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**IN THE SUPREME COURT
STATE OF ARIZONA**

In the Matter of:

Petition to Amend Rule 11(b)(1),
Rules of Procedure for Eviction
Actions

Arizona Supreme Court No. R-24-0022

**Comment to Petition to Amend Rule 11(b)(1),
Rules of Procedure for Eviction Actions**

Pursuant to Rule 28(e) of the Rules of the Supreme Court of Arizona, Disability Rights Arizona (DRAZ), formerly the Arizona Center for Disability Law, respectfully submits this comment in support of Petition R-24-0022, filed by Petitioners the William E. Morris Institute for Justice, Community Legal Services, DNA People's Legal Services, and Southern Arizona Legal Aid (Petitioners), which would create a provisional change to Rule 11(b)(1) of the Rules of Procedure for Eviction Actions by requiring an eviction court to call an eviction case a second time during the court's hourly docket or calendar before issuing a default judgment (the Petition).

DRAZ is a statewide non-profit law firm that provides no-cost advice and representation to people with disabilities. DRAZ is also the designated Protection & Advocacy agency for individuals with disabilities in Arizona. DRAZ regularly provides legal information, advice, and representation to tenants with disabilities who have faced or are facing discriminatory evictions. DRAZ has expertise in the multitude of disability-related barriers that may delay individuals with disabilities' appearance at an eviction hearing.

DRAZ supports the proposed rule change to require that eviction cases which would result in a default judgment be called a second time before a default judgment is entered. The proposal, which would enact a provisional rule change and a one-year pilot program, is eminently reasonable. Arizonans are presently evicted because they are late to the courthouse or remote hearing, have connectivity issues, or experience an error or lack of accessibility with the video-conferencing software. Individuals with disabilities face a multitude of barriers which may delay their appearance at their eviction hearing and may suffer devastating consequences due to a default judgment of eviction.

I. Individuals with disabilities face a multitude of barriers that may delay appearance at their eviction hearing.

There is a long history of discrimination against people with disabilities in accessing programs, services, and buildings operated by state courts.¹ Although Title II of the ADA requires state courts to provide reasonable modifications in their programs and activities as well as auxiliary aids and services to allow people with disabilities an equal opportunity to participate, individuals with disabilities continue to face obstacles and barriers to equal access to court proceedings.

Numerous barriers may cause a tenant with a disability to be late to their eviction hearing. Many clients have informed DRAZ that they have experienced delayed or inconsistent service with the paratransit services that some individuals with disabilities rely on to access public transportation. People with disabilities may also face obstacles physically accessing courthouses, including delays attempting to pass through security while using a wheelchair, walker, cane, oxygen machine, or other disability-related assistive devices.

While the widespread availability of video and telephonic options to appear at an eviction hearing is a salutary development that should remain available alongside the in-person option, the availability of remote hearings is not a panacea. Conferencing software used by the courts may not be fully compatible with assistive

¹ See *Tennessee v. Lane*, 541 U.S. 509, 524-29 (2004) (discussing pervasive exclusion of individuals with disabilities from courthouses and court proceedings and concluding that Congress validly exercised its remedial lawmaking authority under the Fourteenth Amendment in applying Title II of the Americans with Disabilities Act (ADA) to state courts).

technology used by individuals who are blind or have low-vision, or who are Deaf or hard of hearing. Individuals with intellectual, cognitive, or other disabilities may be unable to access the required software. Many individuals who do not speak slowly, calmly, and clearly because of their disabilities find it difficult or impossible to communicate effectively using video-conferencing software.

Often, when a tenant with a disability faces eviction, the precipitating factor is either a deterioration in their disability-related medical conditions or a major interruption in the support systems that previously allowed that individual to live independently in the community. Many tenants with disabilities facing eviction for nonpayment of rent have lost work because of a deterioration in their health, a hospitalization, or an unexpected interruption in their disability benefits. Tenants facing eviction for other types of lease violation may have been unable to keep up with landscaping or other lease obligations due to an interruption in caregiving, either because of the death of absence of family member or a lapse in access to government-subsidized caregiving services. In most cases, a tenant with a disability facing an eviction is already facing extraordinarily challenging circumstances that precipitated the eviction.

Upon being sued for eviction, many tenants then do everything possible to avoid the loss of their home. This could include trying desperately to raise money by selling or pawning belongings, picking up extra shifts or gigs, seeking usurious

payday and vehicle title loans, and spending hours calling social services agencies, nonprofits, churches, and rental assistance agencies. Tenants may be endeavoring unsuccessfully to find an attorney, and may be occupied filing papers *pro per*, collecting evidence for court, and trying to work some arrangement out with their landlord. Many tenants are simultaneously preparing for the worst by packing up and trying to arrange a safe place for their children, service animal, emotional support animal, or pets. They may be preoccupied with getting an old car running so that they need not risk abandoning their only potential alternative place to sleep. They may be calling a long list of emergency shelters trying to find one that is available or making difficult phone calls to estranged family or friends.

