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IN THE SUPREME COURT
STATE OF ARIZONA

**PETITION TO AMEND
RULE 11(b)(1), ARIZONA RULES
OF PROCEDURE FOR EVICTION
ACTIONS**

Supreme Court No. R-24-0022

**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 in response
5 to the Petition to Amend Rule 11(b)(1) of the Rules of Procedure for Eviction
6 Actions (“RPEA”). The proposed rule change would add a temporary requirement
7 for the court to re-call at the end of a court calendar, or after one hour if a calendar
8 call lasts longer than one hour, any case in which the plaintiff or defendant did not
9 appear or respond after an initial call of the case.¹ The RPEA would be amended
10 on a one-year experimental basis as a pilot project, the results of which will be
11 evaluated for purposes of considering a permanent rule amendment.

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16 Petitioners’ proposed rule change received overwhelming support from
17 nonprofit law firms, community groups, attorney association groups, a government
18 office, and a state house representative. Those who provided supportive comments
19 all recognized the need to institute a change in court protocol for default
20 judgments. Specifically, the State Bar of Arizona, Disability Rights Arizona
21 (“DRAZ”), Unemployed Workers United (“UWU”), the Arizona Attorney
22 General’s Office, the Arizona Commission on Access to Justice, Wildfire: Igniting
23
24
25

26 ¹ The Justice of the Peace Bench in Maricopa County, in their comment,
27 appear to misinterpret the proposal to require judicial officers to wait one hour to
28 recall cases in all calendar calls, even if the initial call is completed in less time.
Comment from the Justice of the Peace Bench in Maricopa County at 2.

1 Community Action to End Poverty in Arizona (“Wildfire”), and Arizona State
2 House Representative Charles Lucking, all filed comments in support of the
3 proposed rule change.
4

5 Zona Law Group P.C. on behalf of the Manufactured Housing Communities
6 of Arizona, the Justice of the Peace Bench in Maricopa County, the law firm Hull,
7 Holliday & Holliday, P.L.C., and the law firm Clark & Walker, P.C., all filed
8 comments in opposition to the proposed rule change. All commenters in
9 opposition filed similar comments to Petitioners’ rule change proposed last year,
10 Supreme Court Number R-23-0027.
11

12 The comments, both those in support and in opposition, detail similar issues,
13 and we address those common themes collectively.
14
15

16 **I. Petitioners’ Proposed Rule Change is Simple and Helps Institute**
17 **Fairness and Uniformity in Courtroom Procedures**

18 As Petitioners stressed this year and last, the proposed rule change simply
19 seeks to require a court to call a case twice before dismissing the case or entering a
20 default judgment. If a party does not answer after a case is initially called, the
21 court must recall those cases after all other cases have been called, or after one
22 hour – at most – if there are many cases scheduled for that day and time. Often,
23 the second call of the case would occur much less than an hour later; depending on
24 the size of the overall docket, it may occur mere minutes after the initial call of the
25 case. This year, Petitioners ask the Court to implement the rule change temporarily
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1 and evaluate the effectiveness of the change after one year, for the possibility of a
2 permanent rule change.

3
4 The commenters in support of the proposed rule change recognize the
5 proposal's simplicity to achieve fairness and uniformity in eviction actions. As
6 Rep. Lucking states, "[t]his [is a] very simple one-year pilot program..." and "is an
7 even-handed approach that would prevent defaults on the part of both plaintiffs and
8 defendants...."² Wildfire similarly expressed the following:

9
10
11 Such a pilot would allow the exploration of a solution that would help
12 even the playing field between self-represented tenant litigants, many
13 of whom have never been to court before, may have poor-quality
14 internet, phones, or transportation, and plaintiffs, who are almost
15 always represented by attorneys who have staff who will call the court
16 clerk to let them know the attorney is delayed, or have an IT
17 department available to assist with technical difficulties.³

18
19 Like last year, the commenters in opposition to the proposal state that the
20 rule change will be difficult to implement because many courts call cases based on
21 the law firm representing the landlord, and that it would be unfair and impractical
22 for the attorneys to have to remain in the courtroom for a case to recalled.⁴ As we
23 have previously explained, justice courts often hold off calling cases if an attorney
24 representing a landlord is not present – some even going as far to call the

25 ² Comment from Rep. Charles Lucking.

