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**IN THE SUPREME COURT
STATE OF ARIZONA**

In the Matter of:

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

Supreme Court No. R-23-0027

COMMENTS ON PROPOSED RULE



Commenting Party, Manufactured Housing Communities of Arizona (“MHCA”), hereby opposes the Petition to amend Rule 11(b)(1) (“Petition”) of the Arizona Rules of Procedure for Eviction Actions (“RPEA”), filed by Community Legal Services (“CLS”), DNA People’s Legal Services (“DNA”), Southern Arizona Legal Aid (“SALA”) (collectively “legal services”), and the William E Morris Institute for Justice (“MIJ”), on or about January 10, 2023.

In summary, despite the lengthy recitation of the harm of evictions and homelessness generally, Petitioners: (1) do not provide justification for the current rule change, and (2) do not clearly articulate the harm they seek to correct. This is another attempt to change evictions, not by looking at the specific issue, but solely by arguing that evictions are bad.

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The Petition includes a cut-and-paste of the same justifications and arguments provided in every petition made by tenant advocates: that tenants are uneducated, tenants are unrepresented, tenants are unable to understand how to read a summons as to when they are required to appear, tenants have a property interest in their residences, and the perils of homelessness after eviction. Nothing new is stated identifying any evidence-based problem with default judgments after valid service of a Summon and Complaint. Although hardship provokes sympathy, it is not the basis for a court procedural rule that is unsupported by eviction data and uses vague and undefined terms which can lead to delays and complications. Further, the current RPEA provide ample protection for all parties involved; a tenant who fails to attend a court hearing, can simply file a motion to vacate judgment, which as will be discussed below, is commonly granted. There is no harm that the current Petition seeks to address. It is yet another rule attempting to unnecessarily complicate evictions and nothing more.

I. STATEMENT OF INTEREST.

The MHCA is a non-profit organization that protects and promotes the interest of Arizona’s manufactured housing community owners. MHCA is the largest manufactured housing community owners’ association in Arizona. The MHCA remains active within Arizona, by tracking legislative and legal issues, educating community owners and managers, and working to improve Arizona’s manufactured housing. Manufactured housing communities are one of Arizona’s greatest sources of low-cost/low-income housing.

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1 **II. THE PETITION.**

2 The Petition and proposed rule amendment seeks to amend RPEA Rule 11(b)(1) to
3 include language stating:

4 If a plaintiff or defendant does not appear or answer as present in response to
5 the initial case call, the court shall call the case a second time later in the
6 calendar before proceeding to the material allegations of the case. The court
7 shall recall such cases either after one hour has passed or at the end of the
8 calendar, whichever happens first.

9 ¹“Petitioners’ proposed rule change applies to remote hearings as well as in-person
10 hearings.”² Allegedly, the purpose behind the Petition is “...to allow all parties to have
11 their day in court and to conserve judicial resources.”³ The Petition justifies the proposed
12 rule amendment by stating “[t]he proposal is in line with past Arizona Supreme Court
13 administrative orders that limit eviction calendar calls to 25 cases in an hour,” and “[t]he
14 amendment adds on a matter of minutes to a court’s calendar...”⁴ The Petition also states
15 “[w]ithout recalling cases where a party may have arrived after their case was called, the
16 court will have to expand staff resources both to process a dismissal or default
17 judgment...to schedule and hear any post-judgment motion from a party initially found in
18 default in eviction litigation.”⁵

19
20 The Petitioners’ reasoning on why tenants are late or do not appear for initial
21 hearings in person is “[t]enants are late to court for many reasons, but common
22 explanations include that they were held up at security, they could not find the courtroom,
23 they had car trouble or delayed public transportation, they had trouble getting childcare, or
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26 ¹ Pet., at 4.

27 ² Pet., at 6.

28 ³ Pet., at 3.

⁴ *Id.* at 3–4.

