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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 **11(d) AND 18(d) OF THE**  
12 **ARIZONA RULES OF**  
13 **PROCEDURE FOR EVICTION**  
14 **ACTIONS**

**STATE BAR OF ARIZONA**  
**COMMENT**

15 Pursuant to Rule 28(e) of the Arizona Rules of Supreme Court, the State Bar  
16 of Arizona (the “State Bar”) hereby submits the following as its comment to the  
17 above-captioned Petition.

18 The Petition proposes to make a one-word revision to Rule 11(d), Rules of  
19 Procedure for Eviction Actions (“RPEA”) on continuances (“may” to “shall”); to  
20 make several revisions to the definition of “good cause” in Rule 18(d); and to add a  
21 non-exclusive list of “examples of good cause that may require a continuance” at the  
22 conclusion of Rule 18(d). The State Bar agrees in principle with these changes but  
23 suggests several revisions to the text of the proposed amendments, as set forth infra.  
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1 A prefatory note is in order in light of the Comment submitted in this rule  
2 matter by the Justice of the Peace Bench in Maricopa County. First, the State Bar  
3 wholeheartedly agrees, and there can be no dispute, that eviction actions in Arizona  
4 are “statutory summary proceedings and the statutes establishing them govern their  
5 scope and procedure.” Rule 2, RPEA (Construction of Rules). The purpose of  
6 forcible entry and detainer actions is to provide a summary, speedy, and adequate  
7 remedy for obtaining possession of premises. *Olds Bros. Lumber Co. v. Rushing*, 64  
8 Ariz.199, 204-05 (1946). This objective would be “entirely frustrated if the  
9 defendant were permitted to deny his landlord’s title or to interpose customary and  
10 usual defenses permissible in the ordinary action at law” such as counterclaims,  
11 offsets and cross complaints. *Id.* at 205.

12 Eviction actions are designed to resolve the right to possession quickly and do  
13 not include the full procedural safeguards of general civil action. *Colonial Tr-City*  
14 *Ltd. Partnership v. Ben Franklin Stores, Inc.* stated:

15 The policy behind our holding is obvious; the summary proceedings  
16 authorized by section 33-361 and the forcible entry and detainer statutes  
17 do not furnish all of the procedural safeguards provided in a general civil  
18 action. “In order to provide an expeditious means of recovering  
19 possession, the [forcible entry and detainer] statutes provide for  
20 streamlined procedures.” 2 Richard R. Powell, *Powell on Real Property* §  
21 246(3) (1993). “Notice periods are short, pleadings are restricted, triable  
22 issues are limited, discovery is general unavailable, and the judgment is  
23 promptly operative.” *Id.*

1 179 Ariz. at 428, 433 (App. 1993).

2         However, the State Bar concludes that these proposed amendments may be  
3 adopted without trenching on these principles. The amendments do not seek to  
4 lengthen notice provisions, to expand triable issues, to authorize counterclaims,  
5 cross-claims, or offsets, to open discovery where there was none, or to protract a  
6 proceeding beyond the 3 days already permitted for a continuance. Instead, they add  
7 examples of good cause in an attempt to give parties and the court a fuller  
8 understanding of just and equitable grounds for continuances. They empower  
9 defendants to seek continuances that are well-founded and that fairly should be  
10 granted, thereby increasing access to justice. While two examples from the proposed  
11 list incorporate existing requirements from federal statutes, the State Bar finds this  
12 helpful to pro per litigants rather than undesirable.  
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16         The Petition makes clear that, by changing “may” to “shall,” the intent is to  
17 make a continuance mandatory *only if a court has found good cause, a discretionary*  
18 *decision*. The Petition does not purport to require a continuance in the absence of  
19 good cause, as the JP Bench’s Comment asserts. JP Bench Comment at 1 (“The  
20 proposed rule change would create a mandatory system where both Superior Court  
21 judges and Justices of the Peace are required to grant trial continuances in residential  
22 eviction actions for a wide variety of justifications.”); JP Bench Comment at 2 (“NO  
23 EFFECTIVE COURT CASE FLOW MANAGEMENT PLAN WOULD ADOPT A  
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1 PROCESS WHERE JUDGES ARE AUTOMATICALLY REQUIRED TO DELAY  
2 COURT DATES”); JP Bench Comment at 3 (“It would remove judicial discretion  
3 and command judges to grant trial continuances if either party could successfully  
4 claim any health or medical emergency, employment scheduling conflict, or child  
5 care issue.”). These concerns rest on a misunderstanding of the Petition. However,  
6 to clarify that a continuance is mandatory only when the court, in its discretion, has  
7 found good cause, the State Bar recommends below that the proposed wording be  
8 revised.  
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11 The State Bar respectfully disagrees with the notion that the proposed  
12 amendment regarding continuances is an “attempt to address a problem that does not  
13 exist,” Comment by JP Bench at 1, or that it constitutes “REMEDIES IN SEARCH  
14 OF A PROBLEM,” *id.* at 10. The examples of denials of continuances cited by the  
15 Petition at 6-7 exemplify the need for the amendments proposed in the Petition and  
16 this Comment.  
17

