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IN THE SUPREME COURT OF THE STATE OF ARIZONA

In the Matter of:	)	Supreme Court
	)	No. R-24-0022
PETITION TO AMEND	)	
RULE 11(b)(1)	)	
of the RULES OF PROCEDURE	)	
FOR EVICTION ACTIONS	)	

BACKGROUND

This comment is filed on behalf of the Justice of the Peace Bench in Maricopa County. It is substantially similar our response to a petition filed last year by the Petitioners, R-22-0027, because the Petitioners have proposed the same previously rejected bad ideas; but this time as a pilot program. These comments were presented at a bench meeting on March 13, 2024, and were then endorsed by a unanimous vote of our bench.

This highly problematic rule change would impact every residential action filed in the state. It is an attempt to address the comparatively rare situation of a tenant being defaulted either due to a problem interacting with court technology or due to not having reliable transportation. When such a situation occurs, a tenant already has an existing legal remedy because a tenant can file a motion to set aside a default judgment.

We again recommend the rejection of the proposed amendment and any alternative suggestion. In addition, we believe Petitioners have referenced materials that unfairly and inaccurately criticize Justice Courts as being indifferent to the due process rights of tenants and as being essentially rubber stamps for requests from landlords.¹

I.

THE RECOMMENDED CHANGE TO RPEA 11 IS CONTRARY TO JUDICIAL ECONOMY, WILL FORCE INEFFICIENCY, WILL MAKE COURT START TIMES IRRELEVANT, AND WILL MANDATE CHAOS.

The proposed amendment would command a case processing nightmare at least two days each week for Justice Courts in Maricopa County. If adopted, it would require judges to call every case twice: once when scheduled and then again after “one-hour” has passed.

Many, but not all, Justice Courts in Maricopa County schedule their eviction calendars in clusters by landlord attorney. A somewhat typical eviction calendar could have 15 cases filed by ABC law firm set for 1:00 p.m.,

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).

20 cases filed by DEF law firm set for 2:00 p.m., and 25 cases filed by GHI law firm set for 3:00 p.m. The information provided by the court, and served on the tenants, instructs the parties to call-in for their remote proceeding 15 minutes prior to the time it is scheduled. On the computer screen, the judge can see how many people have signed into the system, and, perhaps after some announcements, will begin calling each case individually.

This typical afternoon moves forward. Of the 15 1:00 p.m. cases, four are dismissed after a verbal motion from the landlord. One alleges something other than only nonpayment of rent. The tenant disputes those alleged facts and the case must be set for a trial. Five tenants failed to appear and five involve tenants who admitted they have not paid their rent. None of those tenants dispute any of the amounts their landlord claims are due.

For the five tenants that did appear, the judge explains their remaining options, including possibly obtaining rental assistance; but also explains the writ of restitution process and the date the tenant may actually be required to move.² (Some judges do this using some type of group rights advisement.) The 1:00 p.m. cases are done at 1:30 p.m. The only people listed as being present on the computer screen in the courtroom are the judge, a landlord

² Every eviction judgment has two parts, an award of money and an award of possession. Most landlords, who are represented by counsel, have standard written post-judgment payment plans that allow the tenant to maintain possession.

attorney, and a court clerk. So what happens at this point if the proposed rule is adopted?

The 2:00 p.m. cases cannot begin at 2:00 p.m. because the judge must now call the five potential default cases that had been scheduled for 1:00 p.m., a second time. The first landlord attorney cannot represent his or her clients in another court at 2:00 p.m. because the 1:00 p.m. cases are being called a second time -- an hour after they were scheduled. The cases scheduled for 2:00 p.m. cannot begin on time and will now likely run into the 3:00 p.m. cases, which might now actually start between 3:30 p.m. and 3:45 p.m., after any potential defaults from cases set for 2:00 p.m. are called yet again at 3:00 p.m.

