

1 Hon. Lawrence F. Winthrop
2 1501 W. Washington, Suite 410
3 Phoenix, Arizona 85007

4 **IN THE SUPREME COURT**

5 **STATE OF ARIZONA**

6 PETITION TO AMEND RULE 13(b)(4)
7 OF THE RULES OF PROCEDURE FOR
8 EVICTION ACTIONS

Supreme Court No. R-17-0020

**Supplement to Petition to Amend
Rule 13(b)(4) of the Rules of
Procedure for Eviction Actions**

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10 Pursuant to Rule 28 of the Arizona Rules of the Supreme Court, the Arizona
11 Commission on Access to Justice (Commission), submits this supplement to the petition to
12 amend Rule 13(b)(4) of the Arizona Rules of Procedure for Eviction Actions in response to
13 comments filed by stakeholders and as a result of the Maricopa County Justice Courts' pilot
14 program implementing the proposed rule change on a trial basis. If adopted, the new rule would
15 permit courts to accept stipulated judgments when the court finds the following:

- 16 • both parties or their attorneys personally appear before the court; or
- 17 • the attorney asserts to the court that the tenant was informed of the right to
18 appear and declined; or
- 19 • the court determines that, because of distance or other circumstances, the
20 defendant cannot personally appear, that good cause exists and it is in the interest
21 of justice to proceed; and
- 22 • the court determines that the conditions of Rule 13(a)(1)-(2) have been satisfied;
- 23 • the form to which the defendant stipulated contains the specific warning in
24 RPEA 13(b)(4);
- 25 • the court determines that the parties understand the terms contained in the
26 document; and
- 27 • the defendant has signed the warning language in (b).

28 The first comment period ended on March 14, 2017. There were a total of six comments
submitted in objection. Objections to the petition came from a realtor/investor association, law

1 firms specializing in representing landlords and residential owners, law firms specializing in
2 representing private tenants, and two justices of the peace.¹

3
4 The objections to the Commission’s proposed rule focus on several areas, and assert that:

- 5 1. The proposal implies distrust and disdain for attorneys representing landlords.
- 6 2. The proposal seeks to amend a functioning rule for emotional reasons.
- 7 3. The proposal will not regulate stipulated judgments but rather will end them.
- 8 4. The proposal will result in longer court eviction dockets.
- 9 5. Tenants will lose opportunity to strike beneficial deals.

10 In support of the petition, the Commission replies as follows:

11 **I. Commenters claim that the proposal implies distrust and disdain for attorneys**
12 **representing landlords. That is incorrect.**

13 Michael A. Parham, Page 2, notes that the proposal implies “that attorneys
14 representing landlords misrepresent themselves as court employees”, and that “the
15 landlord’s attorney might have forged the tenant’s signature” to obtain a stipulated
16 judgment.

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18 In addition, Mr. Parham, Page 8, indicates “the ACAJ implies (with no factual
19 basis) that landlord attorneys are browbeating tenants into stipulating to judgments
20 against their best interests.”

21 The intent of the proposal is not to allege misconduct on the part of landlord
22 attorneys but rather to ensure that tenants understand what they are signing and agreeing
23 to. According to the Joint Center for Housing Studies, Harvard University, December 9,
24 2015, found at [http://www.jchs.harvard.edu/research/publications/americas-rental-](http://www.jchs.harvard.edu/research/publications/americas-rental-housing-expanding-options-diverse-and-growing-demand)
25 [housing-expanding-options-diverse-and-growing-demand](http://www.jchs.harvard.edu/research/publications/americas-rental-housing-expanding-options-diverse-and-growing-demand), 36.2 percent of low-income
26 renters (those whose rent is at least half of their income) do not have a high school
27 degree.

28 ¹ Manufactured Housing Communities of Arizona and Michael A. Parham; Law Offices of Mark Hyatt Tynan, Law Offices of
Mark A. Tucker, and Cook & Price PLC; Holliday & Holliday PC; Judge Frank J. Conti; Law Offices of Scott M. Clark, P.C.;
and Judge Cecil Ash

1 In response to the notion that there is an implication of distrust and disdain for
2 landlord attorneys, the Commission revised the language in Rule 13. The Commission
3 continues to believe that both landlord attorneys and tenants would benefit from these
4 changes. An option was added for the landlord attorney to assert to the court that the
5 tenant was informed of the right to appear but did not stay for the hearing. Additionally,
6 the language was revised so only the defendant, not the landlord attorney, is required to
7 sign the warning language in (b). Based on the comments, the Commission also proposes
8 to break down Rule 13(b)(4) and the warning language into subsections to provide
9 clarification and improve readability for self-represented litigants.