18 The State Bar also disagrees that the overriding purpose of the Petition is to  
19 “encourage parties to request and courts to grant more continuances.” Petition at 6.  
20 This statement in the Petition, read in isolation, may create this ambiguity. However,  
21 read completely, the Petition asserts the intended purpose of “clarifying” the  
22 definition of “good cause,” Petition at 2, 4, 5, and 6, providing equal access to the  
23 courts, p. 3, upholding due process, p. 7, encouraging negotiation and settlement, p.  
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1 8, and better informing the courts. *Id.* Read as a totality, the purpose of the Petition  
2 is to ensure continuances that are well-founded and fair.

3  
4 The JP Bench’s Comment at 5-11 correctly describes a cognate statute,  
5 A.R.S. §33-1377(C) (“For good cause shown supported by an affidavit, the trial may  
6 be postponed for not more than three days in a justice court or five days in the  
7 superior court.”), as “[l]imit[ing] delays to 3 days in Justice Court and to 5 days in  
8 Superior Court.” JP Bench’s Comment at 5-11.

9  
10 However, the JP Comment overlooks that the rule, even now, conflicts with  
11 the statute by permitting trial postponements of ten days in Superior Court instead  
12 of five. Rule 11(d), RPEA (“The court may order the continuance of a trial date by  
13 up to three court days in justice court or ten days in superior court on the request of  
14 a party for good cause shown . . . .”). Also, *the rule* omits any requirement that a  
15 continuance be supported by an affidavit—a requirement of *the statute*. The disparity  
16 seems not to have been addressed by any Rule 28 petitioner since the RPEA were  
17 promulgated in 2009.

18  
19 Presumably, the drafters of the RPEA deemed postponement limits and the  
20 affidavit requirement as procedural matters rather than substantive, meaning that the  
21 rule could diverge from the statute on those matters. *Seisinger v. Siebel*, 220 Ariz.  
22 85, 33 (2009). In that event, no objection should be made if Rule 11(d) is amended  
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24 to clarify (differently from the less definite terms of the statute) that, upon a finding  
25

1 of good cause, a court “shall” grant a continuance. This is merely a logical  
2 clarification, since inherent in the term “good cause” is the notion of a legally  
3 sufficient basis. To find a legally sufficient basis for a continuance and  
4 simultaneously deny a continuance appears both self-contradictory and an abuse of  
5 discretion.  
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7         The proposed amendments do not inherently create a risk of authorizing  
8 multiple continuances and a permanent delay. The provision of Rule 11(d) that “[n]o  
9 continuance of more than three court days in justice courts or ten days in superior  
10 courts may be ordered unless both parties are in agreement” should mitigate this  
11 concern. If this provision is not sufficiently clear, it could be revised to clarify that  
12 only one continuance of 3 days is permissible.  
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15         The proposed amendments do not appear inconsistent with the summary  
16 nature of evictions actions. Instead, they instructive as to the proper grounds for the  
17 three-day continuance, a remedy which already exists in the rules and is fully  
18 consistent with the summary nature of evictions. It is common for rules of court and  
19 administrative codes to contain multiple examples of “laundry lists” of examples  
20 intended to illustrate and guide the application of the good cause criterion. Some  
21 examples of this practice include:  
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24         (1) 20 C.F.R. § 404.911 (relating to Social Security Administration deadlines to  
25         request review) provides nine examples of “good cause” in a laundry list

1 fashion. The provision states that any of the nine examples may constitute  
2 good cause and the provided list is not exclusive.

3 (2) State of Washington Administrative Code WA ADC 388-02-0020 provides  
4 for multiple examples of good cause, and states that good cause for not  
5 requesting a hearing before the deadline in a public assistance case may  
6 include, but is not limited to: military deployment, medical reasons, housing  
7 instability, language barriers, or domestic violence. This provision also  
8 references WA ST 74.08.080 which governs public assistance grievances, and  
9 (2)(a)(i) again states good cause for failing to meet a hearing deadline may  
10 include, but is not limited to military deployment, medical reasons, housing  
11 instability, language barriers, or domestic violence.

