

1 **The Law Office of Mark Hyatt Tynan**
Mark Hyatt Tynan
2 7320 E Shoeman Ln Ste 204
3 Scottsdale, AZ 85251-3359
480-612-0577

4 **Cook & Price, PLC**
5 Jesse D. Cook, Esq.
6 402 E. Southern Ave.
Tempe, AZ 85282
480.407.4440

7 **The Law Office of Mark A. Tucker**
8 Mark Tucker
2650 E Southern Ave
9 Mesa, AZ 85204-5413
480-633-9466

10 **IN THE SUPREME COURT OF THE STATE OF ARIZONA**

11 In re:

Supreme Court No. R-16-0040

12 **PETITION TO AMEND THE**
13 **RULES OF PROCEDURE FOR**)
14 **EVICITION ACTIONS**)
15)

COMMENTS re:
PROPOSED RULE MANDATING
FORMS AND PLEADINGS IN
EVICITION ACTIONS

16
17 The undersigned counsel hereby jointly file their Comments and Objections
18 to the Petition to Amend the Rules of Procedure for Eviction Actions (“Petition”)
19 requiring the use of court-published forms for notices and court pleadings. We
20 believe that we are the primary private attorneys who appear on behalf of tenants in
21 eviction actions in Maricopa County, as opposed to *pro bono* attorneys. Strangely
22 no private, for-hire attorneys like us were included in the Arizona Commission on
23 Access to Justice (“ACAJ”) workgroup that led to the current Petition. The petition
24
25
26

1 is obviously drafted to hinder landlords but serves no benefit to tenants. In fact, if
2 the Petition's rules and forms are adopted, it would harm any tenant seeking to
3 present a legal defense to an eviction action.
4

5 The forms as written will confuse tenants and the idea of any type of
6 mandatory forms will ultimately serve as a detriment to tenants. We strongly
7 request that this Court reject any mandated forms for landlords or tenants. Such
8 forms should be voluntary only.
9

10 While we understand that the original time to respond to the Petition has
11 closed, until recently we were not aware of the existence of the ACAJ and were
12 unaware of the Petition.
13

14 We would be more than happy to participate in drafting proposed rules to
15 facilitate access to justice by the underprivileged. Given the small pool of attorneys
16 who represent tenants, and even a smaller pool who charge for such services, we
17 believe we have a unique perspective that this Court should consider before
18 adopting any rules affecting tenants. Not only do we represent and charge tenants
19 for such work, we are also often retained solely to provide general guidance to
20 tenants who are unable to afford our fees for representation in the cases themselves.
21 Therefore, we request that the Court consider our Comments on the original
22 Petition.
23

24 ...
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

I. YOUR AUTHORS

a. MARK TYNAN

Mark Hyatt Tynan is a sole practitioner of more than thirty years. During this time Mr. Tynan has represented landlords and tenants, but has focused on tenant representation. He has been involved in defending tenants in eviction actions and damages actions, and suing landlords for the recovery of deposits and for damages, usually statutory damages. Mr. Tynan also advises tenants on their rights and responsibilities. Since the imposition of the Rules of Procedure for Eviction Actions, his tenant representation has declined as these rules have made the cost of tenant representation prohibitive for those who are unable to qualify for representation by Community Legal Services and other such agencies. Mr. Tynan appeared as an expert at a Maricopa County program for the judiciary about the fairness of the rules and the courts when it comes to tenants. He was selected for this program because of his long standing tenant advocacy.

b. JESSE COOK

Jesse Cook is a partner with the law offices of Cook & Price PLC. Cook and Price PLC represents tenants in a variety of different types of landlord-tenant disputes. Among other areas of law, the firm provides the following representation to tenants: (1) defending tenants in evictions; (2) serving notices to landlords on behalf tenants; (3) representing tenants in recovering their security deposits; (4)

1 defending tenants in litigation filed by landlords for alleged property damage; and
2 (5) providing advice and counsel to tenants on any landlord-tenant type issues.
3

