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

9 In the Matter of:

Supreme Court No. R-25-0020

10 Petition to Amend Rules 11(d) and  
11 18(d), Arizona Rules of Procedure for  
12 Eviction Actions

**Comment to Petition to Amend Rules  
11(d) and 18(d), Rules of Procedure  
for Eviction Actions**

13 Pursuant to Rule 28(e) of the Rules of the Supreme Court of Arizona,  
14 Disability Rights Arizona (DRAZ), formerly the Arizona Center for Disability Law,  
15 respectfully submits this comment in support of Petition R-25-0020, filed by  
16 Petitioners William E. Morris Institute for Justice, Community Legal Services, DNA  
17 People’s Legal Services, and Southern Arizona Legal Aid (Petitioners), which would  
18 amend the Rules of Procedure for Eviction Actions (“RPEA”), Rules 11(d) and  
19 18(d), to have a definition of “good cause” that encourages parties to request—and  
20 courts to grant—continuances to parties when needed.

21 DRAZ is a statewide non-profit law firm that provides no-cost legal advice  
22 and representation to people with disabilities. DRAZ is the designated Protection &  
23 Advocacy (P&A) agency for individuals with disabilities in Arizona. DRAZ  
24 regularly provides legal information, advice, and representation to tenants with  
25 disabilities who have faced or are facing discriminatory evictions. DRAZ has  
26 expertise in disability-related barriers that affect individuals’ ability to appear at and  
27 participate in eviction hearings.

1 DRAZ supports the proposed rule amendment in its entirety. DRAZ’s  
2 comment focuses on the two grounds for good cause that directly impact the  
3 disability community: (1) a health or medical emergency and (2) a need to request  
4 and obtain a reasonable accommodation under the Americans with Disabilities Act  
5 (ADA). Individuals with disabilities are more likely to have a medical or health  
6 emergency that affects their ability to appear at a court hearing. Further, only  
7 individuals with disabilities may need reasonable accommodations to equally  
8 participate in a court hearing. A mandatory continuance of either three or ten days  
9 because of a health or medical emergency or to process a reasonable accommodation  
10 request is reasonable and in the interests of justice.

11 **I. Individuals with disabilities face disability-related barriers that affect**  
12 **their appearance at court hearings and their susceptibility to eviction.**

13 People with disabilities face discrimination in accessing programs, services,  
14 and buildings operated by state courts despite legislative action and intent to remedy  
15 such discrimination and ensure equal access.<sup>1</sup> Title II of the ADA requires state  
16 courts to provide reasonable modifications in their programs and activities, as well  
17 as provide auxiliary aids and services, to give people with disabilities an equal  
18 opportunity to participate.<sup>2</sup> The purpose of the ADA’s requirements is to enable  
19 people with disabilities to overcome barriers to participating in public services and  
20 to guarantee equal access to services, including court proceedings.

21 The ADA defines “disability” to include “a physical or mental impairment  
22 that substantially limits one or more major life activities.”<sup>3</sup> “Major life activities”  
23 include, but are not limited to, seeing, hearing, walking, standing, speaking,

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24 <sup>1</sup> See *Tennessee v. Lane*, 541 U.S. 509, 524-29 (2004) (holding that Congress validly exercised its remedial  
25 lawmaking authority under the Fourteenth Amendment in applying Title II of the ADA to state courts); 42 U.S.C. §  
12101(a), (b).

26 <sup>2</sup> 28 C.F.R. § 35.130(b)(7)(1) (“A public entity shall make reasonable modifications in policies, practices, or  
27 procedures when the modifications are necessary to avoid discrimination on the basis of disability.”); 28 C.F.R. §  
35.160(b)(1) (“A public entity shall furnish appropriate auxiliary aids and services where necessary to afford  
28 individuals with disabilities . . . an equal opportunity to participate in, and enjoy the benefits of, a service, program,  
or activity of a public entity.”)

<sup>3</sup> 42 U.S.C. § 12102(1).

