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IN THE SUPREME COURT OF THE STATE OF ARIZONA

In the Matter of:	)	Supreme Court
	)	No. R-16-0040
PETITION TO AMEND	)	
RULES 5(a), 5(b)(6), 5(b)(7) and	)	Additional Objections to
Add Rules 13(h) and 20 of the	)	Proposed Rule Changes,
RULES OF PROCEDURE FOR	)	to Proposed Mandatory
EVICTION ACTIONS	)	Court Forms and to
	)	Proposed Mandatory Notice
	)	Forms

BACKGROUND

The author of this pleading is a justice of the peace in Maricopa County. Joining him in these comments, in their individual capacities, are the following justices of the peace: Judge Cecil Ash, North Mesa JP (Maricopa County), Judge Frank Conti, Dreamy Draw JP (Maricopa County), Judge Maria Felix, JP in Pima County Consolidated Justice Court, Judge Keith Frankel, San Marcos JP (Maricopa County), Judge Andy Gastelum, Maryvale JP (Maricopa County), Judge Joe Getzwiller, Ironwood JP (Maricopa County), Judge Sam Goodman, San Tan JP (Maricopa County), Judge Gary Griffith, Justice of the Peace 1 (Graham County), Judge Joe "Pep" Guzman, Agua Fria JP (Maricopa County), Judge Dorothy Little, Payson Regional JP (Gila County), Judge Miles Keegan, Hassayampa

JP (Maricopa County), Judge John McComish, Kyrene JP (Maricopa County), Judge C. Steven McMurry, Encanto JP (Maricopa County), Judge David Osterfeld, White Tank JP (Maricopa County), Judge Wyatt Palmer, Justice of the Peace 2 (Graham County), Judge Michael Reagan, McDowell Mountain JP (Maricopa County), Judge Vincent Roberts, JP in Pima County Consolidated Justice Court, Judge Keith Russell East Mesa JP (Maricopa County), Judge Steve Urie, Highland JP (Maricopa County), Judge Donald Watts, Manistee JP (Maricopa County), and Judge Dean Wolcott, former Arcadia Biltmore JP (Maricopa County).

The comments contained within this response are offered in the spirit of candor. We recognize and commend the work that has been done thus far and believe that these efforts have been valuable. Even so, several concerns remain, including those raised in the objections and suggested alternative language that were filed on August 5, 2016.

The desire to produce something should not overpower the desire to produce something worthwhile. There is a concern that just because everyone has a sincere desire to improve access to justice, and just because significant resources have been expended, that some type of mandatory change must occur. A type of bureaucratic inertia may have taken hold based in part on a belief that establishing even more court rules is the

preferred mechanism to accomplish that goal. On top of this possible dynamic is the very real problem that the stakeholders in this process do not trust each other.[1] In Maricopa County, the relationship between the landlord bar and the legal aid community appears to be the worst it has been in several years.

We recommend that everyone take a step back and define what problem we are attempting to solve. For example, does anyone actually believe that tenants, who are either unable or unwilling to pay their rent, do not understand that they will be most likely evicted? Probably not. So what access to justice roadblock are we attempting to abolish?

A major obstacle is that legal advice, like medical advice, is often preventive. It is often as simple as "don't do that." For self-represented tenants with limited means, access to justice means getting answers to the real problems they have when their landlord fails to fulfill his or her obligations under the law. For example, it may be an answer to a repair and maintenance issue, such as, "What do I do when my landlord won't respond to my text messages to fix my air conditioning?"

[1] The Petitioner unfortunately cites as authority a document that pre-dates the Rules of Procedure for Eviction Actions (RPEA). Although this document, the William E. Morris Institute for Justice, "Injustice in No Time – The Experience of Tenants in Maricopa County Justice Courts" (June 2005), is often presented as an objective or even scholarly study; it is, in reality, an advocacy piece. Former Chief Justice Charles E. Jones, in his comments to the original set of proposed eviction rules, noted that this 2005 commentary "displayed a severe bias in favor of tenants and against landlords in eviction litigation." Even so, the advocacy piece did raise some issues that were addressed with the adoption of the REPA.

Access to justice is real when a tenant can get hot or cool air, or get running water, or get something promptly repaired that poses a health or safety risk. No amount of mandatory court forms and mandatory notice forms will fix those problems or give real access to justice, and their absence will not prevent or occlude a judge's perception of the real problem or prevent a judge from ensuring that a landlord has perfected his or her filing before judgment is entered.

I.

SETTING UP EVICTION CASES TO BE DISMISSED ON NEWLY CREATED TECHNICALITIES, ONLY FOR THEM TO BE REFILED WITHIN A FEW DAYS, DOES NOT ADVANCE CONCEPTS ASSOCIATED WITH PROVIDING ACCESS TO JUSTICE FOR ANYONE

Although issues associated with making new law have been explored in previously filed comments, it is worth stating again that if these mandatory forms are adopted, then a landlord could comply with every statutory requirement in the applicable landlord and tenant act, could also comply with every current requirement of the RPEA, and still have his or her case dismissed merely because he or she used the wrong form. The mandatory notice forms will create a new set of procedural due process rights and judges will be required to dismiss eviction actions merely because

a mandated form was not used. Such dismissals would be required even in default cases where the tenant failed to appear. If this Court, as a matter of public policy, desires to create such hyper-technical defenses, then it is obviously free to do so. However, we urge caution in going down such a path.[2]

II.

WHILE SUGGESTED FORMS APPROPRIATELY SEEK STANDARDIZATION, MANDATING EVICTION FORMS WOULD MAKE EVICTION CASES DIFFERENT THAN NEARLY EVERY OTHER AREA OF THE LAW.

