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ARIZONA SUPREME COURT
STATE OF ARIZONA

IN THE MATTER OF :) Supreme Court No. R-23-0027
Petition to Amend Rule 11(b)(1)) Comments on Proposed Rule
Arizona Rules of Procedure for)
Eviction Action)
_____)

Commenting party, Hull, Holliday & Holliday, PLC, hereby opposes the Petition to Amend rule 11(b)(1) (“Petition”) of the Arizona Rules of Eviction Procedure (“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.

The proposed rule change states:

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.

This proposed change appears to presuppose that defendants in eviction cases are unable to understand their obligation to appear at a time set by the court to respond to eviction complaints and/or that defendants are unable to logon to virtual hearings, either telephonically

1 or virtually. Legal services and MIJ point to no evidence that defendants are being denied their
2 day in court for any such reasons.

3 Effective 2023, the Arizona legislature required courts to permit parties to appear at
4 initial hearings either virtually or in person. Since then the number of defendants who have
5 appeared virtually has skyrocketed, with current statistics showing that only a very small
6 number of defendants fail to exercise their right to be present using any of the three (3) methods
7 authorized by the Court. There is no evidence that any significant number of defendants are
8 being delayed at security, unable to find parking spaces, or get lost trying to find the court or a
9 courtroom.
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12 Contrary to Legal Services' and MIJ's contention, very few defendants these days lack
13 the ability to participate in a virtual eviction hearing. Although there are certainly people who
14 do not have personal access to a computer, there are very few who lack access to a cell phone.
15 The most recent statistics show that ninety-six percent (96%) of US adults between the ages
16 of 18 and 29 and ninety-five percent (95%) of those between 30 and 49 own smartphones.
17 Although this number decreases as people get older, they still reflect that eighty-three percent
18 (83%) of US adults between 50 and 64 years of age own smartphones, and this figure decreases
19 to just sixty-one percent (61%) for those aged 65 and above¹. Because of the widespread
20 availability of and access to cellular phones, even those defendants who don't have their own
21 phones are almost always able to borrow phones from friends, neighbors and relatives for use
22 at an eviction hearing.
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25 In the situations where a defendant has alleged that he or she was unable to participate
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¹ <https://www.oberlo.com/statistics/how-many-americans-have-smartphones>

1 due to lack of transportation, parking, security or other delays, and who do not have access to
2 a telephone, that defendant still has the option to file a Motion under Rule 15, RPEA, based on
3 mistake, in advertence, or excusable neglect. As set out in previous comments, such motions
4 are almost always granted.

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6 Contrary to Petitioner's argument, it is also highly unlikely that post-hearing motions
7 will impose a greater burden on the court than the resolution that Petitioners' propose.

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9 Currently courts are permitted to schedule no more than twenty-five (25) eviction cases
10 per hour. If a defendant becomes argumentative during his/her hearing and takes up more than
11 his/her allotted 2.4 minutes, that already means that other parties have less time to present their
12 cases. If this happens for multiple defendants, or if one defendant is argumentative for *e.g.*
13 twenty (20) minutes – not an unusual situation - the court is already running considerably late.
14 Since most courts schedule other matters around the eviction docket, this means that the court's
15 other obligations are also delayed. In these situations it is more efficient for a judge to simply
16 re-set the missed hearing for a different date on his/her eviction calendar than to delay the
17 current calendar to give the absent defendants a second chance to appear.
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20 Adding the additional burden on the court to then recall cases also imposes a significant
21 hardship on attorneys representing plaintiffs in these cases. Attorneys who represent clients
22 whose tenants have missed their hearing will then be compelled to stay on the line on the off-
23 chance that they will have that case recalled at the end of the court's docket. Inevitably the
24 cost of this additional burden will be passed along to parties, including all defendants, and not
25 merely those who failure to appear at the time noticed on the summons.
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27 Instead of making the court more efficient, Petitioners' arguments in favor of this

1 proposed amendment will actually cause greater delays for the court and counsel, impose
2 higher costs in the form of higher attorney's fees for Petitioner's own clients and those for
3 whom they appear to be advocating, and reward those tenants who could have appeared at the
4 time ordered by the court and who – for whatever reason – did not.

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6 Based on all of the above, Hull, Holliday & Holliday PLC therefore urges the Court to
7 deny Petitioner's proposed amendment to the RPEA.

8 Respectfully submitted this 1st day of May 2023.

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10 Hull, Holliday & Holliday, PLC

11 By: /s/ Judy Drickey-Prohow, 005796

12 Attorney

13 /s/ Denise Holliday, 017275

14 Managing Partner
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