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7 **IN THE SUPREME COURT**

8 **STATE OF ARIZONA**

9 **Petition to Amend the Rules of
10 Procedure for Eviction Actions**

Supreme Court No. R-13-0047

11 **COMMENTS TO PETITION TO
12 AMEND THE RULES OF
13 PROCEDURE FOR EVICTION
14 ACTIONS**

15 Pursuant to Rule 28 of the Rules of the Supreme Court, the William E. Morris
16 Institute for Justice (“Institute”), Community Legal Services (“CLS”) and Southern
17 Arizona Legal Aid (“SALA”) submit these comments in support of the amendment to the
18 Rules of Procedure for Eviction Actions by adding a change of judge rule, as Rule 9.1.
19 The proposed rule would permit for a change of judge as a matter of right and for cause
20 in eviction actions in Justice Court. The proposed rule is comparable to Rule 133(d) of
21 the Justice Court Rules of Civil Procedure that permits a change of judge in other civil
22 cases heard by the Justice Court. In support of the petition, the Institute, CLS and SALA
23 state the following:

24 **I. Statements of Interest**

25 The Institute is a non-profit public interest program that works on issues of
26 importance to low-income Arizonans. The rights of tenants in eviction cases is such an
27 issue. In 2005, the Institute published a study of eviction cases in Maricopa County:
28 “Injustice In No Time: The Experience of Tenants in Maricopa County Justice Courts”
found at morrisinstituteforjustice.org. CLS and SALA are federally funded civil legal
services program for low-income Arizonans. The legal services programs represent

1 tenants in eviction actions throughout the state. They typically are the only attorneys
2 who represent tenants in Justice Court. Legal services attorneys understand the
3 significant impact evictions can have on low-income persons.

4 **II. Background to the Proposed Rule Amendment**

5 In 2008, the Arizona State Bar submitted a Petition for the Rules of Procedure for
6 Eviction Actions, Supreme Court Number R-07-0023. The proposed rules were the
7 product of the State Bar Landlord/Tenant Task Force appointed by the State Bar
8 President. Attorney Katz of the Institute served on the Task Force as did CLS attorneys.
9 The Task Force members included Justices and attorneys representing tenants and
10 landlords. Included in the petition was a proposed rule for a change of judge for eviction
11 cases in Justice Court, Rule 11(e). Many comments were submitted in response to the
12 petition. Only one commenter objected to the change of judge rule and only to the
13 change of judge rule as a matter of right. The final rules adopted by the Court and
14 effective January 1, 2009, did not contain a change of judge rule for evictions in Justice
15 Court. Rule 1 of the Rules of Procedure for Eviction Actions provides that Rule 42(f) of
16 the Arizona Rules of Civil Procedure applies to evictions in Superior Court. The change
17 of judge provision in Rule 42(f) permits changes of judge as a matter of right and for
18 cause.

19 In 2012, the State Bar Petitioned for Approval of the Justice Court Rules of Civil
20 Procedure. Included in the proposed rules was a change of judge rule, Rule 133(d). The
21 Court approved the Justice Court Rules of Civil Procedure. Rule 133(d) provides for a
22 change of judge as a matter of right and for a change of judge if the party believes the
23 party will not have a fair and impartial trial before the justice. The Justice Court Rules of
24 Civil Procedure do not apply to evictions. Rule 101(b). These rules were effective
25 January 1, 2013.

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1 Thus, eviction actions, one of the most common civil cases heard in Justice Court,¹
2 are the only type of cases that have no change of judge rule.² The proposed change of
3 judge rule is the same one proposed in 2008. This rule change has been vetted by the
4 State Bar two times. This year, the proposed rule amendment was vetted through the
5 Legal Services Committee of the State Bar, the State Bar Rules Committee and the Board
6 of Governors of the State Bar. There was no public opposition to the proposed rule and it
7 was approved on the consent calendar at the Board of Governor's meeting on October 25,
8 2013. This proposed rule ensures that litigants in eviction cases heard in Justice Court
9 have the right to a change of judge.

10 **III. The Proposed Rule is Necessary for Fairness for Litigants in Eviction Cases**
11 **in Justice Court**

12 Eviction cases are important. Tenants have a property interest in their residences.
13 *Greene v. Lindsey*, 456 U. S. 444, 451-52 (1982). *See also Foundation Development*
14 *Corporation v. Loehmann's*, 163 Ariz. 438, 442, 788 P.2d 1189, 1193 (Ariz. 1990)
15 (recognizing common law right of tenant's property interest in rental). Eviction
16 proceedings that deprive tenants of that property must comply with the due process
17 requirements of the 14th Amendment to the United States Constitution. *Greene*, 456 U.S.
18 at 455.