Given that a lack of sufficient support systems, a major deterioration in their health, or an exacerbation of disability-related symptoms is often the reason that a tenant with a disability is facing eviction in the first place, such tenants face enormous difficulty accomplishing this long list of tasks on the extraordinarily compressed timeline of an eviction action. It is no surprise then that many tenants with disabilities may also fail to follow the extensive list of best practices suggested by the Arizona judiciary of people making remote appearances in court, which includes testing the videoconferencing software before court, familiarizing oneself with the technology, logging in early, making sure that one has sufficient electrical power and phone plan minutes, and ensuring that one's internet or cellular phone

connection is stable.² For many tenants whose disabilities impact their executive functioning and ability to plan and execute complex tasks³, as well as for tenants whose mental health disabilities limit their ability to cope and manage with extreme stress, these best practices may not be achievable under the enormous pressure and compressed timeline presented by eviction court. Even when tenants with disabilities achieve these best practices, they may not be able to respond sufficiently quickly when their case is called because of speech disabilities and language processing disorders. For example, some individuals with speech disabilities may be using an app on an iPad or tablet as a speech-generating device that takes time for a response.

While attorneys and judges are now very used to remote court appearances, the same is not true for many individuals unfamiliar with the technology or for whom the technology is not accessible. It is therefore not surprising that many individuals with disabilities receive default judgments of eviction after having been delayed in accessing their court appearance.

² Arizona Judiciary, *Remote Court Appearances*, available at <https://www.azcourts.gov/selfservicecenter/Resources/Remote-Court-Appearances> (last accessed April 28, 2024).

³ Examples of health and mental health conditions that might affect executive function skills include but are not limited to: [attention deficit hyperactivity disorder \(ADHD\)](#), [conduct disorder](#), [depression](#), [schizophrenia](#), [fetal alcohol spectrum disorders](#), [learning disorders](#), including dyslexia, [autism spectrum disorders \(ASD\)](#), [Alzheimer's disease](#) and other [neurodegenerative conditions](#), [anxiety disorders](#), [chronic stress](#), [sleep disorders](#), [obsessive-compulsive disorder](#), [autoimmune conditions](#), and traumatic brain injuries affecting the frontal lobe. See Herndon, J. *Understanding Executive Dysfunction and It How Shows Up*, Healthline (Feb. 2, 2022) (last accessed April 30, 2024).

Importantly, imposition of a default judgment prevents tenants with disabilities from asserting viable defenses in eviction court. Tenants whose landlords seek eviction for an alleged lease violation that could have been cured by a reasonable accommodation, for example tenants facing eviction for having service or emotional support animals, or tenants denied additional time to catch up on housekeeping or landscaping duties while hospitalized for disability-related treatment, may have a defense in eviction court for the landlord's unlawful failure to accommodate them.⁴ And like all tenants, even those tenants with disabilities who are behind in rent have a defense in an action for nonpayment if they prevail in a counterclaim against the landlord, including a counterclaim for violation of the landlord's statutory obligation to make repairs necessary to maintain fit and habitable premises.⁵ Default judgments also prevent tenants from asserting important procedural defenses in eviction actions, such as for lack of notice⁶ or improper service of process.⁷

II. Default judgments of eviction can be particularly devastating for tenants with disabilities.

⁴ See e.g. *Douglas v. Kriegsfeld Corp.*, 884 A.2d 1109, 1129 (D.C. 2005) (discussing requirements for establishing a reasonable accommodation defense to eviction under the Fair Housing Act); see also *Miller v. Amos*, 2024 CO 11, ¶ 31, 543 P.3d 393, 401 (2024) (concluding that analogous state fair housing act provided equitable defense to a discriminatory judicial eviction).

⁵ A.R.S. 33-1365(A) (stating that a tenant has a defense in an action for possession based on nonpayment of rent if the tenant succeeds in a counterclaim worth more than the amount owed).

⁶ See RPEA 13(a)(2) (requiring an eviction court to dismiss the complaint if a proper termination and any applicable period to cure was not provided).

⁷ See RPEA 5(e) (setting forth requirements for proper service of process in an eviction action).

