either* the judgment for possession *or* any
17 judgment for the money damages by filing a supersedeas bond.” [Emphasis added].
18 A.R.S. § 12-1179(D) goes on to provide, “The party seeking to stay the execution of the
19 judgment for possession shall file a supersedeas bond in the amount of rent ***accruing***
20 ***from the date of the judgment until the next periodic rental date***, together with costs and
21 attorney fees, if any . . . [and] ***on or before each periodic rental due date during the***
22 ***pendency of the appeal, the amount of rent due under the terms of the lease or rental***
23 ***agreement.***” [Emphasis added]. Finally, A.R.S. § 12-1179(F) provides, “The party
24 seeking to stay the execution of the judgment for money damages shall file a supersedeas
25 bond in the amount of the judgment, together with costs and attorney fees, if any.”

26 Similarly, Rule 17 of the Rules of Procedure for Eviction Actions (“RPEA”)
27 enumerates different bonds for appellants, depending on whether they want to remain in
28 possession of the premises while the appeal is pending or whether they want to stop

1 enforcement of the monetary portion of the judgment while the appeal is pending. *See*
2 RPEA 17(b)(2), (3). Consistent with A.R.S. § 12-1179(D), RPEA 17(b)(2) explicitly
3 states that an appellant wanting to remain in possession of their home pending appeal
4 “must pay to the clerk of the court any rent due *apart from amounts included in the*
5 *judgment* and continue paying to the clerk additional rent as it becomes due during the
6 appeal.” [Emphasis added.]

7 When an eviction defendant appeals a judgment, often the most important right
8 they are seeking to protect is the right to remain in their home. The statutes described
9 briefly above are informed by the development of constitutional jurisprudence since the
10 early 1970s, which Petitioners discuss in detail below, recognizing the unique interests at
11 stake in eviction actions and the effects of cost-prohibitive bonds on tenants’ rights to
12 pursue eviction appeals.

13 Rule 6(a)(1) denies an eviction defendant wishing to remain in their home pending
14 appeal the ability to elect to pay only a possession-stay bond and forego a collection-stay
15 bond while pursuing an appeal. As presently written, Rule 6(a)(1) of SCRAP requires
16 defendants wishing to remain in possession of their homes pending appeal to pay *both* a
17 possession-stay bond *and* a collection-stay bond. In imposing a double-bond requirement
18 on such defendants, Rule 6(a)(1) of SCRAP conflicts with the statutory language
19 governing supersedeas bonds in eviction actions and RPEA 17(b), which explicitly allow
20 an eviction defendant to pay the appropriate statutory bonds for either a possession stay
21 or a collection stay pending appeal from a justice court to a superior court. The double-
22 bond requirement is especially problematic for low-income eviction defendants, as it
23 creates expensive bonds that effectively prohibit them from exercising the right to stay
24 enforcement of writs of restitution to stay in their homes pending resolution of their cases
25 on appeal. Moreover, there are federal and state constitutional problems arising under the
26 current language of Rule 6(a)(1), when applied to establish financially burdensome
27 supersedeas bond requirements in many common scenarios faced by eviction defendants.
28 *See Lindsey v. Normet*, 405 U.S. 56, 74-79 (1972); *Blair v. Stump*, 617 P.2d 791, 127

1 Ariz. 7 (1980).

2 For all of these reasons, Petitioners request changes to the language of Rules
3 6(a)(1) and 6(a)(5) of SCRAP to align Rule 6 with the statutes governing eviction appeals
4 to Superior Courts, as well as the United States Constitution and the Arizona
5 Constitution.

6 **III. Proposed Rule Amendment**

7 Petitioners propose amending Rules 6(a)(1) and 6(a)(5) of SCRAP to clarify the
8 legally proper and constitutionally sound supersedeas bond requirement for eviction
9 defendants seeking stays of possessory relief pending appeal. Below are Petitioners'
10 proposed amendments to Rules 6(a)(1) and 6(a)(5), with new language in bold and italics:

11 **(a) Supersedeas Bond**

12 (1) *Stay Upon Appeal.* An appellant or cross-appellant may
13 obtain a stay of execution of judgment by filing a supersedeas
14 bond in the trial court in an amount equal to the judgment and
15 costs. The bond may be filed before or after the filing of the
16 notice of appeal. The stay is effective when the supersedeas
17 bond, if any, is filed.

17 The bond, if any, shall be conditioned that appellant or cross-
18 appellant prosecute their appeal and satisfy any judgment
19 which may be rendered against them on the appeal.

