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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)	)	Comment to Petition to Amend
of the RULES OF PROCEDURE	)	Rule 11(b)(1), of the RULES OF
FOR EVICTION ACTIONS	)	PROCEDURE FOR EVICTION
	)	ACTIONS

Commenting Party, Unemployed Workers United (“UWU”) hereby respectfully submits this Comment in support of the Petition to amend Rule 11(b)(1) (“Petition”) of the Arizona Rules of Procedure for Eviction Actions (“RPEA”), filed by Community Legal Services (“CLS”), DNA People’s Legal Services (“DNA”), Southern Arizona Legal Aid (“SALA”) and the William E. Morris Institute for Justice (“MIJ”) on January 10, 2024.

The Petition would allow a grace period for parties struggling to access eviction hearings by requiring Justices to re-call any case where a party does not appear once they have finished the hour’s hearing calendar. This minor procedural safeguard aims to ensure that more parties who attend the hearings actually have the opportunity to be heard, and therefore, reduces the default judgment rate. The proposed rule addresses one component contributing to the challenge of ensuring that eviction proceedings are fair, just, and accessible. It also recognizes the endemic asymmetries in a system where one party is overwhelmingly represented by specialized attorneys with intimate knowledge of court procedure, while the other is often navigating the court system alone and for the first time.

Given the enormous costs of evictions on affected households—and on the state of Arizona—the potential benefits of such a pilot program far outweigh any minimal procedural burdens. Opponents of the rule express vehement disapproval, largely based on faulty and selective statistics and a range of excuses. Their arguments ultimately boil down to the fact that landlords’ attorneys and Justice Courts will have to spend a few more minutes at each hearing to ensure all present parties can be heard. It is disappointing that these opponents prioritize a minor inconvenience over the due process rights of litigants navigating the difficult and often life-changing prospect of an eviction.

I. STATEMENT OF INTEREST

This comment is made on behalf of Unemployed Workers United (“UWU”), a project of Working Families Power. UWU advocates for the rights of poor and working-class people, with a focus on the wellbeing of immigrants and people of color. UWU’s work in Arizona has included bringing litigation to challenge former Arizona Governor Doug Ducey’s premature termination of federal pandemic unemployment compensation and advocating for (and securing the adoption of) laws banning rental discrimination based on housing vouchers or other sources of income. The process of listening to and working with Arizonans throughout these campaigns led UWU to an even deeper understanding of the challenges and difficulties facing poor and working-class renters in Arizona.

Over the past several years, our members have identified rising housing costs as the most significant threat to their families’ stability and security. In response, UWU began offering recurring virtual know-your-rights training for tenants, accompanied one of our members through the eviction process, and undertook a series of court-watch sessions—observing eviction hearings in a number of Maricopa County Justice Courts, both in person and virtually.

II. ARIZONA’S EVICTION CRISIS

UWU members’ experiences reflect a larger housing crisis across Arizona and, in particular, in Maricopa County.¹ From 2019 to 2023, apartment rent went up 38% in the Phoenix area.² The number of evictions filed in Maricopa County in the past year was 33% higher than the pre-COVID annual average.³ These numbers cannot be explained away by population growth—Maricopa’s 5.2% eviction rate in 2023 is the highest in the last decade.⁴ These rates continue to increase in 2024. While communities across the country are grappling with widespread housing insecurity, Arizona stands out. The state has one of the highest housing loss rates in the country, and Maricopa County leads the nation in evictions with rates nearly twice the national average.⁵

Evictions have negative health impacts and create significant compounding costs ultimately borne by the public. This includes costs related to, amongst other programs, shelter, education, health care, mental health services, and youth social services.⁶ A University of Arizona Cost of Eviction Calculator estimates that evictions cost the state over \$900,000 a year, or over \$9,000 per household evicted.⁷

¹ The Comment submitted by the Manufactured Housing Communities of Arizona only cites statistics from 2021 and 2022, before the post-COVID eviction spike was apparent. Manufactured Housing Communities of Arizona, Comment on Petition to Amend Rule 11(b)(1), Supreme Court No. R-24-0022 (“MHCA Comment”) at 5-6.

² Housing Update, Maricopa Association of Governments (June 2023), <https://azmag.gov/Programs/Maps-and-Data/Land-Use-and-Housing/Housing-Data-Explorer>.

³ Phoenix, Arizona, Eviction Lab (last accessed Apr. 2024), <https://evictionlab.org/eviction-tracking/phoenix-az>.

⁴ Maricopa County: Eviction Dashboard, Arizona State University ((last accessed Apr. 2024)), <https://resilience.asu.edu/evictions-dashboard>.

⁵ *Id.*

⁶ Eviction Prevention: Reducing Harm To Households and Society, Wisconsin Institute for Research on Policy (Feb. 2023), <https://www.irp.wisc.edu/resource/eviction-prevention-reducing-harm-to-households-and-society>.

