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7 **IN THE SUPREME COURT**
8 **STATE OF ARIZONA**

9 In the Matter of:

10 **PETITION TO AMEND RULE**
11 **11(b)(1) OF THE ARIZONA**
12 **RULES OF PROCEDURE FOR**
13 **EVICTON ACTIONS**

Supreme Court No. R-24-0022

STATE BAR OF ARIZONA
COMMENT

14 Pursuant to Rule 28(e) of the Arizona Rules of Supreme Court, the State Bar
15 of Arizona (the “State Bar”) hereby submits the following as its comment to the
16 above-captioned Petition.

17 After discussion by the State Bar’s Civil Practice and Procedure Committee
18 (“the Committee”), the State Bar supports the goals of the Petition, which are to
19 promote access to the courts and avoid unnecessary defaults on technical grounds in
20 the growing number of residential eviction cases. At the same time, the Committee
21 has heard from representatives of the Maricopa County Justice of the Peace Bench
22 (“Maricopa JP Bench”) that the proposed protocol is unworkable because it would
23 disrupt Maricopa JP courts’ existing method for processing eviction cases.
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1 Currently, the Maricopa JPs group each calendar's cases by landlords' law firms,
2 each of which is allocated a pre-announced time slot in the eviction calendar.
3 Essentially, the objection by the Maricopa JP Bench seems to be that, if late-arriving
4 defendants are allowed a second call, a deviation will occur in the pre-announced
5 hearing schedule, whereby a block of cases handled by a single law firm is currently
6 heard at a predictable time. The Maricopa JP Bench opposes even a trial of the
7 proposed protocol, despite the fact that some Maricopa County JP Courts have
8 reportedly been observed to already employ the proposed protocol on a
9 discretionary, informal basis in their courtrooms today.

12 The State Bar is concerned that the status quo, featuring a form of the
13 proposed protocol being applied sporadically depending on the situation or
14 courtroom, may appear selective and discriminatory, especially since the majority
15 of landlords are represented by attorneys and the majority of tenants appear *pro se*.

17 The State Bar therefore supports efforts to find an acceptable alternative
18 methodology for avoiding the automatic default of late-arriving litigants, both
19 plaintiffs and defendants, in residential eviction cases. It may be necessary, for
20 example, to automatically reschedule to another day the cases of all parties, plaintiff
21 or defendant, who appear within a prescribed, brief period after their case is called.
22 The State Bar believes it is possible to reach a consensus on a rule change or a pilot
23 project which will avoid automatic default in eviction cases without unduly
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1 disrupting JP courts' case management. That is the State Bar's ultimate
2 recommendation.

3 The State Bar commends petitioners for raising a timely and consequential
4 issue.
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6 INTRODUCTORY INFORMATION

7 According to a report published in the Arizona Republic, a record number of
8 metro Phoenix renters faced losing their homes in January 2024. Eviction filings hit
9 a high of 8,025, according to the Maricopa County Justice Courts, exceeding the last
10 monthly record of 7,948 in October 2023. Again, according to the Arizona Republic,
11 the pace of filings to evict Phoenix-area renters, mostly for missing monthly
12 payments, likely climbed to a new record in 2023. Catherine Reagor, *Metro Phoenix*
13 *Evictions Hit New High in January. Bills to Help Renters Introduced*, Arizona
14 Republic (Feb. 16, 2024, 9:27 AM), <https://www.azcentral.com/story/money/real-estate/2024/02/15/metro-phoenix-eviction-filings-reach-new-high-in-january/72571995007/>.
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20 It was against this demographic backdrop that the Civil Practice and
21 Procedure Committee considered a thoughtful comment this Petition.
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1 **I. THE PETITION**

2 Petitioners propose that this Court initiate a one-year pilot project for a
3 temporary amendment to the Rules of Procedure for Eviction Actions (“RPEA”),
4 Rule 11(b)(1), adding a requirement that a court presiding over an eviction calendar
5 re-call any case in which the plaintiff or defendant did not appear or respond after
6 an initial call of the case. The second call of the case would take place at the end of
7 the calendar or, at most, after a one-hour time period for longer court calendars.
8 According to the Petition, some JPs already follow a protocol of recalling cases on
9 calendars in which one or both parties do not answer the initial call of the case, as a
10 measure to prevent defaults. At the conclusion of the one-year pilot period, the
11 results would be evaluated for purposes of considering a permanent rule amendment.
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13 **II. THE ARIZONA SUPREME COURT REJECTED A PREVIOUS,**
14 **SIMILAR RULE PETITION A YEAR AGO**