⁵ *Id.*

1 they could not get time off from work soon enough.”⁶ The Petitioners further the
2 explanation by saying “[t]he switch to remote court hearings only exacerbated problems
3 for some low-income litigants, who often have limited access to the internet and other
4 technology.”⁷ There is no support for this argument and it defies simple logic as any tenant
5 with access to a telephone can appear in court, from anywhere in the world.
6

7 **A. PETITIONERS’ ARGUMENTS CONTRADICT EVICTION DATA.**

8 Eviction rates in Arizona over the past decade have significantly decreased on a per
9 capita basis, and tenant participation has increased. In 2021, the Department of Housing
10 wrote:
11

12 [w]hile there is a perception that eviction rates have increased over the past
13 decade, an analysis of the data shows that eviction rates...were significantly
14 lower than the end of the preceding decade. When factoring in Arizona’s
15 large population increase, the per capita eviction rate in Arizona has
16 actually...declined over the past few years.

17 ⁸In 2011, the overall eviction rate in Maricopa County was four-point nine percent
18 (4.9%).⁹ In 2021, the overall eviction rate in Maricopa County was two-point six percent
19 (2.6%).¹⁰

20 While the foregoing is good background information to address Petitioner’s
21 generalized complaints, for the current Petition, the only relevant data points relate to
22 tenants failing to appear and their likelihood of success if they file a motion to vacate or
23 set aside judgment. This is because the current Petition effectively asks Courts to be
24 required to recall cases at various times – this can only relate to a failure to appear at the
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26 ⁶ Pet., at 5.

27 ⁷ *Id.* at 5–6.

28 ⁸ *Id.*

⁹ *Maricopa County: Eviction Dashboard*, ARIZONA STATE UNIVERSITY, <https://resilience.asu.edu/evictions-dashboard> (last visited February 16, 2023).

1 initial calling, or the failure to be able to get relief via post-judgment motion. The data
2 demonstrates that such are not valid issues – more tenants are appearing now than ever
3 before, and in an overwhelming majority of times where motions to vacate are filed, they
4 are granted. Therefore, the Petition doesn't fix a legitimate issue.

5
6 In 2019, thirty-six-point fifty seven percent (36.57%) of tenants failed to appear in
7 eviction actions for Maricopa County. In 2020, twenty-nine-point twenty eight percent
8 (29.28%) of tenants failed to appear in eviction actions for Maricopa County. In 2021,
9 twenty nine percent (29%) of tenants failed to appear in eviction actions for Maricopa
10 County. In 2022, only twenty-four-point forty one percent (24.41%) of tenants failed to
11 appear in eviction actions for Maricopa County.

12
13 In 2022, the Pima County Justice Court posted its eviction statistics, finding one
14 hundred twenty (120) motions for reconsideration were filed, and out of the one hundred
15 twenty (120) motions for reconsideration, ninety-one (91) of the motions for
16 reconsideration were granted.¹¹ While in 2020, thirty seven (37) motions for
17 reconsideration were filed, and twenty four (24) of the motions for reconsideration were
18 granted.¹² Additionally, in 2022, the total amount of judgments entered was nine thousand
19 nine hundred fifty (9,950), while only three thousand five hundred thirty six (3,536)
20 resulted in a writ of restitution being issued by the Court.¹³

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25 ¹⁰ *Id.*

26 ¹¹ Derek Zenner, *Eviction Statistics 2022*, PIMA COUNTY CONSOLIDATED JUSTICE
27 COURT, <https://www.jp.pima.gov/EvictionStats/eviction-statistics.html> (last visit
28 February 16, 2023).

¹² Derek Zenner, *Eviction Statistics 2020*, PIMA COUNTY CONSOLIDATED JUSTICE
COURT, <https://www.jp.pima.gov/EvictionStats/eviction-statistics.html> (last visited
February 16, 2023).

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The statistics demonstrate tenants have ample access to the Justice Courts and are exercising their rights. Additionally, out of all the Pima County eviction judgments in 2022, only one point two percent (1.2%) of tenants felt the judgment was incorrectly entered, and out of the one-point two percent (1.2%), only twenty-nine (29) tenants’ motion for reconsideration were denied, likely due to failure to present a valid legal defense.¹⁴ The Petitioners are essentially petitioning the Arizona Supreme Court for a rule change impacting zero-point two percent (0.2%) of tenants, if the Arizona Supreme Court assumes those motions for reconsideration were wrongly denied.

