

We recommend rejection of the proposed amendments. The multiple-choice list of eight reasons a party can request a delay contain items that are either unnecessary or unworkable. Somewhat amazingly, the Petitioners acknowledge they are proposing these rules to “encourage parties to request and [for] courts to grant more continuances.”¹

In addition, Petitioners have referenced materials that unfairly and inaccurately criticize Justice Courts as being indifferent to the due process rights of tenants and as allegedly ordering whatever landlords request.² Unfortunately, Petitioners have been using these same discredited materials as their primary reason for attempts to change eviction court rules every year for the last few years.

I.

NO EFFECTIVE COURT CASE FLOW MANAGEMENT PLAN WOULD ADOPT A PROCESS WHERE JUDGES ARE AUTOMATICALLY REQUIRED TO DELAY COURT DATES.

¹ Petition, R-25-0020, page 6.

² As has been done in previous rule change petitions, the Petitioners again reference narratives they prepared that are very critical of our bench. This year, they did so in both of their petitions, R-25-0019 and R-25-0020. The prior concerns, from 2005, had some validity and resulted in the adoption of the Arizona Rules of Procedure for Eviction Actions. However, their May 2020 commentary, *What’s Justice Got To Do With It? The Experience of Tenants in the Maricopa Justice Courts*, is, at best, misleading. See generally, Concluding Report, Supreme Court of Arizona, Task Force on Countering Disinformation, (Mar. 1, 2022).

The proposed amendment would make it substantially more difficult for judicial officers hearing eviction actions to manage their calendars. It would remove judicial discretion³ and command judges to grant trial continuances if either party could successfully claim any health or medical emergency, employment scheduling conflict, or child care issue.⁴ In addition, if the proposed amendment is adopted, Superior Court judges and Justices of the Peace would be required to continue a trial date any time either party had “a need to gather evidence relevant to the eviction action.”⁵ This need is potentially present in every case and therefore could be claimed in nearly every case. Effective case flow management requires judges, to the extent possible, to provide certainty that events will occur as scheduled and that deadlines will be enforced.⁶

More alarmingly, by slyly changing the “may” to “shall” in Rule 11(d), the Petitioners have created a permanent delay, because a party can continually claim a work conflict or an inability to obtain child care to repeatedly demand

³ The Petitioners proposed language changes “The court may order the continuance of a trial date” to “The court ***shall*** order the continuance of a trial date.” Petition, R-25-0020, page 3.

⁴ Petition, R-25-0020, page 4.

⁵ *Id.*

⁶ Course Materials, *Effective Case flow Management*, The National Judicial College (2006).

a trial continuance, which the court would be required to repeatedly grant, as the trial continuance is mandatory and the rule contains no limit to the number of requests.

Petitioners also incorrectly claim that their proposed changes are necessary to provide clarity so that “parties in eviction matters [can] utilize what should be a common litigation mechanism to seek necessary continuances of eviction proceedings.” A major problem with this declaration in support of their delay on demand proposal is that residential eviction actions are not common litigation.

Residential eviction actions are summary proceedings⁷ that are narrowly focused,⁸ that have limited discovery,⁹ that have limited categories of

⁷ Gerald A. Williams, *Representing Residential Tenants in Eviction Actions*, 48 Ariz. Attorney 12 (Nov. 2011); RPEA 11 (Tenants are not required to file an Answer before first court date and are only required to file an Answer if ordered by judge to do so).

⁸ A.R.S. § 33-1368 (Noncompliance with rental agreement by tenant); A.R.S. § 33-1377(Special detainer actions are limited); *Keenen v. Biles*, 17 P.3d 111 (Ariz. Ct. App. 2001)(Landlord can obtain judgment for rent, costs, and attorney’s fees); RPEA 5 (Lists requirements for content of complaint); RPEA 13 (Monetary damages are generally limited to rent, utilities, and late fees); .

⁹ RPEA 10 (Disclosure procedures).

authorized counterclaims,¹⁰ and that are designed to move promptly.¹¹ They are designed primarily to resolve issues concerning possession (but never ownership) of a residence, with the understanding that claims concerning property damage (and any other outstanding issues) will potentially be resolved subsequently either in a small claims case or in a civil lawsuit, after the landlord has made any lawful deductions from the tenant's security deposit.

Encouraging trial continuances, especially as a litigation tactic, is bad public policy. In addition to disrupting the case processing time standards set by the Administrative Office of the Courts, delay for the sake of delay is counterproductive. In the vast majority of residential eviction cases, landlords allege non-payment as the factual basis for the case. If the procedural requirements have been met, there are not many defenses to nonpayment of rent. Delaying the case, simply because it can be delayed, is not likely to change the ultimate outcome. It is, however, likely to result in harm to tenants,

¹⁰ RPEA 8 (Provides requirements for counterclaims). For example, a tenant cannot lawfully file a tort claim as a counterclaim in a residential eviction action. In contrast, tenants can file a counterclaims for limited types of alleged misconduct by a landlord. A.R.S. § 33-1343(D)(Abuse of access); A.R.S. § 33-1367 (Unlawful ouster, exclusion of essential services); A.R.S. § 33-1381(Retaliatioin).