1 breathing, learning, reading, concentrating, thinking, communicating, and working.<sup>4</sup>  
2 “A major life activity also includes the operation of a major bodily function,  
3 including but not limited to, functions of the immune system, normal cell growth,  
4 digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine,  
5 and reproductive functions.”<sup>5</sup> There is a wide variety of disabilities. Some are visible  
6 and some are not. Examples of disabilities include, but are not limited to cancer,  
7 diabetes, post-traumatic stress disorder (PTSD), HIV/AIDS, autism, cerebral palsy,  
8 deafness or hearing loss, blindness or low vision, epilepsy, mobility disabilities  
9 requiring use of a wheelchair, walker, or cane, intellectual disabilities (ID), major  
10 depressive disorder, schizophrenia, and traumatic brain injury (TBI).<sup>6</sup>

11 The definition of disability is construed “in favor of broad coverage of  
12 individuals” and “to the maximum extent permitted.”<sup>7</sup> Rules of construction for  
13 interpreting the ADA definition of “substantial limitation” state that episodic  
14 impairments are considered disabilities if they substantially limit major life activities  
15 when active.<sup>8</sup> The determination of whether an impairment substantially limits a  
16 major life activity is made “without regard to the ameliorative effects of mitigating  
17 measures” including medication, medical supplies, equipment, or appliances, use of  
18 assistive technology, reasonable accommodations, or auxiliary aids or services.<sup>9</sup>

19 People with disabilities often face obstacles to accessing courthouses and  
20 court proceedings. These obstacles include but are not limited to: difficulties  
21 physically accessing courthouses for people who use walkers, wheelchairs, or other  
22 mobility devices, frequent medical appointments for people with chronic illnesses,  
23 a need for an American Sign Language (ASL) language interpreter for a deaf  
24 individual, and chronic disability-related symptoms such as fatigue and pain that

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25 <sup>4</sup> 42 U.S.C. § 12102(2)(A).

26 <sup>5</sup> 42 U.S.C. § 12102(2)(a).

27 <sup>6</sup> See Introduction to the Americans with Disabilities Act, ADA.gov, available at <https://www.ada.gov/topics/intro-to-ada/> (last accessed April 29, 2025).

28 <sup>7</sup> 42 U.S.C. § 12102(4)(A).

<sup>8</sup> 42 U.S.C. § 12102(4)(D).

<sup>9</sup> 42 U.S.C. § 12102(4)(E)(i).

1 make everyday tasks much more difficult. Other obstacles include difficulty finding  
2 accessible parking, untrained court staff or personnel who refuse service animals or  
3 make unlawful inquiries into a party's need for reasonable accommodation, and a  
4 need for alternatively formatted written information, such as large print, Braille, or  
5 audio-recorded materials for people who are blind or low-vision. People with  
6 disabilities that affect cognitive functioning, communication skills, linguistic  
7 abilities, and memory may need additional time for proceedings or filings, written  
8 rather than verbal orders, frequent breaks, and assistive technology.<sup>10</sup> Individuals  
9 with cognitive, intellectual, or learning disabilities may not be able to access written  
10 or printed instructions and may need alternative formats or other reasonable  
11 accommodation in order to be fully informed of their rights and the status of  
12 proceedings. For people with disabilities, whether physical or mental, such  
13 accommodations are necessary to ensure equal access to court proceedings and  
14 services.

15 Further, while widespread use of videoconference and telephonic options to  
16 appear at court proceedings improves access for people with disabilities, it does not  
17 eliminate the need for reasonable accommodation or mean that emergency health  
18 matters will not require a continuance. The assistive technology used by individuals  
19 who are blind or have low vision may not be compatible with a court's  
20 videoconferencing system. Individuals with intellectual or cognitive disabilities may  
21 not be able to access videoconferencing technology. Individuals with  
22 communication or speech-related disabilities may find it difficult or impossible to  
23 communicate effectively over videoconferencing. Some individuals with disabilities  
24 may not be able to access videoconferencing technology at all and may need to  
25 appear in-person to obtain printed materials, request reasonable accommodation, or

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26  
27 <sup>10</sup> Examples of disabilities that might affect cognitive functioning and executive function skills include but are not  
28 limited to: attention deficit hyperactivity disorder (ADHD), conduct disorder, depression, schizophrenia, learning  
disorders, autism spectrum disorders (ASD), Alzheimer's disease and other neurodegenerative conditions, anxiety  
disorders, obsessive-compulsive disorder (OCD), and traumatic brain injuries (TBI).

