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9 IN THE ARIZONA SUPREME COURT
10 STATE OF ARIZONA

11 IN THE MATTER OF:) Supreme Court No. R-25-0020
12)
13 Petition to Amend Rule 11(d) and) Comments in Opposition of
Rule 18(d) of the Arizona Rules of) Petition to Amend
14 Procedure for Eviction Actions) the Proposed Rule 11(d) and 18(d)

15 **BACKGROUND**

16 Commenting party, Hull, Holliday & Holliday, PLC, hereby opposes the Petition
17 to Amend Rule 11(d)(1) and Rule 18(d) (“Petition”) of the Arizona Rules of Procedure for
18 Eviction Actions (“RPEA”) filed by Community Legal Services (“CLS”), DNA People’s
19 Legal Services (“DNA”), Southern Arizona Legal Aid (“SALA”) (collectively “Legal
20 Services”) and the William E. Morris Institute for Justice (“MIJ”) on or about January 10,
21 2025 (collectively, “Petitioners”).
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23
24 Petitioners’ proposed amendments would (1) mandate that judges continue, *e.g.* delay
25 eviction actions for “good cause,” and then (2) specifically define “good cause” to include (a)
26 a health or medical emergency; (b) a need to request and obtain a reasonable accommodation

1 under the Americans with Disabilities Act (“ADA”)¹; (c) an employment scheduling conflict;
2 (d) an obligation related to past or present military service; (e) lack of access to child care; (f)
3 the unavailability of a material witness; (g) the need to gather evidence relevant to the eviction
4 process; and (h) an undefined good faith belief that the rent default will be cured during the
5 period of the three (3) day continuance.

6
7 Petitioners assert that these amendments would serve the interest of courts and parties
8 to evictions actions, without explaining how a three (3) day delay – beyond what the court is
9 already required to grant upon the court’s finding of good cause– will benefit anyone, other
10 than allowing residents who are already in violation of their lease and/or who pose a serious
11 risk of harm to other persons or property to remain in the community. Petitioners also fail to
12 take into account the havoc that these delays impose on the courts’ already overburdened
13 dockets, the disruption that further delays will cause to landlords and their witnesses, and the
14 damage that landlords and others may experience by having unacceptable tenants continuing
15 to reside on the premises.
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18 The Rules of Eviction Procedure (“RPEA”) were enacted specifically to ensure a
19 speedy, affordable, summary, and adequate remedy for obtaining possession of premises
20 withheld by a tenant in violation of tenancy or a lease. *Bank of New York Mellon v. Dodev*,

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23 ¹ The ADA deals with disability-related issues in employment, government, places of public accommodations, and places
24 of transportation, while state and federal fair housing laws apply to evictions. In situations involving federally assisted
25 housing, residents are already afforded twenty-five (25) additional days to prepare any defenses to eviction actions, in
26 excess of the five (5) days accorded to residents of non-subsidized housing, and during that time there is no obvious
reason why they cannot make arrangements for child care, schedule employment absences (when needed), gather
evidence needed to dispute eviction complaints, and arrange for material witnesses to be available when a contested
hearing on the merits is scheduled. Under fair housing rules tenants have the ability to request reasonable
accommodations at any time ranging from the date they inquire about housing up and until they are physically removed.

1 246 Ariz. 1, 8, 433 P.3rd 549, 556 (Ct. App. 2018). Petitioners’ proposed rule change would
2 undermine that intent by mandating the definition of ‘good cause’ and removing the court’s
3 ability to make that determination, inserting unnecessary and often frivolous delays into the
4 process, empower parties to delay eviction proceedings in bad faith, make eviction actions
5 more costly to parties, and impose a significant burden on already overburdened courts. For
6 these reasons the Court should reject Petitioners’ Proposed Rule Change to RPEA 11(d) and
7 18(d).
8

