

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 Blvd., #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
3 Legal Aid (“SALA”) (collectively “legal services”), and the William E. Morris
4 Institute for Justice (“MIJ”) respectfully petition this Court to initiate a pilot
5 project with a temporary amendment to the Rules of Procedure for Eviction
6 Actions (“RPEA”), Rule 11(b)(1), adding a requirement for the court to re-call at
7 the end of a calendar, also referred to as a court’s docket, or after the specific one-
8 hour time period for longer calendar calls, any case in which the plaintiff or
9 defendant did not appear or respond after an initial call of the case during a court
10 calendar. Petitioners propose that the RPEA be amended on a one-year
11 experimental basis as a pilot project, the results of which will be evaluated for
12 purposes of considering a permanent rule amendment.

13
14 In 2023, Petitioners filed a Petition to amend Rule 11(b)(1) but proposed the
15 amendment permanently. Supreme Court Number R-23-0027. The Supreme
16 Court denied the Petition.

17
18 In support of this Petition, Petitioners state the following:

19
20
21 **I. Statement of Interest**

22
23 CLS, DNA, and SALA (collectively “legal services”) are federally-funded
24 civil legal services law firms that represent low-income Arizonans. Together,
25 CLS, DNA, and SALA deliver free, direct legal services statewide to low-income
26 Arizonans in a variety of priority civil practice areas affecting life’s most basic
27
28

1 needs and legal rights, including eviction litigation and other civil cases affecting
2 housing health, safety, and stability.

3
4 MIJ is a non-profit organization established to advocate and litigate on
5 behalf of the interests of low-income and other vulnerable Arizonans statewide.
6 MIJ works closely with the three federally-funded legal services law firms, other
7 legal advocacy organizations, and community groups on a variety of systemic
8 poverty law and public interest issues, including ensuring that all Arizonans facing
9 eviction have a chance at justice by having equal access to the legal system.
10
11

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

13 In 2008, the Arizona Supreme Court approved the RPEA. The current rules
14 provide direction on initial appearances and trial procedures in eviction actions.
15
16 The rules provide the following:

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

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

21 (1) Call the case, identify the parties and any attorneys or
22 representatives present and ascertain that they are properly
23 authorized to represent the parties to the action. As provided by
24 Arizona Supreme Court Rule 31, no property manager or other
25 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.

26
27 (2) State or summarize the material allegations contained in the
complaint.

28 (3) Ask the defendant whether the defendant contests the allegations

1 contained in the complaint.

2 The rule includes instructions on how a court must handle preliminary hearing
3 procedures for eviction actions. However, Rule 11(b), and the rest of the RPEA, is
4 silent on what a court must do if either the plaintiff or defendant fails to respond as
5 present or misses the court calling their case initially. Some courts make it a
6 practice of re-calling the case at the end of the calendar, but other courts
7 immediately dismiss the case if a plaintiff fails to show or issue a default judgment
8 if a defendant is not present. The dismissals or default judgments frequently stand
9 even if the plaintiff or defendant arrives after the court calls their case but before
10 the calendar ends.
11

12 The proposed temporary rule amendment seeks to formalize the practice of
13 recalling cases at the end of each initial calendar call, or after the specific one-hour
14 time period for longer calendar calls, to allow all parties to have their day in court
15 and to conserve judicial resources. The proposal is in line with past Arizona
16 Supreme Court administrative orders that limit eviction calendar calls to 25 cases
17 in an hour. See Admin. Order No. 2021-47. The temporary amendment proposed
18 herein adds a matter of minutes to a court's calendar, but those extra minutes can
19 mean the difference between a defendant having a home and experiencing
20 homelessness or a plaintiff having to re-file their eviction action. Without recalling
21 cases where a party may have arrived after their case was initially called, the court
22 will have to expend staff resources both to process a dismissal or default judgment,
23
24
25
26
27
28

1 as well as to schedule and hear any post-judgment motion from a party initially
2 found in default in eviction litigation.