1 effectively participate in proceedings. Ultimately, for many tenants with disabilities,  
2 the availability of remote appearance does not alleviate the need for reasonable  
3 accommodation or modification.

4 Disability-related factors and circumstances often precipitate the eviction of  
5 tenants with disabilities. For example, an individual may experience a deterioration  
6 or decline in their disability-related symptoms, leading to financial loss. Or an  
7 individual may experience an interruption in support systems that previously  
8 allowed them to live independently in the community. Individuals who receive social  
9 security disability income (SSDI) may experience delays or interruptions in benefits  
10 through no fault of their own. Many tenants with disabilities facing eviction for  
11 nonpayment of rent have lost work because of health or medical conditions beyond  
12 their control, such as hospitalization or worsening symptoms. Tenants facing  
13 evictions for other types of lease violations may have been unable to keep up with  
14 lease obligations due to disability-related symptoms or loss of caregiving support.  
15 In most cases, a tenant with a disability who is facing eviction is already dealing  
16 with extraordinarily challenging life circumstances.

17 As observed in the course of DRAZ's advocacy, tenants often face eviction  
18 due to discrimination related to their disability or accommodation needs. For  
19 example, DRAZ represented a tenant who was wrongfully evicted due to unlawful  
20 application of an apartment complex's crime-free ordinance when police came to  
21 the apartment to perform a mental wellness check. DRAZ represented a tenant with  
22 a mobility disability who was unlawfully forced to vacate due to the apartment  
23 complex's failure to provide an accessible unit and charging of discriminatory  
24 transfer and service animal fees. DRAZ represented a tenant who was unlawfully  
25 charged for normal wear-and-tear on flooring because of a mobility device in her  
26 apartment. These are just a few examples of tenants who have faced disability-based  
27 discrimination from housing providers.

28 Given the substantial barriers that many people with disabilities must

1 overcome to participate in court proceedings, providing a mandatory continuance of  
2 an eviction trial date for the purpose of (1) a health or medical emergency or (2) a  
3 need to request and obtain reasonable accommodation under the ADA is reasonable  
4 and necessary to give people with disabilities equal access to court services and  
5 proceedings.

6 **II. A mandatory continuance for a tenant who has a medical or health**  
7 **emergency or needs reasonable accommodation is in the interests of**  
8 **justice and is required by the ADA.**

9 Tenants with disabilities face barriers to accessing court proceedings that also  
10 make them more vulnerable to eviction in the first place. Similarly, tenants with  
11 disabilities experience unique harm from the failure to obtain a necessary  
12 continuance of a court date. Oftentimes, the difference between obtaining and not  
13 obtaining a necessary continuance can be the difference between a person remaining  
14 in their home or not. The proposed rule change remedies this injustice by requiring  
15 a continuance when a tenant has a medical or health emergency or needs reasonable  
16 accommodation under the ADA.

17 Further, requiring a mandatory continuance for a tenant who has a medical or  
18 health emergency or needs reasonable accommodation under the ADA prevents  
19 uneven and discretionary application of the ADA. As the ADA already requires  
20 courts to grant reasonable accommodation where necessary to ensure people with  
21 disabilities equal access to court services and proceedings, a brief continuance of a  
22 court date for a health or medical emergency or to request reasonable  
23 accommodation already falls within what the ADA requires. The proposed rule  
24 change codifies this ADA requirement into the Rules of Procedure for Eviction  
25 Actions, thereby ensuring conformity and consistency in the ADA's application.  
26 Society benefits from predictable and consistent application of the law.