At least one of the proposed forms would be optional for Superior Court; but all of the proposed forms would be mandatory for Justice Courts.[3] If the proposed forms are mandatory, they would essentially be the only mandatory forms required in either civil or criminal practice in Arizona. The suggested forms in this and in other types of cases are listed in the following table.

[2] *See generally* Ariz. H.B. 2237, 53rd Leg., 1st Reg. Sess. (2017)(Prohibits a court from adopting or enforcing a rule or policy that requires a mandatory or technical form for providing notice or for pleadings in an action for forcible or special detainers).

[3] No reason is given for this distinction. However, this proposed distinction apparently only applies to the proposed summons. All of the other proposed mandatory notice and court forms would apply to eviction actions filed in Superior Court as well.

Language from Rule	**Form**
The Complaint shall "Be in the approved form referenced in Rule 20 of these rules." Proposed RPEA 5(b)(6).	Two page eviction complaint form[4]
A copy of the notice shall be "in the approved form as referenced in Rule 20 of these rules …" Proposed RPEA 5(b)(7).	Complex one page eviction notice form with confusing language and alternating formats (e.g. bold, italics, bold in shaded box).
"The judgment must be in the approved form referenced in Rule 20 of these rules." Proposed RPEA 13(h).	Two page eviction judgment form with 44 check box options
"The forms in the Appendix suffice under these rules and illustrate the simplicity and brevity these rules contemplate." Ariz.R.Civ.P. 84	Every sample form provided at the end of the Arizona Rules of Civil Procedure
EXAMPLE: "Every subpoena must "be substantially in the form set forth in Rule 84, Form 9." Ariz.R.Civ.P. 45(a)(1)(D).	Civil Subpoena
"Form 2 (Arrest Warrant) in the following Appendix is mandatory for use in courts throughout the State of Arizona. The other forms are recommended for use in Arizona courts and are sufficient to meet the requirements of these rules." Ariz.R.Crim.P. 41.	Every criminal form, other than an arrest warrant, is recommended; but is not mandatory.
"Parties may use forms for civil cases in justice court that are maintained and made available on the website of the Administrative Office of Courts …" JCRCP 148.	Justice Court Summons Justice Court Civil Subpoena

[4] The proposed mandatory complaint form contains an additional 76 word notice that is substantially similar to what is already contained within the REIS form, which the landlord is already required to be serve on the tenant.

III.

THE PROPOSED LANGUAGE IN THE MANDATORY NOTICE FORMS REMAINS UNNECESSARILY WORDY AND REMAINS CONFUSING.

The Petitioner did make some changes to the proposed forms in response to feedback;[5] but unfortunately dismissed other recommendations "regarding usability and formatting issues" as being merely "a user-preference" that do not "speak to the legal sufficiency of the forms." Such an analysis misses the point. A legally sufficient notice form is of no value if it is a format that no tenant will bother to read. Prior to the adoption of any new notice forms, whether they are mandatory or suggested, feedback should be obtained from people who regularly work with tenants in distress, including but not limited to social workers and employees at municipal government housing offices.

Currently, nearly all of the previously referenced defects in the notice forms remain,[6] including the one that sets trial judges up to fail by falsely informing tenants that the judge will "decide if [the tenant has] to move or can remain in the" residence. If the tenant admits that he or she has not paid

[5] There is now a reference that deposits cannot be used to pay rent.

[6] It still contains random parenthetical commentary (e.g. "Must be listed in rental agreement" or "if allowed in rental agreement") and tells tenants not once, but twice, to get any agreement in writing. In addition, the proposed notices still do not refer a tenant to the RPEA.

rent (and does not have a legal defense to nonpayment), then the judge has no legal authority to extend the lease beyond the writ of restitution date. Inferring otherwise is cruel.

IV.

A MANDADORY TWO-PAGE JUDGMENT FORM WILL NOT DO ANYTHING CONSTRUCTIVE; BUT WILL LITERALLY DOUBLE THE AMOUNT OF PAPER COURTS ARE REQUIRED TO PROCESS FOR NO APPARENT REASON.

The Petitioner made no changes in response to feedback to the proposed mandatory two-page judgment form. There are 44 check off boxes on this mandatory judgment form, some of which are for things that happen in perhaps one out-of-every five-hundred cases (e.g. counterclaims, non-waiver agreements).

Especially problematic is that the proposed form divides the monetary and the possession aspects of the judgment on different pages. The page documenting what happened in the case and the amount of any monetary damages would be on a page with no judge's signature. In contrast, the writ of restitution date, if any, would be on a second page that would have the judge's signature; but would not have either the names of the parties or the address of the rental property. This counterproductive set up would be especially challenging in Maricopa County.

Justice courts in Maricopa County hear approximately 5,000 eviction cases per month. We no longer have individual physical case files and instead have stacks of papers that are clipped together. After the cases are heard, they are scanned in to a computer storage system and those images are maintained. With a two-page judgment form it is only a matter of time before the second page of one case becomes attached to the first page of another. (Given the volume in some courts, this could be a weekly problem.) If a nonpayment of rent case (with a five day writ date) is attached to an immediate (with a one day writ date), the results could be disastrous. However, the bottom line is that our current eviction judgment forms are not broken. There is no need to attempt to fix them.

CONCLUSIONS

Having a set of recommended eviction notice forms and eviction court forms is a good idea. However, having a set of mandatory forms is not, especially if those forms are the ones proposed. There is clearly no agreement among the stakeholders that have participated in this process and proposed RPEA Rule 20 should be modified to read simply, "When applicable, landlords should use forms that are substantially similar to the notice forms in the appendix to these rules."

RESPECTFULLY SUBMITTED, this 27th day of January 2017.

/s/ Gerald A. Williams
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