As the above example demonstrates, the Petitioners' claim that their proposal to require judges to call defaults twice will add only "a matter of minutes to a court's calendar"³ is objectively in conflict with reality. In addition, in January 2024, a total of 8,025 residential eviction cases were filed in Justice Courts in Maricopa County.⁴ If only 25% of those cases were

³ Petition to Amend Rule 11(b)(1), Arizona Rules of Procedure for Eviction Actions, 4 (Jan. 10, 2024).

⁴ This data is from Scott Davis. He is the Communication and Public Information Officer for the Justice Courts in Maricopa County.

required to have been called twice, foreseeable bottlenecks would have been impossible to prevent. The Petitioners next argument at least acknowledges that tenants who miss their court date already have an existing remedy.

Petitioners falsely claim that calling every default twice will actually save judicial resources because doing so will prevent courts of needing “to schedule and hear any post-judgment motions from a party initially found in default in eviction litigation.”⁵ No facts are offered in support of this claim, perhaps because most Justices of the Peace in Maricopa County can count on one hand the number of motions to set aside/vacate an eviction default they receive each month. In addition, the Petitioner’s plan would waste judicial resources because under a pilot project, judges would also be required to collect data to document a case management system that will be a self-evident failure.

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⁵ Id.

II.

REMOTE APPEARANCES FOR EVICTION ACTIONS HAVE SIGNIFICANTLY HELPED SELF-REPRESENTED TENANTS AND HAVE INCREASED ACCESS TO JUSTICE

Last year, the Petitioners criticized remote proceedings. While they did not do so this year, it is worth noting how allowing tenants to appear remotely has significantly increased access to justice.

Courts in Arizona conduct remote hearings in eviction actions in large part because doing so is required by statute,⁶ by court rule,⁷ and by administrative order.⁸ While many self-represented litigants undoubtedly have either limited or no access to technology, internet access is not a prerequisite for a tenant to appear remotely for their residential eviction case. Only access to a telephone is required. More importantly, our remote appearance programs have been a remarkable success story.

One data-based example is the appearance rates in eviction actions filed in the Maricopa County Justice Courts. Before the pandemic, in more than one-third

⁶ A.R.S. § 22-206(A)

⁷ RPEA 6(a)(4).

⁸ In the Matter of: Adoption and Implementation of Plan B Workgroup Recommendations as Presumptive Standards for Remote and In-Person Hearings, Ariz. S.Ct. Admin. Order 2022-88 (Aug. 3, 2022); In The Matter of the Adoption and Implementation of Presumptive Standards for Remote and In-Person Hearings for Justice Courts in Maricopa County, Maricopa County Admin. Order 2022-119 (Sep. 20, 2022).

of evictions actions, the defendant failed to appear. In 2019, for example, the failure-to-appear rate in such cases ranged from one-third to approaching 40%. After implementing remote appearance options, failure-to-appear rates decreased significantly, to as low as approximately 13% in February 2021.⁹

This trend has continued. By way of background, residential eviction filings typically drop considerably from January to February. In 2023, landlords filed 7,031 residential eviction cases in Justice Courts in Maricopa County.¹⁰ In February, there were 5,820 eviction actions; but the February data revealed two noteworthy points. First, February 2023 had more eviction cases filed than any other February in our history. Second, facilitating remote appearances continues to result in more tenants attending their court hearings. In February, only 24.4% of tenants failed to appear for their court date. In other words, three out of four tenants appeared for their eviction case. A belief that remote appearances have been a highly favorable change for tenants is usually undisputed. We are aware that some tenants may lack the technology or have other issues with technology; but they are still free to appear in person or by telephone.

⁹ Hon. Samuel A. Thumma, et. al., *Post-Pandemic Recommendations: COVID-19 Continuity of Court Operations During a Public Health Emergency Workgroup*, 75 SMU L. Rev 1, 18-19 (Jan 2022). The quote is from the report of the Plan B Workgroup. Manistee Justice of the Peace (Maricopa County) Donald Watts served on that workgroup.