12 (3) Rule 60 of the Arizona Rules of Civil Procedure. While this Rule does not  
13 define “good cause,” Rule 60(b) does provide a “laundry list” of grounds or  
14 reasons why the court may relieve a party from a final judgment. This serves  
15 as an example of a current civil rule that provides a laundry list to assist the  
16 judge in making a determination.

17 (4) A.R.S. § 41-619.55 applies to the Board of Fingerprinting and subsection (E)  
18 provides a laundry list of reasons why the board may grant a “good cause  
19 exception” hearing, setting forth six different factors to be considered in  
20 granting the exception.

21 (5) A.R.S. § 32-2412 applies to Private Investigators and the entire statute  
22 addresses examples of good cause in a laundry list fashion. Subsection B  
23 provides an example of a good cause statute with a mandatory requirement,  
24 as it establishes what the board “shall consider” before granting a good cause  
25 exception at a hearing.

26 Finally, the proposed provision of Rule 18(c)(viii) does not improperly  
27 authorize additional time for payment of a past due balance. Instead, the provision  
28 delays the entry of an eviction order for the prescribed three days when the judge, in  
29 his or her discretion, decides the circumstances surrounding impending payment  
30 constitute “good cause.”

31 In supporting these amendments, the State Bar is especially mindful of the  
32 economic reality facing parties in eviction cases in today’s housing environment and

1 of the grave, real-world consequences of eviction. Essentially, an eviction crisis in  
2 Arizona is in effect and steadily worsening. After a brief lull due to the pandemic  
3 and federal assistance programs, evictions in Arizona over the past few years have  
4 returned to, and then exceeded, pre-pandemic rates.<sup>1</sup> In 2024, landlords in metro  
5 Phoenix filed for 87,197 evictions, which set a new record for evictions in a year.<sup>2</sup>

7         Across the entire state, the number of evictions was most likely over 100,000,  
8 as the Arizona Eviction and Foreclosure Dashboard was able to map almost 97,000  
9 statewide evictions in 2023 and evictions have only increased since then.<sup>3</sup> High rents  
10 have left many more people at risk for eviction, as 55% of Phoenix tenants are paying  
11 more than 30% of their income towards rent and 26% of tenants are spending more  
12 than half their income on keeping their home or apartment.<sup>4</sup> The rapid pace of  
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16 <sup>1</sup> Kunle Falayi and Catherine Reagor, *Three evictions, three stories. Why the Phoenix*  
17 *area eviction crisis is only getting worse*, azcentral (Nov. 25, 2023, 12:04 p.m.),  
18 [https://www.azcentral.com/in-depth/news/local/arizona/2023/04/17/eviction-](https://www.azcentral.com/in-depth/news/local/arizona/2023/04/17/eviction-filings-are-on-the-rise-in-metro-phoenix-what-can-be-done/69907643007/)  
19 [filings-are-on-the-rise-in-metro-phoenix-what-can-be-done/69907643007/](https://www.azcentral.com/in-depth/news/local/arizona/2023/04/17/eviction-filings-are-on-the-rise-in-metro-phoenix-what-can-be-done/69907643007/).

20 <sup>2</sup> Catherine Reagor, *Metro Phoenix eviction filings set record in 2024, despite lower*  
21 *rents, more apartments*, azcentral (Jan. 8, 2024, 6:00 a.m.),  
22 [https://www.azcentral.com/story/money/real-estate/2025/01/08/metro-phoenix-](https://www.azcentral.com/story/money/real-estate/2025/01/08/metro-phoenix-eviction-filings-set-record-in-2024-despite-lower-rents/77504989007/)  
23 [eviction-filings-set-record-in-2024-despite-lower-rents/77504989007/](https://www.azcentral.com/story/money/real-estate/2025/01/08/metro-phoenix-eviction-filings-set-record-in-2024-despite-lower-rents/77504989007/).

24 <sup>3</sup> Shea Lemar, et al., *Arizona Eviction and Foreclosure Dashboard*, Arizona State  
25 University,  
[https://storymaps.arcgis.com/collections/89946f2d8ad74812a5fa10da4ae5ba58?ite](https://storymaps.arcgis.com/collections/89946f2d8ad74812a5fa10da4ae5ba58?item=1)  
m=1 (last visited Feb. 10, 2025). The dashboard notes that their number for 2023 is  
an undercount, as they only included evictions that were mappable, so the number  
may have been over 100,000 even in 2023.

