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IN THE SUPREME COURT
STATE OF ARIZONA

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

Supreme Court No. R-23-0027

**REPLY TO COMMENTS TO THE
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
3 Legal Aid (“SALA”) (collectively “legal services”), and the William E. Morris
4 Institute for Justice (“MIJ”) respectfully reply to comments submitted in
5 opposition to the Petition to Amend Rule 11 (b)(1) of the Rules of Procedure for
6 Eviction Actions. The proposed rule change would add a requirement for the court
7 to re-call at the end of a court calendar, or after one hour if a calendar call lasts
8 longer than one hour, any case in which the plaintiff or defendant did not appear or
9 respond after an initial call of the case. Petitioners propose a minor change to
10 court operations that applies to all parties, but it is a change that would have a
11 profoundly positive effect on low-income parties, particularly tenants.

12 Zona Law Group P.C., on behalf of the Manufactured Housing Communities
13 of Arizona, the Justice of the Peace Bench in Maricopa County, and the law firm
14 Hull, Holliday & Holliday, P.L.C., all filed comments in opposition to the
15 proposed rule change. The three sets of comments detailed similar concerns, and
16 we will address those common themes below.

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23 **I. Petitioners’ Proposed Rule Change Will Help Institute Fairness and**
24 **Uniformity in Courtroom Procedures**

25 Two of the commenting parties argued that the proposed rule is vague
26 because petitioners used the term “calendar” to describe a court’s eviction court
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1 call or docket.¹ The websites for the Maricopa County² and Pima County³ Justice
2 Courts refer to the “court calendar” when describing the list of cases to be heard on
3 a designated date and at a delineated time. Moreover, Petitioners’ counsel include
4 current and former legal services attorneys with many years of experience
5 advocating for tenants in eviction matters in Arizona and in other jurisdictions. In
6 Petitioners’ experience, judges and landlord attorneys commonly use the term
7 “calendar” to refer to a list of cases that are set for a particular day and time.
8 Likewise, eviction defense practitioners commonly use the term “calendar”
9 interchangeably with the term “docket.”
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13 Regardless of the specific term used to describe the block of cases set for
14 hearing at a particular time or window of time, Petitioners’ proposed rule change
15 simply seeks to require the court to call a case twice before dismissing the case or
16 entering a default judgment. If a party does not answer after a case is initially
17 called, the court must recall cases after all other cases have been called, or after
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20 ¹ The Justice of the Peace Bench in Maricopa County stated that “It is not
21 clear what ‘at the end of the calendar’ means.” Comment from Maricopa County
22 Justice Court Bench at 2. Similarly, Manufactured Housing Communities of
23 Arizona, stated that “There is no legal definition of the term ‘end of the calendar’
24 and the various Justice Courts handle their ‘calendar’ differently, with significantly
25 different implications given this vague language.” Comment from Manufactured
26 Housing Communities of Arizona at 8.

27 ² Website for the Justice Courts of Maricopa County,
28 <https://justicecourts.maricopa.gov/app/courtrecords/CourtCalendars> (last visited
May 5, 2023).

³ Website for Pima County Justice Court,
<https://www.jp.pima.gov/NewCalendar2018/Filter.aspx> (last visited May 5, 2023).

1 one hour – at most – if there are many cases scheduled for that day and time. In
2 many scenarios common to justice court eviction calendars, the second call of the
3 case would occur much less than an hour later and, in many cases, would occur
4 mere minutes after the initial call of the case on the calendar in question.
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6 The commenters further state that the proposed rule change will be difficult
7 to implement because many courts call cases based on the law firm representing
8 the landlord. The commenters note that, if the rule change were to be
9 implemented, attorneys would unfairly and impractically have to remain in the
10 courtroom for the entire eviction calendar while ignoring that the current practice
11 permits parties, including their lawyers, to appear remotely.⁴ These comments
12 unintentionally reveal that the courtroom procedures currently in practice, as
13 described by the commenters, unfairly favor landlords and their attorneys as a
14 matter of course. Since many justice courts organize their calendars and call cases
15 according to which law firm is representing the plaintiffs, over ninety percent⁵ of
16 whom have counsel, those courts will often hold off calling blocks of cases that are
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24 ⁴ Comment from Manufactured Housing Communities of Arizona. at 8-9;
25 Comment from Maricopa County Justice Court Bench at 2.

