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IN THE SUPREME COURT OF THE STATE OF ARIZONA

In the Matter of:)	Supreme Court No. R-25-0020
)	
PETITION TO AMEND)	
RULE 11(d) and 18(d))	Comment to Petition to Amend
of the RULES OF PROCEDURE)	Rule 11(d) and 18(d), of the
FOR EVICTION ACTIONS)	RULES OF PROCEDURE FOR
)	EVICTION ACTIONS

Commenting Party, Organized Power in Numbers (“OPIN”) hereby respectfully submits this Comment in support of the Petition to amend Rule 11(d) and 18(d) (“Petition”) of the Arizona Rules of Procedure for Eviction Actions (“RPEA”), filed by Community Legal Services (“CLS”), DNA People’s Legal Services (“DNA”), Southern Arizona Legal Aid (“SALA”) and the William E. Morris Institute for Justice (“MIJ”) on January 10, 2025.

In brief, the proposed amendments to RPEA (11)(d) and 18(d) do two things. One, it makes a continuance mandatory, *when the “good cause” standard is met*. Two, it provides more specific guidance to the term “good cause”. The Petitioners provide ample reasons why this amendment promotes procedural fairness and is a valuable reform for the low-income Arizona client population the Petitioners assist daily. This comment will focus on two key reasons why the amendment should be adopted and will address several opposition arguments raised in other comments.

I. STATEMENT OF INTEREST

This comment is made on behalf of Organized Power in Numbers (“OPIN”), a fiscally sponsored project of Working Families Organization. OPIN was formerly known as Unemployed

Workers United (“UWU”). OPIN advocates for the rights of poor and working-class people, with a particular focus on the wellbeing of immigrants and people of color. OPIN’s work in Arizona has included bringing litigation to challenge former Arizona Governor Doug Ducey’s premature termination of federal pandemic unemployment compensation and advocating for (and securing the adoption of) laws banning rental discrimination based on housing vouchers or other sources of income. The process of listening to and working with Arizonans throughout these campaigns led OPIN to an even deeper understanding of the challenges and difficulties facing poor and working-class renters in Arizona, especially in Maricopa County.

Over the past several years, our members have identified rising housing costs as the most significant threat to their families’ stability and security. In response, OPIN began offering recurring virtual know-your-rights training for tenants, has accompanied several of our members through the eviction process, and carried out a series of court-watch sessions—observing eviction hearings in several Maricopa County Justice Courts, both in person and virtually.

OPIN’s members’ experiences reflect a larger housing crisis across Arizona and especially in Maricopa County. There were 87,197 eviction filings in Maricopa County in 2024, a figure that reflects a 36% increase over the pre-covid average annual filings figure.¹ The number of filings constitutes a 14% eviction filing rate, meaning that there are 14 evictions filed for every 100 renters in Maricopa County.² Maricopa County leads the nation in evictions with rates nearly twice the national average.³ These statistics should raise the alarm for anyone considering changes to rules, policies, or procedures that impact the eviction process in Arizona.

¹Publicly available data from Maricopa County Justice Courts, available by request from the Public Information Officer.

² Phoenix Arizona: Eviction Tracking System, Eviction Lab (2025), <https://evictionlab.org/eviction-tracking/phoenix-az/> (last visited Mar 5, 2025).; *See also* publicly available 2024 annual data from the Maricopa County Justice Courts, available by request from the Public Information Officer.

³ *Id.*

II. OPIN SUPPORTS THE PROPOSED RULE AMENDMENTS

OPIN supports the proposed amendments because they will provide greater clarity and uniformity to eviction procedures across all twenty-six Maricopa County Justice Courts and across all the Justice Courts that hear eviction actions throughout the state of Arizona.

