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IN THE SUPREME COURT
STATE OF ARIZONA

**PETITION TO AMEND RULE 5(d),
ARIZONA RULES OF PROCEDURE
FOR EVICTION ACTIONS**

Supreme Court No. R-23-0024

**REPLY TO COMMENTS TO THE
PETITION**

1 Pursuant to Rule 28 of the Rules of the Supreme Court, Community Legal
2 Services (“CLS”), DNA People’s Legal Services (“DNA”), Southern Arizona
3 Legal Aid (“SALA”) (collectively “legal services”), and the William E. Morris
4 Institute for Justice (“MIJ”) respectfully reply to comments submitted regarding
5 their Petition to Amend Rule 5(d) of the Rules of Procedure for Eviction Actions
6 (“RPEA”). In summary, the proposed rule amendments outlined in the Petition
7
8 clarify existing federal law applicable to CARES Act-covered properties.
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10 Moreover, the proposed rule amendments outlined in the Petition are harmonious
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12 with currently effective Rules 4(f), 5(b)(8), and 13(a)(2) of the RPEA, which
13
14 presently impose pre-eviction notice and procedure requirements that supersede
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16 state law and require dismissal of actions with notice defects, consistent with
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18 binding precedent from the Supreme Court of the United States. Additionally, the
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20 proposed rule amendments will help ensure that judicial officers presiding in
21
22 eviction actions have complete and accurate information about the properties at
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24 issue and the law to apply in the cases over which they preside, consistent with
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26 practices already utilized in many Arizona justice courts. Finally, the rule change
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28 will help ensure Due Process of Law and promote Access To Justice by informing
eviction defendants about the full nature of their property interests and the law
governing their rental homes.

27 The Justice of the Peace Bench in Maricopa County; Zona Law Group, P.C.,
28 on behalf of the Manufactured Housing Communities of Arizona; the law firm of

1 Hull, Holliday & Holliday, P.L.C.; Clark & Walker, P.C., on behalf of the Arizona
2 Multihousing Association; the law firm of Clark & Walker, P.C.; and the State Bar
3 of Arizona all filed comments in opposition to the proposed rule change. Arizona
4 State Representative Charles Lucking; Wildfire: Igniting Community Action to
5 End Poverty in Arizona; Unemployed Workers United, a project of Working
6 Families Power; and Disability Rights Arizona all filed comments in support of the
7 proposed rule change.
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10 This Reply focuses on the comments opposing the Petition. We address
11 points and common themes from the opposing comments below.
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13 **I. The CARES Act Requires Landlords to Wait 30 Days After a Notice to**
14 **Vacate Before Filing an Eviction Action**

15 The CARES Act states, “The lessor of a covered dwelling unit . . . may not
16 require the tenant to vacate the covered dwelling unit before the date that is 30
17 days after the date on which the lessor provides the tenant with a notice to vacate
18”.¹ Commenting parties opposing the Petition state that the notice period
19 outlined in 15 U.S.C. § 9058(c)(1) need not expire prior to the filing of an eviction
20 action to require a tenant to vacate.² Specifically, they disagree with Petitioners’
21 position that the plain language of 15 U.S.C. § 9058(c)(1) mandates a *notice to*
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26 ¹ 15 U.S.C. § 9058(c)(1).

27 ² See, e.g., Comment from the Maricopa County Justice Bench at 2-3;
28 Comment from Manufactured Housing Communities of Arizona at 2-3; Comment
from Hull, Holliday & Holliday, P.L.C., at 2-14.

1 *vacate* providing a minimum of 30 days' notice *before* a lessor of a CARES Act-
2 covered property *may require* a tenant to vacate the property by filing an eviction
3 action in court.³
4

5 Petitioners simply note that 15 U.S.C. § 9058(c) says that a lessor may not
6 require a tenant to vacate a CARES Act-covered property until they give a 30-day
7 notice to vacate and wait out the period before filing an eviction action in court.
8 Congress imposed the 30-day notice to vacate requirement on lessors, restricting
9 how and when they may require their tenants to vacate. And the only way lessors
10 in Arizona (and elsewhere) may legally require tenants to vacate is by filing an
11 eviction action in court.
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14 Opponents of the Petition outline a different interpretation of the statutory
15 language restricting how and when a lessor may require a tenant to vacate. They
16 generally agree that tenants should have 30 days after a notice to vacate before
17 they are required to move. However, they argue that the 30-day pre-eviction notice
18 period runs from the date of a notice to vacate⁴ through the date of execution of a
19 stayed eviction judgment sought and entered while the period is running. They
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23 ³ *Id.*