3
4 Commenters to the petition filed last year, Supreme Court Number R-23-
5 0027, expressed concerns regarding the time and resources necessary to implement
6 the rule change. Although Petitioners maintain that the amendment would have
7 minimal impact on judicial officers and court staff, the proposal to amend the
8 RPEA on a one-year experimental basis will allow the Court to collect data for
9 evaluation of [1] eviction litigant default rates, and [2] pilot project effects on court
10 staff's use of resources in implementing the temporary rule amendment. After the
11 one-year experimental period, the Court can consider whether the data and findings
12 support a permanent rule amendment.

16 **III. Proposed Rule Amendment**

17 Legal services and MIJ propose the following temporary rule amendment, in
18 bold, as a pilot project for implementation on a statewide basis for a one-year
19 period, commencing on October 1, 2024:

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

22 **Beginning October 1, 2024 and ending September 30, 2025, the**
23 **following procedures will be in place:**

24
25 **Each case shall be scheduled to be heard on a specific date and**
26 **during a specific one-hour time period.** On the date and at the time
27 set for the initial appearance, and after announcing the name of the
28 plaintiff and the defendant, the court shall:

(1) Call the case, identify the parties and any attorneys or

1 representatives present and ascertain that they are properly
2 authorized to represent the parties to the action. **If a plaintiff or**
3 **defendant does not appear or answer as present in response to**
4 **the initial case call, the court shall call the case a second time**
5 **later in the calendar before proceeding to the material**
6 **allegations of the case. The court shall promptly recall such**
7 **cases either after the specific one-hour time period has passed**
8 **or at the end of the calendar, whichever happens first.** As
9 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.

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

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

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

15 Although the practice of issuing default judgments prematurely can affect
16 both plaintiffs and defendants, it disproportionately impacts defendants. In most
17 eviction actions, the defendant is the tenant and is unrepresented by counsel. MIJ
18 published two studies on eviction practices and trends in Maricopa County, the
19 first in 2005¹ and the second in 2020.² In the 2020 report, MIJ reported that out of
20
21
22

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

26 ² William E. Morris Institute for Justice, *What's Justice Got To Do With It?*
27 *The Experience of Tenants in the Maricopa Justice Courts*, May 2020,
28 [https://morrisinstituteforjustice.org/helpful-information/landlord-and-tenant/47-](https://morrisinstituteforjustice.org/helpful-information/landlord-and-tenant/47-institute-maricopa-county-justice-courts-eviction-report-5-21-2020/file)
[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 1,097 cases observed, 94% of landlords were represented by an attorney in court,
2 while only two tenants were represented by an attorney. Tenants largely must
3 navigate the court system and the eviction process by themselves, which puts them
4 at a disadvantage, compared to landlords who are represented by attorneys skilled
5 in court procedures and hearing calendar processes. Petitioners have observed
6 many eviction actions where the defendant tenant shows up to court a few minutes
7 late, shortly after their case has been called, and the court is made aware of the
8 tenant's arrival but does not recall the case. When this happens, the landlord (or
9 more likely, the landlord's attorney), is still in the courtroom, waiting for other
10 matters to be called.
11

12 Further, many justice courts organize their calendars and call cases
13 according to the law firms that represent landlords, of whom over 90 percent of
14 whom have counsel.³ The justice courts will often hold off calling blocks of cases
15 that are handled by a particular law firm if the attorney is not present.⁴ In the most
16 common scenario, a landlord's attorney is not present because the attorney is
17

18 ³ William E. Morris Institute for Justice, *What's Justice Got to Do With It? The Experience of Tenants in Maricopa County Justice Courts*, p. 12, May 2020,
19 [https://morrisinstituteforjustice.org/helpful-information/landlord-and-tenant/47-](https://morrisinstituteforjustice.org/helpful-information/landlord-and-tenant/47-institute-maricopa-county-justice-courts-eviction-report-5-21-2020/file)
20 [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).

