

Gerald A. Williams
Arizona Bar No. 018947
North Valley Justice Court
14264 West Tierra Buena Lane
Surprise, AZ 85374

IN THE SUPREME COURT OF THE STATE OF ARIZONA

In the Matter of:)	
)	Supreme Court
PETITION FOR)	No. R-07-0023
PROCEDURE FOR)	
EVICTION ACTIONS)	COMMENT ON PETITION FROM
)	JUSTICE OF THE PEACE
)	NORTH VALLEY
)	JUSTICE COURT
)	(MARICOPA COUNTY)

BACKGROUND and INTRODUCTION

The State Bar’s Landlord Tenant Task force was formed in large part because of the concerns raised in a report titled, “Injustice in No Time: The Experience of Tenants in Maricopa County Justice Courts.” Although this document is continually presented as an objective study, it is, in reality, an advocacy piece that is summarized on the advocacy group’s web page as concluding, “that in almost every respect, court practices benefited landlords and disadvantaged tenants.”¹ Unfortunately, the vast majority of the attorneys appointed to the task force are currently or formerly employed by Community Legal Services or are currently or formerly board members of Community Legal Services.² While there was a vocal minority on the task force and on the various subcommittees that were created, the clear majority of the task force was composed of attorneys who essentially believe that justice courts, especially justice courts in Maricopa County, are biased against tenants. Even so, some level of standardization is clearly needed in this area and the proposed rules, when taken as a whole, represent a noteworthy first step.

There are some significant problems with the proposed rules. Most of these are detailed in the attached minority report, which the State Bar, for whatever reason, declined to forward to this Court. However, there are some additional concerns about the impact of these proposed rules on justice courts, especially the amount of paper

¹ Web page of William E. Morris Institute, February 2007 Newsletter.

² While the State Bar may have intended to originally invite a cross section of stake holders, the proposed rules were drafted primarily by tenants’ rights attorneys in Maricopa County. For example, many of the justice court judges listed as task force members in Appendix B to the petition could not or did not participate in either the full task force meetings or in the subcommittee meetings that drafted the proposed rules. The two justice court judges that were actively involved in the rule drafting process were myself and Judge C. Steven McMurry.

documents that will be required to be filed at various front counters around Maricopa County if these rules are adopted. Finally, prior to any statewide implementation, these rules should be tested at a regional court center in Maricopa County as well as in justice courts in Pima County and in some of the more rural justice court jurisdictions in Arizona.

THE PROPOSED RULES WILL INCREASE THE NUMBER OF DOCUMENTS REQUIRED TO BE FILED AT A COURT'S FRONT COUNTER FROM ONE TO FOUR IN EACH CASE.

While there may be sound policy reasons for the dramatic increase in paper that the rules will require, there should be no doubt that they will do so. Currently, court clerks can process an incoming eviction case with a one page summons and complaint form. Unlike other incoming court documents, with eviction cases, the summons must be issued immediately³ with a court date set for no less than three and for no more than six days away. Filing fees must be collected and receipted and computer entries must be made. The proposed rules will require every court clerk to accept and process three additional pieces of paper per case.

There are three specific proposed rules that will require additional documents to be filed, primarily at justice court front counters, around the state. Rule 5(a) requires a two page summons and complaint form. Rule 5(a)(5) requires that an eviction procedures information sheet be included with every summons issued (although it could also be printed on the back of the summons form). Rule 5(b)(7) requires that a copy of the notice (usually a five day notice alleging nonpayment of rent) be attached to the complaint.⁴ While three additional documents per case may not sound significant, it is. It is worth noting that the justice courts located in Maricopa County hear approximately 7,000 eviction cases each month. Going from 7,000 pieces of paper to 28,000 pieces of paper each month is significant.

THE ADDITIONAL ITEMS REQUIRED TO BE INCLUDED IN THE COMPLAINT WILL SLOW DOWN CASE PROCESSING TIMES CONSIDERABLY

Perhaps it is not surprising that a set of rules prepared in response to a report called "Injustice In No Time," would immediately increase case processing times. Again, there may be sound public policy reasons to do so but there can be no serious doubt that it will happen. In Rules 5(b) – 5(d), there are, depending upon how they are counted and the basis for the lawsuit, at least *twenty-one* separate and distinct requirements as to what must be in the complaint. Even in cases where the defendant

³ "The summons shall be issued on the day the complaint is filed . . ." A.R.S. § 33-1377B.

⁴ This rule requires that every tenant be served with the cure notice twice, once prior to the lawsuit and then again as part of the lawsuit. The value added for doing so for both the judge and the tenant is minimal. This rule was put in at the request of tenants' rights attorneys because it increases the chance that their client will bring at least one copy of their notice to the initial meeting. Consequently, for the extremely small percentage of cases where organizations like Community Legal Services are involved, a significant burden was placed on the entire system in every case.

fails to appear, the trial judge will be required to study the case file to make sure all of these additional requirements are present prior to issuing a default judgment against a tenant.⁵

UNLESS THE APPLICABLE STATUTES ARE AMENDED FIRST, THE PROPOSED RULES WILL TRIGGER LITIGATION AND CONFUSION

There are variety of sound public policy and philosophical reasons why court rule making procedures should never be used to “amend” or change the meaning of existing statutes. This position is discussed in detail in the attached minority report.

PRIOR TO ANY STATEWIDE IMPLEMENTATION, THE RULES SHOULD BE TESTED AT VARIOUS JUSTICE COURTS AROUND THE STATE

Often unexpected and even counterproductive consequences follow sweeping change. By way of example, although these rules were designed to protect and in some ways expand the rights of tenants, some of the rules, if strictly enforced, could actually be used as a weapon against tenants. For these reasons, the rules should be tested at both urban and rural justice courts prior to being adopted statewide. Doing so would likely require some type of administrative order from this Court. I respectfully suggest that the testing location for Maricopa County be the justice courts located at the Downtown Regional Center for two reasons. First, two of the justice court judges there participated on the state bar’s task force. Second, those are the justice courts located closest to the offices of Community Legal Services. Since that organization and another advocacy group were the primary driving force behind these proposed rules, its attorneys should be actively involved in any testing and review. The proposed rules should also be tested in Pima County and in the Springerville Justice Court, among others. The justice of the peace in Springerville, Judge Sherry L. Geisler, is an experienced non-lawyer judge who is extremely well respected by the other justices of the peace throughout the state.

DATED this 24th day of December 2007.

Gerald A. Williams

Attachment:
Minority Report, dated 9 May 2007

⁵ Within the task force, there was significant debate as to why tenants in Maricopa County fail to appear for eviction cases at alarming rates. Some believed it was because they were never served and that process servers were submitting false certifications to various courts. Others, such as myself, believed that given the vast majority of cases are for nonpayment of rent, a prudent tenant is not willing to miss work and the corresponding pay just to agree that he has not paid his rent. Any available funds and time would be better spent finding a new place to live and moving out. Under such circumstances, a tenant’s failure to appear is completely rationale. In the justice courts located in the facility in Surprise, Arizona, there are additional complications for tenants because most of the courts are located far away from their precincts and because of the lack of mass transit availability.

A copy of this comment and the attachment to it has been mailed this 24th day of December 2007 to:

Robert B. Van Wyck
Chief Bar Counsel
State Bar of Arizona
4201 North 24th Street, Suite 200
Phoenix, AZ 85016