Petitioners’ arguments that tenants are unable to appear in court, participate in court, and virtual hearings have only exacerbated problems for tenants is statistically unsupported. The data clearly shows tenant participation in eviction hearings has substantially increased. This Court can draw the logical conclusion that the increase in tenant participation is directly linked to virtual court hearings, despite Petitioners’ assertion that “[t]he switch to remote court hearings only exacerbated the problems....”¹⁵ Virtual hearings have provided tenants the reassurance that they no longer have to worry about being held up at security, finding a courtroom, car trouble, delayed public transportation, finding childcare, or requesting time off of work.

It is also noteworthy that Petitioner MIJ actually objected to the change in the law that allowed tenants to appear in Court via virtual methods. This was a bill proposed by the housing industry, and, as the data shows, it has helped tenants gain access to Court.

¹³ Derek Zenner, *Eviction Statistics 2022*, PIMA COUNTY CONSOLIDATED JUSTICE COURT, <https://www.jp.pima.gov/EvictionStats/eviction-statistics.html> (last visit February 16, 2023).
¹⁴ Derek Zenner, *Eviction Statistics 2022*, PIMA COUNTY CONSOLIDATED JUSTICE COURT, <https://www.jp.pima.gov/EvictionStats/eviction-statistics.html> (last visit February 16, 2023).

1 However, Petitioners testified against the bill.

2 The only statistics Petitioners cite to bolster its arguments is a pre COVID-19, 2020
3 report, that states “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.”¹⁶ This
5 observation has nothing to do with the proposed rule change that erroneously concludes
6 that tenants need more time to appear at initial hearings for eviction actions. Petitioners
7 misrepresented tenant participation in eviction actions and failed to state even one (1)
8 statistic or logical explanation that supports their arguments. Instead, Petitioners copy and
9 paste, almost word for word, previous lackluster policy arguments that were made in past
10 petitions or comments.¹⁷

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13 Petitioners’ entire Petition is based upon unsupported allegations that lack any
14 evidentiary basis.

15 **B. THE PROPOSED RULE AMENDMENT WOULD RESULT IN AN**
16 **EXORBITANT TIME AND FINANCIAL BURDEN ON THE COURTS AND**
17 **PARTIES.**

18 RPEA Rule 11(b)(1) currently requires,

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20 On the date and at the time set for the initial appearance, and after
21 announcing the name of the plaintiff and the defendant, the court shall: (1)
22 call the case, identify the parties and any attorneys or representatives present
23 and ascertain that they are properly authorized to represent the parties to the

24 ¹⁵ Pet., at 5–6.

25 ¹⁶ Pet., at 5.

26 ¹⁷ For Petitioners’ arguments surrounding eviction actions and its impact regarding tenants
27 and low-income tenants *see* Pet., at 6–7; William E. Morris Institute for Justice Supreme
28 Court No. R-19-0018 Comments in Support of Petition to Amend the Rules of Procedure
for Eviction Actions, at 7–9; William E. Morris Institute for Justice Supreme Court No. R-
18-0020 Comments in Support of Petition to Amend the Rules of Procedure for Eviction
Actions, at 4–5; William E. Morris Institute for Justice Supreme Court No. R-17-0020
Comments in Support of Petition to Amend the Rules of Procedure for Eviction Actions,
at 5–6; William E. Morris Institute for Justice Supreme Court No. R-16-0022 Comments
in Support of Petition to Amend the Rules of Procedure for Eviction Actions, at 4–5.

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action. As provided by Arizona Supreme Court Rule 31, no property manager or other agent shall be allowed to represent a party 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. (2) State or summarize the material allegations contained in the complaint. (3) Ask the defendant whether the defendant contests the allegations contained in the complaint.