21 ⁴ Comment from Maricopa County Justice Court Bench at 2, Supreme Court
22 Number R-23-0027; William E. Morris Institute for Justice, *What's Justice Got to*
23 *Do With It? The Experience of Tenants in Maricopa County Justice Courts*, p. 18,
24 May 2020, [https://morrisinstituteforjustice.org/helpful-information/landlord-and-](https://morrisinstituteforjustice.org/helpful-information/landlord-and-tenant/47-institute-maricopa-county-justice-courts-eviction-report-5-21-2020/file)
25 [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 handling other matters in another courtroom. Petitioners acknowledge that justice
2 courts' practices of delaying calling cases on their calendar is routinely extended as
3 a practical and professional courtesy to landlords' counsel. However, tenants are
4 usually not afforded the same courtesy. It is not uncommon for a tenant to have to
5 wait for the landlord—or most often, the landlord's attorney—to be present before
6 their case is heard. Yet tenants must be present and ready at the outset of a court
7 calendar, or else they face a default judgment.⁵ This well-documented, differential
8 treatment of landlords and tenants in the same type of case raises constitutional
9 concerns, including whether both sides of eviction actions are receiving equal
10 protection of the law in Arizona justice courts.

11
12 Tenants are late to court for many reasons, but common explanations include
13 that they were held up at security, they could not find the courtroom, they had car
14 trouble or delayed public transportation, they had trouble getting childcare, or they
15 could not get time off from work soon enough. During the COVID-19 pandemic,
16 courts began having telephonic or virtual hearings, and many courts in Arizona
17 continue this practice today. Petitioners' position is, and always has been, that
18 additional pathways to court participation such as remote hearings is essential to
19 due process and play an important role in eviction proceedings. Nevertheless,
20
21

22
23
24
25
26 ⁵ When a landlord fails to appear for their court hearing, the tenant merely
27 secures a dismissal and not a default judgment in their favor. The landlord can
28 then simply refile their case against the tenant and start the entire process over
again.

1 some low-income litigants often have limited access to the internet and other
2 technology, making it difficult for the litigants to show up for their hearings on
3 time.⁶ Anywhere from 13.4 percent of people in Maricopa County to as many as
4 61.2 percent in Apache County do not have internet service.⁷ Further, litigants,
5 especially low-income litigants, may have difficulties navigating the remote access
6 system operated by justice courts around Arizona, causing them to fail to “appear”
7 when their case is called. For purposes of uniformity and equity, Petitioners’
8 proposed temporary rule change applies to remote hearings as well as in-person
9 hearings, to allow all parties to have their day in court, regardless of the mode used
10 to hold the hearing.
11

12
13
14
15 Regardless of the reason a party may not be present when a case is initially
16 called, a party who is late to court should not be penalized unjustly and
17 substantially by a default judgment, especially when it may result in eviction and
18 the loss of one’s home, and particularly if the court is still moving through the
19 calendar and the landlord or landlord’s attorney is still in the courtroom.
20

21
22 A default judgment, or a judgment of any kind in an eviction action, can be
23 devastating to a tenant, particularly a low-income tenant. In Arizona, eviction
24

25 ⁶ See, e.g., Emily A. Vogels, *Digital Divide Persists Even as Americans with*
26 *Lower Incomes Make Gains in Tech Adoption*, Pew Research Center, June 22,
27 2021, <https://www.pewresearch.org/fact-tank/2021/06/22/digital-divide-persists-even-as-americans-with-lower-incomes-make-gains-in-tech-adoption/>.

28 ⁷ Connect Arizona, Digital Equity Community Data, <https://connect-arizona.com/digital-equity/community-data> (last visited May 10, 2023).