24 ⁴ Apparently, based on the comments opposing the Petition, Arizona lessors
25 of CARES Act-covered properties routinely file eviction actions at or shortly after
26 the expiration of the five-day notice period found in A.R.S. § 33-1368(B), taking
27 formal action in court to require tenants to vacate their rental homes. This means
28 that tenants – whether or not they are ever told they have 30 days to vacate under
the CARES Act – face eviction judgments in court well before the federally
required 30-day period has passed.

1 argue that a lessor may file an eviction action and secure a judgment that is then
2 stayed by a judicial officer hearing the case for a certain number of days, raising
3 the total to 30 days from the date of the notice. In short, they argue that a lessor
4 can literally do everything in the lessor's power to require a tenant to vacate –
5 giving a notice to vacate, filing an action in court, requesting a judgment, securing
6 a judgment, *etc.* – but that, through this sequence of phased and intentional actions,
7 they are somehow **not** requiring a tenant to vacate until the hypothetical court-
8 imposed stay expires.
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12 The commenting opponents' interpretation, of course, allows landlords to
13 move faster in evicting tenants. It deprives tenants of the 30 days before the
14 eviction case filing to pay any unpaid rent or to cure other defaults to prevent the
15 filing from happening in the first place. Speed is their goal. But their argument
16 presupposes both [1] that courts are somehow informed along the way that
17 properties are subject to the requirements of 15 U.S.C. § 9058(c), and [2] that
18 effective and certain 30 days' notice to tenants is even possible in the scenario they
19 imagine, including predicting judicially imposed stays after lessors file eviction
20 actions to require tenants to vacate covered properties.
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24 The commenting opponents' position on the matter conflicts with the plain
25 language and meaning of the CARES Act. It also conflicts with how a decided
26 majority of courts of record around the United States interpret 15 U.S.C. §
27 9058(c)(1) to apply in practice. As noted by Disability Rights Arizona in a
28

1 comment supporting the Petition, state appellate courts of record in Colorado,
2 Indiana, Ohio, and Washington, and a federal district court in Oklahoma, have all
3 determined that the 30-day notice period in the CARES Act precedes the filing of
4 an eviction action.⁵

6 In short, the amendments proposed in the Petition to clarify that the 30-day
7 notice period runs before a lessor may require a tenant to vacate by filing an
8 eviction action is based in objective legal reality. Petitioners believe that the
9 language in 15 U.S.C. § 9058(c)(1) plainly addresses the issue at hand and
10 recognizing the effect of the language in the proposed amendments to Rule 5(d) of
11 the RPEA helps clarify how the law applies in Arizona.

12 **II. The Rule Change Will Promote Consistency with the Application of** 13 **Existing Provisions in the Rules of Procedure for Eviction Actions**

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15 Commenting parties in opposition to the Petition take issue with the use of a
16 Rules Petition to “change” substantive state law on pre-filing notice periods in
17 eviction actions filed to recover possession of properties covered by the CARES
18 Act.⁶ Opponents of the Petition urge the Court to refrain from approving a Rules
19 Petition that will affect pre-filing notice periods found in state statutes governing
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24 ⁵ Comment from Disability Rights Arizona at 4.

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26 ⁶ See, e.g., Comment from the Maricopa County Justice Bench at 3-7;
27 Comment from Manufactured Housing Communities of Arizona at 5-8; Comment
28 from Hull, Holliday & Holiday, P.L.C., at 10-14; Comment from Clark & Walker,
P.C., at 4-6.

1 eviction actions.⁷

2 Longstanding rules presently in effect in the RPEA already operate to
3 mandate compliance with the CARES Act – and other federal laws and regulations
4 – for many subsidized rental properties. For example, Rule 4(f) of the RPEA
5 states:
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8 The parties shall comply with all federal and state laws and
9 regulations governing subsidized rent.