<sup>4</sup> *Id.*

1 Arizona eviction proceedings – renters can be locked out as quickly as three weeks  
2 after missing a payment – also contributes to these risks.<sup>5</sup> Without major changes in  
3 the rental market or housing availability, there is every reason to expect that eviction  
4 numbers will continue to climb.

6 Studies have demonstrated a clear connection between evictions and  
7 homelessness. A Yale study found that evicted individuals were more than 300%  
8 more likely to visit a homeless shelter in the year after their eviction than non-evicted  
9 individuals, and that this risk of homelessness also remained increased for the second  
10 year after eviction.<sup>6</sup> This homelessness risk is not limited to losing an eviction  
11 judgment, as other researchers have found a correlation between the eviction filing  
12 rate and the rate of sheltered homelessness.<sup>7</sup> This suggests that even if the proceeding  
13 does not end in an eviction, merely being subject to an eviction proceeding increases  
14 the chance of becoming homeless. These effects were also shown to be felt more  
15 strongly among minority populations, with Black tenants and female tenants having  
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21 <sup>5</sup> Kunle Falayi and Catherine Reagor, *supra* note 1.

22 <sup>6</sup> Henri Cornec, *New Research Sheds Light on the Economic Consequences of*  
23 *Evictions*, Yale Department of Economics (Sept. 26, 2023),  
<https://economics.yale.edu/news/230926/new-research-sheds-light-economic-consequences-evictions>.

24 <sup>7</sup> *Eviction Filings Associated with Increases in Homelessness*, National Low Income  
25 Housing Coalition (Apr. 10, 2023), <https://nlihc.org/resource/eviction-filings-associated-increases-homelessness>.

1 increased chances of homelessness compared to the overall population.<sup>8</sup> This  
2 analysis does not even include the impacts, most likely long-lasting, of eviction and  
3 homelessness on parties' children.  
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5 Added to these far-reaching impacts is the fact that, according to the Petition,  
6 99% of eviction defendants are unrepresented, while about 99% of plaintiffs are  
7 represented, giving rise to an inherently uneven playing field.  
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9 In sum, robust protections appear owed to parties seeking relief from eviction  
10 judgments, orders, and proceedings. The leading Supreme Court case for  
11 establishing the requirements of due process in this context is *Mathews v. Eldridge*,  
12 which established a three-factor test for determining what process is due prior to the  
13 deprivation of some property interest.<sup>9</sup> One of these factors is the private interest  
14 that will be affected by the official action, with a more important private interest  
15 weighing in favor of stronger due process protections.<sup>10</sup> *Goldberg v. Kelly* lays out  
16 this principle explicitly, holding that “[t]he extent to which procedural due process  
17 must be afforded the recipient is influenced by the extent to which he may be  
18 ‘condemned to suffer grievous loss.’”<sup>11</sup> The Supreme Court has also held that in  
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23 <sup>8</sup> Henri Cornec, *supra* n.6.

24 <sup>9</sup> *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976).

25 <sup>10</sup> *Id.*

<sup>11</sup> *Goldberg v. Kelly*, 397 U.S. 254, 262-63 (1970) (quoting *Joint Anti-Fascist Refugee Committee v. McGrath*, 341 U.S. 123, 168 (1951)).

1 proceedings where the defendant would face harsher consequences than the plaintiff  
2 in a civil action, due process may require heightened procedural protection for that  
3 defendant.<sup>12</sup>

4  
5 The Arizona Constitution has a similar due process provision to the federal  
6 Constitution<sup>13</sup> and Arizona law likewise emphasizes the increased importance of due  
7 process protections in proceedings with serious risk of erroneous deprivation. In  
8 cases of government deprivations, the Arizona Supreme Court has adopted and  
9 applied the *Mathews* test to determine what process is due.<sup>14</sup> Arizona therefore also  
10 follows the principle that a more important private interest will weigh in favor of  
11 stronger due process protections.<sup>15</sup>

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14 Notwithstanding the need for expeditious processing of evictions, the  
15 consequences to defendants and their families in eviction actions are sufficiently  
16 weighty to justify a minimal continuance of three days when a judge finds “good  
17 cause.” It is worth re-emphasizing that no continuance will be granted under the  
18 proposed amendment unless the judge finds “good cause” for the continuance. The  
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23 <sup>12</sup> *Santosky v. Kramer*, 455 U.S. 745, 761 (1982).