4 **c. MARK TUCKER**

5 Mark Tucker is a sole practitioner of more than twenty three years. During
6 that time Mr. Tucker has represented both landlords and tenants in the justice court,
7 superior court and appellate courts. He represented the tenant, Tracey Biles, in the
8 Arizona appellate court decision, *Keenen v. Biles*, 199 Ariz. 266, 17 P.3d 111 (App.
9 2001). He has been involved in representing tenants of all kinds whether they are
10 governed by Arizona's commercial, residential, mobile home park, or long-term
11 RV space acts. He frequently advises, assists and represents tenants in their exercise
12 their rights pursuant to the contracts and the law. His representation includes
13 representation of tenants in eviction actions, security deposit cases and civil
14 litigation. Mr. Tucker is a member of the Arizona Association of Landlord-Tenant
15 Attorneys (ALTA) and has served as a guest instructor at ALTA CLEs on issues
16 relating to residential tenants under the law. Mr. Tucker currently serves as a judge
17 pro tempore for the Maricopa County Justice Court.
18
19
20
21
22

23 **II. THE PROPOSED FORMS WILL NOT BENEFIT TENANTS.**

24 We have reviewed the substance of the proposed form and found numerous
25 defects that will impede tenant's rights. The mandated forms will potentially
26 mislead tenants as to their rights and will limit valid defenses that tenants currently
27
28

1 possess to eviction actions.

2 For example, the form of judgment does not have a place for tenants and
3 landlords to stipulate. This is one of the most critical rights that we as counsel to
4 tenants have to effectively represent them in eviction actions. Regularly when we
5 are retained for eviction matters, our clients seek to amicably resolve their cases
6 whether by getting additional time to pay or additional time to vacate the rental
7 property. Further, it is common in our practices to agree with the landlord's
8 counsel that if the tenant pays within a certain time period, the landlord agrees to
9 vacate the judgment against the tenant and let them stay. This protects the landlord
10 as they get the judgment, but allows the tenant the opportunity to reinstate the lease
11 without penalty. By calling opposing counsel and seeking a written stipulation, we
12 are able to not only obtain such a settlement but we are able to reduce the attorneys'
13 fees expended as we do not have to bill hourly for our time travelling to court for a
14 physical appearance. The current proposed change will drastically reduce the
15 number of tenants that are able to hire private attorneys to represent them in these
16 actions.
17
18
19
20
21

22 Second, in the form of judgment, it states that "if you have a statutory basis
23 to file a counterclaim ... it **must** be in writing and served upon the opposing party."
24 Proposed Summons ¶ 4 (Emphasis added). First, this appears to be legal advice
25 that a tenant will assume is given by the Court or plaintiff's counsel. Second, upon
26
27
28

1 reading this, a tenant will presume that they must file any and all counterclaims that
2 they have. However, the filing of a counterclaim is a strategic decision that we
3 make with our clients because it is often more advantageous for our clients to
4 preserve their counterclaims and raise them in separate litigation. Depending on
5 the nature of the potential counterclaim, a tenant will be significantly harmed by
6 attempting to assert claims such as habitability in an expedited statutory action.
7 Rather, a tenant will have more success pursuing such claims where full discovery
8 is permitted. The summons as drafted does not account for such legal decisions but
9 rather mandates that any and all counterclaims be immediately filed by the tenant.

10
11
12
13 ***This is not only incorrect, it is bad legal advice.***

14
15 Finally, two non-curable notice forms (the second 10 Day Notice and the
16 Material and Irreparable Violation Notice) give incorrect legal advice that can
17 mislead tenants into not protecting their interests. These are violations that cannot
18 be cured but tenants may have defenses to them. But the forms both state in the
19 opening paragraphs that, "the violation(s) cannot be fixed." However the bold
20 language in the shaded box at the bottom of the form says ". . . in order to reinstate
21 the lease you may be required to pay damages, attorney fees, and court costs."
22
23

24 Tenants receiving these can be expected to seek to cure and reinstate the
25 lease instead of promptly seeking legal counsel and perhaps learning of ways to
26 argue that the facts are wrong to the landlord or to defend the subsequent eviction
27
28

1 action. By putting off getting legal counsel while seeking to cure a non-curable
2 violation, tenants will be acting to their detriment because of the wrong and
3 confusing advice contained in the notice forms.
4