A. The High Stakes of Evictions (Including Fiscal, Safety, and Health Impacts)

Necessitate Adoption of the Proposed Amendments

While most participants (judges, defendants, plaintiffs, and counsel) in the eviction court process probably intuitively understand that unrepresented tenants (the majority of tenants) are at a disadvantage compared to represented landlords (the majority of landlords) in eviction proceedings, not everyone may be aware that this is not simply unfortunate. Nor is it merely explained by the disparity in the rate of legal representation between plaintiffs and defendants, though this does have a very significant impact. It is important for decision makers and the public to understand that the disadvantages faced by tenants are further explained by the historical origins of the summary process used in Arizona eviction proceedings and used widely across the United States.

1. The Speed of The Summary Eviction Process Favors Landlords and Justifies

Adoption of the Proposed Amendments

The origins of the summary eviction process are traceable to common law England where a tenant's possessory interest, although eventually recognized, was always subjugated to the landlord's dominant and greater ownership interest.⁴ Landlord-tenant law has evolved since common law England, reflecting a mixture of legal principles from property law, contract law,

⁴ Kathryn Ramsey Mason, *Housing Injustice and the Summary Eviction Process: Beyond Lindsey v. Normet*, 74 OKLA. L. REV. 397 (2022) <http://digitalcommons.law.edu/olr/vol74/iss3/5>

and consumer law.⁵ Yet the process remains tilted in favor of landlords. The last major legal challenge to the fundamental fairness and constitutionality of summary eviction proceedings was in 1972 when the Supreme Court decided the case of *Lindsey v. Normet*.⁶ The Supreme Court held that summary eviction processes were generally not unconstitutional.⁷ This decision has ensured that, “a legal process which prioritizes the landlord’s claim of possession above all other considerations, remains the law of the land to this day.”⁸

But just one year after *Lindsey*, Arizona enacted the Arizona Residential Landlord and Tenant Act (ARLTA) in 1973. The Act’s stated purpose was to simplify, clarify, modernize and revise the law governing the rental of dwelling units and the rights and obligations of landlords and tenants as well as to encourage landlords and tenants to maintain and improve the quality of housing.⁹ Prior to the adoption of the ARLTA, tenants were not permitted to raise counterclaims in forcible detainer actions. *See Hinton v. Hotchkiss*, 65 Ariz. 110, 174 P.2d 749, 754 (1946) (holding that “in an action for forcible entry and detainer no counterclaim or cross-complaint may be filed seeking affirmative relief”). “By enacting [the Landlord and Tenant Act, including] § 33-1365A the Legislature changed the law so as to *give tenants the right to assert counterclaims in an action by the landlord for possession or for rent.*” *Mead, Samuel & Co. v. Dyar*, 622 P.2d 512, 515 (Ct. App. 1980) (emphasis added). ARLTA represented a significant legislative reform in response to the need to modernize landlord-tenant relations, as did the adoption of the Rules of Procedure for Eviction Actions (RPEA) just fourteen years ago in

⁵ *Id.* At 396.

⁶ *Lindsey v. Normet*, 405 U.S. 56, 58 (1972).

⁷ *Id.*

⁸ Kathryn Ramsey Mason, *Housing Injustice and the Summary Eviction Process: Beyond Lindsey v. Normet*, 74 OKLA. L. REV. 413 (2022) <http://digitalcommons.law.edu/olr/vol74/iss3/5>

⁹ A.R.S. § 33-1302

2009.¹⁰ This history demonstrates that despite the status quo of summary proceedings for eviction actions, the legislative and rule reforms since *Lindsey* have trended toward protecting the due process rights of all parties within the fast-paced summary process framework.

In addition to this historical context, decision makers should consider the rapidly changing landscape and reality of the rental housing market in Arizona which includes a pending lawsuit filed against nine major residential apartment landlords operating in Arizona for conspiring to engage in illegal residential rent price-fixing in the Phoenix and Tucson metro areas.¹¹ This lawsuit brought by the Arizona Attorney General's office demonstrates the difficulty renters face in trying to secure affordable rental units, and that the high cost of rent may be at least partly due to illegal activity on the part of major corporate landlords.