24 <sup>13</sup> U.S. Const. amend XIV, § 1; Ariz. Const. art. 2, § 4

25 <sup>14</sup> *See, e.g.*, In re MH-2008-000867, 225 Ariz. 178 (2010).

<sup>15</sup> *Id.*

1 judge is free to deny a continuance upon finding that the grounds fall short, such as  
2 when the motion is filed merely for delay.

3  
4 The Bar makes the following recommendations with respect to the Petition's  
5 respective proposals:

- 6 1. The proposal to change "may" to "shall" in Rule 11(d): The State Bar  
7 proposes that the following amendment be substituted for the version  
8 proposed by the Petition:  
9

10 Whenever possible, the trial should be held on the initial return date.  
11 The court ~~may~~ shall order ~~the~~ a single continuance of a trial date by  
12 up to three court days in justice court or ten days in superior court  
13 on the request of a party ~~for~~ if the court finds good cause shown by  
14 such request. The court may also order a single continuance of a trial  
15 date ~~or~~ to accommodate the demands of the court's calendar, ~~but~~  
16 The court nevertheless shall give priority to hearing and resolving  
17 alleged "immediate and irreparable" evictions. No continuance of  
18 more than three court days in justice courts or ten days in superior  
19 courts may be ordered unless both parties are in agreement.

- 20 2. The proposal to amend the definition of "good cause" in Rule 18(d): The  
21 State Bar proposes to modify the first two sentences of Rule 18(d) as  
22 proposed in the Petition by leaving in the word "substantial" and the phrase  
23 "without causing a significant delay or harm to another party," but  
24 maintaining the deletion of the phrase "but not from simple neglect" and  
25 the addition of the words "or excusable neglect, including any  
circumstances beyond the party's reasonable control," as follows:

1 “Good cause” shall mean a stated, substantial reason, the  
2 accommodation of which will serve the interests of fairness and  
3 justice, without also causing a significant delay or harm to another  
4 party. Good cause may include relieving a ~~person~~ party from the  
5 consequences of mistake, or inadvertence, ~~but not from simple  
neglect. or excusable neglect, including any circumstances beyond  
the party’s reasonable control.~~

- 6
- 7 3. The provision in paragraph 18(d)(iv) related to military service should be  
8 sharpened to expressly reference the Servicemembers Civil Relief Act,  
9 which contains provisions that grant Servicemembers protections in  
10 eviction cases, 50 U.S.C. § 3951, and the ability to stay civil proceedings  
11 for 90 days, 50 U.S.C. § 3932. “Servicemembers,” are defined there as  
12 members of the “Uniformed Services.” 50 U.S.C. § 3911(a), a term which  
13 in turn is defined as the Armed Forces *and* “the commissioned corps of the  
14 National Oceanic and Atmospheric Administration” (“NOAA”) and “the  
15 commissioned corps of the Public Health Service”) (“USPHS”). 10 U.S.C.  
16 § 101(5).<sup>16</sup> “Military service” as used in the proposed provision could be  
17 interpreted as excluding members of NOAA and the USPHS. The State  
18 Bar also believes the proposed provision is too nebulous, inviting abuse by  
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23 <sup>16</sup> While members of NOAA and the USPHS are not as prevalent as members of the  
24 Army Forces, they hold military ranks and deploy into combat. The United States  
25 Surgeon General typically wears a naval uniform because he or she is a three-star  
admiral in the USPHS.

1 some defendants. “An obligation related to past . . . military service”  
2 should be modified to limit the relief to that provided under the  
3 Servicemembers Civil Relief Act. *See* 10 U.S.C. § 101(d); 50 U.S.C. §  
4 3911(a)(i), (ii). The State Bar sees no problem with referencing existing  
5 protections already provided by the SCRA, or by the ADA, for the  
6 guidance of litigants and the court. The State Bar therefore suggests that  
7 18(d)(iv) be revised to state as follows: “iv. Relief available under the  
8 Servicemembers Civil Relief Act.”  
9  
10

11 **Conclusion**

12 The State Bar of Arizona respectfully requests that the Court approve this  
13 Petition with the revisions set forth above.  
14

15 RESPECTFULLY SUBMITTED this 1<sup>st</sup> day of May 2025.  
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18 \_\_\_\_\_  
19 Lisa M. Panahi  
20 FOR THE STATE BAR OF ARIZONA

21 Electronic copy filed with the  
22 Clerk of the Supreme Court of Arizona  
23 this 1<sup>st</sup> day of May 2025.

24 by: PSequin  
25