26 ⁵ William E. Morris Institute for Justice, *What's Justice Got to Do With It?*
27 *The Experience of Tenants in Maricopa County Justice Courts*, p. 12, May 2020,
28 [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 handled by a particular law firm if the attorney is not present.⁶ In the most
2 common scenario, a landlord’s attorney is not present because the attorney is
3 handling other matters in another courtroom. Petitioners acknowledge that justice
4 courts’ practices of delaying calling cases on their calendar is routinely extended as
5 a practical and professional courtesy to landlords’ counsel. However, tenants are
6 usually not afforded the same courtesy. It is not uncommon for a tenant to have to
7 wait for the landlord—or most often, the landlord’s attorney—to be present before
8 their case is heard. Yet tenants must be present and ready at the outset of a court
9 calendar, or else they face a default judgment.⁷ This well-documented, differential
10 treatment of plaintiffs and defendants in the same type of case raises constitutional
11 concerns, including whether both sides of eviction actions are receiving equal
12 protection of the law in Arizona justice courts.

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17 The proposed rule change seeks to acknowledge existing practices and
18 courtesies extended to landlords’ attorneys in eviction actions heard in Arizona
19 justice courts, while remedying the treatment disparity experienced by tenants.
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23 ⁶ Comment from Maricopa County Justice Court Bench at 2; William E.
24 Morris Institute for Justice, *What’s Justice Got to Do With It? The Experience of*
25 *Tenants in Maricopa County Justice Courts*, p. 18, 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).

26
27 ⁷ When a landlord fails to appear for their court hearing, the tenant merely
28 secures a dismissal and not a default judgment in their favor. The landlord can
then simply refile their case against the tenant and start the entire process over
again.

1 The change would establish fairness and uniformity in courtroom procedures
2 applicable to all parties in eviction matters. Because the proposed rule change
3
4 applies equally to plaintiffs and defendants, all parties are afforded some flexibility
5 to ensure that they can attend their court hearings, whether they have a hearing in
6 another courtroom or whether they are having trouble with their home internet
7
8 connection.

9 **II. The Proposed Rule Change Would Have a Profound, Positive Impact on**
10 **Parties, Particularly Low-Income Tenants**

11 Maricopa County Justice Court Bench states that the proposed rule change is
12 unnecessary because “only” 24.4 percent of tenants in Maricopa County failed to
13 appear for their court date in February 2023.⁸ The Manufactured Housing
14 Communities of Arizona similarly point out that “only twenty-four-point forty one
15 percent (24.41%) of tenants failed to appear in eviction actions for Maricopa
16 County.”⁹ Despite the commenters’ assertion, 24.4 percent – essentially a quarter
17 of defendants – is not insignificant. In 2022, 54,150 eviction cases were filed in
18 Maricopa County¹⁰, meaning that over 13,000 people ended up with a default
19 judgment in Maricopa County alone – and this number does not account for default
20 judgments in the other Arizona counties. The Maricopa County Justice Court
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25 ⁸ Comment from Maricopa County Justice Court Bench at 6.

26 ⁹ Comment from Manufactured Housing Communities of Arizona at 5.

27 ¹⁰ Arizona Judicial Branch Website, Interactive Data Dashboards: Justice
28 Court Evictions, <https://www.azcourts.gov/statistics/Interactive-Data-Dashboards/Justice-Court-Evictions> (last visited May 9, 2023).

1 Bench further expects tenants to rely on landlords’ attorneys for relief: “Most
2 landlords, who are represented by counsel, have standard written post-judgment
3 payment plans that allow the tenant to maintain possession.”¹¹ This expectation is
4 misplaced.
5

6 First, once landlords obtain an eviction judgment, they are under no legal
7 obligation to let a tenant remain in the home. Second, while it is always better for
8 a tenant to maintain possession of their home than to be physically removed
9 through the legal eviction process, a tenant’s reliance on a landlord attorney’s
10 standard payment plan does not account for the hardships that go along with
11 having a default judgment entered against them.¹²
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14 As explained in the Petition, default judgments become a permanent part of
15 the person’s court and consumer credit history, which can affect a person’s ability
16 to secure future housing or obtain consumer credit and financing.¹³ Loss of stable
17 housing in turn can affect a person’s capacity to maintain employment, affect a
18 child’s educational attendance and success, and lead to negative physical and
19 mental health outcomes for both adults and children.¹⁴
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23 ¹¹ Comment from Maricopa County Justice Court Bench at 3.

24 ¹² Petitioners question the Maricopa County Justice Court Bench’s comment
25 which appears to improperly promote and encourage the use of a party’s materials
26 in an extra-judicial transaction that occurs between two litigants, one usually being
27 an unrepresented party.

28 ¹³ Petition at 6.

