

1 ELLEN SUE KATZ, AZ Bar. No. 012214
2 WILLIAM E. MORRIS INSTITUTE FOR JUSTICE
3 202 East McDowell Road, Suite 257
4 Phoenix, AZ 85004
5 (602) 252-3432
6 eskatz@qwestoffice.net

7 **IN THE SUPREME COURT**

8 **STATE OF ARIZONA**

9 **Petition to Amend Rule 11 of the Rules
10 of Procedure for Eviction Actions**

Supreme Court No. R-14-0027

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

15 Pursuant to Rule 28 of the Arizona Rules of the Supreme Court, the William E.
16 Morris Institute for Justice (“Institute”) submits these comments in opposition to the
17 Petition to Amend Rule 11 of the Rules of Procedure for Eviction Actions. The proposed
18 Rule would allow the parties and witnesses to appear telephonically upon request if
19 certain reasons are satisfied. In response, on May 18, 2015, the Maricopa County Justice
20 Court Bench submitted a comment that proposes an alternative rule for telephonic
21 appearances. The Institute also opposes the Bench’s proposal. As explained below, the
22 Institute would not oppose a rule that allows for telephonic appearances if the rule is fair
23 and may be of actual use by tenants. Unfortunately, neither the Petition, not the Bench’s
24 alternate proposal is. Therefore, in opposition to the Petition and the Bench’s alternative
25 proposal, the Institute states the following:

26 **I. Statements of Interest**

27 The Institute is a non-profit public interest program that works on issues of
28 importance to low-income Arizonans. The rights of tenants in eviction cases is such an
issue. In 2005, the Institute published a study of eviction cases in Maricopa County:

1 “Injustice In No Time: The Experience of Tenants in Maricopa County Justice Courts”
2 found at morrisinstituteforjustice.org.

3 The Institute works closely with federally funded civil legal services program for
4 low-income Arizonans. The legal services programs represent tenants in eviction actions
5 throughout the state. They typically are the only attorneys who represent tenants in
6 Justice Court. The Institute’s opposition is based on its knowledge of eviction practices
7 and information provided by legal services housing attorneys.

8 **II. Non-Resident Landlords Do Not Need the Proposed Rule**

9 This rule is being proposed by and for “nonresident landlords” who own
10 residential property in Arizona. These non-resident landlords want the “knowledge and
11 comfort” that they will not “be put to the inconvenience, expense and hassle” of coming
12 to court for an eviction case they filed. These non-resident landlords own property in
13 Arizona, are the party filing the eviction case, and are typically represented by an
14 attorney. In such circumstances, there is no “inconvenience” or “hassle” in coming to
15 court and any “expense” is part of doing business.

16 The non-resident landlord has other options. The Arizona Residential Landlord
17 and Tenant Act, A.R.S. § 33-1309(B) (“ARLTA”) provides:

18 If a landlord is not a resident of the state or is a corporation
19 not authorized to do business in this state and engages in any
20 conduct in this state governed by this chapter, or engages in
21 any transaction subject to this chapter, he may designate an
agent ...

22 If the non-resident landlord does not want to hire a local property manager who
23 could appear at the hearing as a witness, that is the landlord’s decision. The landlord has
24 a rental business and chose to operate the rental business in Arizona.

25 In support of the Petition, the non-resident landlord references a Rule of Family
26 Law Procedure, Rule 8(A) that allows for telephonic appearance by parties and witnesses.
27 An eviction case is markedly different than family court cases where jurisdiction of the
28 child remains in Arizona even if the parent moves out of state. Significantly, the Justice

1 Court Rules of Procedure do not have a rule pertaining to telephonic attendance. Neither
2 does the Superior Court Civil Rules of Procedure.

3 **III. The Proposed Rule Is Not Practical For Tenants And Will Only Benefit**
4 **Landlords**

5 The practicalities of the proposal render it only of use to landlords and of no use to
6 tenants. As proposed, in order for a tenant to request a telephonic appearance, the tenant
7 must “file” the request with the “filing” of the answer. In general, all pleadings in Justice
8 Court may be made orally. A.R.S. § 22-215.¹ Thus, currently tenant answers do not need
9 to be in writing and filed and neither do requests for telephonic appearances. If the
10 proposed rule is read to require written pleadings, which the Institute believes it does,
11 then it imposes additional pleading requirements on tenants that currently do not exist.

12 In marked contrast, as proposed, for the landlord, the request for telephonic
13 appearance would be “filed” with the complaint. The overwhelming majority of
14 landlords are represented by counsel. Therefore, such a written request filed with the
15 complaint will be relatively easy to accomplish.

16 For telephonic requests by landlords, the request would be served with the
17 complaint. Any tenant opposition would have to be filed two days after service. Given
18 the statutory time frames for service of process on a tenant, a tenant only needs to be
19 served 2 calendar days before the hearing. A.R.S. §33-1377(B). Thus in many
20 situations, if a tenant wanted to oppose the request, the tenant would have to come to
21 court, often on the day of the trial, to file an objection. Subsequently, the Court would
22 rule on the motion. That ruling could be at the time for trial or at some other time. How
23 the tenant would be notified whether the request was or was not granted is not clear.
24 Thus, as proposed, if a tenant wanted to object to a request, the tenant may have to come
25 to court 2 times, the date set for the trial and on another date after the ruling on the
26 motion.

27
28 ¹ Eviction claims and defenses do not fit within the limited exceptions to oral
pleadings in the justice court statute. A.R.S. § 22-216.