9 **I. Judicial Discretion is Necessary to Avoid Abuses of RPEA 11(d)**

10 The proposed amendment to RPEA Rule 11(d), which would make the granting of
11 continuances mandatory on a showing of their definition of “good cause²” and removing
12 judicial discretion, would shackle judges in their management of their dockets, and increase
13 the risk of abuse of Rule 11(d) by bad faith and vexatious litigants.
14

15 Courts are already overburdened with the numbers of eviction and other matters that
16 judges deal with on a regular basis. Except in Pima County, where there is a separate eviction
17 court, judges throughout the state deal with a variety of cases in addition to evictions,
18 including criminal arraignments and trials, civil disputes, and traffic violations.
19

20 In between these other cases, judges are required to schedule eviction complaints
21 within five (5) to seven (7) days after an eviction complaint has been filed and served on a
22 defendant. In cases involving material and irreparable allegations, the hearing must be set
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26 ² The issue of what constitutes “good cause” is unclear. Is it enough that a tenant or representative state that he/she would suffer a hardship by appearing at the initial hearing? Would a tenant need to provide a doctor’s note to continue a hearing under this standard? Would an employer need to provide a verification that the tenant cannot leave work despite the fact that court hearings are only conducted Monday through Friday which may coincide with that person’s work schedule?

1 within three (3) days of filing and service. This already imposes a heavy burden on judges,
2 and that burden is made heavier when the matter requires a continuance, including for the
3 reasons identified in Petitioners' Petition to Amend, and the Court has to significantly modify
4 their docket for a hearing that could not be heard as scheduled.

5 Rule 11 already compels a court to continue a case in situations where a matter is
6 contested and the evidence cannot be presented during the time period allocated for initial
7 hearings. This typically requires that the court to allocate additional resources into its already
8 heavily docket – within three (3) days of the initial hearing – to adjudicate to a disputed
9 matter. These additional delays further burden an already overscheduled calendar.
10

11 Imposing a requirement that courts approve additional three (3) day delays for the
12 types of reasons requested in this petition such as when a defendant has child care issues,
13 “hopes” to obtain financial assistance that had not been obtained, works during the court’s
14 scheduled times etc., creates a hardship on an already burdened judicial system and delays
15 justice for all parties.
16

17 Two years ago, the Supreme Court dealt with the fairness and due process issues that
18 Petitioners raise in this Petition by permitting easier access to the court to anyone who has
19 access to a telephone or any virtual means of appearing. Parties are no longer required to
20 physically appear in court when they have sick children, can't get away from work for
21 standard court appearances, or have other reasons that prevent them from being in court in-
22 person. As such, most of the arguments that Petitioners raise for mandating continuances
23 are no longer valid, and judges still have discretion to grant short continuances when justice
24 requires it. Petitioners point to absolutely no evidence of any judge abusing that discretion
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26

1 and refusing to grant a delay under these circumstances.

2 Petitioners' proposed amendments are a solution in search of a problem. Petitioners
3 argue that more continuances, the inevitable result of the proposed amendment, could lead
4 to more "relevant information" for courts and more settlement opportunities, but do not
5 demonstrate a dearth of either in the eviction landscape. Practically speaking, many eviction
6 actions are not evidence-intensive, especially actions for nonpayment of rent. On the other
7 hand, the eviction actions with the greatest evidentiary interest, actions for material and
8 irreparable breach, are driven by a need for expediency to prevent further harm to property
9 or persons.

11 Petitioners seek to employ continuances as a vehicle to provide what is essentially
12 mandatory prolonged discovery in eviction actions. The RPEA explicitly limits the manner
13 and scope of discovery under the RPEA so that it does not delay the timeline for eviction
14 actions.³ Continuances for further disclosures are already allowed if good cause is shown
15 under RPEA Rule 10(b) or by agreement of the parties. The proposed amendment does
16 nothing but remove judicial discretion in granting such continuances, and Petitioners provide
17 no good reason to do so. At best, the proposed amendment demonstrates a lack of faith in
18 the existing process and disdain for the time constraints already experienced by judges.

21 The proposed amendment, which does not provide for any practical limits on the
22 number of continuances granted per rule 11(d), would allow the rule to be abused by parties
23 seeking to delay and obstruct proceedings to get more time living on rental properties while
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³ Rule 10, RPEA.