27 **A. A mandatory continuance for a tenant who has a medical or health**  
28 **emergency is in the interests of justice.**

1           A medical or health emergency can interfere with a tenant's ability to attend  
2 and participate in court proceedings. An emergency hospitalization or medical  
3 appointment can physically prevent a person with a disability from attending a  
4 virtual or in-person court hearing. Recovery from symptoms or treatment can also  
5 interfere with a tenant's ability to attend or participate in a court hearing regardless  
6 of whether there is an in-person or virtual appearance . For example, a person  
7 receiving chemotherapy, immunotherapy, or radiation treatment may have an  
8 appointment that conflicts with a court date and may also need additional time to  
9 recover adequately to participate in court. Other examples of situations where a  
10 continuance may be necessary include, but are not limited to: kidney dialysis  
11 appointments for a person with end-stage kidney disease, physical therapy for people  
12 with mobility impairments, intravenous or oxygen therapy to treat sickle cell anemia,  
13 infusion therapy for autoimmune conditions such as multiple sclerosis, rheumatoid  
14 arthritis, and lupus, and any major surgery and the attendant recovery and  
15 rehabilitation. Episodic conditions such as epilepsy or migraine headaches can  
16 unexpectedly and temporarily disable a tenant. Courts routinely grant extensions for  
17 attorneys facing medical emergencies and chronic health conditions and should do  
18 the same for litigants, especially since most tenants are unrepresented.

19           DRAZ represented a tenant with low vision who was hospitalized for eye  
20 surgery after experiencing a fluctuation in vision. The tenant's church pastor  
21 informed the Justice Court magistrate presiding over the case that the tenant was  
22 hospitalized and requested that the matter be postponed until the tenant was released  
23 from the hospital. The request was denied and the proceeding moved forward  
24 without the tenant present, resulting in his eviction while hospitalized. Other DRAZ  
25 clients and tenants with disabilities have requested continuances due to disability-  
26 related hospitalizations and been denied. Such denials contribute to unjust  
27 proceedings and outcomes that likely violate the ADA.

28           A mandatory continuance in cases where a medical or health emergency

1 interferes with a scheduled court date also benefits landlords. In cases where a tenant  
2 cannot attend a court hearing due to a medical or health emergency or a need for a  
3 reasonable accommodation, and is evicted as a result, the tenant may have legal  
4 grounds to contest the eviction.<sup>11</sup> Further, like all tenants, tenants with disabilities  
5 may have a defense in an action for nonpayment if they prevail in a counterclaim  
6 against a landlord.<sup>12</sup> Requiring a continuance under these specific circumstances  
7 therefore ensures finality of judgments, prevents ongoing litigation, and conserves  
8 the resources of both landlords and the court.

9 **B. A mandatory continuance for a tenant who needs reasonable**  
10 **accommodation is in the interests of justice and is required by the ADA.**

11 Determining, requesting, and obtaining reasonable accommodation or  
12 auxiliary aids for a person with a disability can take time. If the court does not  
13 already have procedures in place for processing and granting such requests, doing  
14 so may require additional time. Accommodation requests for litigants with  
15 disabilities often entail providing materials in accessible formats or obtaining  
16 interpreter services. People who are blind or low-vision may require braille or large-  
17 print documents or audio recordings of written documents. People who are deaf or  
18 hard of hearing may require an ASL interpreter or assistive hearing devices.  
19 Depending on the circumstances and the nature of the person's disability, a  
20 specialized interpreter such as a Certified Deaf Interpreter may be needed.<sup>13</sup> If such  
21 accommodation is not immediately available, the ADA requires the court to allow  
22 time to provide the accommodation or auxiliary aid.<sup>14</sup> A lack of available  
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24 <sup>11</sup> See, e.g., *Douglas v. Kriegsfeld Corp.*, 884 A.2d 1109 (D.C. Cir. 2005) (tenant established reasonable  
25 accommodation defense to eviction under Fair Housing Act); see also *Miller v. Amos*, 543 P.3d 393, 201 (Colo.  
2024) (holding that tenant can raise fair housing violation as affirmative defense to eviction).