⁷ The Cost of Eviction Calculator, Innovation for Justice (last accessed Apr. 2024), <https://uarizona.neotalogic.com/a/costofevictioncalculator>. This is based on national averages—given the high cost of healthcare in Arizona, the true cost to the state is likely higher.

III. UWU SUPPORTS THE PROPOSED RULE AMENDMENT

UWU strongly supports the Petition to amend Rule 11(b) of the RPEA to implement a one-year pilot program requiring Justice Courts to re-call eviction actions if either the landlord or the tenant does not answer the initial case call on the calendar.

A. Even with a Remote Court Option, Default Judgments Remain a Significant Issue

The RPEA should ensure that as many parties as possible are able to attend court proceedings. The proposed amended rule addresses one barrier to access—challenges navigating the court either in person or remotely. There are a plethora of reasons why a landlord or tenant may miss a Justice calling their case, even though they are trying to appear or even are present. Eviction proceedings are rapidly moving proceedings, with most parties appearing remotely, either virtually over either Microsoft Teams, or by telephonic participation. The technology can be faulty and confusing to connect to and navigate. We have observed at least one Justice Court that did not provide a virtual video participation option, but rather only a telephonic option. This makes it even more difficult for the remote parties to understand what is happening and follow the proceedings. Legal observers have witnessed more than one case where parties had trouble muting or unmuting. In addition, parties often experience connection issues. This is not isolated to tenants. In fact, justices may speak far from the microphone and be hard to hear or understand. At other times, justices may mispronounce names so that a party attending the proceeding are unaware they have been called at all. When a case is called and a default judgment is signed within a couple of minutes (or less), there is very little grace for simple mistakes.

Opponents of the Petition—including the Maricopa County Justice Bench (the “Maricopa Justices”) and the Manufactured Housing Communities of Arizona (“MHCA”) spend significant

space defending a remote proceeding option.⁸ UWU agrees that the remote option is a good policy that has facilitated increased access to eviction proceedings. But there is still a long way to go. In 2022 in Maricopa County, 28,698 evictions were granted, and 13,640 default judgments were signed.⁹ That means that in about 1 in 3 cases where an eviction judgment was signed, a tenant did not appear. Regardless of whether this is less than previously, the number remains far higher than it should be.

B. The Proposed Rule Change Strengthens Due Process Protections and Ameliorates Existing Disparities in Treatment

Piloting a proposed strategy to address continuing high default judgment rates will contribute to basic principles of fairness that require judicial personnel to ensure all parties, including pro se litigants, have access to the courts.

A constitutional right to due process necessitates procedural safeguards for pro se litigants. *Turner v. Rogers*, 564 U.S. 431 (2011). State rules recognize that procedures must protect the rights of litigants to access the court, even if these procedural burdens add time. For example, Rule 11(b) of the RPEA directs judges to summarize allegations, inquire whether defendants have defenses, and “determine whether there is a basis for a legal defense to the complaint either by reviewing a written answer . . . or by questioning the defendant in open court.” Likewise, Rule 2.6, Note 1 of the Code of Judicial Conduct directs judges to ensure the right to be heard: “The right to be heard is an essential component of a fair and impartial system of justice. Substantive rights of litigants can be protected only if procedures protecting the right to be heard are observed.”

⁸ MHCA Comment, *supra* note 1, at 6-9; Justice of the Peace Bench in Maricopa County, Comment on Petition to Amend Rule 11(b)(1), Supreme Court No. R-24-0022 (“Maricopa Justices Comment”), at 6-7.

⁹ Justice Court Evictions, Arizona Courts (last accessed Apr. 2024), <https://www.azcourts.gov/statistics/Interactive-Data-Dashboards/Justice-Court-Evictions>.

Despite these obligations, Justice Courts often make far more accommodations for landlords’ attorneys than for tenants in the name of “professional courtesy.” For example, Justice Courts may be willing to continue or skip and return to cases if attorneys are not prepared or still tracking down a file.¹⁰ It is only fair that pro se parties are given the same opportunities.

A re-call process—which, despite the Maricopa Justices’ contention,¹¹ applies neutrally to both plaintiffs and defendants who fail to appear at the initial call—contributes to the courts’ due process obligations and will address existing disparities in treatment.

C. The Potential Benefits of the Proposed Rule Change Outweigh the Costs

Ultimately, the potential benefits of the Petition far outweigh the costs. Courts should take their time and have significant procedural protections in place before signing an order removing someone from their home. This policy would ensure that more cases are determined on the merits, rather than turning on a party’s ability to navigate technology. It would allow pro se parties better access to court procedure and reduce erroneous rulings.