¹⁴ *Id.*

1 The proposed rule change would be life-altering and, in some instances, life-
2 saving for tenants, including most critically those in the 24.4 percent that may have
3 missed their cases being called by a matter of minutes. Tenants are already at a
4 disadvantage when they are faced with an eviction. As commenters explain, when
5 a tenant is able to attend their court hearing, they are discouraged from taking up
6 too much time to present a defense: “If a defendant becomes *argumentative* during
7 his/her hearing and takes up more than his/her allotted 2.4 minutes, that already
8 means that other parties have less time to present their cases.”¹⁵ [Emphasis added.]
9 Despite commenters’ opinion that tenants presenting defenses are being nothing
10 more than “argumentative,” all litigants, including tenants, have a right to have
11 their day in court.
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16 Court rules are established to standardize practices so that litigants do not
17 have to rely on the good faith of their adversaries and “handshake” practices
18 outside of court. The proposed rule change simply helps ensure that all parties
19 have an opportunity to be present in court, with a chance to present their case.
20

21 **III. The Proposed Rule Change Seeks to Reach Parties Who May Not Be**
22 **Able to Obtain Relief from a Default Judgment by Filing a Motion with**
23 **the Court**

24 Commenters state that the proposed rule change is unnecessary because
25 parties who miss their hearings and face a default judgment may file a motion with
26 the court to set aside the judgment based on mistake, inadvertence, or excusable
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28 ¹⁵ Comment from Hull, Holliday & Holliday P.L.C. at 3.

1 neglect, pursuant to Rules of Procedure for Eviction Actions (“RPEA”) 15(a),¹⁶ or
2 for reconsideration, pursuant to RPEA 9(g).¹⁷ Commenters further state that the
3 courts are able to provide parties with forms and that “[t]enants...understand they
4 can call the Court and ask for help on how to request additional time to appear at
5 an initial hearing for an eviction action.”¹⁸ Although the RPEA allows parties to
6 file motions for relief from a default judgment with the court, unrepresented
7 tenants may not know how to file them or, contrary to the commenter’s assertion,
8 may not know they can and should contact the court if they need assistance.¹⁹
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12 Commenting on the instant Petition, intended to limit the number of default
13 judgments subject to such motions, Hull, Holliday, and Holliday P.L.C., argues
14 that the RPEA provides all of the expansive relief parties may need, thus making
15 the current proposed rule change unnecessary. However, as noted above, there are
16 thousands of default judgments entered against eviction defendants annually. Most
17 eviction defendants are unrepresented and unable to secure counsel on a timeline to
18 file motions for relief from default judgments. The status quo does not represent a
19 level playing field. It benefits the interests of commenters, so they have opposed
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24 ¹⁶ Comment from Maricopa County Justice Court Bench at 7; Comment from
25 Hull, Holliday & Holliday P.L.C., at 3.

26 ¹⁷ Comment from Manufactured Housing Communities of Arizona at 11.

27 ¹⁸ Comment from Maricopa County Justice Court Bench at 7; Comment from
28 Manufactured Housing Communities of Arizona at 10.

¹⁹ *See* Declaration of Alan Solot, date May 25, 2023. Attachment A.

1 changes that would expand available pathways to relief from judgments²⁰ and now,
2 efforts to prevent default judgments in the first place. The proposed rule change
3 simply seeks to avoid the administrative hassle for the parties and courts by
4 allowing parties a second call of the case as a safeguard to ensure they may appear
5 for their hearings in the event they are minutes late to the courtroom or experience
6 technical challenges in participating remotely. The proposal does not represent a
7 disruption, or even a sea change from current best practices in some justice courts.
8 In most cases, the calendar protocol proposed in this Petition would add mere
9 minutes, or seconds, to the end of already incredibly fast-paced court calendars.
10 Those brief stints of time benefit all parties by eliminating inefficiencies caused by
11 defaulting parties' efforts to file post-judgment motions for relief. More
12 importantly, the brief stints of time the Petition would add to most calendars would
13 ensure access to justice for more litigants in eviction actions.

