

IN THE SUPREME COURT STATE OF ARIZONA

PETITION TO AMEND RULE) Supreme Court No. R-_____
13(b)(4) of the Rules of Procedure)
for Eviction Actions)
_____)

Pursuant to Arizona Supreme Court Rule 28, Petitioner, the Arizona Commission on Access to Justice (hereinafter “ACAJ”) through its Chair, respectfully requests this Court amend Rule 13(b)(4) to the Rules of Procedure for Eviction Actions (RPEA), as shown in Appendix A. The new Rule 13(b)(4) would permit courts to accept stipulated judgments only when the court finds the following: both parties or their attorneys personally appear before the court; the court determines that the conditions of Rule 13(a)(1)-(2) have been satisfied; the form to which the defendant stipulated contains the specific warning in RPEA 13(b)(4); the court determines that the parties understand the terms contained in the document they signed; and all parties have initialed the warning language in (b).

I. Background of the Proposed Rule Amendment. The ACAJ was established by Administrative Order 2014-83 pursuant to the Court’s strategic agenda of “Advancing Justice Together: Courts and Communities.” The order directs the ACAJ to make recommendations on assisting self-represented litigants and revising court rules and practices to facilitate access to justice and the efficient processing of eviction cases. The Commission’s Limited Jurisdiction Workgroup drafted the proposed rule change concerning stipulated judgments and then reached out to judges throughout the state concerning the proposal.

In November 2016, the ACAJ unanimously agreed to propose the Petition for the rule change for stipulated judgments in evictions and to continue to receive feedback from stakeholders. The ACAJ is informed and believes that the 26 Justice Courts in Maricopa County will in January 2017 voluntarily implement the procedure outlined in this rule petition, and the petition may be revised in response to ongoing feedback from those courts and other stakeholders.

II. Purpose of the Proposed Rule Amendment. More than 99 percent of tenants in eviction hearings are self-represented litigants, while approximately 87 percent of landlords are represented by an attorney according to the June 2005 Justice Court Study by the William E. Morris Institute found at http://www.morrisinstituteforjustice.org/docs/Final_eviction_report.pdf.

According to the Joint Center for Housing Studies, Harvard University, December

9, 2015, found at <http://www.jchs.harvard.edu/research/publications/americas-rental-housing-expanding-options-diverse-and-growing-demand>, 36.2 percent of low-income renters (those whose rent is at least half of their income) do not have a high school degree.

Currently, before the eviction cases are called at eviction hearings, landlord attorneys typically ask to speak privately to tenants who are present in the courtroom. These conversations generally last a few minutes and sometimes result in the tenant signing a stipulated judgment and then leaving the court house without appearing before the court. The attorney for the landlord then submits the stipulated judgment to the judge when the case is called. Stipulated judgments are typically drafted by the landlord's attorney in advance of the hearing and printed in small font in English. The proposed judgment usually states the defendant appeared in person even though the defendant leaves before appearing before the judge. The stipulated judgments usually include the following provisions: judgment should be awarded to plaintiff, possession of the premises should be given to the plaintiff and that a writ of restitution will be issued on a certain day. Additionally, the stipulated judgments award the plaintiff monetary damages including rent, court costs, attorney fees and other damages. Frequently, stipulated judgments include a clause that provides that the defendant waives any rights to reconsideration or appeal. In contrast, if the tenant has failed to answer or otherwise defend and has been

defaulted, he or she may still file a motion to reconsider the default judgment. Accordingly, tenants who sign a stipulated judgment are frequently in a worse position than tenants who default.

The potential consequences of stipulated judgments are enormous for tenants. Besides immediately being required to leave their housing, the judgment may now appear on their credit report preventing them from acquiring other housing. Additionally, many subsidized and voucher housing programs terminate assistance if a tenant has an eviction on his or her record. For low-income persons, an eviction action may threaten their only means of shelter. *See, e.g.,* Chester Hartman and David Robinson, *Evictions: The Hidden Housing Problem*, Housing Policy Debate, Vol. 14, Issue 4 (2003) found at <http://content.knowledgeplex.org/kp2/cache/kp/10950.pdf>. The inability to find other housing on short notice can lead to the disruption of children's education, interruption of employment, dislocation from health care providers, loss of personal belongings and homelessness. Thus, the consequences of eviction cases make them very important to tenants and especially low-income tenants, who often lack back-up resources. The result of an eviction may be that a family is living in a car or shelter. Because the consequences of evictions are so critical, the amendments would not only ensure procedural due process, but also assist self-represented tenants by ensuring they understand the important ramifications of stipulated

judgments.

III. Request for a Modified Comment Period. Petitioner acknowledges that stakeholders raised concerns about the impact of the rule change and unintended consequences. Public comments may address items that this petition overlooks, or may suggest other changes that improve the proposed rule. As noted, Maricopa County Justice Courts have volunteered to conduct a pilot project starting on January 1, 2017, to implement these procedures on a trial basis, and to gather more information to evaluate the impact of the proposed rule change. Petitioner therefore requests that the Court allow a modified comment period to accommodate the filing of an amended petition after an initial round of public comments. Petitioner suggests the following dates:

- April 30, 2017: First round of comments due
- May 28, 2017: Amended petition due
- June 18, 2017: Second round of comments due
- July 16, 2017: Reply due

IV. Conclusion. For the reasons stated above, the Petitioner respectfully requests that the Court open this petition for comments during the modified periods described above.

RESPECTFULLY SUBMITTED this 9th day of January, 2017.

By /s/ Judge Lawrence F. Winthrop
The Honorable Lawrence F. Winthrop, Chair
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APPENDIX A

RULES OF PROCEDURE FOR EVICTION ACTIONS

Rule 13. Entry of Judgment and Relief Granted

b. Forms of Judgment.

(4) Stipulated Judgments. The court may accept a stipulated judgment, ~~but~~ only if when the court finds all the following:

- A. Both parties or their attorneys personally appear before the court, unless the court determines that, because of distance or other circumstances, the defendant cannot personally appear, that good cause exists and it is in the interest of justice to proceed; and
- B. The court determines that the conditions of Rule 13(a)(1)-(2) have been satisfied and the form to which the defendant stipulated contains the following warning:

Read carefully! WARNING! The plaintiff's representative is not a court employee. By signing below, you are consenting to the terms of a judgment against you and the landlord will now be able to evict you. You may be evicted as a result of this judgment have your wages garnished, the judgment may appear on your credit report, you may lose your right to subsidized housing, and you may NOT stay at the rental property, even if the amount of the judgment is paid in full, without your landlord's express consent unless you get the agreement in writing or get a new written rental agreement with your landlord.

- C. The court determines that the parties understand the terms in the document they signed and parties have initialed the warning language in (b).