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7 **IN THE SUPREME COURT**
8 **STATE OF ARIZONA**

9 **Petition to Amend Rules 5(a), 5(b)(6),**
10 **5(b)(7) and Add Rules 13(h) and 20, of**
11 **the Rules of Procedure for Eviction**
12 **Actions**

Supreme Court No. R-16-0040

13 **COMMENTS IN SUPPORT OF**
14 **PETITION TO AMEND AND ADD TO**
15 **THE RULES OF PROCEDURE FOR**
16 **EVICION ACTIONS**

17 Pursuant to Rule 28 of the Rules of the Supreme Court, the William E. Morris
18 Institute for Justice (“Institute”) submits these comments in support of the Petition to
19 Amend Rules 5(a), 5(b)(6), 5(b)(7) and add Rules 13(h) and 20 to the Rules of Procedure
20 for Eviction Actions and in response to comments submitted in opposition to the Petition.
21 The Petition was filed by the Access to Justice Commission and would make mandatory
22 the use of three eviction pleadings and five eviction notices. These comments will
23 respond to some of the objections submitted by two active Access to Justice Commission
24 workgroup members, Paul Henderson and Denise Holliday, who helped draft the
25 proposed notices and pleadings but who now oppose the workgroup’s product.

26 **I. Formation of the Eviction Workgroup:**

27 The Access to Justice Commission (“Commission”) was established by Chief
28 Justice Bales in 2014. One part of the initial work of the Commission was to “examine
and make recommendations” on: “Assisting self-represented litigants and revising court
rules and practices to facilitate access and the efficient processing of family court and
eviction cases.” In carrying out this mandate, one focus of the Commission’s work was
to look at information provided and the forms and pleadings used in eviction cases in

1 justice courts. These are cases where few tenants are represented and the overwhelming
2 majority of landlords are represented. The cases move quickly and because housing is at
3 issue, are very important. The result of an eviction may be homelessness as explained in
4 comments submitted by the Arizona Community Action Association.

5 The Commission established a subcommittee to look at aspects of the eviction
6 process, including information on the justice court websites and eviction forms and
7 pleadings. A subcommittee workgroup was formed with the specific purpose to draft
8 informational materials, eviction forms and eviction pleadings. Four Commission
9 members were on the subcommittee workgroup; a Maricopa County Justice of the Peace,
10 a Maricopa County Justice Court Administrator, a management employee with the
11 Administrative Office of the Court and the Director of the Institute. Invited to participate
12 with the workgroup were two landlord attorneys, Paul Henderson and Denise Holliday,
13 and two Community Legal Services attorneys. The rest of the workgroup was made up
14 of approximately 12 justice court personnel invited by the workgroup chair, the Maricopa
15 County Justice of the Peace. Thus, the workgroup's composition of approximately 20
16 persons was 75% court personnel.

17 The workgroup met on numerous occasions during the spring and summer of
18 2015. During the meetings, there was no objection to the composition of the workgroup
19 in general or to the number of landlord and tenant attorneys in particular. Moreover,
20 Attorneys Henderson and Holliday's claim now that the workgroup composition was
21 unbalanced in favor of attorneys who represent tenants is not correct.

22 **II. The Workgroup's Product was Consensus Driven**

23 Before the workgroup started our work, we looked at the eviction information and
24 form pleadings currently on the Maricopa County Justice Court website and at a 5-day
25 notice used by a prominent landlord firm that is posted on its website. The consensus of
26 the group was that we could and should do better.

27 The five notices under review in the Petition were consensus products. A sixth
28 notice was drafted for the termination of a month to month tenancy but the workgroup

1 could not agree on the wording for the notice and that draft notice was not passed on to
2 the full Commission for review. For the notices, the workgroup identified some specific
3 goals. We wanted a notice that complied with the law that landlords, especially
4 unrepresented landlords, could use. We also wanted to give the tenant adequate
5 information to know what were the landlord's claims; how the tenant could resolve the
6 situation - the options; what in general to expect if there was no resolution; where the
7 tenant could obtain additional information about landlord and tenant rights; and
8 importantly we wanted the notices to be in "plain" English. We wanted to avoid the use
9 of unnecessary "legalese." The Commission had asked that we try to keep the reading
10 level of the notices to a sixth grade level.