14 **IV. Petitioners Advocate for All Pathways to Access Court Proceedings**

15 The Manufactured Housing Communities of Arizona and the Maricopa
16 County Justice Court Bench misunderstand and consequently mischaracterize
17 Petitioners' position on remote court hearings. Petitioners are not against remote
18 court hearings or remote party appearances and never have been. Rather,
19

20 ²⁰ Last year, Hull, Holliday & Holliday P.L.C., filed a Comment opposing the
21 expansion of RPEA 9 to allow more pathways for tenants to seek relief from
22 judgments, in line with Rule 60 of the Federal Rules of Civil Procedure. *See*
23 Supreme Court No. R-22-0004.
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1 Petitioners have always advocated for all pathways for litigants to access court
2 proceedings. Petitioners also routinely advocate for all pathways of access,
3 including remote access, when applying for Nutrition Assistance, Medicaid, Cash
4 Assistance, Unemployment Insurance, and in attending administrative hearings.
5

6 Commenter Manufactured Housing Communities of Arizona correctly states
7 that the MIJ opposed Senate Bill 1322 (“SB 1322”) which created A.R.S. § 22-
8 206(A) allowing for virtual appearances in forceable detainer actions. However,
9 MIJ’s opposition was based on separation of powers issues and a concern
10 regarding the bill’s requirement that a party provide written notice before being
11 allowed to attend their court hearing remotely, in recognition of the burdens the
12 written notice requirement would place on parties, and specifically Arizonans
13 without the financial means to afford counsel. In fact, in a letter to Governor
14 Ducey urging a veto of SB 1322, MIJ explained that “The Institute [MIJ] and other
15 advocates do not object to the court allowing everyone to appear remotely at the
16 first appearance and certainly this option is needed during the COVID-19
17 pandemic.”²¹ Simply put, MIJ advocates for all parties to have a fair and equal
18 opportunity to attend hearings virtually, while recognizing the reality that not all
19 parties may be equally able to do so.
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26 Petitioners have in the past and continue to have concerns with remote

27 ²¹ William E. Morris Institute for Justice Letter to Governor Ducey Regarding
28 Senate Bill 1322 (April 2, 2021). Attachment B.

1 appearances for eviction matters because some parties, particularly low-income
2 Arizonans living in rural areas, may not have reliable access to the internet or to
3 telephone service, making it difficult to show up for their hearings on time.
4
5 Anywhere from 13.4 percent of people in Maricopa County to as many as 61.2
6 percent in Apache County do not have internet service.²² Having pathways for
7 remote appearances is ideal, but the practical accessibility of those pathways
8 remains a barrier and a problem for many economically vulnerable Arizonans.
9

10
11 Parties may also have difficulties navigating the remote access system
12 operated by justice courts around Arizona. Although remote hearings have been in
13 place since the beginning of the COVID-19 pandemic, some people still have
14 issues with remote technology. An attorney with Petitioner SALA recently
15 personally experienced access issues with the remote system in Pima County.²³
16 The attorney logged on to the remote system early, but the justice court never
17 called his client's case.²⁴ His client received a default judgment.²⁵ The attorney
18 was able to file a motion to set aside the judgment pursuant to RPEA 15²⁶, but the
19 client, who was elderly and had a cognitive disability, would not have been able to
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24 ²² Connect Arizona, Digital Equity Community Data, [https://connect-](https://connect-arizona.com/digital-equity/community-data)
25 [arizona.com/digital-equity/community-data](https://connect-arizona.com/digital-equity/community-data) (last visited May 10, 2023).

26 ²³ Declaration of Alan Solot, date May 25, 2023. Attachment A.

27 ²⁴ *Id.* at ¶ 13.

28 ²⁵ *Id.* at ¶ 14.

²⁶ *Id.* at ¶ 17.

1 file a motion on his own.²⁷

2 The proposed rule change seeks to counter any delays or denials of
3 participation a party may experience while using the court's remote access
4 technology.
5

6 **V. Conclusion**
7

8 The proposed rule change emphasizes fairness and uniformity in court
9 procedures in eviction actions. If adopted, the Petition will have positive impacts
10 on judicial economy and all parties, including both low-income tenants trying to
11 access a hearing remotely on a break from work and represented landlords whose
12 attorneys may have multiple cases in different courtrooms on the same date. The
13 proposed calendar protocol prevents parties who are minutes late for their hearings
14 from having to file motions for relief from default judgments with the court. It
15 also ensures meaningful access to justice for Arizonans affected by current
16 calendar calls, which favor the conveniences and preferences of represented
17 parties, disproportionately plaintiffs, over the fair and equal treatment of all
18 litigants in eviction actions. For the above reasons, we respectfully request that the
19 Court approve this petition to amend Rule 11(b)(1) of the Rules of Procedure for
20 Eviction Actions.
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28 ²⁷ *Id.* at ¶ 18.

1 Respectfully submitted this 31st day of May 2023.

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22 Original electronically filed with the
23 Clerk of the Supreme Court of Arizona
24 this 31st day of May 2023.

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26
27
28