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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**
11 **of 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, Community Legal
18 Services submits these comments in support of the Petition to Amend Rules 5(a), 5(b)(6),
19 5(b)(7) and ADD RULES 13(h) and 20. The Petition was filed by the Arizona
20 Commission on Access to Justice (hereinafter “ACAJ”). The purpose of the amendments
21 are to assist self-represented litigants by making eviction forms and notices
22 understandable and to facilitate access and the efficient processing of eviction cases. The
23 vast majority of the self-represented litigants in evictions hearings are low income tenants
24 who are denied access to justice unless they are able to meaningfully understand the
25 notices, pleadings and judgments. These comments will also respond to the objections
26 submitted by Denise Holliday, Paul Henderson and Michael Parham.

27 **I. Statement of Interest**

28 Community Legal Services (hereinafter “CLS”) is a nonprofit law firm which
advocates for access to justice for low-income Arizonans. The mission of CLS is to
eliminate poverty based inequities in the civil justice system by providing high quality
legal advice, advocacy and assistance to low income Arizonans. As part of its advocacy,

1 CLS frequently represents tenants in eviction actions. While the firm provides direct
2 representation, it is also dedicates extensive time and resources towards increasing access
3 to justice for all low-income Arizonans. Additionally, CLS attorneys do not have a
4 financial interest in eviction hearings. While CLS can be awarded attorney’s fees, the
5 firm uses these awards to assist in future advocacy pursuant to the Legal Services
6 Corporation restrictions and guidelines.

7 **II. Background**

8 Stanley Silas, CLS Housing Lead Attorney, and Pamela Bridge, CLS Director of
9 Advocacy and Litigation, were asked to participate in the work group to develop notices,
10 pleadings and judgment forms that will further access to justice for self-represented
11 litigants in eviction actions. The group worked extensively on all of the proposed
12 notices, pleadings and judgment. While many of the meetings produced friendly debates
13 about proper wording or interpretation of certain statutes, ultimately, every member of
14 the work group agreed to the notices, pleadings and judgment for use in the special
15 detainers based upon the Arizona Residential Landlord and Tenant Act (hereinafter
16 “ARTLA”) before the documents were presented to the ACEJ for their approval.

17 **III. The Notices and Forms should be Mandatory for ARTLA Special**
18 **Detainers.**

19 **A. The notices are only meant to be used for certain ARTLA violations.**

20 There are four residential landlord tenant laws in Arizona: ARTLA applies to the
21 rental of landlord owned dwelling units (ARS § 33-1301 *et seq.*); the Mobile Home Parks
22 Act applies to the rental of a mobile home space in a mobile home park (ARS § 33-1401
23 *et seq.*); the Long Term RV Rental Space Act applies to the rental of spaces for RV's
24 under rental agreements over of 180 days (ARS § 33-2101 *et seq.*); and the general
25 landlord tenant laws ("the Innkeeper Laws") apply to the rental of RV spaces for short
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1 terms as well as any residential tenancies not otherwise covered by the preceding three
2 laws (ARS § 33-301 *et seq.*)

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4 While there are extensive Mobile Home Park Act cases in eviction proceedings,
5 the majority are ARTLA cases. For this reason, the work group only focused upon
6 ARTLA and the notices are only meant for ARTLA cases.

7 Additionally, this Petition only involves five notices. The Petition asks that only
8 the following notices be mandatory:
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- 10 5-Day Notice to Move - Health and Safety Violation;
- 11 5-Day Notice to Move - Failure to Pay Rent;
- 12 10-Day Notice to Move - Material Breach;
- 13 10-Day Notice to Move - Repeat Material or Health and Safety
14 Breach;
- 15 Immediate Notice to Move - Material and Irreparable Breach

16 Of course, outside of this list are other notices such as a non-renewal of lease,
17 etc. The work group focused on these five notices because they are, by far, the most
18 commonly utilized. For any notice outside of these five, landlords will be able to continue
19 to use their own notices.

