

1 HULL, HOLLIDAY & HOLLIDAY P.L.C.  
7000 North 16<sup>th</sup> Street, Suite 120-#484  
2 Phoenix, Arizona 85020-5547  
(602) 230-0088 *office*; (602) 230-7421 *fax*  
3 hull@h3landlordlaw.com  
[attorney@h3landlordlaw.com](mailto:attorney@h3landlordlaw.com)  
4 Denise M. Holliday 017275  
Kevin W. Holliday 017276  
5 Matthew R. Schlabach 034118  
Judy Drickey-Prohow 005796  
6 Brandy N. Aguero 033723  
Benjamin L. Hill 038115  
7 Alexander J. Gilman 035655  
William D. Welch 036465  
8 *Attorneys for Commenting Party*

9 IN THE ARIZONA SUPREME COURT  
10 STATE OF ARIZONA

11 IN THE MATTER OF: ) Supreme Court No. R-25-0019  
12 )  
13 Petition to Amend Rule 15 ) Comments in Opposition of  
of the Arizona Rules of Procedure for ) Petition to Amend  
Eviction Actions ) the Proposed Rule 15

14  
15 **BACKGROUND**

16 Commenting Party, Hull, Holliday & Holliday, PLC, hereby opposes the Petition  
17 to Amend Rule 15 (“Petition”) of the Arizona Rules of Eviction Procedure (“RPEA”) filed  
18 by Community Legal Services (“CLS”), DNA People’s Legal Services (“DNA”), Southern  
19 Arizona Legal Aid (“SALA”) (collectively “Legal Services”) and the William E. Morris  
20 Institute for Justice (“MIJ”) on or about January 10, 2025 (collectively, “Petitioners”).  
21

22 Petitioners’ Petition to modify Rule 15 seeks to override a state statute and is nothing  
23 more the return to an earlier age, when the civil procedure rules were applicable to eviction  
24 procedures. The Supreme Court rejected that process as unduly cumbersome for simple claims  
25 to possession of property in *Bank of New York Mellon v. Dodev*, 246 Ariz. 1, 8, 433 P.3<sup>rd</sup> 549,  
26

1 556 (Ct. App. 2018). There the Court pointed out, the “[o]bject of FED action is to afford  
2 summary, speedy, and adequate remedy for obtaining possession of premises withheld by  
3 tenant in violation of tenancy or lease.” Petitioners’ Petition to Amend would undermine that  
4 intent by inserting additional barriers to the FED process, creating barriers that result in  
5 unnecessary delays, and adding additional time and costs to what is intended to be an  
6 expeditious proceeding. Additionally, it is a well settled principal of law that while the Arizona  
7 Supreme Court has the authority to establish rules of procedure, those rules must be consistent  
8 with Arizona statutes. This ensures that the will of the branch of the government established  
9 to create laws is not circumvented by another branch of the government.  
10

11         The proposed amendment would add three (3) additional legal reasons to set aside a  
12 residential eviction judgement and create a mandatory three-day stay of the writ of restitution  
13 pending a post-judgment motion filed by either party. Additionally some of the proposed  
14 changes undermine and contradict A.R.S. §12-1178 and would also undermine and contradict  
15 Rules 13(c)(1) of the RPEA (requiring a writ to be issued within five (5) calendar days after  
16 the judgment is signed which is the identical language found in A.R.S. §12-1178(C)), and  
17 14(a) of the RPEA (which mirrors A.R.S. §12-1178 (C) and prohibits a suspension or delay in  
18 the enforcement or the issuance of a writ of restitution affected by the filing of a motion to set  
19 aside, vacate judgment, or similar motion unless the court finds good cause).  
20  
21

22         If a defendant in an RPEA action believes that a judgment and writ were erroneously  
23 issued, as stated above, A.R.S. §12-1179 provides a speedy remedy while an appeal is pending,  
24 including the stay of a writ of restitution and retention of the status quo when the defendant  
25 posts a supersedeas bond and complies with the procedures set out in A.R.S. §12-1179(D) –  
26

1 (F).

2 For the reasons set out herein, Hull, Holliday & Holliday PLC therefore urges the  
3 Court to reject Petitioner’s proposed amendment to RPEA Rule 15.