¹¹ A.R.S. § 33-1377(C)(Limits delays to 3 days in Justice Court and to 5 days in Superior Court); RPEA 11 (Limits delays in Justice Court to 3 days).

as landlords request additional attorney fees for additional court appearances, and if a trial is continued into the next month, an evicted tenant will be responsible for the full amount of the rent for the new month.¹²

II.

ONE OF THE PROPOSED JUSTIFICATIONS FOR DELAY REQUESTS IS INCONSISTENT WITH CURRENT ARIZONA LAW AND WOULD RESULT IN A SIGNIFICANT PUBLIC POLICY CHANGE

Whether additional procedural safeguards are needed for residential tenants facing eviction is a discussion that is worth having.¹³ As judicial officers, we generally take no position on what the law should be. Those discussions are often better reserved for the other branches of government. Currently, judges have no legal authority to delay an eviction action to give a tenant additional time to pay a past due balance. Proposed RPEA 18(d)(viii) would invent one.¹⁴ Given the recommended requirements of the rest of the petition, judges

¹² A.R.S. § 12-1178(A); 33-1377(F).

¹³ Larisa G. Bowman, *Eviction Abolition*, 55 Loyola Univ. Chicago L.J. 541, (Spring 2024); Kathryn R. Mason, *Housing Injustice and the Summary Eviction Process: Beyond Lindsey v. Normet*, 74 Okla. L. Rev. 391 (Spring 2022); *See also*, Gerald A. Williams & Charles J. Adornetto, *Pandemic Residential Eviction Moratoriums: An Analysis of Judicial Implementation and Recommendations for the Future*, 54 Texas Tech L. Rev. 603, 643 (Summer 2022)(Authors urge caution in adopting policies to add requirements designed to make it more difficult to evict tenants because they can harm the tenant community in general. For example, landlords unable to collect rent from some may be forced to raise rent for all.); Joshua Kamali, *Opinion: I believe in tenants' rights. But L.A. is pushing out small landlords like me*, Los Angeles Times, Jan. 16, 2024.

¹⁴ Petition, R-25-0020, page 5.

would be required to delay eviction actions to allow tenants additional time to pay.

Legislation designed to help struggling tenants has been introduced in the most recent Arizona legislative secession¹⁵ and that is where that type of public policy decision should occur. Substantive policy changes, even if they are a genuinely good idea, should not be made through the court rule petition process.

IV.

TWO OF THE REQUESTED REASONS FOR JUDGES TO GRANT MANDATORY DELAYS ARE UNNECESSARY BECAUSE THEY MERELY REQUIRE JUDGES TO COMPLY WITH EXISTING FEDERAL LAW.

Two of the reasons on the Petitioners list of reasons for delay are a reference to existing federal law. Therefore, both are unnecessary; but as worded, both are also unworkable.

Proposed RPEA 18(d)(ii) would require judges to comply with the Americans with Disabilities Act. This is already a requirement and consequently does not need to be restated in a court rule. But as stated it is

¹⁵ Senate Bill 1173, 57th Legislature, 1st Reg. Sess. (Ariz. 2025)(Amends A.R.S. § 33-1368 to change the requirement for a landlord to give a five-day notice for nonpayment of rent to a 15-day notice); Senate Bill 1172, 57th Legislature, 1st Reg. Sess. (Ariz. 2025) (Amends A.R.S. § 33-1371 to require a landlord to accept partial payment of rent); Senate Bill 1176, 57th Legislature, 1st Reg. Sess. (Ariz. 2025)(Appropriates \$25 million to the housing trust fund).

unworkable because it allows a party to request a mandatory delay for an unspecified individual. This unknown person could be a party, a witness, or even a spectator. The Petition states courts should grant delays on this basis because a live-in-caregiver was not able to attend proceedings.¹⁶ It is not clear from the Petition why this caregiver could not attend remotely.

Proposed RPEA 18(d)(iv) would require judges to grant delay requests for an “obligation related to past or present military service.” This may be an attempt to reference the Servicemembers Civil Relief Act (SCRA), which applies not only to military members, but also to their family members. Evictions can be blocked by either a military member or their dependent filling a request to stay an eviction action.¹⁷ However, rather than reference the well-established eviction protections under the SCRA, the proposed rule would require a delay for any “obligation related to past ... military service,” perhaps, up to and including, being in charge of Taco Tuesday at a local American Legion Post. Again, this proposed rule change is both unnecessary and unworkable.

¹⁶ Petition, R-25-0020, page 8.

¹⁷ 50 U.S.C. § 3951(b); *See also*, William G. Montgomery and Gerald A. Williams, *With Most Courts Allowing Remote Appearances, Does a Military Member’s Service Still Materially Effect Their Access to Courtrooms?* – Tex. A&M L. Rev. – (To be published Summer 2025)(One section discusses residential evictions).