26 <sup>12</sup> See A.R.S. § 33-1365(A).

27 <sup>13</sup> See Use of a Certified Deaf Interpreter, Access Services Northwest, available at <https://asnwonline.com/use-of-a-certified-deaf-interpreter/> (last accessed April 29, 2025).

28 <sup>14</sup> The ADA requires courts to provide reasonable accommodations or modifications that do not pose an undue administrative or financial burden, regardless of how long they may take to provide. 28 C.F.R. § 35.130(b)(7)(1); 28 C.F.R. § 35.160(b)(1).

1 information about how to request reasonable accommodation can cause additional  
2 delay and should be remedied as much as possible.

3 DRAZ represented a deaf tenant who was facing eviction based on non-  
4 payment of rent. During the eviction hearing, the client was present in-person and  
5 had an ASL interpreter over Zoom. The client could not understand the ASL  
6 interpreter and was clear to the other party and the court that there was confusion  
7 and possible lack of effective communication. However, the court chose to “muddle  
8 through” the hearing. The court issued a judgment of eviction. Ultimately, DRAZ  
9 had to file a stipulated motion requesting that the eviction court vacate the eviction  
10 order and set a hearing with an in-person ASL interpreter. The experience took a  
11 significant emotional toll on the litigant.

12 A mandatory continuance where a party needs to request and obtain  
13 reasonable accommodation alleviates the additional burdens of improper evictions  
14 of tenants with disabilities. Tenants with disabilities often face additional barriers to  
15 moving, such as limited mobility and resources. They may be forced to abandon  
16 mobility aids and devices and even life-saving medical equipment. They may have  
17 to vacate a dwelling they modified at their own expense, such as by building ramps,  
18 widening doorways, installing grab bars, lowering shelving, or installing a doorbell  
19 with a visual flasher. Eviction can disrupt medical and community support systems  
20 of people with disabilities, such as easy access to health care providers. Often,  
21 households with family members with disabilities have additional disability-related  
22 criteria in locating suitable housing. It may need to be accessible, on the ground  
23 floor, on an accessible bus line, near behavioral health clinics or specialty medical  
24 practices, near a family member who provides personal care or other related  
25 assistance, and within a specific price point based on a limited income. Disrupting  
26 housing will result in longer periods of housing instability trying to replace housing  
27 that fits essential criteria. The search process can be longer because of discrimination  
28 in the rental screening process. People with mental health disabilities may face loss

1 of stable housing, which can disrupt treatment or exacerbate symptoms. Tenants  
2 with disabilities may face further difficulties locating accessible housing, a task  
3 made even more difficult by the existence of an eviction record. Eviction can  
4 therefore have compounded and cascading harmful effects on tenants with  
5 disabilities to the detriment of their health, wellbeing, and the entire community.

6 **III. Conclusion**

7 Tenants with disabilities are entitled to a fair and equal opportunity to access  
8 court proceedings that determine whether they will be evicted from their housing.  
9 The proposed rule change will promote fairness in the process and address some of  
10 the barriers to accessing the eviction court system due to disability.

11 For the above reasons, DRAZ respectfully requests that the Court approve the  
12 Petition to Amend Rule 11(d) and Rule 18(d) of the Arizona Rules of Procedure for  
13 Eviction Actions to require a mandatory continuance in cases as set forth in the  
14 proposed rule amendment, including a mandatory continuance for good cause due  
15 to a health or medical emergency or a need to request and obtain reasonable  
16 accommodation under the ADA.

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19 Respectfully submitted this 30th day of April 2025.

20 DISABILITY RIGHTS ARIZONA

21  
22 By /s/ Katherine Henrichs

23  
24 Original electronically filed with the  
25 Clerk of the Supreme Court of Arizona  
26 this 30th day of April 2025.

27 By: /s/ Katherine Henrichs