4 **The Proposed Justifications for Relief from Judgment are Either Needlessly**  
5 **Duplicative or Contrary to the RPEA.**  
6

7 The proposed additions to RPEA Rule 15(a) would allow relief from judgments that  
8 are void, released, discharged, or satisfied in full, or for any other reason justifying relief.  
9 The first three (3) reasons are unnecessary, while the latter directly contradicts the purpose  
10 and construction of the RPEA. This comment shall address each proposed reason in turn.  
11

12 There is no reason to specifically allow relief from void judgments under the RPEA.  
13 RPEA Rule 15(a)(9) already allows relief from judgments that are contrary to law, which  
14 encompasses void judgments by definition<sup>1</sup>. As such, parties may motion to vacate a void  
15 judgment pursuant to RPEA Rule 9. Petitioners provide no explanation as to why Rule  
16 15(a)(9) and Rule 9 in tandem are insufficient to address void judgments. This proposed  
17 change is a solution in search of a problem; it is hard to conceive of a situation in which a  
18 party would seek to enforce a void judgment, or oppose a motion to vacate one.  
19

20 For the same reasons, Petitioners have no basis for seeking to enshrine Rule 141(c)(5)  
21 of the Justice Court Rules of Procedure into the RPEA. There is no reason to specifically  
22 allow relief from judgments that are released, discharged, or satisfied in full in eviction  
23 actions. If a landlord fails to vacate a judgment that has been released, discharged or  
24

25 \_\_\_\_\_  
26 <sup>1</sup> See, *Jackson v. GMAC Mortgage Corp. et al*, 139 S.Ct. 1195 (2019) (A void judgment is  
a nullity from the beginning and is attended by none of the consequences of a valid judgment.)

1 satisfied, defendants can file a motion to compel the filing of a satisfaction of judgment under  
2 Rule 9(h) of the RPEA; such a motion would resolve that issue and is already authorized.  
3 There is no good reason to amend the existing rules to create a delay in resolving this issue.

4         Allowing relief from judgments for any general reason is contrary to the purpose of  
5 the RPEA. Petitioners correctly point out that Rule 60 of the Arizona Rules of Civil  
6 Procedure for Superior Courts (“ARCP”) contains a “catch-all” basis for obtaining relief  
7 from judgment provisions in general civil litigation that mirrors the proposed change in the  
8 RPEA. However, eviction actions governed by the RPEA are unlike general civil litigation.  
9 The RPEA governs actions that are substantially simpler than those governed by the ARCP,  
10 focusing on the right to possession of real property at a specific time and, in some cases, an  
11 award of monetary damages based on a contract. Petitioners do not explain what exigent  
12 circumstances might justify relief from an eviction judgment that are not available under the  
13 RPEA as written. The proposed change itself is unworkably vague, and is more likely to  
14 cause confusion or lead to disputes over equitable and factual concerns otherwise  
15 inconsequential to eviction proceedings.  
16  
17

18  
19         **I. The Implementation of a Three-Day Stay Pending Post-Judgment**  
20                 **Motions is Contrary to a state statute and the RPEA**

21         Petitioners’ proposed 3-day stay, which would delay the issuance of writs of  
22 restitution pending post judgment motions, directly conflicts with the plain language and  
23 intent of both state statute and existing provisions of the RPEA. The RPEA is designed to  
24 resolve eviction actions in a swift and expeditious manner and to allow landlords to regain  
25 possession of their property promptly after the entry of judgment and already matches the  
26

1 language of the state statute that governs these types of legal proceedings. These intentions  
2 by the legislature are reflected in A.R.S. §12-1178 (C) and mirrored in RPEA Rule 14(a),  
3 which states, “[n]either the issuance nor the enforcement of a writ of restitution will be  
4 suspended, delayed, or otherwise affected by the filing of a motion to set aside or vacate the  
5 judgment or similar motion unless the court finds good cause”.<sup>2</sup> The proposed amendment  
6 conflicts with the plain language of this statute and this rule and the intent of both this state  
7 law and the RPEA and removes a critical requirement of both that requires the court to  
8 specifically find ‘good cause’.

10 Judges may stay the execution of a writ of restitution at their discretion in the current  
11 rules only under limited circumstances. *See*, Rule 13. Petitioners proposed change would  
12 only serve to limit judicial discretion and allow bad actors to unduly delay proceedings by  
13 filing frivolous motions. Additionally, defendants have a due process right to appeal. This  
14 process can stay a writ of restitution<sup>3</sup>. Altogether, Petitioners’ proposed changes would  
15 contradict the state statute that is directly on point as well as disrupt the process intended by  
16 the Court when it intentionally separated the Rules for Eviction Actions from the Rules of  
17 Civil Procedure. Additionally, it is wholly unnecessary, as the identified benefits of these  
18 amendments would merely replicate remedies that are already available and would serve  
19 only to disrupt the court’s calendars, create confusion as to the finality of rulings, and would  
20 do nothing to extend any benefit to tenants who already have the remedies the proposed rule  
21 change seeks to create anew.

25 \_\_\_\_\_  
26 <sup>2</sup> 17B A. R. S. Rules Proc. Evic. Act., Rule 14(a).

<sup>3</sup> *See* 17C A. R. S. Super. Ct. Civil Appellate Proc. Rules, Rule 6(a)(5).