1 actions are expedited proceedings, so tenants are usually required to move out with
2 only a few days' notice – a writ of restitution may be issued five days after a
3 landlord obtains an eviction judgment. A.R.S. § 12-1178(C). This can be
4 extremely difficult for a low-income tenant, especially given the reported shortage
5 of affordable housing.⁸ The inability to find replacement housing on short notice
6 can, in turn, lead to other consequences for evicted tenants, such as the disruption
7 of children's education, interruption of employment, dislocation from health care
8 providers, loss of personal belongings, and homelessness.⁹

12 In the Pulitzer-Prize-winning book *Evicted: Poverty and Profit in the*
13 *American City*, Princeton sociologist Matthew Desmond documents the negative
14 effects of eviction and explains how evictions help perpetuate the cycle of
15 generational poverty.¹⁰

17 In addition to being displaced from their home, a tenant with an eviction
18 order may also have to pay a monetary judgment, creating economic instability and
19 financial insecurity for the tenant. Further, when tenants are evicted, the judgment
20 against them appears on their records, raising a “red flag” whenever they apply for
21

23
24 ⁸ National Low Income Housing Coalition, *Housing Needs By State: Arizona*,
<https://nlihc.org/housing-needs-by-state/arizona> (last visited Jan. 9. 2024).

25 ⁹ See, e.g., National Law Center on Homelessness & Poverty, *Protect*
26 *Tenants, Prevent Homelessness* at 15-18 (Mar. 2018), [https://homelesslaw.org/wp-](https://homelesslaw.org/wp-content/uploads/2018/10/ProtectTenants2018.pdf)
27 [content/uploads/2018/10/ProtectTenants2018.pdf](https://homelesslaw.org/wp-content/uploads/2018/10/ProtectTenants2018.pdf).

28 ¹⁰ Matthew Desmond, *Evicted: Poverty and Profit in the American City*,
Broadway Books (2015).

1 housing in the future. Thus, the consequences of a judgment in evictions cases are
2 far-reaching.

3
4 The proposed temporary rule amendment would allow the Courts to collect
5 data on this safekeeping measure to help ensure that everyone, including
6 unrepresented tenants, has their day in court. While in practice, the proposed
7 temporary rule amendment would also prevent unnecessary and potentially
8 devastating dismissals and default judgments in eviction actions, in which
9 constitutionally-protected property interests are universally at stake for both
10 plaintiffs and defendants.
11

12 **V. Conclusion**

13
14 We request that the Court approve this Petition and implement the Petition's
15 recommendation temporarily requiring courts to recall cases at the end of their
16 calendar, or after the specific one-hour time period for longer calendar calls, if the
17 plaintiff or defendant does not appear or answer as present after an initial calling of
18 the case on the calendar. Having this temporary rule in place as a pilot project will
19 provide valuable information regarding the effect of the temporary rule in judicial
20 efficiency and access to justice for all Arizonans. For the above reasons, we
21 respectfully request that the Court approve this Petition to amend Rule 11(b)(1) of
22 the Rules of Procedure for Eviction Actions for one year and then evaluate the
23 proposal for a permanent amendment.
24
25
26
27
28

1 Respectfully submitted this 10th day of January 2024.

2 COMMUNITY LEGAL SERVICES

3 DNA PEOPLE'S LEGAL SERVICES

4 SOUTHERN ARIZONA LEGAL AID

5 WILLIAM E. MORRIS INSTITUTE FOR
6 JUSTICE

7 By /s/ Andrew P. Schaffer

8 Andrew P. Schaffer

9 Brenda Muñoz Furnish

10 Michelle J. Simpson

3707 North Seventh Street, Suite 300

11 Phoenix, Arizona 85014-5095

12 /s/ Pamela Bridge

13 Pamela Bridge

14 COMMUNITY LEGAL SERVICES

15 /s/ Charles W. Doughty

16 Charles W. Doughty

17 DNA PEOPLE'S LEGAL SERVICES

18 /s/ Alan R. Solot

19 Alan R. Solot

20 SOUTHERN ARIZONA LEGAL AID

21 Original electronically filed with the
22 Clerk of the Supreme Court of Arizona
23 this 10th day of January 2024.

24 By: /s/ Andrew P. Schaffer