26 ³ Comment from Wildfire.

27 ⁴ Comment from the Justice of the Peace Bench in Maricopa County at 2-4, 8-
28 9; Comment from the Manufactured Housing Communities of Arizona at 11;
Comment from Hull, Holliday & Holliday, P.L.C. at 4; Comment from Clark and
Walker, P.C.

1 attorney's law firm to see if and when the attorney plans on appearing. We do not
2 object to this practice because we recognize that the courts' extension of this
3 professional courtesy is a practical measure that helps court processes run
4 smoothly. In that vein, we ask that the same courtesy be extended to *all* parties,
5 both landlords and tenants, who may find themselves late for court.
6

7
8 In addition, commenters in opposition – also a repeat from last year –
9 contend that the proposed rule change is complicated, will severely delay court
10 dockets, and will increase court costs, which will then be passed on to tenants.⁵
11
12 Petitioners maintain that the proposed rule change is simple and will add on only a
13 few minutes to each court call. In the example provided by the Justices of the
14 Peace Bench in Maricopa County, a docket set for a one-hour timeslot is finished
15 in 30 minutes, meaning that there are 30 minutes left over to recall 5 cases that had
16 a party who did not answer at the initial calling of their case.⁶ Based on
17
18 Petitioners' experience practicing in and observing eviction court, the scenario
19 described by the Justices of the Peace is an accurate portrayal of the pace and flow
20 of eviction actions: cases move very quickly and court calendars are often
21 completed well before the allotted period. As a pilot project will demonstrate, the
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25 ⁵ Comment from the Justice of the Peace Bench in Maricopa County at 2-4;
26 Comment from the Manufactured Housing Communities of Arizona at 9-12;
27 Comment from Hull, Holliday & Holliday, P.L.C. at 3-4; Comment from Clark &
Walker, P.C.

28 ⁶ Comment from the Justice of the Peace Bench in Maricopa County at 3-4.

1 Court can easily implement Petitioners' proposal without disrupting the current
2 flow of eviction cases. Commenters' assertion that the proposed rule change will
3 only serve to increase court costs and, thus, hurt tenants is a non sequitur because,
4 as established, the additional time, and costs, stemming from the change in court
5 procedure will be minimal. In contrast, as UWU recognizes, the costs and
6 consequences associated with a default judgment are astronomical.⁷

9 Some justices of the peace already utilize procedures like those proposed in
10 the rule change, with positive outcomes. For example, Petitioners recently
11 observed a justice of the peace in Maricopa County set aside the first eviction case
12 called for the day when the tenant did not respond when the case was called. The
13 justice of the peace moved on to a few more cases and then recalled the case
14 approximately 30 minutes later. Petitioners observed another justice of the peace
15 in Maricopa County recall a case in which a default judgment had already been
16 signed. The tenant was late for her hearing because she had difficulties accessing
17 the virtual courtroom. Petitioners also observed a justice of the peace recall a case
18 a full hour after it was initially dismissed because the landlord attorney did not
19 appear at the scheduled hearing time. Through the proposed rule change,
20 Petitioners seek to establish fairness and uniformity in courtroom procedures
21 applicable to all parties in eviction matters throughout Arizona.

28 ⁷ Comment from Unemployed Workers United at 7-8.

II. The Proposed Rule Change Will Allow More Parties to Have Their Cases Heard on the Merits

If implemented, the proposed rule change will temporarily provide more flexibility for parties so they can have their cases evaluated by a judicial officer. The Arizona Attorney General’s Office recognized that “this temporary change would provide the court with an opportunity to hear all arguments before judgment is entered against the party and before additional court processes must take place.”⁸ UWU likewise states that “[t]his 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.”⁹

At eviction hearings, many tenants describe valid defenses to evictions, and judicial officers dismiss some of those cases after hearing the merits. A party who arrives to a hearing late is not afforded the opportunity to present defenses. DRAZ correctly points out that default judgments prevent parties from asserting substantive defenses in their cases and that “[d]efault judgments also prevent tenants from asserting important procedural defenses in eviction actions, such as lack of notice or improper service of process.”¹⁰ Procedural flaws are common in eviction notices, complaints, service of process documents, and more, and Legal Services often raise these defenses in their cases.