RPEA Rule 13(b)(3)(A) allows a court “[i]f the defendant fails to appear in person or through counsel on the initial return date, and no continuance is granted, the court, after determining that the conditions of Rule 13(a)(1)-(4) are satisfied, shall enter a default judgment against the defendant.” The Petitioners’ proposed rule change would amend the RPEA Rule 11(b) to include

If a plaintiff or defendant does not appear or answer as present in response to the initial case call, the court shall call the case a second time later in the calendar before proceeding to the material allegations of the case. The court shall recall such cases either after one hour has passed or at the end of the calendar, whichever happens first.

¹⁸If Petitioners’ rule change were to be implemented, the time period for an eviction calendar would expand to include the cases that have to be recalled for failure to appear. Attorneys, after their cases are called, would have to remain in court for the entire eviction calendar to have their fail to appear cases recalled. There is no legal definition of the term “end of the calendar” and the various Justice Courts handle their “calendar” differently, with significantly different implications given this vague language. Petitioners’ state that the Court previously limited eviction cases to twenty-five (25) cases an hour, however, this requirement was rescinded by later administrative orders regarding eviction actions.¹⁹

¹⁸ Pet., at 4.
¹⁹ See Pet., at 3–4; Admin Order No. 2022-14.

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A direct consequence of the proposed rule change would be unnecessary delays for law firms and attorneys, resulting in an increase in the attorneys’ fees they charge to handle evictions. If attorneys now have to plan on eviction calendars routinely expanding, they will increase attorneys’ fees which only hurts tenants. The Petition assumes that attorneys remain in Court for the entire eviction calendar, which is not the case. Attorneys, who may have had only one (1) case for an eviction calendar, will now have to remain in court for the other twenty-four (24) or more cases to be called, then wait for their specific firm to be called. Again, the Petition assumes a Court will call cases in the order they were originally called, and wrongfully assumes each court follows the same process

The proposed rule wastes the Courts time and resources. Courts already have long dockets with the current case count, and having to recall cases, already called, for the circumstance a tenant appears late, places an enormous burden on the Courts. Petitioners’ claim “[t]he amendment adds on a matter of minutes to a court’s calendar...”²⁰ however that statement is factually incorrect. Most eviction hearing dockets run up to the next eviction docket time, if not over, with the current RPEA. If the proposed rule change were to be implemented, all eviction dockets would have to be scheduled for longer time frames. This would then cause all other types of cases the Courts hear to be pushed to a later time. The proposed rule change creates a trickle-down effect that is completely unreasonable to ask the Courts to take on.

Petitioners state “[t]he rule puts forth instructions on how a court must handle preliminary procedures for eviction actions.”²¹ In a prior comment for Supreme Court No. R-18-0020 MIJ states “...the eviction case dockets in many Justice Courts are crowded

²⁰ Pet., at 4.

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because that is how justices want to hear these cases...[t]hus, the justices can choose to set cases in a more reasonable manner or have a longer eviction call.”²² Petitioners essentially believe Judges currently are incapable of managing their own dockets and need additional instructions and rules on how to handle preliminary procedures for eviction actions. Petitioners are attempting to use intimidation and micromanaging tactics as a tool in order to insert control and get their agendas passed.

C. THE CURRENT RPEA PROVIDES AMPLE PROTECTIONS FOR PARTIES.

The RPEA currently provides ample protections for parties who are unable to appear in person or virtually, on time, for an initial hearing on an eviction action. Parties who are unable to make the initial hearing date for an eviction action can file a motion to continue before the initial hearing date.²³ The Maricopa County Justice Court provides a template form for parties to use, and the form has all the necessary wording, within the template.²⁴ Tenants, regardless if they are represented, understand they can call the Court and ask for help on how to request additional time to appear at an initial hearing for an eviction action. Upon information and belief, the Court clerks regularly direct tenants to the template forms that they are able to use.

Parties can also file an answer, before the initial hearing, and dispute the allegations listed within the complaint and state legal defenses. Moreover, a party can file a motion to dismiss prior to the initial hearing, which allows a party to dispute the allegations listed

²¹ Pet., at 3.
²² William E. Morris Institute for Justice Supreme Court No. R-18-0020 Comments in Support of Petition to Amend the Rules of Procedure for Eviction Actions, at 7.
²³ See RPEA Rule 9.