Considering the historical context and the current reality of the eviction filing rate and the rental housing market, the proposed amendments are and should be viewed as, attempts to level out -what is at present - an unequal playing field for the parties to eviction actions in Arizona.

The Justice of the Peace Bench in Maricopa County states in their comment in opposition to the amendments that, “[e]ncouraging trial continuances...especially as a litigation tactic, is bad public policy....delay for the sake of delay is counterproductive.” Yet the proposed amendments are explicitly *good cause reasons* for delay, the precise conceptual opposite of, “delay for the sake of delay”.

2. Due to the Negative Public Health and Fiscal Impacts of Evictions the Amendments Should Be Adopted

¹⁰ Petition for Rules of Procedure for Eviction Actions granted December 2008, to be effective, January 1, 2009. <https://www.azcourts.gov/portals/20/2008RulesA/R-07-0023FinalRuleOrder.pdf>

¹¹ See CV2024-003889 <https://www.azag.gov/press-release/attorney-general-mayes-sues-realpage-and-residential-landlords-illegal-price-fixing> (last accessed May 1, 2025).

If public policy considerations are incorporated into the reasoning about whether to adopt the proposed amendments, it would be impossible *not to adopt them*. Over a dozen fiscal impact reports have been published that capture and quantify the detrimental fiscal impacts of evictions on the budgets of local governments. These reports capture public expenditures directly attributable to evictions including shelter funding, education funding, health care provided in hospitals instead of community-based providers, mental health services, criminal legal system costs, public safety expenditures, and transportation costs for homeless youth, among other costs.¹²

A growing body of academic and scientific literature now documents the harmful impacts of evictions on individual and population level health outcomes.¹³ Given the evidence-based reporting and research on the costs of evictions to local governments and the harms on population health, the only rational public policy approach is to adopt procedural rules that seek to reduce eviction filings in the first place and resolve as many filed cases as possible on terms mutually-agreed-upon by both parties. Additional specificity and clarity on the good cause standard for continuances would do just that, particularly when it comes to allowing parties sufficient time to gather facts and reach out of court settlements, an outcome explicitly provided for in statute.¹⁴

3. The Financial Stakes of Eviction Proceedings Have Increased Since 2000

¹² Eviction Right to Counsel Resources, Stout, <https://www.stout.com/en/services/transformative-change-consulting/eviction-right-to-counsel-resources> (last visited April 28, 2025).

¹³ Smith, Patrick D et al. “Eviction, post-traumatic stress, and emergency department use among low-income individuals in New Haven, CT.” *Preventive medicine reports* vol. 29 101956. 17 Aug. 2022, <https://pmc.ncbi.nlm.nih.gov/articles/PMC9502672/> (last accessed May 1, 2025).

¹⁴ A.R.S. § 33-1306

In 2000 the average judgement in Maricopa County for an eviction action was \$953.17.¹⁵ In 2024 the average judgement was \$3,157.18.¹⁶ This means that the financial stakes have more than tripled for defendants, a growth rate that cannot be accounted for by inflation alone. This changed reality since 2000 is yet another reason for increased due process protections, including the proposed amendments to RPEA 11(d) and 18(d).

B. Greater Specificity About What Constitutes “Good Cause” Is Better for Every Stakeholder

Reporting and research on the current nature of the eviction crisis finds that a key problem for many hardworking tenants is the reality of living paycheck to paycheck and being just one unanticipated health emergency, accident, or instance of bad luck, away from falling behind on rent.¹⁷ This problem is exacerbated by the gap between the income needed to afford the average two-bedroom apartment, and the wages earned by working-class people in Arizona. To be able to rent a two-bedroom apartment affordably, a person in Arizona needs to earn \$32.70/hour.¹⁸ Yet wages for vital occupations in Arizona society are routinely below this threshold and the minimum wage is just \$14.70.¹⁹ In light of the realities facing working-class renters, and the time needed to resolve problems pertaining to unpaid rent or to navigate an emergency health matter or other personal emergency that coincides with an eviction filing, the proposed amendments are common sense reforms. Contrary to the Maricopa County Bench’s portrayal of how the amended rules would function, they would not allow for a permanent delay.