⁸ Comment from the Arizona Attorney General’s Office at 3.

⁹ Comment from Unemployed Workers United at 1.

¹⁰ Comment from Disability Rights Arizona at 7.

1 Allowing a judicial officer to decide a case after hearing all arguments is
2 particularly important for vulnerable populations. DRAZ explains that for tenants
3 with disabilities, default judgments can often be avoided if the tenant is able to
4 attend the hearing because most alleged lease violations for tenants with
5 disabilities can be cured by a reasonable accommodation.¹¹ Rather, most often, if a
6 party does not appear for their case when it is initially called, the opposing party is
7 awarded a default judgment. The proposed rule change will reduce the number of
8 default judgments in eviction actions and will help ensure that more cases are
9 heard on the merits.
10

13 **III. Petitioners’ Proposed Rule Change Will Help with the Eviction Crisis**

14 Some of the commenters in support discussed the need to implement rule
15 changes that would help with the ongoing housing and eviction crisis. The State
16 Bar of Arizona cites to the record high eviction filings in Arizona.¹² UWU
17 discusses how Arizona “has one of the highest housing loss rates in the country...”
18 and that “Maricopa County leads the nation in evictions with nearly twice the
19 national average.”¹³ In Maricopa County, 25.19 percent of cases in 2022 resulted
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26 ¹¹ Comment from Disability Rights Arizona at 7.

27 ¹² Comment from the State Bar of Arizona at 3.

28 ¹³ Comment from Unemployed Workers United at 3.

1 in a default judgment and contribute to the wide-spread eviction problem.¹⁴
2 Although commenters in opposition contend that only a small number of people
3 are affected by default judgment¹⁵, that 25.19 percent accounts for over a quarter of
4 all eviction cases in Maricopa County – that is not insignificant.
5

6 As Petitioners have explained in this Petition and in past petitions, default
7 judgments, and judgments in general, can have severe consequences for tenants.¹⁶
8 Judgments become a permanent part of the person’s court and consumer credit
9 history, which can affect a person’s ability to secure future housing or obtain
10 consumer credit and financing.¹⁷ And the consequences of an eviction judgment
11 go far beyond the immediate loss of housing: an eviction judgment can affect a
12 person’s capacity to maintain employment, affect a child’s educational attendance
13 and success, and lead to negative physical and mental health outcomes for both
14 adults and children.¹⁸ The consequences of a default judgment are even higher for
15 particular populations, like persons with disabilities:
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20 Tenants with disabilities may face barriers moving, forcing them to
21

22 ¹⁴ *Statistics: Justice Court Evictions by Manner of Disposition*, Arizona
23 Judicial Branch, <https://www.azcourts.gov/statistics/Interactive-Data-Dashboards/Justice-Court-Evictions>.

24 ¹⁵ Comment from the Justice of the Peace Bench in Maricopa County at 6-7;
25 Comment from the Manufactured Housing Communities of Arizona at 6-7;
26 Comment from Clark & Walker, P.C.

27 ¹⁶ Petition at 9-11.

28 ¹⁷ Petition at 10.

¹⁸ Petition at 10.

1 abandon their possessions, including necessary mobility aids and
2 devices, therapy equipment, or other disability-related aids, or leave a
3 dwelling that they modified at their own expense to meet their unique
4 disability-related needs, such as installing a ramp, grab bars, or
5 lowering shelves. An eviction may disrupt critical support systems
6 that a person with a disability has cultivated or require them to
7 relocate from an area where they were conveniently located near
8 healthcare providers or healthcare services. People with disabilities
9 may then face discrimination or other obstacles in locating alternative,
10 accessible housing.¹⁹

11 The Arizona Attorney General's Office recognizes that "[j]udgments entered
12 against individuals in eviction proceedings have significant consequences."²⁰ The
13 Arizona Attorney General's office also detailed the various hardships faced by
14 people who are evicted from their homes:

