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IN THE ARIZONA SUPREME COURT
STATE OF ARIZONA

IN THE MATTER OF:	)	Supreme Court No. R-24-0022
	)	
Petition to Amend Rule 11(b)(1)	)	Comments on Petition to Amend
Arizona Rules of Procedure for	)	the Proposed Rule 11(b)(1)
Eviction Actions	)	

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 March 14, 2024.

Petitioners’ current petition is virtually identical to the petition they filed and had rejected in 2023. Once again, they have asked the court to establish a pilot program under which judges are required to recall cases when a defendant fails to timely appear for an eviction hearing. In seeking this pilot program Petitioners hypothesize numerous explanations for a defendant’s failure to appear in a timely manner, such as lack of a babysitter, parking issues, inability to find a courtroom, car trouble, delayed public transportation, and an inability to get

1 time off from work.

2 The Arizona legislature addressed this concern in 2023 when it required courts
3 to permit parties to appear at initial hearings either virtually or in person. Since then the
4 number of defendants who have appeared virtually has skyrocketed, with current statistics
5 showing that only a very
6 small number of defendants fail to exercise their right to be present using any of the three (3)
7 methods authorized by the Court. There is no evidence that any significant number of
8 defendants are being delayed at security, unable to find parking spaces, or get lost trying to
9 find the court or a courtroom.
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11 Petitioners point to no data or other evidence suggesting that most defendants' failures
12 to timely appear are related to anything other than an occasional defendant's dilatory response
13 to the summons. They provide no data supporting their contention that defendants who do not
14 appear at the date and time required miss their court dates due to issues outside of their own
15 control.
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17 In the isolated situations when tenants for good cause are unable to appear at the date
18 and time of the hearing by any of the means authorized by the court, each of those defendants
19 still has the ability to file a motion under Rule 15, RPEA, asking the court to set aside an
20 unfavorable judgment and re-set the hearing due to excusable neglect. If Petitioners'
21 description of the need for the pilot program they propose reflects a real problem, it would be
22 reasonable to believe that between all four organizational petitioners, they could identify even
23 one or two defendants whose due process rights were actually (and not hypothetically) violated
24 due to the court's unwillingness to allow them to contest an eviction complaint. In fact they
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1 identify no such person.

2 Contrary to Legal Services' and MIJ's contention, very few defendants these days
3 lack the ability to participate in a virtual eviction hearing. Although there are certainly people
4 who do not have personal access to a computer, there are very few who lack any access to a
5 cell phone. The most recent statistics show that ninety-six percent (96%) of US adults
6 between the ages of 18 and 29 and ninety-five percent (95%) of those between 30 and 49
7 own smartphones. Although this number decreases as people get older, they still reflect that
8 eighty-three percent (83%) of US adults between 50 and 64 years of age own smartphones,
9 and this figure decreases to just sixty-one percent (61%) for those aged 65 and older¹.
10 Because of the widespread availability of and access to cellular phones, even those
11 defendants who don't have their own phones are almost always able to borrow
12 phones from friends, neighbors, and relatives for use at an eviction hearing.
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15 Contrary to Petitioner's argument, it is also highly unlikely that post-hearing
16 motions will impose a greater burden on the court than the resolution that Petitioners'
17 propose. Currently courts are permitted to schedule no more than twenty-five (25) eviction
18 cases per hour. If a defendant becomes argumentative during his/her hearing and takes up
19 more than his/her allotted 2.4 minutes, that already means that other parties have less time to
20 present their cases. If this happens for multiple defendants, or if one defendant is
21 argumentative for *e.g.* twenty (20) minutes – not an unusual situation - the court is already
22 running considerably late.
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¹ <https://www.oberlo.com/statistics/how-many-americans-havesmartphones>

1 Since most courts schedule other matters around the eviction docket, this means that
2 the court's other obligations are also delayed. In these situations it is more efficient for a
3 judge to simply re-set the missed hearing for a different date on his/her eviction calendar
4 than to delay the current calendar to give the absent defendants a second chance to appear.
5 Adding the additional burden on the court to then recall cases also imposes a significant
6 hardship on attorneys representing plaintiffs in these cases. Attorneys who represent
7 clients whose tenants have missed their hearing will then be compelled to stay on the line
8 on the off-chance that they will have that case recalled at the end of the court's docket.
9 Inevitably the cost of this additional burden will be passed along to parties, including all
10 defendants, and not merely those who failure to appear at the time noticed on the summons.
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12 Instead of making the court more efficient, Petitioners' arguments in favor of
13 this petition will also result in higher costs in the form of higher attorney's fees for
14 Petitioner's own clients and those for whom they appear to be advocating, and reward those
15 tenants who could have appeared at the time ordered by the court and who – for whatever
16 reason – did not.
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18 Based on all of the above, Hull, Holliday & Holliday PLC therefore urges the Court
19 to reject Petitioner's proposed amendment to RPEA 11(b)(1).
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21 Respectfully submitted this 30th day of April 2024.

22 Hull, Holliday & Holliday PLC

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

24 /s/ Denise Holliday, 017275

25 *Commenting Party*
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