19 The trial court shall retain all supersedeas bonds.

20 The provisions of this subsection do *not* apply to *any stay of*
21 *enforcement of a judgment for possession in* forcible and
22 special detainer actions. *Such stays are governed by*
23 *subsection (a)(5), below.*

24 ...

25 (5) *Periodic Rent Payments in Forcible and Special Detainer*
26 *Cases. In forcible entry and special detainer actions, the*
27 *supersedeas bond to stay issuance of a writ of restitution or*
28 *enforcement of a judgment for possession shall be the*
amount of rent accruing from the date of the judgment until
the next periodic rental date, together with costs and

1 *attorneys' fees, if any.* The payment of periodic rent to stay
2 issuance of a writ of restitution shall be paid to the clerk of
3 the trial court throughout the pendency of an appeal. The trial
4 court shall retain jurisdiction to recall writs of restitution, or
5 to issue a writ when periodic rent payments are not timely
6 received by the clerk of that court. The trial court shall retain
7 periodic rent payments, unless it authorizes disbursement of
8 such payments to the landlord or its designee for good cause.

7 **IV. Explanation of Need for Proposed Rule**

8 Tenants have a property interest in their rental homes. *Greene v. Lindsey*, 456
9 U.S. 444, 450-52 (1982); *see also Foundation Development Corporation v. Loehmann's*,
10 788 P.2d 1189, 1192-93, 163 Ariz. 438, 441-42 (1990) (recognizing common law right of
11 tenant's property interest in rental). Eviction proceedings that deprive tenants of their
12 possession of their homes must comply with the due process requirements of the
13 Fourteenth Amendment to the United States Constitution. *Greene*, 456 U.S. at 455-56.

14 A double bond as a precondition to appellate review of an eviction judgment
15 violates the Equal Protection Clause of the Fourteenth Amendment of the United States
16 Constitution, as it arbitrarily discriminates against tenants wishing to appeal from adverse
17 eviction decisions that displace them from their homes. *Lindsey v. Normet*, 405 U.S. 56,
18 74-79 (1972). Such requirements heavily burden the statutory right of eviction
19 defendants to appeal and are not necessary to effectuate the State's purpose of preserving
20 the property at issue. *Id.*

21 Overly burdensome appeal bond requirements in Arizona eviction cases may
22 violate the Equal Protection Clauses of the Fourteenth Amendment of the United States
23 and Article 2, Section 13, of the Arizona Constitution. *See Blair v. Stump*, 617 P.2d 791,
24 794-96 127 Ariz. 7, 10-12 (1980). Tenants appealing eviction judgments are entitled to
25 post bonds to stay judgments for possession pending appeal. *Tover v. Superior Court In*
26 *and Of Maricopa County*, 647 P.2d 1147, 1149-50, 132 Ariz. 549, 551-52 (1982).

27 In *Lindsey v. Normet*, the Supreme Court struck down an Oregon statute requiring
28 a double bond requirement imposed upon eviction defendants appealing eviction

1 judgments. 405 U.S. at 77-78. The *Lindsey* court observed the following in reaching its
2 decision:

3 It cannot be denied that the double bond requirement heavily burdens the
4 statutory right of [a forcible entry and detainer] defendant to appeal....The
5 claim that the double bond requirement operates to screen out frivolous
6 appeals is unpersuasive, for it not only bars nonfrivolous appeals by those
7 who are unable to post the bond but also allows meritless appeals by others
8 who can afford the bond. The impact on FED appellants is unavoidable: if
9 the lower court decision is affirmed, the entire double bond is forfeited;
10 recovery is not limited to costs incurred by the appellee, rent owed, or
11 damage suffered. No other appellant is subject to automatic assessment of
12 unproved damages. We discern nothing in the special purposes of the FED
13 statute or in the special characteristics of the landlord-tenant relationship to
14 warrant this discrimination. 405 U.S. at 77-78.

15 The landmark *Lindsey* decision helped establish across the United States the limits
16 on bonds for eviction appeals. In addition to costs and attorneys' fees, if any, requiring a
17 bond equal to the value of the use and possession of property from the time of appeal
18 during the pendency of the appeal is appropriate for a stay of enforcement of a judgment
19 for possession. Anything over and above that standard becomes constitutionally
20 problematic, especially for low-income tenants. As the *Lindsey* court stated, "The
21 discrimination against the poor, who could pay their rent pending an appeal but cannot
22 post the double bond, is particularly obvious. For them, as a practical matter, appeal is
23 foreclosed no matter how meritorious their case may be." 405 U.S. at 79.