15 Additionally, those who are facing an eviction action are confronted
16 with an unfamiliar court process while coordinating work schedule
17 changes and absences at work for the hearing; searching for legal
18 assistance; looking for alternative living arrangements, including rapid
19 rehousing; managing allocation of resources for moving, payment of
20 rent, and childcare; transferring internet or other utility services, and
21 coordinating childcare.²¹

22 Commenter Zona Law Group, P.C. states that eviction rates actually have
23 not increased proportional to Arizona's growing population, which would render
24 almost every paper, report and news article on the issue a red herring.²² But, as
25 UWU correctly points out, "[t]hese numbers cannot be explained away by

26 ¹⁹ Comment from Disability Rights Arizona at 8.

27 ²⁰ Comment from the Arizona Attorney General's Office at 3.

28 ²¹ Comment from the Arizona Attorney General's Office at 2.

²² Comment from the Manufactured Housing Communities of Arizona at 5.

1 population growth – Maricopa’s 5.2% eviction rate in 2023 is the highest in the last
2 decade.”²³

3
4 The proposed rule change will help ensure, on a temporary basis, that parties
5 who are late to court do not automatically have a judgment entered against them.
6 Petitioners are confident based on court observations over the last year that a rule
7 change requiring a second call of a case will prevent unnecessary default
8 judgments, ensuing that more parties in Arizona eviction actions have their day in
9 court. Adopting this already-in-use best practice statewide on a temporary basis
10 will help demonstrate its value more broadly. The rule change is exactly the type
11 of remedial measure that is needed to alleviate Arizona’s eviction crisis and to
12 promote the Court’s Access To Justice vision.
13
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16 **IV. The Proposed Rule Change Seeks to Reach Parties Who May Not Be**
17 **Able to File a Motion for Relief from a Default Judgment**

18 Commenters in opposition to the proposed rule change, again, state that the
19 proposed rule change is unnecessary because parties who receive a default
20 judgment may find relief in the current rules of the RPEA.²⁴ Parties may file a
21 motion with the court to set aside the judgment based on mistake, inadvertence, or
22 excusable neglect, pursuant to RPEA 15(a), or for reconsideration, pursuant to
23
24

25 ²³ Comment from Unemployed Workers United at 3.

26 ²⁴ Comment from the Justice of the Peace Bench in Maricopa County at 8;
27 Comment from the Manufactured Housing Communities of Arizona at 12-14;
28 Comment from Hull, Holliday & Holliday, P.L.C. at 2; Comment from Clark &
Walker, P.C.

1 RPEA 9(g). Commenters in opposition further state that parties have many other
2 remedies under the RPEA before a hearing even takes place, including requesting a
3 continuance, filing an answer, and filing a motion to dismiss.²⁵
4

5 Commenters in opposition miss the point of the proposed rule entirely.
6 Unrepresented parties may not know how to file the motions for relief available
7 through the RPEA, may not know they can and should contact the court if they
8 need assistance, and may, for many reasons, be unable to file motions for relief.
9 Commenters in opposition admit that the various forms of relief afforded by the
10 RPEA are rarely exercised and that “most Justices of the Peace in Maricopa
11 County can count on one hand the number of motions to set aside/vacate an
12 eviction default they receive each month.”²⁶ This is most likely because the
13 available relief is too difficult for parties to access. The proposed rule change is a
14 simple alternative that makes it easier for parties, especially unrepresented parties,
15 to have their day in court.
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20 **V. The Status Quo Must Change**

21 Six different offices, organizations, and individuals recognized the need to
22 institute a change in court protocol for default judgments. In consideration of the
23 comments in opposition to the Petition, the State Bar of Arizona proposes that a
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27 ²⁵ Comment from the Manufactured Housing Communities of Arizona at 12-
13.

28 ²⁶ Comment from the Justice of the Peace Bench in Maricopa County at 5.