1 There are practical problems for the tenant who wants to appear by telephone. If
2 the tenant wanted to request to appear telephonically, given the short time frames for
3 service, as proposed, the practical result is that a tenant would have to come to court on
4 the date set for the trial to “file” the request to be allowed to appear by telephone at the
5 trial. The same concerns apply if a tenant wanted to request that a witness appear
6 telephonically. Often the tenant would be making the request at the initial court date.

7 While this proposed rule may work for landlords with attorneys, it certainly does
8 not work for tenants who rarely have attorneys. The proposed rule appears to be of no
9 practical use by tenants. For all of these reasons, the proposed rule should be rejected.

10 **IV. The Maricopa Justice Court Bench’s Untimely Alternative Proposal Should** 11 **Be Rejected**

12 On May 18, 2015, the Maricopa Justice Court Bench (“Bench”) filed a response
13 supporting the concept of telephonic appearances but not the wording of the Petition.
14 The Bench proposes an alternative rule. Unfortunately, as explained below, the Bench’s
15 untimely counter-proposal creates its own problems and should be rejected.

16 First, presented as a comment, the Bench did not submit its comment until 2 days
17 before the close of the public comment period. Thus, the public has not been given
18 adequate time to evaluate and respond to the proposal. For that reason alone, the
19 proposal should be rejected.²

20 Second, the proposal is seriously flawed. The Bench claims that self-represented
21 tenants are the “most likely” to request a telephonic appearance because of the large
22 geographical areas covered by many justice courts and because many justice courts “are
23 not served by any form of public transportation.” While the Institute may agree with the
24 obstacles that face many tenants in appearing in court, upon close examination, the
25 Bench’s proposal does not address any of these obstacles, and instead, creates more
26 obstacles for the unrepresented tenant.

27
28 ² The Justices may want to submit a petition for a rule change allowing telephonic
appearances next petition cycle that allows for adequate public comment.

1 The Bench's proposal requires that any request "must be in writing and must be
2 made in advance of the time of the scheduled court date." As explained above, there is
3 no statutory requirement in justice court that motions must be made in writing. See
4 A.R.S. § 22-215. The practical result of the Bench's proposal for tenants, who almost
5 universally are unrepresented, will be that they will have to travel significant distances to
6 a court that often is not served by public transportation to file the written request to
7 appear by telephone. That is because after service of process, there is not sufficient time
8 to mail in the request. In addition, there is no online court filing in justice courts. Thus,
9 the only option left for the tenant is to come to court to file the request. If the justices are
10 concerned about tenant access to the courts, then a system should be developed where
11 requests to appear telephonically can be made without coming to court.

12 As explained above, tenants often only receive a few days notice of the eviction
13 prior to the scheduled trial date. Thus, as with the non-resident landlord proposal, most
14 tenants would have to come to court on the day set for trial to file a written request to
15 appear telephonically. That defeats the whole purpose of a process to request telephonic
16 appearances. Thus, the same tenants who will not be able to get to court to appear for
17 trial will not be able to get to court to file a written request for telephonic appearance.

18 The example of the Northwest Justice Court in Maricopa County is illustrative. A
19 tenant could live in the Anthem area over 40 miles from the justice court with no public
20 transportation available. Under either proposal, the tenant would have to find a ride to
21 court to either appear at trial or to file a written request for a telephonic appearance.

22 The timing concerns that arise with the Petition also arise with the Bench's
23 proposal for tenant requests that a witness testify by telephone. A tenant will often have
24 to make the request for a witness to appear telephonically at the beginning of the trial.
25 The Institute has concerns whether the justices will grant these requests.

26 In addition, the Bench's untimely proposal does not include a requirement that the
27 request to appear telephonically be made for good cause. The Institute is concerned that
28 without any articulated standards, the justices will be unduly strict with tenant requests

1 and deny a tenant's request to appear telephonically when the tenant has good cause.

2 Finally, the Bench's proposal inserts wording about a request for telephonic
3 appearance not delaying the timeframes set by statute.³ Since landlords will file their
4 requests with the complaint, their requests will have less impact on any delay than the
5 tenant's request that is filed days later. Thus, this appears to be one more factor that will
6 weigh against the justices granting tenants' requests.

7 The Institute wants to make it clear that it does not oppose appearance by
8 telephone if there is a fair and adequate process to request telephonic appearances for
9 witnesses and parties that would allow tenants to actually be able to make the requests
10 and receive permission to appear telephonically without the necessity of always coming
11 to court first to make the request. As explained above, the Petition and the Bench's
12 untimely alternative proposal do not satisfy even that basic due process requirement.

13 **Conclusion**

14 For all the above reasons, the Institute respectfully requests that the Court deny
15 this Petition and deny the Bench's untimely alternative proposal.

16 RESPECTFULLY SUBMITTED this 20th day of May 2014.

17 WILLIAM E. MORRIS INSTITUTE FOR
18 JUSTICE

19
20 By /s/Ellen Sue Katz
21 Ellen Sue Katz
22 William E. Morris Institute for Justice
23 202 East McDowell, Suite 257
24 Phoenix, Arizona 85004
25

26 _____
27 ³ The Institute does not agree with the Bench's characterization of any statutory
28 time restraints. Regardless, these concerns will no doubt affect some justices' rulings on
the requests and are another example of why the Bench's alternative proposal should be
rejected.

1 Electronic copy filed with the Clerk
2 of the Supreme Court of Arizona this
3 20th day of May 2015

4 Copy of the foregoing emailed to

5 Douglas C. Fitzpatrick
6 49 Bell Rock Plaza
7 Sedona, Arizona 86351
8 fitzlaw@sedona.net

9 Attorneys for Petitioner

10 By /s/Ellen Sue Katz
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28