1. The Proposed Rule Would Not Significantly Impact the Hearing Calendar

Despite MHCA and the Maricopa Justices’ contention, the costs of this procedure are minimal. Both parties seem to willfully misread the proposal to require a Justice to re-call names and sign default judgments at the top of the hour subsequent to that to which they were scheduled. But the proposed rule states: “Each case shall be scheduled to be heard on a specific

¹⁰ See, e.g., *What’s Justice Got to Do With It?*, William E. Morris Institute for Justice (May 2020) at 22, 24, <https://morrisinstituteforjustice.org/helpful-information/landlord-and-tenant/47-institute-maricopa-county-justice-courts-eviction-report-5-21-2020/file> (“Despite these rules, we observed justice courts regularly grant continuances solely because the landlord attorney was unprepared. In fact, we observed courts grant continuances even when a landlord requested an immediate eviction based on a material and irreparable breach of the lease because the landlord attorney had not brought the necessary witnesses to court. . . . When the landlord attorney appears at the hearing prepared to present their case and the tenant is not prepared, the tenant’s request for a continuance may not be granted. Yet, the justices routinely grant requests for continuances by unprepared landlord attorneys.”).

¹¹ Maricopa Justices Comment, *supra* note 8, at 8-9.

date and during a specific one-hour time period...The court shall promptly recall such cases either after the specific one-hour time period has passed or at the end of the calendar, whichever happens first.”¹² This merely requires a Justice to read the list of names *once they have finished the cases calendared for that hour*. Taking the Maricopa Justices’ example,¹³ where cases take 30 minutes a Justice would merely recall the names scheduled for a 1:00 hearing at 1:30, not at 2:00 as the Maricopa Justices suggest. This allows plenty of time to re-call and sign default judgments—or to hear a case if a previously absent party has appeared.

Meanwhile, MHCA bemoans the risk that eviction dockets might run over because of the extra few minutes of re-calling names.¹⁴ But default judgments are by their nature far faster than a judgment where a tenant appears to defend their rights. *If the system only works based on an assumption that a large portion of tenants are not showing up at all, then the schedule is inadequate.*

Ultimately, it seems that the opponents are most concerned that the proposed rule would serve as a slight inconvenience to attorneys and Justices, who may have to stay on the line a few extra minutes. In particular, MHCA decries the “unnecessary delay” such a change would pose to attorneys who would now have to stay through the entire proceeding, rather than just part of the hour.¹⁵ This inconvenience pales in comparison to the significance of these proceedings for the parties, including tenants facing the prospect of eviction from their homes.

2. The Cost of a Wrongfully-Signed Judgment is Significant

MHCA and the Maricopa Justices maintain that an alternative procedure exists for a default judgment signed in error—a Motion to Set Aside Judgment. Even with instructions,

¹² Petition to Amend Rule 11(b)(1), Supreme Court No. R-24-0022, at 5-6.

¹³ Maricopa Justices Comment, *supra* note 8, at 2-6.

¹⁴ MHCA Comment, *supra* note 1, at 10-11.

¹⁵ *Id.* at 11.

UWU questions how many tenants would know how to file such a motion, or whether those who do manage would be successful in their claims.¹⁶ Few statistics exist, but the low number of these Motions filed suggests that a Motion to Set Aside Judgment is not an especially viable option for tenants struggling with navigating the eviction process already.¹⁷

In the best case scenario where a tenant is able to file such a motion, far more time and money would be wasted on the costs of reopening a case and returning to court than would be spent had the court simply recalled the case as the proposed rule change provides. In the more likely scenario, the tenant and Arizona will bear the enormous personal and social costs of the eviction—including, for the tenant, the monetary judgment and challenges finding new housing, and, for the public at large, the social costs of homelessness, foster care, health care, and much more. This will cost the public over \$9,000 per household.¹⁸ Preventing even a few individuals from wrongful evictions would have enormous cost-saving implications for the state.

Given these considerations, UWU strongly encourages the Court to approve the proposed pilot program. This is a minor and common-sense procedure that would benefit all parties.

IV. CONCLUSION

UWU respectfully requests the Petition amendment to Rule 11(b)(1) be accepted. This is a common-sense reform to an issue that is important to the health, safety, and well-being of tens of thousands of Arizona community members.

RESPECTFULLY SUBMITTED, this 1st of May, 2024

UNEMPLOYED WORKERS UNITED

By: /s/ Keally L. Cieslik
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¹⁶ *Id.* at 12-14; Maricopa Justices Comment, *supra* note 8, at 5.

¹⁷ The opposing comments contradict each other on the availability and use of such a Motion. MHCA maintains they are widely granted while the Maricopa Justices state they are rarely filed. *Id.*

¹⁸ The Cost of Eviction Calculator, *supra* note 7.