11 Much of our discussion focused on the kinds of questions tenants often ask the
12 justice court clerks. Over a period of several months, the five notices were drafted with
13 the full and active participation of Attorneys Henderson and Holliday. Although there
14 were workgroup members who wanted to work on notices that tenants might give to the
15 landlord, the group started with the most frequent landlord notices and did not get beyond
16 those notices. After the workgroup disbanded, the Administrative Office of the Court
17 reviewed the notices to be sure there were no typographical errors, grammatical issues
18 and the notices were consistent.

19 It is correct that the five proposed notices do not cover every situation or notice
20 that may be needed. The workgroup accomplished what it could. The Institute
21 understands that additional notices will be developed in the future. For those other
22 situations landlords and tenants may continue to use their own product. The fact that the
23 Commission only proposes five notices is not a valid reason to reject the proposed
24 notices.

25 For the three pleadings, the workgroup wanted to be sure that the pleadings
26 were drafted without the inference that the tenant would lose. We looked at the current
27 pleadings posted on the Maricopa County Justice Court website and there was agreement
28 that those pleadings were not adequate. The three pleadings were drafted over several

1 meetings with the full and active participation of Attorneys Henderson and Holliday. The
2 proposed pleadings were not controversial except there was a strong difference of opinion
3 about how to refer to a waiver when the landlord accepts a partial payment. The
4 Administrative Office of the Courts resolved that conflict when they made the finishing
5 edits. Here, as well, the workgroup expected that other pleadings would be drafted in the
6 future. The workgroup accomplished what it could in the allotted time.

7 During this process, the draft documents were circulated to the legal services
8 housing advocates throughout the state for comments. The Institute's understanding is
9 that the workgroup chair circulated the draft documents to other justices. The workgroup
10 received comments and suggestions from the justices and considered those comments and
11 suggestions at one of our meetings.

12 **III. Specific Objections to the Proposed Pleadings**

13 The Institute will respond to some of the objections to the pleadings. Attorneys
14 Henderson and Holliday do not appear to object to the summons.

15 **A. The Complaint:**

16 As explained above, this pleading was a consensus product. The workgroup
17 continually reviewed the Rules of Procedure for Eviction Actions as well as the Arizona
18 Residential Landlord and Tenant Act as we drafted our work product. Attorneys
19 Henderson and Holliday argued forcefully for the changes they wanted. Quite frankly,
20 had it not been for the consensus building process, the pleadings would have been
21 different. Despite the consensus building process, they now criticize the complaint for
22 the use of boxes for the landlord to check for the issues in the case. The boxes are for
23 "rent owed," "non-compliance," "irreparable breach," and "other." They initially argue
24 that unrepresented landlords will fill in too many boxes. Then they incorrectly claim that
25 the complaint only allows for one cause of action. The wording of the complaint that
26 "Plaintiff wants you evicted and wants possession of the rental because of the **reasons** in
27 section 5," (emphasis added) certainly allows for more than one issue to be raised. The
28 wording of the complaint that "**any** required notice was served" (emphasis added) is

1 broad enough to include more than one notice if appropriate and required. There is
2 nothing is the form complaint that would preclude a landlord from bringing an eviction
3 based on rent owed and the tenant's breach of the lease if proper notice(s) was served and
4 the landlord can prove up those issues.

5 Attorneys Henderson and Holliday complain that the manner in which the rent
6 owed is stated is not in compliance with Rule 5(c)(1)-(7) of the Rules of Procedure for
7 Eviction Actions. That is incorrect. The complaint includes a place to state each of the
8 seven facts that are required by the rule.

9 While conceding that mandatory pleadings are used in order of protection and
10 injunction against harassment cases, the attorneys claim that evictions have more
11 "scenarios" than order of protection and harassment cases. The Institute suggests that
12 eviction cases are rather straightforward and are the perfect type of case to have uniform
13 pleadings and notices. The Institute encourages the Court to approve the mandatory use
14 of the proposed complaint.

15 **The Judgment:**

16 Here as well, this pleading was a consensus product. Rule 13 (a) of the Rules of
17 Procedure for Eviction Actions requires the justice to make several determinations prior
18 to entering judgment, except when there is a stipulated judgment. Those requirements
19 are: (a)(1) whether the summons and complaint were served properly and whether the
20 pleadings contained the information required; (a)(2) whether proper notice was given
21 with any applicable opportunity to cure; (a)(3) whether the facts alleged, if proven are
22 sufficient to determine if the plaintiff has a superior right of possession; and (a)(4) and if
23 the landlord accepted a partial payment, whether a partial payment agreement and waiver
24 was signed by the tenant. Since these are matters the justices are required by rule to
25 review, the workgroup consensus was these matters should be listed in the judgment.