10 Using the term *shall*, Rule 4(f) of the RPEA mandates compliance with “all
11 federal and state laws and regulations governing subsidized rent.”⁸ So, for a
12 substantial number of public housing and other federally subsidized properties, the
13 RPEA already mandates compliance with the 30-day notice provision in 15 U.S.C.
14 § 9058(c)(1). Of course, the Court adopted Rule 4(f) of the RPEA with full
15 knowledge that mandating compliance with applicable federal laws and regulations
16 governing subsidized rent is required by the Supremacy Clause of the United
17 States.
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20 ⁷ *Id.*

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22 ⁸ Opposing commenter Hull, Holliday & Holliday, PLC, acknowledges Rule
23 4(f) of the RPEA in arguing, “Because the RPEA already requires Arizona courts
24 to comply with federal law regarding subsidized rent, there is no preemption issue
25 here.” *See* Comment at 11. Petitioners note that – similar to the language of 15
26 U.S.C. § 9058(c)(1) – the language Rule 4(f) plainly imposes the mandatory duty
27 to comply federal law and regulations on *the parties*. The court’s role is to
28 safeguard the parties’ rights and to ensure they are fulfilling the mandatory rule-
based obligations imposed upon them to follow federal law and regulations,
including the mandatory dismissal of actions in which lack of sufficient notice
violates a statute. *See* Rule 13(a)(2) of the RPEA.

1 States Constitution and decisional authority from the Supreme Court of the United
2 States.⁹

3
4 Long before the CARES Act became law, Rule 4(f) of the RPEA mandated
5 parties in subsidized leases and tenancies comply with federal laws and
6 regulations, changing Arizona pre-eviction notice periods and other eviction
7 procedures. For example, since the inception of Rule 4(f), public housing
8 landlords have been required to provide a 14-day pre-eviction notice to public
9 housing tenants in cases alleging nonpayment of rent.¹⁰ Public housing landlords
10 and project-based subsidized housing providers have been required to provide pre-
11 eviction grievance procedures and set informal meetings when proposing lease
12 terminations in most cases.¹¹ And landlords participating in the Section 8 Housing
13 Choice Voucher Program have been required to notify housing authorities of lease
14 termination notices and eviction complaint filings at the same time they notify
15 tenants of such critical tenancy termination actions.¹²
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21 ⁹ *Thorpe v. Housing Auth. of the City of Durham*, 393 U.S. 268 (1969);
22 *Thorpe v. Housing Auth. of the City of Durham*, 386 U.S. 670 (1967).

23 ¹⁰ 24 C.F.R. § 966.4(l)(3)(a).

24 ¹¹ 24 C.F.R. § 966.51; HUD Handbook 4350.3, Ch. 8, § 8-6(A)(3)(e).

25 ¹² 24 C.F.R. § 982.310(e)(2)(ii); 24 C.F.R. § 982.452(a); HUD Form 52641-A
26 Tenancy Addendum, Section 8 Tenant-Based Assistance and Housing Choice
27 Voucher Program, § 11(b), available at
28 <https://www.hud.gov/sites/dfiles/OCHCO/documents/52641A.pdf>.

1 The above are just a few of the innumerable examples of how Rule 4(f) of
2 the RPEA operates presently in Arizona to mandate compliance by landlords and
3 tenants with federal laws and regulations, including the CARES Act. Even though
4 the proposed amendments in the Petition already apply in a substantial number of
5 eviction actions filed by lessors of CARES Act-covered properties, the Petition is
6 critical because the CARES Act notice requirement also applies at other properties
7 not typically considered to involve “subsidized rent.” For example, the CARES
8 Act covers properties with federally assisted mortgages and all properties covered
9 by the federal Violence Against Women Act (“VAWA”), including the Low
10 Income Housing Tax Credit (“LIHTC”) Program.¹³ While developers and lessors
11 at such properties are receiving public benefits, their relationship with the
12 government as public benefits program participants and funding recipients is not
13 known to the courts hearing their cases or, often, the tenants at their properties. All
14 the reasons that justified the approval of Rule 4(f) of the RPEA justify the
15 compliance safeguards proposed in the Petition as amendments to Rule 5(d) of the
16 RPEA.

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19 Similarly, Rule 5(b)(8) states the following:

20 The Complaint shall . . . [s]tate that the action involves a subsidized
21 rental property if the action involves a subsidized rental property.

22 Rule 5(b)(8) mandates that a plaintiff disclose at the pleading stage of an

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28 ¹³ 15 U.S.C. § 9058(a).