15 In 2023, petitioners filed a similar petition, but framed it as a proposal for a
16 statewide permanent rule. See R-23-0027. Three public comments were filed, by
17 the Maricopa JP Bench, the Manufactured Housing Community of Arizona, and the
18 law firm of Hull, Holliday & Holliday, PLC. All three opposed the proposal in R-
19 23-0027. The Comment by the Maricopa JP Bench explained the opposition as
20 follows:
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1 This highly problematic rule change would impact every residential
2 action filed in the state. It is an attempt to address the comparatively rare
3 situation of a tenant being defaulted due to a problem interacting with
4 court technology. When such a situation occurs, a tenant already has an
5 existing legal remedy because a tenant can file a motion to set aside a
6 judgment.

7 Many, but not all, Justice Courts in Maricopa County schedule their
8 eviction calendars in clusters by landlord attorney. A somewhat typical
9 eviction calendar could have 15 cases filed by ABC law firm set for 1:00
10 p.m., 20 cases filed by DEF law firm set for 2:00 p.m., and 25 cases filed
11 by GHI law firm set for 3:00 p.m. The information provided by the court,
12 and served on the tenants, instructs the parties to call-in for their remote
13 proceeding 15 minutes prior to the time it is scheduled.

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

21 For the five tenants that did appear, the judge explains their remaining
22 options, including possibly obtaining rental assistance; but also explains
23 the writ of restitution process and the date the tenant may actually be
24 required to move. (Some judges do this using some type of group rights
25 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 attorney, and a court clerk. So what happens at this point
if the proposed rule is adopted?

26 The 2:00 p.m. cases cannot begin at 2:00 p.m. because the judge must
27 now call the five potential default cases that had been scheduled for 1:00
28 p.m., a second time. The first landlord attorney cannot represent his or
29 her clients in another court at 2:00 p.m. because the 1:00 p.m. cases are
30 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

1 the 3:00 p.m. cases, which might now actually start between 3:30 p.m. and
2 3:45 p.m., after any potential defaults from cases set for 2:00 p.m. are
3 called yet again at 3:00 p.m.

4 The Maricopa JP Bench also expressed the following additional grounds for
5 opposition:

- 6 ➤ Unrepresented tenants were already being helped to appear by remote
7 access to eviction hearings.
- 8 ➤ Court rules should encourage rather than discourage punctuality.
- 9 ➤ In any event, defaulted tenants who failed to appear through no fault of
10 their own had an existing remedy in the form of a motion to set aside
11 judgment.
- 12 ➤ Court rules should be neutral and not favor one group of litigants over
13 another.
- 14 ➤ Court rules should be neutral and not favor one group of litigants over
15 another.

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17 The State Bar has been informed that the Maricopa JP Bench intends to oppose this
18 petition, R-24-0022, on similar grounds as it opposed R-23-0027.