1 within the complaint and state legal defenses, prior to the initial hearing.²⁵

2 The RPEA provides parties protection in the circumstance that they planned on
3 appearing on time for the initial hearing for an eviction action, but unexpectedly were
4 unable to. Parties who originally planned on appearing in person can appear
5 telephonically.²⁶ In the small circumstance that a party does not have access to a smart
6 device or computer, or *even a telephone*, and fails to appear at the initial appearance of an
7 eviction action, the party can file a motion for reconsideration.²⁷ A party who was unable
8 to appear for an initial hearing on an eviction action that receives a judgment against them
9 can also file a motion to stay the issuance of a writ or quash a writ already issued.²⁸

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12 Upon information and belief, most eviction actions are filed due to nonpayment of
13 rent. These eviction actions can be resolved if the defendant goes into the landlord's
14 community office and tenders the full amount of rent sought. The defendant can reinstate
15 the rental agreement by tendering the full amount of payment sought before and after an
16 eviction action is filed.²⁹ The issue is not that tenants need more time to appear on the
17 initial hearings for eviction actions, the problem is tenants cannot afford their rent due to
18 various reasons, including financial hardships. The Petition and proposed rule change has
19 nothing to do with the actual issues tenants are facing, and only attempts to delay the entry
20 of judgment, at the expense of the Courts, parties, law firms, and attorneys. Unfortunately,
21 such increases in expenses will ultimately be passed along to the tenants.
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25 ²⁴ *Court Forms*, JUSTICE COURTS OF MARICOPA COUNTY,
26 <https://justicecourts.maricopa.gov/find-a-form/court-forms> (last visited February 17,
2023).

27 ²⁵ See RPEA Rule 9(f).

28 ²⁶ See RPEA Rule 11.

²⁷ See RPEA Rule 9(g).

²⁸ See RPEA Rule 14(c) and Rule 17.

²⁹ See A.R.S. § 33-1368(B); A.R.S. § 33-1476(E); and A.R.S. § 33-2143(E).

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The RPEA provides parties opportunities to seek continuances of an initial hearing on an eviction action and remedies if a default judgment is entered.

D. THE PROPOSED RULE CHANGE WITHIN THE PETITION IS VAUGE.

The Arizona Supreme Court, when reviewing statutes applies “fundamental principals of statutory construction, the cornerstone of which is the rule that the best and most reliable index of a statute’s meaning is its language and, when the language is clear and unequivocal, it is determinative of the statute’s construction.”³⁰ The Arizona Supreme Court has said “[w]e employ the same approach when interpreting our rules.”³¹

The wording of the proposed rule change is unclear and vague. It fails to recognize Justice Courts handle their dockets (aka their “calendars”) differently. From the plain reading of the proposed rule change, one can conclude that a Court will recall cases where the defendant failed to appear, after the other cases within an attorneys’ current docket were called, but before the Court moves on to the next law firm. An alternative reading is that a Court will recall cases, where the defendant failed to appear, after all other cases for the entire docket of that particular eviction calendar have been called. If the proposed rule change were to be implemented, with the current wording, defendants in one Court may receive more additional time then defendants in another Court. The current language of the proposed rule change is not clear and unequivocal, and will only lead to varying results, which prejudices all parties involved in the eviction action proceeding.

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³⁰ *State v. Hansen*, 215 Ariz. 287, 289 (2007).

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III. CONCLUSION.

The Petition and proposed rule change should be denied because Petitioners have failed to articulate a specific problem which is supported by data. Further, they failed to set forth a nexus between the language in the Petition and the alleged problem.

RESPECTFULLY SUBMITTED this 8th day of March, 2023.

ZONA LAW GROUP, P.C.

By: /s/ Scott A. Baluha
Scott A. Baluha
Attorneys for Commenting Party

³¹ *State v. Hansen*, 215 Ariz. 287, 289 (2007).

CERTIFICATE OF SERVICE

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COPY OF THE FOREGOING

Mailed this 8th day of March, 2023 to:

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