- 10 A. Both parties or their attorneys must personally appear before the court, or
11 B. The attorney can assert to the court that the tenant was informed of the right to
12 appear and declined. [...]
13 E. The court determines that the parties understand the terms in the document
14 and defendant has signed the warning language in (b).

15 **II. Commenters claim that the proposal seeks to amend a functioning rule for**
16 **emotional reasons. That is incorrect.**

17 Mr. Parham, Page 1, comments that “the Proposal seeks to amend a functioning
18 rule for emotional reasons. It seeks to amend a court rule with no factual or legal
19 justification to solve a problem where there is not one. Realistically, the purpose of this
20 needless Proposal is to delay eviction actions and buy tenants time to live in their
21 landlords’ property rent-free while they seek new housing.”

22 The Commission based the rule change petition on the real needs of tenants and
23 the enormous potential consequences of stipulated judgments, not on emotional reasons.
24 Evictions are disproportionately experienced by minority and poor tenants. For low-
25 income persons who often lack back-up resources, an eviction action may result in
26 homelessness and trigger additional negative changes in the lives of the displaced.
27 Besides immediately being required to leave their housing, the judgment may now appear
28 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. See, e.g., Chester Hartman and David Robinson, Evictions: The

1 Hidden Housing Problem, Housing Policy Debate, Vol. 14, Issue 4 (2003) found at
2 <https://www.innovations.harvard.edu/evictions-hidden-housing-problem>. The inability to
3 find other housing on short notice can lead to the disruption of children’s education,
4 interruption of employment, dislocation from health care providers, loss of personal
5 belongings and homelessness. It was never the goal of the Commission to delay eviction
6 actions, but rather to provide critical and useful information upfront so self-represented
7 litigants are informed and understand the ramifications of what they are signing.

8 **III. Commenters claim that the proposal will not regulate stipulated judgments but**
9 **rather end them.**

10 Ms. Denise M. Holliday, Page 1, comments that “the attorneys in this field have
11 reached a consensus based upon the pilot program in Maricopa County Justice Courts in
12 January 2017. Because of this program, they will not meet with any defendants and
13 discuss reaching a stipulation. This is based upon the pilot questions by the trial court that
14 led the listener to believe the attorney was under suspicion and must have misled the
15 litigant. The program also required the attorney to provide legal advice to the opposing
16 party.”

17
18 Mr. Parham, Page 7, notes that “the stipulation practice will no longer expedite
19 eviction calendars. It makes no sense for landlord attorneys to continue seeking
20 stipulations since under this Proposal the benefits will disappear.” Additionally, Mr.
21 Parham, Page 8, comments that “this Proposal will not regulate stipulated judgments; as a
22 practical matter, it will end them. As a result of the pilot program in Maricopa County the
23 practice has already ended there. It is also important to understand that the losers in this
24 proposal are not landlords and their tenants, but tenants, their attorneys, and the court
25 system.”

26
27 Judge Cecil Ash, Page 1, notes that “from January 1, 2017 until March 1, 2017,
28 [he] voluntarily complied with the pilot program requiring all parties to appear to an

1 eviction to appear in person and explain the stipulation to the judge. During this time,
2 [he] did not have even one stipulation to consider at the initial hearing of the parties. [...]
3 This is not surprising because without the ability to have a stipulation there is no
4 incentive for a landlord's attorney to take the time to explain a stipulation to a tenant.”
5

6 The voluntary pilot program implementing the procedure outlined in this rule
7 petition began on a trial basis on January 1, 2017, in the 26 Justice Courts in Maricopa
8 County to evaluate the proposed rule change's impact and whether the rule was
9 necessary. By several landlord attorneys' own admission, they have stopped the practice
10 of obtaining stipulated judgments. Consequently, the Commission is unable to gather
11 adequate data and determine the proposed rule's administrative impact upon the courts'
12 processing of eviction cases.

13 **IV. The proposal will result in longer court eviction dockets.**

14 Mr. Parham, Page 10, indicates that “without stipulations, court dockets will slow
15 down, requiring attorneys to spend more time in court. If this practice continues, it will
16 likely result in more attorneys being needed to cover the same number of courts. As a
17 result, attorneys' fees in eviction actions will increase.”

18 Mr. Parham, Page 10, also notes that “the courts originally encouraged
19 stipulations to reduce calendar congestion. Ending stipulations [...] will cause all tenants
20 showing up at court to sit through long calendars.”