1 remaining noncompliant with their lease obligations. Making continuances mandatory on a
2 finding of “good cause,” as defined by Petitioners, removes the ability of the trial court to
3 utilize its own discretion based upon the circumstances presented and the law. Such rigidity
4 is inconsistent with the case-specific intent of “good cause.” The purpose of judicial
5 involvement in eviction proceedings is to adjudicate the rights of parties by equitable and
6 legal standards. The proposed amendment would functionally remove equitable
7 considerations from findings of good cause for continuances, reducing it to the strict
8 language of the rule.
9

10 Petitioners cite as anecdotal evidence cases in which continuances might have been
11 proper to avoid hardship, but such cases do not represent the majority of eviction actions.
12 They point to no specific incidents when a refusal to delay a proceeding resulted in
13 inequitable harm to a tenant. Petitioners do not explain why more time is necessary, or why
14 time extensions should not be within the purview of judicial discretion.
15

16 **II. The Proposed Examples of “Good Cause” are Either Overly Broad,**
17 **Unnecessary, or in Conflict with Existing Law**
18

19 The list of “good causes” in the proposed amendment are deficient for several reasons.
20 Altogether, they are unnecessary due to existing law, because they dangerously broaden the
21 scope of what would be justification for a mandatory continuance, or are contrary to existing
22 law. This comment will address each in turn.
23

24 The proposed amendment seeks to define a “health or medical emergency” as good
25 cause for a continuance *per se*. As discussed previously, this can be grounds for a
26 continuance within the discretion of the judge or if agreed to by the parties. Petitioners cite

1 as anecdotal evidence of potential hardship a case where a tenant’s child was due to have
2 surgery. Petitioners do not give the specific details in that case, but in any case, that problem
3 could be solved by communication between the parties or by order of the presiding judge.

4 The proposed amendment also seeks to define a request for accommodation under the
5 Americans with Disabilities Act as good cause *per se*. This change is unnecessary, as judges
6 are already required to comply with the ADA.

7
8 The proposed amendment seeks to define an “employment scheduling conflict” as
9 good cause *per se*. With the advent of remote appearances and access to Teams, Zoom, and
10 telephone, tenants are able to attend proceedings without even leaving their workplace. This
11 justification is also overly broad as it does not require the tenant to actually try and rectify
12 the scheduling conflict or appear telephonically. A party could demand a continuance at any
13 time they have a work conflict whether or not they tried to request time off, or even find a
14 spot to call in from. Furthermore, most defendants in eviction actions have multiple weeks’
15 notice of impending eviction proceedings, which is ample time to make arrangements for
16 time off work, for child care, or to gather evidence and identify witnesses to contest the
17 eviction.⁴

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20 The proposed amendment seeks to define an obligation “related to military service”
21 as good cause *per se*. This too is deficient for being overly broad; the proposed change does
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⁴ See generally A.R.S. § 33-1368. Most defendants in eviction actions are given between 5 and 10 days’ notice prior to
25 the filing of an eviction action against them, and then generally have a week or more to get personal effects in order and
26 gather evidence or witnesses. The exception to this is in the case of evictions for material and irreparable breaches of
lease. Those cases more often than not arise when defendants engage in conduct that imminently threatens other tenants
in their communities or creates a serious risk of harm to the premises. In those cases, continuances cut against the
purpose of the statute, namely preventing the risk of imminent harm to the property or other tenants.

1 not describe what obligation would justify a continuance, how connected to military service
2 that obligation need be, whether such obligation is mandatory, and how long ago the related
3 service is in proximity to the current eviction proceeding. This rule makes no categorical
4 differentiation between a tenant being called to active duty and being asked to speak to a
5 third-grade class about the United States Army. It bears some resemblance to the
6 Servicemembers' Civil Relief Act ("SCRA"), but, as noted by Judge Williams in his
7 response to this Petition, the portions of the SCRA that provide relief for service members
8 and their families are much stricter in their applicability.⁵

10 The proposed amendment seeks to define a "lack of access to childcare" as good cause
11 *per se*. As discussed above, the ability to appear remotely makes this largely unnecessary.
12 If childcare cannot be procured and remote appearance is impossible, however unlikely those
13 circumstances are, then a continuance could be negotiated by the parties or granted by a
14 judge at their discretion. Petitioners provide no evidence otherwise.