19 For low-income persons, an eviction action may threaten their only means of
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21 ¹ In 2012 and 2013, there were over 64,000 evictions filed each year in Maricopa
22 County Justice Courts. [http://www.superiorcourt.maricopa.gov/medirelationsdepartment/
docs/annualrep/fy2013annualrpt.pdf](http://www.superiorcourt.maricopa.gov/medirelationsdepartment/docs/annualrep/fy2013annualrpt.pdf) (at page 22).

23 ² In addition to eviction cases, the Justice Court Rules of Civil Procedure do not
24 apply to civil traffic, civil boating, protective orders and injunctions against harassment.
25 Rule 101(b). These other cases have change of judge rules. Changes of judge are
26 permitted in orders of protection and injunctions against harassment cases because
27 pursuant to Rule 1 of the Arizona Rules of Protective Order Procedure, the Arizona Rules
28 of Civil Procedure apply to those cases. Thus, as relevant here, Rule 42(f) applies to
those cases, as well. For civil traffic and boating cases, Rule 7 of the Rules of Procedure
in Civil Traffic and Civil Boating Violation Cases provides that a change of judge as a
matter of right does not apply in these cases except for cases consolidated with a criminal
matter.

1 shelter. *See, e.g.*, Chester Hartman and David Robinson, *Evictions: The Hidden Housing*
2 *Problem*, Housing Policy Debate, Vol. 14, Issue 4 (2003) found at [http://content.](http://content.knowledgeplex.org/kp2/cache/kp/10950.pdf)
3 [knowledgeplex.org/kp2/cache/kp/10950.pdf](http://content.knowledgeplex.org/kp2/cache/kp/10950.pdf). The inability to find other housing on short
4 notice can lead to the disruption of children’s education, interruption of employment,
5 dislocation from health care providers, loss of personal belongings and homelessness. In
6 addition, the eviction process may lead to monetary judgments. Thus, the consequences
7 of eviction cases make them very important to tenants and especially low-income tenants,
8 who often lack back-up resources. The result of an eviction may be that a family is living
9 in a car. The importance of these cases and the property interest at stake certainly is
10 undercut by not allowing a change of judge.

11 Eviction cases have shorter statutory time frames than some of the other civil
12 cases heard in Justice Court, but these time frames are not a sufficient reason to deny the
13 litigants a right to change judge. If a tenant or a landlord believes that he or she cannot
14 get a fair trial before a Justice, then they should be allowed as other litigants are, to
15 request a change of judge. The change of judge requests can be handled like other
16 continuances for cause. As an example, the common practice in many Justice Courts is
17 that if a tenant appears on the court date noted in the summons and has a defense, the
18 case is continued to another date for a trial. *See* Rule 11(c) of the Rules of Procedure for
19 Eviction Actions (continuances may be granted “on the request of a party for good cause
20 shown or to accommodate the demands of the court’s calendar”); Arizona Residential
21 Landlord and Tenant Act, A.R.S. § 33-1377(C). The same or similar practice could
22 apply to a change of judge request.

23 Justice Courts administer cases differently than the Superior Courts. Two
24 examples highlight the fundamental unfairness of not having a change of judge for
25 eviction cases in justice court. Using Maricopa County as an example, if a person lives in
26 the Encanto Precinct, all the cases against them will be assigned to the one Encanto
27 Justice of the Peace. If a resident in the Encanto Precinct is sued on a credit card debt,
28 the person appears before the Encanto Justice and that Justice resolves the case. The

1 defendant may think he or she was not treated fairly by the Justice. If the person is sued
2 again on another credit card debt 10 months later and still lives in the Encanto Precinct,
3 his or her case will be assigned to the same Justice. In this situation, the person can
4 request a change of judge under Rule 133(d) of the Justice Court Rules of Civil
5 Procedure. If the person is served an eviction action, he or she cannot request a change
6 of judge. This differential treatment is unfair and undercuts the public's confidence in
7 our judicial system.