24 In *Blair v. Stump*, the Arizona Supreme Court struck down the predecessor of
25 A.R.S. § 12-1179, which previously required a double bond, including a bond "in an
26 amount equal to double the yearly value or rental of the premises in dispute," for eviction
27 defendants appealing from justice courts. 127 Ariz. at 9. The eviction defendant in *Blair*
28 was indigent and could not post the bond. *Id.* The *Blair* court applied *Lindsey* and
declared A.R.S. § 12-1179, as written at the time, unconstitutional under the United
States Constitution and the Arizona Constitution. *Id.* at 10-11.

Rule 6(a)(1) incorporates a pernicious double bond requirement into SCRAP.

1 Under the rule, eviction defendants must pay both the post-judgment rent accruing
2 pending appeal *and* the full amount of any monetary judgment in the action, including
3 rent and damages accruing before judgment, as a condition to stay an eviction plaintiff's
4 enforcement of a writ of restitution to recover possession while an appeal is pending.
5 The two separate bonds serve different purposes under Arizona law – one for stays of
6 possession claims, and the other for stays of monetary debt collection claims – with
7 different statutory bases informed by United States and Arizona constitutional
8 jurisprudence on eviction appeal bonds. Rule 6(a)(1) applies *both* bonds to *all* eviction
9 appeals from justice courts, depriving low-income Arizonans of a meaningful opportunity
10 for appellate review and an equal opportunity to challenge the legality of eviction
11 judgments, when compared to litigants with wealth and means to afford costly,
12 financially burdensome bonds.

13 The current language of Rule 6(a)(1) of SCARP visits unique harm on low-income
14 eviction defendants, against the principles outlined in *Lindsey* and its progeny. Sure,
15 low-income defendants in eviction actions can maintain appeals without posting
16 supersedeas bonds. But, then, they lose the right to stay in their homes pending the
17 outcome of their appeals. In effect, they are forced out of their homes due to the financial
18 burdens of the rule's bond requirement, not the merits of their cases. Even if they
19 ultimately win their appeals, they have lost the key benefit of their appeals: their homes.

20 In short, the rule treats low-income eviction defendants with meritorious appeals
21 differently than eviction defendants with financial means to pay costly bonds for any
22 appeals. As a result, low-income eviction defendants will almost always lose the key
23 interest they are protecting in their appeals, *i.e.*, possession of their homes. This reality
24 creates an injustice, closing a door to meaningful appeals for a class of Arizonans without
25 wealth or the means to pay for access. But the law cannot condition access to justice on
26 the ability to pay for it. As Justice Powell put it:

27 Equal justice under law is not merely a caption on the facade of the
28 Supreme Court building; it is perhaps the most inspiring ideal of our
society. It is one of the ends for which our entire legal system exists . . . it

1 is fundamental that justice should be the same, in substance and
2 availability, without regard to economic status.¹

3 Adding additional context to the problem presented by the currently effective
4 language of Rule 6(a)(1), in most eviction actions, the defendant is the tenant and is
5 unrepresented. MIJ published two studies on eviction practices and trends in Maricopa
6 County, the first in 2005² and the second in 2020.³ In the 2020 report, MIJ reported that
7 out of 1,097 cases observed, 94% of landlords were represented by an attorney in court,
8 while only 2 tenants were represented by an attorney. This means that tenants largely
9 navigate the court system and the eviction process by themselves, which already puts
10 them at a disadvantage compared to landlords who are represented by attorneys skilled in
11 court procedure and experienced in presenting cases in court

12 The eviction system, as designed and implemented, is ripe for systemic error. An
13 eviction action is a statutory cause of action ensuring a fast process for the legal recovery
14 of possession by eviction plaintiffs. The process is fast by statutory design, unfolding
15 over a matter of a couple of weeks from the filing of the case to a tenant's forced eviction
16 by a sheriff or constable. Arizona's eviction statutes allow proceedings to be calendared
17 in a matter of days. Eviction defendants only receive a few days' notice of the initial
18 hearing in their cases. Petitioners have observed justice courts hear and dispose of
19 dozens of cases on a single court calendar, with hearings lasting no more than a couple of
20 minutes, at most. Petitioners have observed basic legal mistakes in those cases that
21 would be addressed, or not occur at all, if tenants had access to legal representation.

22 ¹ Lewis Powell, Jr., U.S. Supreme Court Justice, Address to the ABA Legal
23 Services Program, ABA Annual Meeting (Aug. 10, 1976).