Not only do tenants with disabilities face barriers that may cause issuance of a default judgment against them, but tenants with disabilities may also face particularly devastating consequences of a default judgment of eviction. Tenants with disabilities may first face disability-related obstacles in filing a post-judgment motion. They may then face barriers moving, forcing them to abandon their possessions, including necessary mobility aids and devices, therapy equipment, or other disability-related aids, or leave a dwelling that they modified at their own expense to meet their unique disability-related needs, such as installing a ramp, grab bars, or lowering shelves.⁸ An eviction may disrupt critical support systems that a person with a disability has cultivated or require them to relocate from an area where they were conveniently located near healthcare providers or crisis healthcare services. People with disabilities may then face discrimination or other obstacles in locating alternative, accessible housing.

Some commenters opposing the proposed provisional rule change have suggested that a tenant who is late to court and receives a default judgment could simply file a motion under Rule 15(a)(4) of the Rules of Procedure for Eviction Actions, providing for the set aside of a judgment of eviction based on mistake,

⁸ The Fair Housing Act makes it unlawful for landlords “to refuse to permit, at the expense of a handicapped person, reasonable modifications of existing premises, occupied or to be occupied by a handicapped person, if the proposed modifications may be necessary to afford the handicapped person full enjoyment of the premises of a dwelling.” 24 C.F.R. § 100.203.

inadvertence, or excusable neglect. Of course, the vast majority of tenants are unrepresented, and there is no assertion that tenants are meaningfully advised of the possibility of filing such a motion.

Moreover, tenants with a range of disabilities, including intellectual, cognitive, and mental health disabilities, traumatic brain injuries, or other disabilities which cause impairments in executive functioning, or which are associated with debilitating fatigue, may face additional difficulties ascertaining the procedural relief available in RPEA 15(a)(4) or maintaining the concentration, energy, attention, and persistence necessary to file such a motion. Tenants with certain physical disabilities may also be unable to organize accessible transportation within the short timeframe in which such a motion would need to be filed. Tenants with multiple disabilities are likely to face overlapping and compounding barriers.

Tenants with disabilities then often face extraordinary difficulty moving their belongings after being ordered eviction. People whose disability limits standing, walking, bending, stooping, or exerting themselves are unlikely to manage to pack and relocate their belongings in only five days. People with disabilities, such as Chronic Fatigue Syndrome/Myalgic Encephalomyelitis (MECFS), or who are undergoing cancer treatment may have limited energy and must manage activities by balancing rest and activity within their individual limits for mental and physical

activity.⁹ This means that it will take them longer to pack and relocate their belongings than most tenants not living with disabilities. Tenants with disabilities are therefore routinely forced to abandon their belongings when evicted.

Evictions also disrupt the support systems that many individuals with disabilities rely upon. Many individuals with disabilities may have established support systems within their community, such as nearby family, friends, neighbors, professional caregivers, healthcare providers, and social services. While many evictions are precipitated by a lack of necessary support, evictions can also further disrupt these support systems, leading to a loss of stability and continuity in care and assistance.

Evictions may also disrupt access to structural modifications that individuals with disabilities use to access their living spaces. In many cases, a disabled tenant is required to pay for structural modifications to rental dwellings, such as a wheelchair accessible door, ramp, or grab bars. When evicted, the disabled tenant loses access to these necessary accommodations, and may even be financially responsible for the cost of undoing certain modifications.

After being evicted, individuals with disabilities then face a multitude of barriers in locating accessible and available alternative housing. The task is made

⁹ [Center for Disease Control \(CDC\): Treatment of Myalgic Encephalomyelitis/Chronic Fatigue Syndrome](#) (last accessed April 30, 2024).

more difficult because of the existence of an eviction record. Individuals in this circumstance may be shut out of the rental housing market and rendered homeless, and they may then face barriers or discrimination with the shelter system and contribute to the crisis of disabled individuals experiencing street homelessness in Arizona's cities.

III. Conclusion

Comments opposing the rule change have complained that the proposed one-year pilot program would cause inconvenience or delay. But as the U.S. Supreme Court recognized nearly fifty years ago in *Pernell v. Southall Realty*:

Some delay, of course, is inherent in any fair-minded system of justice. A landlord-tenant dispute, like any other lawsuit, cannot be resolved with due process of law unless both parties have had a fair opportunity to present their cases. Our courts were never intended to serve as rubber stamps for landlords seeking to evict their tenants, but rather to see that justice be done before a man is evicted from his home.

416 U.S. 363, 385 (1974). Although the proposed pilot program may pose some minor inconvenience to attorneys appearing in eviction court, the weight of the equities involved requires action to avoid unnecessary default judgments. The proposed pilot program is an eminently reasonable, sensible, and fair mechanism to test a promising rule change.

RESPECTFULLY SUBMITTED this 1st day of May, 2024.

/s/ Joseph Falcon-Freeman

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