8 Second, several prominent landlord attorneys also serve as Justices of the Peace
9 *Pro Tempore* in Maricopa County. Consider the case of a legal services attorney who
10 comes to court to represent a tenant in an eviction case and finds a Justice of the Peace
11 *Pro Tempore* whose legal practice is primarily representing landlords and property
12 management companies. The legal services attorney may not think his or her client can
13 get a fair trial before the Justice. Should the legal services attorney have to try the case
14 before a Justice *Pro Tempore* he or she thinks is unfair? If this rule is not adopted, they
15 will.

16 **IV. The Objections to the Petition Have No Merit**

17 The Committee on Limited Jurisdiction Courts ("Committee") submitted a
18 comment opposing the petition. The Committee makes three assertions: the rule is not
19 necessary; it is impractical; and it is not prudent. These contentions have no merit.

20 The Committee claims the proposed rule is "unnecessary" because purportedly the
21 five justices in the Central Courthouse in Phoenix will honor a change of judge request.
22 Whether these five justices do or do not honor such a request is not relevant. The critical
23 factor is that they do not have to and can change their purported informal practice at any
24 time. Moreover, because there is no formal policy posted about this practice and nothing
25 on the court website so that litigants and their attorneys would know about the practice,
26 this "practice" is one that apparently few persons know about.

27 The Committee also claims the request is "impractical." The Committee
28 apparently wants administrative convenience to trump fairness and due process. It must

1 not. The Committee’s suggestion that a change of judge request may gain the perception
2 as a way to delay an eviction proceeding, unfortunately, appears to show a bias against
3 tenants. There are many court rules that some litigants may take advantage of. That is
4 not a sufficient reason to not have the rule in the first place.

5 **V. Provisional Case Processing Standards Must Not Affect This Petition**

6 The Committee’s third assertion pertains to the provisional case processing
7 standards. Recently, the Steering Committee on Arizona Case Processing Standards of
8 the Arizona Supreme Court proposed as a “standard” that 98% of evictions be resolved in
9 10 days. [http://www.az.courts.gov/cscommittees/committeonArizonaCaseProcessing](http://www.az.courts.gov/cscommittees/committeonArizonaCaseProcessingStandards.aspx)
10 [Standards.aspx](http://www.az.courts.gov/cscommittees/committeonArizonaCaseProcessingStandards.aspx). The Arizona Supreme Court in Administrative Order No. 2013-95, on
11 November 14, 2013, provisionally adopted the case processing standards “to provide
12 local courts and the Administrative Office of the Courts (“AOC”) with a time standards
13 framework for the development and testing of case management reports.”
14 <http://www.azcourts.gov/Portals/zz/admorder.Order13/2013.95>. These provisional case
15 processing standards should not affect the consideration of the petition.

16 First, the processing standards are provisional. Second, as explained previously, a
17 request to change judge must be filed on or before the first appearance, which in eviction
18 cases is the initial trial date. Thus, the request can be treated like any other continuance
19 for cause. Although A.R.S. § 33-1377 sets the timeframe for filing a complaint, serving
20 the summons, the initial court date and continuances, these timeframes do not require that
21 a case be resolved within any certain number of days. It is a misreading of A.R.S. § 33-
22 1377 to claim that an eviction “must” be resolved in 9 days. One need only look to the
23 Rules of Procedure for Eviction Actions to see that the parties may file motions (rule 9),
24 request disclosures and discovery (rule 10) and request a jury trial (rule 12). While many
25 evictions will be resolved rather quickly, administrative case management provisions
26 should not trump fundamental fairness and due process.

27 As explained previously, this is the same change of judge provision that the State
28 Bar Landlord and Tenant Task Force approved and the State Bar proposed in 2008.

1 Nothing has changed since then except for the provisional case management standards,
2 which should have no effect on the petition.

3 **Conclusion**

4 The proposed rule removes the disparity caused by a lack of change of judge rule
5 for eviction actions in Justice Court. Eviction court litigants should have the same right
6 to a change of judge as a matter of right and for cause as other civil litigants in Justice
7 Court and Superior Court. If a litigant or the litigant's attorney in an eviction case does
8 not think the litigant can receive a fair hearing before a justice, the litigant should have
9 the right like all other Justice Court litigants to request a change of judge either as a
10 matter of right or upon the proper showing for cause.

11 For all these reasons, the Institute, CLS and SALA request the Court approve the
12 petition.

13 Respectfully submitted this 20th day of May 2014.

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20 Electronic copy filed with the Clerk
21 of the Supreme Court of Arizona this
22 20th day of May 2014

23 Copy of the foregoing mailed to:

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