1 eviction action whether the action “involves a subsidized rental property.” The
2 reason for the transparency measure is obvious: in a summary procedure such as
3 an eviction action, it is important for judicial officers to know all of the relevant
4 facts and applicable law in making determinations affecting property interests of
5 eviction plaintiffs and eviction defendants at subsidized rental properties. Again,
6 Rule 5(b)(8) already applies to eviction plaintiffs for many, if not most, CARES
7 Act-covered properties, requiring them to disclose that the property at issue is a
8 subsidized rental property. But, given that the CARES Act so broadly expanded
9 the scope of properties subject to federal legal authority in 15 U.S.C. § 9058(a), it
10 is important for the Court to modernize the disclosure obligation to include similar
11 verification and attestation requirements for properties receiving federal mortgage
12 assistance and all properties covered by VAWA, including LIHTC properties.

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17 Finally, Rule 13(a)(2) of the RPEA provides:

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19 Except for stipulated judgments . . . , in each eviction action the court
20 shall . . . [d]etermine whether the tenant or occupant of the premises
21 received proper termination notice if one was necessary, and was
22 afforded any applicable opportunity to cure. If the notice does not
23 comply with the statute or is not properly served, the court shall
24 dismiss the action.

25 In short, Rule 13(a)(2) presently mandates both [1] that the court hearing an
26 eviction action determine whether proper notice was given and [2] in the case of
27 any statutorily non-compliant or improperly served notice, that the court “shall”
28 dismiss the action. One opposing commenter argues that a violation of the notice

1 provision of 15 U.S.C. § 9058(c)(1) would give rise to a cause of action under the
2 CARES Act, but no basis for dismissal under the RPEA.¹⁴ This is incorrect. Rule
3
4 13(a)(2) of the RPEA mandates the remedy of dismissal in such cases, where
5 notice violates a statute, which is exactly the remedy Petitioners propose in the
6 amendments to Rule 5(d) of the RPEA, outlined in the Petition.
7

8 Once again, Petitioners have grounded the RPEA 5(d) amendments they
9 propose in the Petition in existing principles of the RPEA. The only “new”
10 applicability of the proposed amendments regards certain properties at which
11 landlords and housing providers are receiving certain public benefits and economic
12 aid in mortgage, financing, and development agreements, financial relationships
13 which are not easily discoverable by the courts, tenants, and the public at large.
14 For all the reasons that the Court previously adopted and implemented Rules 4(f),
15 5(b)(8), and 13(a)(2) of the RPEA – all of which have operated for years, without
16 proposed amendments – the Court should clarify and harmonize similar
17 compliance, transparency, and remedy provisions for properties subject to the
18 requirements of 15 U.S.C. § 9058(c), a relatively new and important federal law
19 affecting the property rights and interests of both landlords and tenants in rental
20 housing across the United States.
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28 ¹⁴ Comment from Manufactured Housing Communities of Arizona at 8-9.

III. The Proposed Rule Will Ensure Accuracy in the Application of Law in Eviction Actions

Commenting opponents generally disagree with Petitioners about *how* the CARES Act applies to covered properties, but not *that* it applies to covered properties.¹⁵ The consensus in the comments regarding the CARES Act’s present applicability drives home the importance of the Petition. Ensuring that courts are aware of the CARES Act’s applicability at the pleading stage of eviction actions is a reasonable measure and safeguard that will promote accuracy in the application of the law, where it applies.

Perhaps it is for this reason that many justice courts inquire as a matter of course about whether the CARES Act applies. And perhaps it is for this reason that eviction plaintiffs and their counsel routinely alert courts hearing their cases about CARES Act applicability or “federal issues.” Whatever the reason for these practices, they are common and widespread. But, while customary and widespread, these practices remain unregulated and subject to the preferences of particular judicial officers and justice courts. Presently, no rule in the RPEA specifically references the CARES Act, though – as described above – certain

¹⁵ One opposing commenter alleges without evidence, “While there was a drafting error in the [CARES Act] bill which has left this *temporary* measure in effect well after the end of the COVID-19 pandemic, we are left with the language as is until current legislation in the House of Representatives is fully passed and signed into law.” See Comment from Clark & Walker, P.C., at 8. Nonetheless, all commenting opponents agree that 15 U.S.C. § 9058(c) remains in effect at the present time.