¹⁰ All of the data in this paragraph is from Scott Davis. He is the Communication and Public Information Officer for the Justice Courts in Maricopa County.

III.

COURTS SHOULD ENCOURAGE, NOT DISCOURAGE, PUNCTUALITY FROM LITIGANTS; BUT LITIGANTS WHO MISS THEIR COURT DATE HAVE AN EXISTING REMEDY

Although most justice courts attempt to accommodate people who appear on the wrong day at the wrong time in a variety of contexts, appearing on the correct day at the correct time should be encouraged, perhaps especially given that litigants are now allowed to appear by phone. Even so, litigants who failed to appear, through no fault of their own, still have options.

The rules governing residential evictions in Arizona contain the well-established reasons someone can file a motion to set aside a judgment.¹¹ Court employees are available to provide a self-represented tenant a form free of charge for this very purpose.

IV.

COURT RULES SHOULD BE NEUTRAL AND SHOULD NOT FAVOR ONE GROUP OF LITIGANTS OVER ANOTHER

Judges are mandated to be neutral and to exercise judicial functions with impartiality. If one side is specifically authorized to appear late, then the other side must be permitted to do so as well. Allowing every landlord and every

¹¹ These include mistake, inadvertence, or excusable neglect. RPEA 15(a).

tenant in Arizona to appear within an hour of their court ordered time is, at best, impractical.

Oddly enough, this also would require that a tenant, whose case would otherwise be dismissed and sealed, to have to remain in either the courtroom or on hold for up to hour to wait and see if the landlord does appear—all for the strangely specific reason of an alleged problem with technology. In addition, Justice Courts are very familiar with people representing themselves in courtrooms.

Since 2015, our bench has had a detailed Best Practice on Ensuring Access to Justice for Self-Represented Litigants in Civil Cases.¹² Judges in Justice Courts routinely explain court procedures to self-represented litigants as well as what will likely happen next in the case. Our judges aspire to make decisions based on the merits of a case, and not due to a default, whenever possible. We do not excuse a landlord attorney if there are still unidentified phone numbers listed in Microsoft Teams of if a potential tenant is present in the courtroom.

¹² This Best Practice received the Chief Justice’s 2015 Strategic Agenda Award for Enhancing Professionalism Within Arizona’s Courts. Our bench also has the following relevant written Best Practices: Conducting Eviction Initial Appearances and Trials, Eviction Complaints That Do Not Substantially Comply Eviction Rules, Landlord Attorneys Hearing Eviction Cases As Pro Tem Judges, and Lease Break Fees (As An Unenforceable Penalty).

In addition, alternative suggestions, such as automatically setting aside a default for a late-arriving tenant, obviously shows favoritism for one party. If the same leniency were to be mandated for late-arriving landlords, the rule would seemingly require the extremely awkward situation of a court reinstating a dismissed case, even though the judge had informed the tenant that the case was dismissed and the case file would be sealed.¹³ In light of the above-discussed alternatives, it is clear that the proposed rule, and any alternatives, are as unworkable as they are unnecessary.

V.

REMEDIES IN SEARCH OF A PROBLEM

This proposed rule court is based on the myth that numerous tenants in residential eviction actions, in spite of the ability to appear by phone, are receiving default judgments merely because they are appearing late. In response to this unsupported assertion, justice courts would be required to disrupt the lives of everyone who does appear. This suggestion was bad public policy last year. It remains bad public policy this year.

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¹³ Arizona courts are required to seal residential eviction actions that have been dismissed. A.R.S. § 33-1379; RPEA 20.

CONCLUSION

We respectfully request that the proposed amendment to Rule 11(b)(1) of the Rules of Procedure for Eviction Actions, and any alternative suggestion mandating that default judgments be automatically set aside, be rejected. It remains a request for a decree to require court congestion. No court rule, in any context, requires a judge to give a one-hour grace period to appear for a scheduled court date, especially when telephonic appearances are allowed.

RESPECTFULLY SUBMITTED, this 14th day of March 2024.

/s/ Anna Huberman
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