¹⁵ Publicly available data from Maricopa County Justice Courts, available by request from the Public Information Officer.

¹⁶ *Id.*

¹⁷ Kathryn Davis-Young, KJZZ Phoenix, “More Maricopa County Renters Are Facing the Traumatic Experience of Eviction”, March 31, 2025, <https://www.kjzz.org/business/2025-03-31/more-maricopa-county-renters-are-facing-the-traumatic-experience-of-eviction> (last accessed April 28, 2025).

¹⁸ National Low-Income Housing Coalition Annual 2024 Out of Reach Report https://nlihc.org/sites/default/files/oor/2024_OOR-arizona.pdf (last accessed April 28, 2025).

¹⁹ A.R.S. § 23-363

The proposed amendment states that the, “[e]xamples of ‘good cause’ that *may* [emphasis added] require a continuance include but are not limited to...[those in the enumerated list]” . Any reasonable interpretation of the proposed amendments is that the Justices will, in each instance where a continuance is sought, apply good judgement and reasonable consideration of the facts to assess whether what may have constituted “good cause” initially, continues to constitute good cause, or whether the facts no longer constitute “good cause” for purposes of a continuance.

The Justice of the Peace Bench in Maricopa County states in their opposition comment that, “[j]udges do not need guidance on what ‘good cause’ is.” Reasonable minds may disagree about whether the Justices of the Peace in Maricopa County need additional guidance on what constitutes “good cause”. This is partly because there are twenty-six different Justices applying the procedural rules to the cases that come before them. Unlike Pima County, for example, which has a consolidated eviction docket, there are twenty-six Justices in Maricopa County who adjudicate eviction matters. Naturally, each Justice will have their own approach and style to running their courtroom. But with so many different adjudicators, more specific and detailed guidance on procedural rules is clearly beneficial. In fact, the fragmented reality of the Maricopa County Justice Court system is itself a basis for adopting more specific and clearer procedural rules for when continuances should be granted. In 2024 the Kyrene Justice Court received over 5,364 eviction filings, while the Hassayampa Court received only 2,003 filings.²⁰ This information demonstrates that there are significant differences between the judicial districts when it comes to the volume of eviction cases on the docket of a given Justice Court. It is understandable that where there are such significant differences in filings, each Justice of the Peace might interpret the current RPEA 18(d) language requiring a “stated, substantial” reason

²⁰ Publicly available data from Maricopa County Justice Courts, available by request from the Public Information Officer.

differently, particularly considering different docket pressures created by different volumes of cases. The proposed amendments help to alleviate this inevitable procedural unevenness across the courts by providing more specific and clearer guidance.

Finally, regardless of whether the Justices do or do not need guidance on what constitutes “good cause” – it is clear that defendants and plaintiffs also need better guidance. In a jurisdiction where, during the course of observing over 1,000 eviction actions, only 11 defendants and 17 plaintiffs requested continuances²¹, no one can doubt that the litigants themselves - especially defendants in eviction actions - need a better understanding their own due process right to seek a continuance, including for the reasons enumerated in the proposed amendment.

III. CONCLUSION

In the interests of procedural fairness, justice, public health, and public fiscal common sense, OPIN respectfully requests the proposed amendments to Rule 11(d) and 18(d) be adopted by the Arizona Supreme Court.

RESPECTFULLY SUBMITTED, this 1st of May, 2025

ORGANIZED POWER IN NUMBERS

By: /s/ Keally L. Cieslik
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²¹ William E. Morris Institute for Justice, *What’s Justice Got to Do With It? The Experience of Tenants in the Maricopa Justice Courts*, May 2020, <https://www.morrisinstituteforjustice.org/helpful-information/landlord-and-tenant/47-institute-maricopa-county-justice-courts-eviction-report-5-21-2020/file> (last accessed May 1, 2025)