V.

REMOTE APPEARANCES FOR EVICTION ACTIONS HAVE SIGNIFICANTLY HELPED TENANTS LIMIT THEIR TIME AWAY FROM WORK

Courts in Arizona conduct remote hearings in eviction actions in large part because doing so is required by statute,¹⁸ by court rule,¹⁹ and by administrative order.²⁰ While many self-represented litigants undoubtedly have either limited or no access to technology, internet access is not a prerequisite for a tenant to appear remotely for their residential eviction case. Only access to a telephone is required. More importantly, our remote appearance programs have been a remarkable success story.

One data-based example is the appearance rates in eviction actions filed in the Maricopa County Justice Courts. Before the pandemic, in more than one-third of evictions actions, the defendant failed to appear. In 2019, for example, the failure-to-appear rate in such cases ranged from one-third to approaching 40%. After implementing remote appearance options, failure-to-appear rates decreased significantly, to as low as approximately 13% in February 2021.²¹

¹⁸ A.R.S. § 22-206(A)

¹⁹ RPEA 6(a)(4).

²⁰ In the Matter of: Adoption and Implementation of Plan B Workgroup Recommendations as Presumptive Standards for Remote and In-Person Hearings, Ariz. S.Ct. Admin. Order 2022-88 (Aug. 3, 2022); In The Matter of the Adoption and Implementation of Presumptive Standards for Remote and In-Person Hearings for Justice Courts in Maricopa County, Maricopa County Admin. Order 2022-119 (Sep. 20, 2022).

²¹ Hon. Samuel A. Thumma, et. al., *Post-Pandemic Recommendations: COVID-19 Continuity of Court Operations During a Public Health Emergency Workgroup*, 75 SMU

While remote appearances do not solve every issue that would otherwise require a delay, they do help significantly. By way of example, many tenants are hourly employees who therefore do not get paid if they are not at work. They now no longer need request half a day off work so they can drive to the courthouse, find parking, go through security, and appear in person. Because it is a place where they can secure privacy, many tenants in eviction actions appear remotely from their car during a break from work. Thus some, but obviously not all, reasons for a tenant to request a delay because he or she cannot get off work are eliminated.

V.

THE AMENDMENTS ARE REMEDIES IN SEARCH OF A PROBLEM

These proposed rule changes are based on the false belief that judges are continually denying tenants due process by ruling against them when they request delays. As evidence in support of this alleged crisis, the Petitioners provide only their observation of a snapshot sample cases from five years ago. According to the Petition, in 2020, they examined 1,097 cases and found

L. Rev 1, 18-19 (Jan 2022). The quote is from the report of the Plan B Workgroup. Manistee Justice of the Peace (Maricopa County) Donald Watts served on that workgroup.

plaintiffs requested continuances 17 times, 16 of which were approved.²² In contrast, 11 defendants requested continuances, 8 of which were approved.²³

To put those numbers in perspective, the Justice Courts in Maricopa County are currently hearing approximately 7,000 residential eviction actions each month. More significantly, there is an obvious reason delay requests by landlords are often granted: Landlords have no advance notice of whether a tenant will appear, and if so, contest the allegations in the complaint. Attorneys who represent landlords cannot reasonably be expected to witness standing by on call for 7,000 potential trials each month. Unless the case is one where a landlord is requesting immediate possession,²⁴ it is virtually impossible for a landlord to know whether a witness will be needed on the day of the initial appearance. If a tenant articulates a potentially valid defense, the judge is required to set the case for trial.²⁵ Often that trial cannot occur the

²² Petition, R-25-0020, page 6.

²³ *Id.*

²⁴ “If there is a breach that is both material and irreparable and that occurs on the premises,” which includes, but is not limited to criminal conduct, “the landlord may deliver a written notice for immediate termination of the rental agreement.” A.R.S. § 33-1368(A). Even if the tenant fails to appear, a judge cannot sign a judgment in an eviction action requesting immediate possession without evidence from a witness called by the landlord. RPEA 13(b)(3)(B)(Immediate evictions require a hearing).

²⁵ “If the court determines that a defense or proper counterclaim may exist, the court shall order a trial on the merits.” RPEA 11(c)(1)

same day at the first court date. Consequently, the Court must grant landlord's continuance request; but additional time usually helps the tenant as well.

Finally, by the Petitioners' own numbers, 24 of 28 (85.7%) of requested trial continuances were granted. Judges do not need mandatory guidance on what "good cause" is, and this is another annual attempt by the Petitioners to remedy a problem that does not exist. It is unfortunate and frequently heartbreaking that so many Arizonans are evicted, to the greatest extent because they can no longer make their monthly rental payments; but it is not the fault of hard-working Arizona judges diligently and timely following the eviction laws established by the Legislature.

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CONCLUSION

For the reasons stated, we respectfully request this Court reject the proposed amendments to Rule 11(d)(1) and to 18(d) of the Rules of Procedure for Eviction Actions.

RESPECTFULLY SUBMITTED, this 14th day of February 2025.

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