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14264 West Tierra Buena Lane
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IN THE SUPREME COURT OF THE STATE OF ARIZONA

In the Matter of:	)	Supreme Court
	)	No. R-24-0024
PETITION TO AMEND	)	
RULE 5(d)	)	Comment from Maricopa County
of the RULES OF PROCEDURE	)	Justice Court Bench
FOR EVICTION ACTIONS	)	

BACKGROUND

The Professional Standards and Policy Committee of the Justice of the Peace Bench in Maricopa County initially considered this comment. The Bench then voted unanimously to endorse it at a previously scheduled bench meeting on February 14, 2024.

We recommend the rejection of the proposed amendment in its current form. We also believe Petitioners have referenced materials that unfairly and inaccurately criticize Justice Courts.¹

¹ As has been done in previous rule change petitions, the Petitioners again reference narratives they prepared that are very critical of our bench. This year, they did so in each of their petitions, R-24-0022, R-24-0023, and R-24-0024. The prior concerns, from 2005, had some validity and resulted in the adoption of the Arizona Rules of Procedure for Eviction Actions. However, their May 2020 commentary, *What's Justice Got To Do With It? The Experience of Tenants in the Maricopa Justice Courts*, is, at best, misleading. See generally, Concluding Report, Supreme Court of Arizona, Task Force on Countering Disinformation, (Mar. 1, 2022).

I.

THE PETITIONERS' INTERPRETATION OF THE CARES ACT IS NOT THE ONLY INTERPRETATION.

At issue in this petition is an interpretation of 15 U.S.C § 9058(c). The Petitioners' contend it "imposes a 30-day pre-eviction notice requirement" for CARES Act covered properties (e.g. residences with housing vouchers, properties with a federally backed mortgage). The Maricopa County Justice Courts Best Practices Committee has discussed and analyzed this ongoing eviction issue. Our interpretation of the federal law is different.

The 30-day requirement laid out in the 2020 CARES Act remains in effect to this day. However, based on the text of the statute, and in order to be consistent with state law, we interpret the 30-day period to run from the date of the notice until the date a landlord can file a writ of restitution, which is when an Arizona landlord can actually obtain possession.

Our interpretation of 15 U.S.C § 9058(c) does not require a 30-day notice before a landlord can file an eviction action seeking to obtain post-judgment possession. 15 U.S.C § 9058(c) states "The lessor of a covered dwelling unit may not require the tenant to vacate the covered dwelling before the date that is 30 days after the date on which the lessor provides the tenant with a notice to vacate." In Arizona, the landlord cannot "require the tenant to vacate" until

after a writ of restitution is filed. The following table provides an example of how days are currently counted.

Documents	Calendar Date	Legal References
Landlord Serves 5-Day Notice Alleging Nonpayment of Rent	March 4, 2024	A.R.S. § 33-1368(B); RPEA 5(b)(7)
Landlord Files Eviction Action in Court	March 11, 2024	A.R.S. § 12-1175; RPEA 5
Court Enters Judgment Against Tenant	March 18, 2024	A.R.S. § 12-1178(A); RPEA 13
Writ of Restitution Date for Property Not Covered by CARES Act	March 25, 2024	A.R.S. § 12-1178(C) RPEA 14
Writ of Restitution Date for Property Covered by CARES Act	April 3, 2024	15 U.S.C § 9058(c)
Note: Under this example the landlord might not file the eviction action until after April 1, 2024. The March 4 notice would still be legally sufficient; but the landlord might request that any unpaid rent for April also be included in the judgment.		

II.

A COURT RULE CHANGE PETITION IS NOT THE PROPER MECHANISM TO RESOLVE QUESTIONS OF LAW AND PUBLIC POLICY

Whether additional procedural safeguards are needed for residential tenants facing eviction is a discussion that is worth having.² As judicial officers, we

² Press Release, Fact Sheet: Biden-Harris Administration Announces New Actions to Protect Renters and Promote Rental Affordability, Jan. 23, 2023, <https://www.whitehouse.gov/briefing-room/statements-releases/2023/01/25/fact-sheet-biden-harris-administration-announces-new-actions-to-protect-renters-and-promote-rental-affordability/>; Gerald A. Williams & Charles J. Adornetto, *Pandemic Residential Eviction Moratoriums: An Analysis of Judicial Implementation and Recommendations for the Future*, 54 Texas Tech L. Rev. 603, 643 (Summer 2022)(Authors urge caution in adopting policies to add requirements designed to make it more difficult to evict tenants because they can harm the tenant community in general. For example, landlords unable to

generally take no position on what the law should be. Those discussions are often better reserved for the other branches of government. In this case, we note only that if adopted, the Petitioner’s proposed language will create a conflict between a court rule and a state statute.