21
22 Judge Ash, Page 1, reports seeing “that numerous tenants were required to miss
23 additional time from work to wait through a congested court calendar for their brief
24 appearance before the judge, wherein they acknowledge their non-payment of rent or
25 their failure to otherwise uphold the provisions of the lease. This was not only a waste of
26 time for them, but it also delayed the proceedings for those who had legitimate issues to
27 bring to the court's attention.”
28

1 The purpose of the pilot program was in part to explore alternative court dockets
2 and calendaring options to ensure that court appearances by plaintiffs and defendants
3 proceeded in an efficient manner. However, the Commission never had the opportunity to
4 test the alternatives when stipulated judgments were unilaterally stopped. Without
5 adequate data, the Commission, much like the commenters, is unable to verify and
6 analyze the impact of the pilot program on the length of court eviction dockets.
7 Therefore, the Commission is unable to make an informed recommendation to the court,
8 except to note the continuing goal that tenants understand their rights and the potential
9 consequences of the court proceeding.

10 **V. Tenants will lose opportunity to strike beneficial deals.**

11 Mr. Mark Hyatt Tynan, Mr. Jesse Cook, and Mr. Mark Tucker, Pages 1-3,
12 comment “that the proposed rule will create a significant impediment for countless
13 tenants who use stipulated judgments as a means of securing a more favorable outcome.”
14 [...] “Through the stipulation process, we are able to get our tenant clients: additional time
15 to vacate; time to pay and stay; the right to have the judgment vacated if they pay in full;
16 or a mutual release from the lease if the rent is paid in full, thus relieving our clients of
17 future liability.”

18 Mr. Hyatt Tynan, Mr. Cook, and Mr. Tucker, Page 4, note that “the ability to
19 reach such stipulations prior to court is vital to our clients because: (1) it avoids
20 unnecessary attorneys’ fees being spent on traveling to court, waiting around and then
21 making perfunctory court appearances; and (2) it prevents tenants from missing work,
22 medical or other important appointments to attend court. The proposed rule would
23 eliminate these benefits and the cost would prevent tenants from hiring private
24 attorneys.”

25 The Commission’s goal is to ensure that self-represented tenants who take the
26 time to appear in court are sufficiently informed and understand what they are signing.
27 Moreover, by making an appearance, tenants should not be in a worse position than
28 someone who just stayed home, resulting in a default judgment. According to a report

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from the Maricopa County Justice Courts Administration, there were at least 200 stipulated judgments per month in 2016. Even if there was only one person who did not understand what they were signing, it is one too many.

Conclusion

For all the above reasons, as well as those stated in the initial petition, the Arizona Commission on Access to Justice respectfully requests that the Court amend Rule 13(b)(4) of the Arizona Rules of Procedure for Eviction Actions (RPEA) and permit courts to accept stipulated judgments under certain circumstances.

RESPECTFULLY SUBMITTED this 26th day of April, 2017.

Arizona Commission on Access to Justice

By /s/Lawrence F. Winthrop
Lawrence F. Winthrop
Chair of the Arizona Commission on Access to Justice

Electronic copy filed with the Clerk
of the Supreme Court of Arizona this
26th day of April 2017
By: /s/Julie Graber

1 **APPENDIX A**

2 **RULES OF PROCEDURE FOR EVICTION ACTIONS**

3 **Rule 13. Entry of Judgment and Relief Granted**

4 ***

5 **b. Forms of Judgment.**

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

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- 9 A. Both parties or their attorneys personally appear before the court, or
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- 11 B. The attorney asserts to the court that the tenant was informed of the
12 right to appear and declined, or
- 13 C. The court determines that, because of distance or other
14 circumstances, the defendant cannot personally appear, that good
15 cause exists and it is in the interest of justice to proceed; and
- 16 D. The court determines that the conditions of Rule 13(a)(1)-(2) have
17 been satisfied and the form to which the defendant stipulated
18 contains the following warning:

19 **Read carefully! WARNING!**

- 20 **1. The plaintiff's representative is not a court employee.**
- 21 **2. By signing below, you are consenting to the terms of a judgment**
22 **against you and the landlord will now be able to evict you.**
- 23 **3. You may be evicted as a result of this judgment have your wages**
24 **garnished and, the judgment may appear on your credit report.,**
- 25 **4. You may lose your right to subsidized housing, and**
- 26 **5. You may NOT stay at the rental property, even if the amount of the**
27 **judgment is paid in full, without your landlord's express consent**
28 **unless you get the agreement in writing or get a new written rental**
agreement with your landlord.

- E. The court determines that the parties understand the terms in the
document and defendant has signed the warning language in (b).