24 ² William E. Morris Institute for Justice, *Injustice In No Time: The*
25 *Experience of Tenants in Maricopa County Justice Courts*, June 2005,
26 <https://morrisinstituteforjustice.org/helpful-information/landlord-and-tenant/4-final-eviction-report/file>.

27 ³ 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>.

1 When legal mistakes happen, eviction defendants must act to address the consequences
2 on short notice. If they wish to appeal the judgments they face, the primary route is an
3 appeal to the Superior Court in their county within five calendar days after rendition of
4 the judgment, as required by A.R.S. § 12-1179(A). But, in those cases, eviction
5 defendants encounter Rule 6(a)(1) of SCRAP, which is often financially prohibitive to
6 low-income defendants wishing to stay in their homes while they challenge eviction
7 judgments through appeals.

8 The plight of low-income tenants and the effect evictions have on their lives has
9 received national attention. In 2015, Mathew Desmond, a professor at Harvard published
10 the book, *Evicted: Poverty and Profit in the American City*. Professor Desmond lived in
11 a low-income residential section of Milwaukee for almost two years and observed the
12 intersection of low-income tenants and eviction actions. He documented the resulting
13 loss of shelter and the increased social and economic instability.

14 It is well recognized that for low-income persons, an eviction action may threaten
15 their only means of shelter.⁴ The inability to find other housing on short notice can lead
16 to the disruption of children’s education, interruption of employment, dislocation from
17 critical health care providers, loss of personal belongings, and homelessness.⁵ In
18 addition, the eviction process may lead to monetary judgments. These monetary
19 judgments make it difficult for tenants to secure new rental housing. Thus, the
20 consequences of eviction cases raise the stakes for tenants, especially low-income
21 tenants, who often lack back-up financial resources and are part of the 63% of American
22 consumers with less than one month’s income in emergency savings.⁶ The result of an

23
24 ⁴ Chester Hartman and David Robinson, *Evictions: The Hidden Housing Problem*,
25 Housing Policy Debate, Vol. 14, Issue 4 (2003),
https://prprac.org/pdf/evictions_the_hidden_housing_problem.pdf.

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

28 ⁶ Caroline Ratcliffe, Brianna Middlewood, Melissa Knoll, Misha Davies, and Grant
Guillory, *Emergency Savings and Financial Security Insights from the Making Ends Meet*

1 eviction may be that a family is living in a car, or in a tent in an encampment.

2 Legal services attorneys have encountered the problem of financially burdensome
3 bonds causing harm to eviction defendants while they seek appellate review in
4 meritorious cases. Legal services attorneys have observed cases in which defendants
5 without the means to afford bonds imposed by Rule 6(a)1) of SCRAP are forced to move
6 on short notice, with no new place to live or to store their personal property, even while
7 they challenge the legality of the judgments they face. As a consequence of the sudden
8 upheaval in their lives, they abandon meritorious appeals to prioritize finding new homes
9 and re-stabilizing their lives.

10 Accordingly, as written, Rule 6(a)(1) serves as a systemic and structural barrier to
11 meaningful participation in the legal system for eviction defendants pursuing legal
12 challenges to the judgments issued against them in justice courts around Arizona. For all
13 the above reasons, the Court should adopt Petitioners' proposed rule amendments to
14 Rules 6(a)(1) and 6(a)(5) in the interests of justice and to protect the constitutional rights
15 of Arizonans facing eviction actions in justice courts statewide.

16 **V. Conclusion**

17 Petitioners submit this Petition to resolve a conflict between court rules and
18 Arizona statutory law governing supersedeas bonds in eviction appeals. The conflict is
19 problematic on its own terms, but it is made worse due to the constitutional access to
20 justice problem it creates for indigent eviction defendants appealing judgments in their
21 cases. Petitioners request that the Court approve this Petition and implement the
22 Petition's recommendations to conform the supersedeas bond requirements of Rules
23 6(a)(1) and 6(a)(5) of SCRAP to Arizona statutory law, as well as federal and state
24 constitutional law, and to provide fair and equal protection of the law to indigent litigants
25 appealing eviction judgments from Arizona justice courts.

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Survey and Consumer Credit Panel, CFPB Office of Research Data Point No. 2022-01
(Mar. 2022), [https://files.consumerfinance.gov/f/documents/cfpb_mem_emergency-
savings-financial-security_report_2022-3.pdf](https://files.consumerfinance.gov/f/documents/cfpb_mem_emergency-savings-financial-security_report_2022-3.pdf).

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Respectfully submitted this 10th day of January 2023.

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Clerk of the Supreme Court of Arizona
this 10th day of January 2023.

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