In support of their position to amend the applicable eviction court rule to replace the current five and ten day notice provisions in A.R.S. § 33-1368, the Petitioners cite *In Re Plaintiff: Arvada Village Gardens LP, v. Garate*, 529 P.3d 105 (Colo. 2023); *Sherwood Auburn, LLC v. Pinzon*, 521 P.3d 212 (Wash. Ct. App. 2022).

The central issue in *Arvada Village* was whether the notice provision in 15 U.S.C § 9058(c) had expired. The Supreme Court of Colorado concluded it had not and also held that a residential landlord in Colorado must provide a 30-day notice “before filing” a forcible detainer action.³ However, it also held the remedy was to dismiss the case (and therefore to make the landlord file a second case). In contrast, the Best Practices Committee has recommended that courts merely extend the writ date to a date 30 days from the notice. It appears the Colorado court did not consider this alternative.

collect rent from some may be forced to raise rent for all.); Joshua Kamali, *Opinion: I believe in tenants’ rights. But L.A. is pushing out small landlords like me*, Los Angeles Times, Jan. 16, 2024.

³ 529 P.3d at 108.

Sherwood Auburn also concluded the 30-day period was a prerequisite to a court action being filed. It went further and also held the “require the tenant to vacate” language in 15 U.S.C § 9058(c) was not connected to a writ of restitution.

As an aside, during the COVID-19 eviction moratoriums, both the CDC and the Justice Department issued positions concluding the CDC eviction moratorium order⁴ did not prevent a landlord from beginning a state court eviction action. On October 2, 2020, the Department of Justice filed a pleading in response to a case in a federal district court. In it, it took the following position on the CDC's order “[E]ven where a tenant is entitled to its protections, the order does not bar a landlord from commencing a state court eviction proceeding, provided that the actual eviction does not occur while the order remains in place.”⁵ The CDC subsequently issued “non-binding guidance” agreeing with the Justice Department: “The order is not intended to terminate or suspend the operations of any state or local court. Nor is it intended to prevent landlords from starting eviction proceedings, provided

⁴ *Temporary Halt in Residential Evictions to Prevent the Further Spread of COVID-19*, 85 Fed. Reg. 55,292 (Sept. 4, 2020).

⁵ Defendants Memorandum in Opposition to Plaintiffs Motion for Preliminary Injunction at 42, *Brown v. Azar*, 497 F. Supp. 3d 1270 (N. D. Ga. 2020)(No. 20-CV-3720) (citations omitted).

that the actual eviction of a covered person for nonpayment of rent does NOT take place during the period of the Order.”⁶

Finally, we must point out that Chief Justice Robert Brutinel has already rejected the interpretation suggested by the Petitioners. In multiple Administrative Orders, including 2022-14, the final AO issued regarding evictions during the pandemic, he did not require that a 30 day notice be provided before filing an eviction action. Instead, he required that the court not allow the enforcement of the writ prior to the expiration of the notice:

The order issuing a writ may be executed by the constable or sheriff no earlier than five calendar days after the date of the order or 30 days from the notice of breach if required by federal law. The order shall state the earliest date on which execution may occur.⁷

This is exactly the interpretation taken by the MCJC Best Practices Committee since the adoption of the CARES Act.

Reasonable people can disagree on the meaning of 15 U.S.C § 9058(c) and we are willing to reconsider our current interpretation.⁸ However, a

⁶ *HHS/CDC Temporary Halt in Residential Evictions to Prevent the Further Spread of COVID-19, Frequently Asked Questions*, HUD, <https://www.hud.gov/sites/dfiles/Main/documents/EvictionMoratoriaOrderFAQs.pdf> (last visited Mar. 1, 2022).

⁷ *Disposition of Residential Eviction Cases Related to the Public Health Emergency and Transition to Regular Case Processing*, Ariz. Supreme Ct. Admin. Order 2022-14, 2 (Jan. 19, 2022).

⁸ On January 25, 2024, a Superior Court Judge in Pima County, who is designated to hear lower court appeals, reached a different conclusion than the authors of this comment. The

discussion on a proposed amendment to a state court rule is not the proper forum to resolve questions of federal statutory interpretation.

CONCLUSION

We respectfully request that the proposed amendment to Rule 5(d) of the Rules of Procedure for Eviction Actions be rejected.

RESPECTFULLY SUBMITTED, this 16th day of February 2024.

/s/ Anna Huberman
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judge held 15 U.S.C § 9058(c) preempted A.R.S. § 33-1368(B) for CARES Act covered properties, and in doing so, effectively re-wrote the notice provisions of Arizona landlord tenant law. *Gina Scroggins v. 45th Street Senior Apartments, LLC*, C20235625 (Ariz. Superior Ct., Pima. County, Jan. 25, 2024).