19 In their Reply in R-23-0027, petitioners rejected the argument that, if the rule
20 change were implemented, attorneys would unfairly and impractically have to
21 remain in the courtroom for the entire eviction calendar. On the contrary, they
22 pointed out, the current practice permits parties, including their lawyers, to appear
23 remotely. Petitioners also made the following rejoinders to the opposition:
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- 1 ➤ The Maricopa JP Bench’s comment unintentionally revealed that the
2 courtroom procedures currently in practice unfairly favor landlords and
3 their attorneys as a matter of course, by organizing their calendars and call
4 cases according to which law firm is representing the plaintiffs. In the
5 most common scenario, a landlord’s attorney is not present because the
6 attorney is handling other matters in another courtroom. In that case, the
7 JP court routinely delays calling cases as a courtesy to landlords’ counsel.
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9 However, tenants are usually not afforded the same courtesy, as tenants
10 have to wait for the landlord—or most often, the landlord’s attorney—to
11 be present before their case is heard. Yet tenants must be present and ready
12 at the outset of a court calendar, or else they face a default judgment.
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16 ➤ This differential treatment of plaintiffs and defendants in the same type
17 of case raises constitutional concerns, including whether both sides of
18 eviction actions are receiving equal protection of the law in Arizona
19 justice courts. The differential treatment of landlords in evictions actions
20 is documented in Morris Institute of Justice’s two eviction studies cited
21 in the Petition in R-23-0027 at 5, n. 1 and 2. William E. Morris Institute
22 for Justice, *Injustice In No Time: The Experience of Tenants in Maricopa*
23 *County Justice Courts*, June 2005,
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1 [https://morrisinstituteforjustice.org/helpful-information/landlord-and-](https://morrisinstituteforjustice.org/helpful-information/landlord-and-tenant/4-final-eviction-report/file)
2 [tenant/4-final-eviction-report/file](https://morrisinstituteforjustice.org/helpful-information/landlord-and-tenant/4-final-eviction-report/file). William E. Morris Institute for
3 Justice, *What's Justice Got To Do With It? The Experience of Tenants in*
4 *the Maricopa Justice Courts*, May 2020,
5 [https://morrisinstituteforjustice.org/helpful-information/landlord-and-](https://morrisinstituteforjustice.org/helpful-information/landlord-and-tenant/47-institute-maricopa-county-justice-courts-eviction-report-5-21-2020/file)
6 [tenant/47-institute-maricopa-county-justice-courts-eviction-report-5-21-](https://morrisinstituteforjustice.org/helpful-information/landlord-and-tenant/47-institute-maricopa-county-justice-courts-eviction-report-5-21-2020/file)
7 [2020/file](https://morrisinstituteforjustice.org/helpful-information/landlord-and-tenant/47-institute-maricopa-county-justice-courts-eviction-report-5-21-2020/file).
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- 10 ➤ In some JP courts judicial officers have been observed already employing
11 a version of the practice proposed in the Petition.
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13 ➤ Because the proposed rule change applies equally to plaintiffs and
14 defendants, all parties are afforded some flexibility to ensure that they can
15 attend their court hearings, whether they have a hearing in another
16 courtroom or whether they are having trouble with their home internet
17 connection.
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19 The Arizona Supreme Court rejected the Petition in R-23-0027 on August 22,
20 2023.
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1 **III. IF THE PROPOSAL AT ISSUE IS UNACCEPTABLE TO THE JP**
2 **BENCH, AN EFFORT SHOULD BE MADE TO FIND A**
3 **WORKABLE ALTERNATIVE**

4 The State Bar has considered the opponents’ objections to outright adoption
5 of a statewide permanent rule as expressed in R-23-0027. The Committee has noted
6 the Maricopa JP Bench’s opposition to even a pilot project in a single division of a
7 JP court in 2024. As a result, the Bar is unable to support the proposed pilot project.
8 However, because the Bar believes that the Petition raises important concerns, it
9 recommends that a study committee or working group comprised of the various
10 stakeholders be appointed to work toward a consensus on a protocol to prevent the
11 automatic default of late-appearing parties, both plaintiff and defendant, while
12 ensuring equal access to justice to both represented plaintiffs and unrepresented
13 defendants.
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16 The State Bar notes that, contrary to what was stated in the comments to R-
17 23-0027 concerning an “existing remedy,” filing a motion to set aside a default
18 judgment, if it can even be accomplished by a litigant facing imminent
19 homelessness, would not prevent an eviction because evictions happen in
20 approximately five days. And if the proceedings are occurring virtually, it may be
21 much more difficult for a party to file a motion to set aside a default judgment, as
22 filing such motion may require an in-person visit to the court, as there is no eFile in
23 justice courts.
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1 The State Bar agrees with petitioners that technology issues are likely a reason
2 that a tenant, or a landlord's attorney, could be late to a virtual proceeding. There is
3 no reason to doubt the truth of those statements in the Petition. The State Bar is
4 aware of technology problems with Zoom, Teams, Go To Meeting, etc., that have
5 caused even sophisticated users to be delayed in appearing for meetings.
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7 In summary, the Bar supports efforts to level the litigation playing field,
8 especially in a critical area of people's lives such as housing. The Bar is hopeful that
9 a workable, mutually agreeable solution to unnecessary defaults can be found.
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11 IV. CONCLUSION

12 The State Bar of Arizona urges the Court to continue this Petition to allow a
13 study committee or working group to reach a consensus on a workable pilot project
14 or rule.
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16 RESPECTFULLY SUBMITTED this 1st day of May 2024.
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19 _____
20 Lisa M. Panahi
21 General Counsel

22 Electronic copy filed with the
23 Clerk of the Supreme Court of Arizona
24 this 1st day of May 2024.

25 by: PSequin