5 **III. ANY FORMS CREATED FOR LANDORDS AND/OR**
6 **TENANTS SHOULD BE VOLUNTARY, NOT MANDATORY**

7 As set forth by the Commission, the idea behind the forms was to create
8 standard forms for landlords that tenants can understand. This ignores the fact that
9 mandated notices and forms which have been pre-approved will be a detriment to
10 tenants. In numerous eviction cases, we are able to present a legal defense for
11 tenants based upon a defect in the notice and/or summons and complaint—
12 arguments that the documents do not meet the statutory standard to state a claim
13 upon which relief can be granted. Failure to state a claim is a defense that litigants
14 in all other types of lawsuits have; the ACAJ is attempting to deprive tenants of this
15 right through implementation of standard forms.
16
17
18

19 Second, in the Reply, it is requested that the Administrative Director of the
20 Administrative Office of the Courts be given power to draft future forms without
21 any explanation of what that may include. Our first observation of the current
22 proposal is that there are no forms for tenants, yet the ACAJ is asking for *carte-*
23 *blanche* authority to create forms in the future that will restrict the means by which
24 tenants can raise their claims. Any mandating of forms will undoubtedly serve to
25 impede tenants' rights because tenants may not be aware that they must use a
26
27
28

1 specific form to provide notice of a problem to their landlord. Contrary to the
2 assertion in the Reply that the goal is to help “self-represented litigants and others
3 navigate the judicial process,” any mandated forms will only serve as an
4 impediment to unrepresented parties. Landlords and tenant attorneys will all
5 immediately adjust to the new rule, and individual, self-represented litigants will
6 find roadblocks to asserting their statutory rights.
7

8
9 Third, Rule 20 suggests where there is no adequate form a party in such need
10 first must petition the court for its approval of the form counsel wishes to utilize.
11 Given the short time in which these cases go to trial, such a requirement would be
12 almost impossible to meet and would needlessly add expense to a case. The
13 additional time required for the opposing party to respond and for the court to rule,
14 and then for the moving party to file may put the trial beyond the time during which
15 the trial must commence. This is no idle hypothetical. There is no form for a
16 Motion to Continue Trial. There is no form for a Motion to Dismiss or a Motion
17 for Summary Judgment. There is no form for stipulations. Further, a pro per tenant
18 may be under the false impression that he or she is limited to these forms or
19 intimidated by these rules. The present rules have made it more difficult for tenants
20 to represent themselves and afford representation. These proposed rules and the
21 suggested forms will only exacerbate this problem. Please keep in mind that these
22 motions almost always are filed by tenants and their attorneys. Furthermore, the
23
24
25
26
27
28

1 vast majority of tenants in eviction cases are not represented by a community
2 agency or a pro bono attorney where fees are not an issue. Accordingly, the added
3 costs and unclear rules that will result from these changes and additions will make
4 it even more difficult for tenants to represent themselves or afford counsel.
5

6 **CONCLUSION**
7

8 The undersigned have serious concerns regarding the current proposal and the
9 unintended consequences that have not properly been vetted. We are concerned not
10 only with the mandate that landlords use certain forms and pleadings, but the notion
11 that forms will be drafted in the future for tenants. For very different reasons,
12 mandated forms for both parties to an eviction action, will serve as a detriment to
13 tenants attempting to properly raise defenses and will serve as an impediment to
14 tenants seeking to hire attorneys, as our fees will needlessly increase. We
15 respectfully request the court to deny the petition.
16
17

18 RESPECTFULLY SUBMITTED this 17th day of February, 2017.
19
20

21 s/ Mark Hyatt Tynan _____
22 Mark Hyatt Tynan
23 Law Offices of Mark Hyatt Tynan

s/ Mark Tucker _____
Mark Tucker
Law Offices of Mark A. Tucker

24
25 s/ Jesse Cook _____
26 Jesse Cook
27 Cook & Price PLC
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

A copy of this comment has been e-mailed
this 17th day of February 2017 to:

Hon. Lawrence Winthrop
1501 W Washington, Suite 410
Phoenix, AZ 85007
spickard@courts.az.gov