20 **B. The notices, pleadings and judgment forms must be mandatory.**

21 CLS strongly supports the ACAJ's decision to petition that the proposed
22 forms be mandatory in ARTLA cases.

23 While CLS may represent tenants in evictions if they have applied for services
24 before the hearing date, unfortunately, many tenants do not ask for assistance until after
25 the hearing. Many of these tenants do not understand the notices and speedy eviction
26 process and as a result, lose their housing. Further, most self-represented tenants cannot
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1 afford an attorney, while most landlords can afford and have an attorney. Without an
2 attorney, it is extremely difficult for tenants to understand and navigate the eviction
3 process within the short time frames.
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5 The notices and pleadings vary from one landlord to the other. Regardless of
6 whether the landlord is represented or not, the notices and complaints currently used by
7 landlords are confusing. They use terms of art and the language requires a higher reading
8 level than many of CLS' clients. Therefore, the current notices and complaints by
9 landlords are creating a barrier to tenants to access the eviction process. While the
10 information on the Residential Eviction Procedures Information Sheet is important and
11 needed, it does not provide all of the critical information for tenants in a clear, accessible
12 manner.
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15 Self-represented tenants' inability to understand the currently used notices and
16 complaints is evidenced by the well documented amount of tenant defaults in Arizona.
17 These are tenants who, for one reason or another, have decided not to access the courts and
18 defend themselves. Surely, the Courts should make sure tenants have all the needed
19 information in a clear, concise manner before they make such a life changing decision.
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21 It is for these important reasons that the ACAJ asked the work group to draft
22 improved notices, pleadings and judgment. If the forms are not mandatory, only the
23 tenants whose landlord chose to use the form will be lucky enough to receive the
24 information in a way they can understand. Don't all tenants in Arizona, regardless of
25 whether they or the landlord are being represented, deserve to be given the same
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1 information? Shouldn't all tenants in Arizona who are facing eviction be given the same,
2 meaningful information?

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4 **IV. The Notices are Legally Correct pursuant to ARTLA.**

5 As stated above, the proposed notices are limited to ARTLA violations. By far, the
6 most common reason for evictions are nonpayment of rent under ARTLA.

7 **A. The proposed 5 Day notice allows landlords to make appropriate claims**
8 **for rent.**

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10 In their Comment upon and Objection to Proposed Rule Amendment, Paul
11 Henderson and Denise Holliday allege that the proposed 5 Day Notice to Move- Failure to
12 Pay Rent fails to allow landlords to make certain claims against tenants. Pursuant to
13 A.R.S. § 33-1310 (11), rent "...means payments to be made to the landlord in full
14 consideration for the rented premises." A.R.S. § 33-1310 (11) provides that, premises
15 "...means a dwelling unit and the structure of which it is a part and existing facilities and
16 appurtenances therein, including furniture and utilities where applicable, and grounds,
17 areas and existing facilities held out for the use of tenants generally or whose use is
18 promised to the tenant." As such, payments for the use of the dwelling unit and facilities
19 are defined as rent. A.R.S. § 33-1368 (B) spells out the requirements for evicting a tenant
20 for nonpayment of rent.
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24 If rent is unpaid when due and the tenant fails to pay rent within
25 five days after written notice by the landlord of nonpayment and the
26 landlord's intention to terminate the rental agreement if the rent is not
27 paid within that period of time, the landlord may terminate the rental
28 agreement by filing a special detainer action pursuant to [§ 33-1377](#).
Before the filing of a special detainer action the rental agreement shall
be reinstated if the tenant tenders all past due and unpaid periodic rent
and a reasonable late fee set forth in a written rental agreement. After a

1 special detainer action is filed the rental agreement is reinstated only if
2 the tenant pays all past due rent, reasonable late fees set forth in a
3 written rental agreement, attorney fees and court costs. After a judgment
4 has been entered in a special detainer action in favor of the landlord, any
reinstatement of the rental agreement is solely in the discretion of the
landlord.

5 The proposed 5 Day Notice to Move/Nonpayment of Rent clearly explains this
6 process to the tenant and what he or she must do in order to cure the violation in order to
7 not be evicted. Contrary to the comments by Mr. Henderson and Ms. Holliday, a
8 landlord cannot use this process to make other financial claims against a tenant. For
9 instance, financial administrative fees and charges from dishonored checks do not fall
10 within the definition of rent under the ARTLA and so, the landlord could not include
11 those fees in the 5 Day Notice. Landlords can still make these claims against tenants, but
12 must seek remedies through normal civil remedies or if the fee was required in the rental
13 agreement, could claim it was a material noncompliance with the rental agreement and
14 give the tenant a 10 day notice pursuant to A.R.S. § 33-1368 (A).
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18 Mr. Henderson and Ms. Holliday argue the proposed 5 Day Notice does not allow
19 landlords to make claims for rent based upon “the repair, replacement of a damaged item
20 or cleaning,” within the residence pursuant to A.R.S. § 33-1369 and utilities pursuant to
21 A.R.S. § 33-1314.01 (B). Both of these items are specifically listed in the ARTLA as
22 being included in the definition of rent. A.R.S. § 33-1369 specifically states these fees
23 must be considered rent and the definition of rent at A.R.S. § 33-1310 provides utilities
24 may be considered rent if applicable. Therefore, these items are distinct from
25 administrative fees or charges that have no statutory basis for being considered rent. More
26 importantly, the proposed 5 Day Notice allows for any item in which the statute has
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1 already defined as rent. On the proposed Notice, the landlord will simply list anything
2 that is defined by statute to be rent on the line that requests the amount of rent due that
3 month. Currently, tenants receive 5 day notices with no way of knowing how the landlord
4 calculated the amount due or a clear explanation of what the tenant must pay to stop from
5 being evicted. The proposed 5 Day Notice provides the tenant this information so
6 hopefully, the landlord will be able to receive the correct amount due immediately and the
7 eviction will be prevented.
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10 **B. The proposed 5 day notice allows landlords to claim appropriate late**
11 **fees.**