1 study committee or working group comprised of various stakeholders be convened
2 to find a workable solution.²⁷ Although Petitioners maintain that the proposed rule
3 change is a simple way to remedy the problems described in the Petition,
4 Petitioners are open to taking part in a study committee or working group to
5 discuss alternative proposals.
6

7 **VI. Comments to the Petitioners' Proposed Rule Made Outside the Rules** 8 **Forum** 9

10 Petitioners are aware that public comments regarding the Petition were
11 presented outside of the Rules forum.²⁸ The rulemaking process has fair and
12 equitable procedures that allow petitioners and commenters to present and evaluate
13 rule proposals. Comments presented outside the designated process deny everyone
14 involved the opportunity to present and respond to the comments. We have
15 included as an Appendix the public comments that were made outside of the Rules
16 forum, as context for the responses we provide in this Reply.
17

18 **VII. Conclusion** 19

20 The proposed rule change emphasizes fairness and uniformity in court
21
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23 ²⁷ Comment from the Arizona State Bar at 9.

24 ²⁸ Specifically, one member of the Justice of the Peace Bench in Maricopa
25 County made remarks critical of the Petition on the social media networking
26 website, *LinkedIn*. The posting prompted comments from members of the legal
27 community and the general public. As stated above, the Justice of the Peace Bench
28 in Maricopa County appear to misinterpret the proposal to require judicial officers
to wait one hour to recall cases in all calendar calls, even if the initial call is
completed in less time. Screenshots of the posting are attached to this reply.

1 procedures in eviction actions. The Petition will allow the Court to implement a
2 temporary pilot project to evaluate the effects of a proposed change in calendar
3 protocol. We are confident that the pilot project will show that such a change has a
4 positive impact on all parties who are minutes late for their hearings. For the
5 above reasons, we respectfully request that the Court approve this petition to
6 temporarily amend Rule 11(b)(1) of the Rules of Procedure for Eviction Actions as
7 a pilot project.

8
9
10 Respectfully submitted this 3rd day of June 2024.

11
12 COMMUNITY LEGAL SERVICES
13 DNA PEOPLE'S LEGAL SERVICES
14 SOUTHERN ARIZONA LEGAL AID
15 WILLIAM E. MORRIS INSTITUTE FOR
16 JUSTICE

17 By /s/ Andrew P. Schaffer
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23 /s/ Pamela Bridge
24 Pamela Bridge
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26 /s/ Leslie McLean
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28 DNA PEOPLE'S LEGAL SERVICES

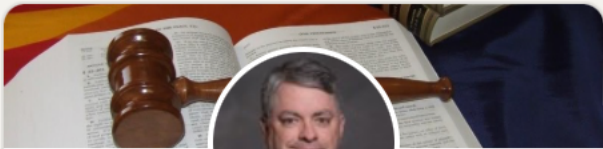
/s/ Alan R. Solot
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Original electronically filed with the
Clerk of the Supreme Court of Arizona
this 3rd day of June 2024.

By: /s/ Andrew P. Schaffer

Appendix A



Gerald Williams

Justice of the Peace at Maricopa County

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Gerald Williams • 1st

Justice of the Peace at Maricopa County

5d •



A group of tenant advocates filed a petition to change the rules governing residential evictions to require courts to give a one hour grace period for tenants to appear for their scheduled court date. The Arizona Supreme Court rejected this idea last year. The proposal is in response to a persistent myth that numerous tenants in residential eviction actions, in spite of the ability to appear for their court date by phone, are receiving default judgments merely because they are appearing in courtrooms late.

Our bench filed a public comment again this year in opposition. If adopted, it would force inefficiency, would make court start times irrelevant, and would mandate chaos.



Andrew Patrick Schaffer

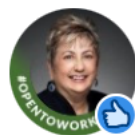
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7 comments

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Gerald Williams

Justice of the Peace at Maricopa County

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7 comments

Reactions



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Most relevant ▼



Greg Davis • 2nd

5d ...

Partner at Warner Angle Hallam Jackson & Formanek

If you can't be on time for something that important, that's not anyone's fault but your own.

Like · 5 | Reply · 5 Replies



Lydia Peirce Linsmeier • 2nd

5d ...

Effective and efficient civil litigator, fair housing, and animal l...

When people are under extreme stress (like losing your housing) they may have a difficult time coping. Combined with needing to work, disability, transportation issues, childcare, etc... things happen. (The proposed remedy is a nightmare - would be better to focus resources on the front end and prevent evictions in the first place.)

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