26 Attorneys Henderson and Holliday now fault the pleading because it requires the
27 justice to check the boxes that correspond to the findings he or she is required to make.
28 These findings are predicates to any judgment and are properly in a form judgment. The

1 attorneys claim that having boxes to check on the judgment form for what the justice is
2 required to review in the rules is “unnecessary.” If the judge is required to review those
3 facts, then it is a best practice to include them.

4 The attorneys incorrectly claim the partial payment line is “legally deficient.”
5 They imply that having the line in the judgment “implies” a partial payment was
6 accepted. That is not what the wording says. The lead in sentence is “If a partial
7 payment was accepted” Moreover, as noted above, Rule 13(a)(4) requires the justice
8 to inquire about a partial payment if it “appears” that a landlord accepted one.

9 As explained above the Commission wanted the workgroup to use “plain English.”
10 The attorneys claim that using the term “rental” is not sufficient and that the words
11 “dwelling unit” or “premises” are terms of art that must be used. The word rental is a
12 word that is easy to understand by all parties and certainly encompasses or is
13 synonymous with the other terms.

14 The attorneys also complain about the use of the terms “guilty” and “not guilty”
15 with the terms “responsible” and “not responsible.” Since the Arizona Residential
16 Landlord and Tenant Act and the Forcible Entry and Detainer Act use the terms
17 guilty/not guilty, the workgroup kept those terms but also added the terms responsible/not
18 responsible since these are civil cases.

19 Attorneys Henderson and Holliday object that the notice required by A.R.S. § 12-
20 1178(E) is not sufficiently described in the judgment. Here, as well, they are incorrect.
21 The required notice starts with a bold **WARNING** and follows with this text. “After
22 service of the Writ of Restitution (order to vacate rental), if you remain on or return
23 unlawfully to the rental, you will have committed criminal trespass in the third degree.”
24 The attorneys incorrectly claim that this wording is not adequate. The workgroup wanted
25 to explain what a “writ of restitution” is in plain English and if that explanation, in fact,
26 needs some tweaking, then the Institute would support that endeavor. The attorneys
27 appear to prefer that the statutory section be attached to the form judgment but inserting
28 or attaching a complete statutory section, goes against the goal to use “plain” English.

1 The attorneys also fault the Commission for not including the stipulated judgment
2 warning required by Rule 13(b)(4) in the judgment. The two judgment forms are used in
3 different situations. As the Institute understands the practice, use of a stipulated
4 judgment is different from use of the judgment form and the current usage does not
5 conflict with the proposed wording of the judgment. It appears inconsistent for the
6 landlord attorneys to suggest that the stipulated judgment warning be included in every
7 judgment even when if it is not a stipulated judgment when in other situations they object
8 that too much information is contained on the judgment form.

9 Finally, Attorneys Henderson and Holliday also fault the judgment form for not
10 having a place for the attorneys' contact information, relying on the requirements in Rule
11 5 (b)(3). That rule applies to the complaint, not the judgment form. The proposed
12 complaint does include a place for the attorney and his or her contact information as
13 required by the rule.

14 The Institute encourages the Court to approve the mandatory use of the proposed
15 judgment.

16 **The Goal of the Petition:**

17 Attorneys Henderson and Holliday assert that the "clear" end goal of the Petition
18 is to increase inefficiencies, raise the probability of errors and slow down the eviction
19 process. While the process to draft these pleadings and documents did not always go
20 smoothly, the Institute believes the final products submitted by the Commission will not
21 cause the purported harms the attorneys describe but rather will assist the justice court
22 eviction process to be more transparent, efficient and more understandable to the
23 unrepresented litigants who are overwhelmingly low-income tenants. That is the real
24 end goal of the Petition.

25 In addition, the Institute supports the mandatory use of proposed notices as well as
26 the pleadings discussed above.¹

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28 ¹ The Institute has not commented on the specific objections to the five notices. The
Institute believes that those objections are unfounded but has left the response to others.

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Conclusion

For all the above reasons, the Institute requests that the Court approve the Petition. The Institute understands that change can be hard for those who are comfortable and satisfied with the ways things currently function. This Petition is a good start to improving the eviction process.

Respectfully submitted this 23rd day of September 2016.

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Copy of the foregoing emailed to:

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