12 In their comments, Mr. Henderson and Ms. Holliday claim that the proposed 5
13 Day Notice fails to allow landlords to claim late fees beyond the date the notice was
14 provided to the tenant. As stated above, A.R.S. § 33-1368 (B) provides reasonable late
15 fees can be claimed by the landlord if it is set forth in a written rental agreement. The
16 proposed 5 Day Notice states clearly, “Total owed \$_____ as of this date_____. If
17 late fees are allowed in the rental agreement, this amount will increase by \$_____ each
18 day the rent is not paid.”
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21 **V. The Pleadings are Legally Correct.**

22 The rules concerning pleadings in eviction actions under ARTLA are set forth in
23 Rule 5 of the Rules of Procedures for Eviction Actions. The proposed pleadings comply
24 with both ARTLA and Rule 5. More importantly, they are more accessible and
25 understandable than the pleadings currently used by the landlords.
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A. Complaint

Contrary to the argument by Mr. Henderson and Ms. Holliday, the complaint allows for more than one cause of action. The proposed complaint advises landlords to check all claims that apply. Additionally, rent can be claimed in cases outside nonpayment of rent. Because landlords can still claim additional fees under “Other (as authorized by law),” they can still claim utilities outside of rent. Rule 5 (b) (7) provides that a complaint must state the reason for the eviction and the proposed complaint requires the landlord to state the reason for the eviction. Further, Rule 5 (c) provides the requirements for monetary damages and again, the proposed complaint complies with every requirement.

B. Summons

In his Comments to Proposed Rule, Michael Parham objects to the Summons because it informs tenants, “If you want to file a counterclaim, it must be in writing.” Mr. Parham concedes that counterclaims can be filed in nonpayment of rent cases under ARTLA. As discussed, nonpayment of rent ARTLA cases are the most common eviction actions in Arizona. So often, the tenants who do appear at court have no idea how to bring counterclaims in eviction actions. This simple instruction on the summons at least informs them of the first requirement that it must be in writing. Surely, informing tenants counterclaims must be in writing does not prejudice the landlord’s case.

1 **VI. CONCLUSION**

2 For low income persons, an eviction action may threaten their only means of
3 shelter. See, e.g., Chester Hartman and David Robinson, *Evictions: The Hidden*
4 *Housing Problem*, Housing Policy Debate, Vol. 14, Issue 4 (2003) found at
5 <http://content.knowledgeplex.org/kp2/cache/kp/10950.pdf>. The inability to find other
6 housing on short notice can lead to the disruption of children’s education, interruption of
7 employment, dislocation from health care providers, loss of personal belongings and
8 homelessness. In addition, the eviction process may lead to monetary judgments. Thus,
9 the consequences of eviction cases make them very important to tenants and especially
10 low income tenants, who often lack back-up resources. The result of an eviction may be
11 that a family is living in a car or shelter.

12 Courts have a duty to make sure tenants at least understand why they are facing
13 this life changing event in a meaningful way. Making sure the information given to
14 tenants is clear and consistent and not contingent on which form a landlord choses to
15 give the tenant is critical. A system in which a landlord who wants to evict a tenant also
16 is the decision maker concerning the amount of rights and information given to tenant is
17 an unbalanced system. If all tenants in Arizona cannot be provided the same accurate
18 and clear information, they are being blocked before they enter the court’s doors and
19 denied access to justice in its most fundamental form.

20 For these reasons, Community Legal Services supports the Petition by the
21 Arizona Commission on Access to Justice and asks that the proposed forms be adopted
22 as mandatory.

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Respectfully submitted this 23rd day of September, 2016.

COMMUNITY LEGAL SERVICES

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Electronic copy filed with the Clerk
of the Supreme Court of Arizona this
23rd day of September 2016

Copy of the foregoing emailed and
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