1 existing compliance and pleading requirements already apply to many CARES
2 Act-covered properties. Petitioners simply request measures to modernize the
3 RPEA to promote compliance with applicable law and transparency about when
4 the CARES Act applies, consistent with existing rules regarding parties'
5 participation in subsidized rent programs.
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8 Suffice it to say, court rules establish standardized best practices so that
9 litigants do not have to rely on the voluntary good faith of their adversaries. The
10 proposed rule change will ensure that the court and all parties are aware of
11 applicable law. Adopting the proposed amendments outlined in the Petition will
12 ensure that applicable law is known to Arizona courts to help them make legally
13 accurate decisions about the parties' present possessory rights and interests.
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16 **IV. The Proposed Rule Will Help Ensure Due Process of Law and Promote** 17 **Access to Justice**

18 As set forth in the Petition, tenants have a property interest in their rental
19 homes.¹⁶ Eviction proceedings that deprive tenants of their possession of their
20 homes must comply with the due process requirements of the Fourteenth
21 Amendment to the United States Constitution.¹⁷
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24 Critically, the Supreme Court of the United States has long recognized the
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26 ¹⁶ See Petition at 10 (citing *Greene v. Lindsey*, 456 U.S. 444, 450-52 (1982);
27 *Foundation Development Corporation v. Loehmann's*, 788 P.2d 1189, 1192-93,
163 Ariz. 438, 441-42 (1990)).

28 ¹⁷ *Greene v. Lindsey*, 456 U.S. at 455-56.

1 importance of pre-eviction notice requirements in federally assisted housing
2 programs.¹⁸ And, since Arizona's territorial period, the Arizona Supreme Court
3 has mandated strict compliance with procedural safeguards in summary actions for
4 possession of real property.¹⁹

5
6 The Court's strict view of procedural safeguards is reflected in its adoption,
7 approval, and expansion of various rules in the RPEA. The Court's past
8 rulemaking actions include adoption of the rules cited above in this Reply, noting
9 rules that mandate [1] compliance with federal law and regulations, [2] disclosure
10 of the subsidized status of properties, and [3] dismissal for violations of notice
11 statutes.

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15 Petitioner's proposed amendments to RPEA 5(d) build upon the foundation
16 the Court has established in the RPEA over the last fifteen years. The Petition
17 represents a reasonable expansion of RPEA Due Process safeguards made
18 necessary by a critical change in federal law. The Petition represents an Access To
19 Justice proposal that will meaningfully improve accuracy and transparency in
20 outcomes in justice courts around the state. To ensure Due Process of Law and to
21 promote Access To Justice, the Court should adopt the safeguards proposed by
22 Petitioner in RPEA 5(d) in recognition of the importance of the 30-day pre-
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27 ¹⁸ See, e.g., *Thorpe v. Housing Auth. of the City of Durham*, 393 U.S. 268
28 (1969); *Thorpe v. Housing Auth. of the City of Durham*, 386 U.S. 670 (1967).

¹⁹ *Tweed v. Guild*, 11 P. 753, 2 Ariz. 207 (Ariz. 1886).

1 eviction notice requirement found in the CARES Act, 15 U.S.C. § 9058(c).

2 **V. Conclusion**

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4 For the above reasons, we respectfully request that the Court approve the
5 Petition to Amend Rule 5(d) of the Rules of Procedure for Eviction Actions.
6 Petitioners respectfully note that the Court may not see the matter of interpreting
7 the plain language of 15 U.S.C. § 9058(c)(1) as a simple reading test or believe
8 that, even agreeing with Petitioners' reading of the law, addressing the notice
9 period mechanics in a rule amendment is the best approach. However the Court
10 may view the notice period issue, the balance of the proposed amendments to Rule
11 5(d) of the RPEA remain critically important. Otherwise stated, if the Court
12 decides that 15 U.S.C. § 9058(c)(1) does not plainly and unambiguously require a
13 notice to vacate 30 days before a lessor may require a tenant to vacate by filing an
14 eviction action in court, the Court should still adopt the balance of the proposed
15 amendments advanced in the Petition, including, specifically, the provisions
16 requiring an attestation of compliance with 15 U.S.C. § 9058(c) and verification of
17 the statute's applicability, subject to the remedy of dismissal.
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23 Respectfully submitted this 3rd day of June 2024.

24 COMMUNITY LEGAL SERVICES
25 DNA PEOPLE'S LEGAL SERVICES
26 SOUTHERN ARIZONA LEGAL AID
27 WILLIAM E. MORRIS INSTITUTE FOR
28 JUSTICE

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Original electronically filed with the
Clerk of the Supreme Court of Arizona
this 3rd day of June 2024.

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