16 The proposed amendment seeks to define a "need to gather relevant evidence" as good
17 cause *per se*. As discussed previously, this is already codified in RPEA Rule 10, and can be
18 handled either by agreement of the parties or at the discretion of the judge.⁶

20 The proposed amendment next seeks to define a failure of a "material witness" to
21 appear as good cause *per se*. This problem is not unique to defendants in eviction cases, and
22 courts have broad discretion to determine whether the reason for any witness' absence is
23 prejudicial to the proponent or resulted from the intentional unavailability of the witness.
24

25
26 ⁵ Also discussed in Judge Williams' comment, *supra* note 1 at 8.

⁶ *Supra* note 4.

1 Without further amendment, the proposed rule would allow a continuance if any witness was
2 unavailable to appear for any reason.

3 Finally, the proposed amendment seeks to allow a continuance as a matter of right
4 based on a good faith belief that a rent default will be cured during the continuance period.
5 This proposed rule is uniquely troublesome, as it is both vague and contrary to law.
6

7 A “good faith belief” is entirely subjective and would depend on specific
8 circumstances such as whether the defendant has already applied for assistance, whether any
9 person or entity has already agreed to provide the necessary funds, when those funds will be
10 transmitted to the landlord, whether any promised funds will cover the amount of the tenant’s
11 delinquency, and other similar considerations.
12

13 As a practical matter, landlords are typically willing to work with tenants when funds
14 covering a delinquency are pending, and landlords have up to forty-five (45) days from the
15 date of the writ to do so. *See*, Rule 14, RPEA. Once the judgment for unpaid rent and other
16 amounts due is paid in full, landlords are then required to file a Satisfaction of Judgment and
17 the parties may agree to seal record under Rule 20 RPEA.
18

19 Petitioner’s Petition also conflicts with the language of A.R.S. § 33-1368(B), which
20 only allows a tenant to reinstate their tenancy by paying past due amounts prior to the entry
21 of judgment. This would functionally allow tenants to extend this deadline infinitely, and
22 render the language of the Arizona Residential Landlord Tenant Act moot.
23

24 **III. The Proposed Amendment Would Risk Imposing Financial Burden on Tenants.**

25 The proposed amendment appears to favor tenants and defendants in eviction actions,
26

1 but in practice would prove quite harmful to them. Each time a continuance is granted,
2 parties represented by counsel incur additional attorney's fees, which will be borne by the
3 non-prevailing party.⁷ In practice, the former are usually landlords, and the latter tenants.
4 Furthermore, tenants in default will also continue to accrue late fees and unpaid rent as
5 eviction actions are needlessly drawn out. Tenants may be unaware of the costs they are
6 accruing and seek continuances under this proposed rule, only to be saddled with a greater
7 financial burden than they anticipated.
8

9 CONCLUSION

10 In summary, the proposed amendment to Rule 11(d) would do nothing but limit
11 judicial discretion and bog down eviction procedures with continuances that have no
12 practical basis. The proposed amendment to Rule 18(d) is unworkable because the "good
13 causes" proposed are overly vague, needlessly duplicative, and directly contrary to law in
14 some cases. Based on the above reasoning, Hull, Holliday & Holliday PLC urges the Court
15 to reject Petitioner's proposed amendment to RPEA 11(d) and 18(d) in its entirety.
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17

18 Respectfully submitted this 30th day of April 2025.

19 Hull, Holliday & Holliday PLC

20 By: /s/ Judy Drickey-Prohow, 005796

21 /s/ Denise Holliday, 017275

22 *Commenting Party*
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⁷ Rule 13, RPEA.