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7 **IN THE SUPREME COURT**

8 **STATE OF ARIZONA**

9 **Petition to Amend 13(b)(4) of the**
10 **Rules of Procedure for Eviction**
11 **Actions**

Supreme Court No. R-16-0040

12 **COMMENTS IN SUPPORT OF**
13 **SUPPLEMENT TO PETITION TO**
14 **AMEND RULE 13(b)(4) OF THE**
15 **RULES OF PROCEDURE FOR**
16 **EVICITION ACTIONS AND**
17 **PROPOSED AMENDMENTS**

18 Pursuant to Rule 28 of the Rules of the Supreme Court, Community Legal
19 Services submits these comments in support of the Petition to Amend Rule
20 13(b)(4) of the Rules of Procedure for Eviction Actions (hereinafter “Petition”) and
21 proposes amendments to the Petition. The Petition was filed by the Arizona
22 Commission on Access to Justice (hereinafter “ACAJ”). The purpose of the
23 Petition is to assist self-represented litigants by making sure they understand the
24 terms of a stipulated judgment before agreeing to the severe consequences of an
25 eviction. These comments will also respond to the objections submitted by Mike
26 Parham, Denise Holliday, Paul Henderson, Mark Tynon, Jesse Cook and Mark
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1 Tucker. Further, this comment suggests alternative language to the petition which
2 is attached as Appendix A. Specifically, we suggest amending the current
3 proposed language with the following changes:
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5 1. Stipulated judgment only may be accepted when at least one of the
6 following conditions is met:
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8 (A) When both parties are represented by attorneys and both attorneys
9 sign the stipulation, or
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11 (B) When one or both parties is unrepresented and the unrepresented
12 party/parties appear before the court and court determines the
13 unrepresented party/parties understand the document signed, or
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15 (C) The court determines that because of distance or other circumstances,
16 the unrepresented party cannot personally appear before the court and
17 good cause exists and it is in the interest of justice to proceed.
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19 Also, these comments suggest additional language stating that the court should call
20 cases with stipulated judgments first so that any unrepresented party can leave the
21 court without delay.
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23 **I. Statement of Interest**
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25 Pamela Bridge is a member of the Arizona Commission for Access to Justice
26 and Director of Litigation and Advocacy at Community Legal Services (hereinafter
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1 “CLS”). CLS is a nonprofit law firm which advocates for access to justice for low-
2 income Arizonans. The mission of CLS is to eliminate poverty- based inequities in
3 the civil justice system by providing high quality legal advice, advocacy and
4 assistance to low income Arizonans. As part of its advocacy, CLS frequently
5 represents tenants in eviction actions. While the firm provides direct
6 representation, it is also dedicates extensive time and resources towards increasing
7 access to justice for all low-income Arizonans. Additionally, CLS attorneys do not
8 have a financial interest in eviction hearings. While CLS can be awarded
9 attorney’s fees, the firm uses these awards to assist in future advocacy pursuant to
10 the Legal Services Corporation restrictions and guidelines.
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15 **II. The Petition benefits all Self-Represented Litigants.**
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17 The proposed rule change benefits both self-represented tenants and
18 landlords. The courts have previously acknowledged the importance of
19 determining whether a self-represented landlord understands a settlement or
20 stipulated judgment. When a CLS attorney represents a tenant against a self-
21 represented landlord and reaches a settlement or stipulated judgment that grants the
22 tenant additional time in his/her housing or reduces the money he/she owes, several
23 courts will not accept the stipulation unless the landlord is present and the judge
24 determines the landlord understands the terms of the settlement. CLS attorneys
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1 understand that the judges who require this procedure are doing so not because
2 they believe CLS attorneys misled the landlord, but rather because they want to
3 make sure the self-represented landlord understands the terms of the agreement.
4 The proposed petition provides this protection for self-represented litigants,
5 regardless of whether they are landlords or tenants.
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8 **III. The Petition is Critical because Tenants often do not understand the**
9 **Terms and Effects of Stipulated Judgments.**

10 In 2015, housing advocates from all of three of the Legal Services
11 Corporation funded organizations throughout the state (hereinafter “Legal Services
12 advocates”) identified tenants' inability to understand stipulated judgments as one
13 of the most critical barriers to access to justice. While a high percentage of tenants
14 do not attend court and receive default judgments, the tenants who sign stipulated
15 judgments at court took the time to properly appear. However, after signing a
16 stipulated judgment and leaving the court without seeing a judge, tenants
17 continually made the following complaints to Legal Services advocates:
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- 20 - Tenants did not understand they were speaking to an attorney for a landlord.
 - 21 - Tenants did not understand terms of the stipulated judgment.
 - 22 - Tenants did not understand the consequences of the stipulated judgment.
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- 1 • Several tenants did not understand the document they signed or the
2 consequences of the document.
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- 4 • Several tenants stated they believed that the landlord would still work
5 with them to retain housing after the stipulated judgment was signed,
6 yet that understanding was not memorialized in the judgment.
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- 8 • One tenant reported she did not even understand that she had agreed
9 to be evicted.
10

11 These unjust outcomes are consistent with our experience at CLS. Tenants
12 frequently apply for legal services because of misunderstandings about the terms of
13 a stipulated judgment they signed. For instance, recently we received a complaint
14 from a mother whose rent was supposed to be paid almost entirely by the Section 8
15 Housing Choice Voucher Program. However, she agreed in a stipulated judgment
16 to pay the entirety of the landlord's rental amount, including the amount paid by
17 Section 8. This mother did not understand that she had agreed to such improper
18 terms until she came to CLS.
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21 Legal Services advocates believe there are several critical factors that lead to
22 fundamental misunderstandings by the tenants, including: the small print of the
23 judgment terms on the carbonless NCR pre-printed forms, the limited time
24 landlord attorneys have to discuss the terms with the tenant, and other important
25 factors which might not be immediately apparent to the landlord attorneys, like
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1 tenant language barriers and disabilities.
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3 **C. Tenants fail to understand the consequences of the stipulated**
4 **judgments.**

5 In addition to ordering a tenant to leave his or her home, stipulated
6 judgments often have a devastating and enduring impact on tenants' lives in ways
7 they do not anticipate. Stipulated judgments affect tenants' credit scores and
8 evictions limit tenants' ability to find housing in the future. Landlords sometimes
9 garnish the tenants' wages in order to recover the monetary judgment, resulting in
10 future evictions, utility issues, and consequently, endless fees and future judgments
11 that never allow them to escape debt and poverty. Tenants in subsidized housing,
12 such as the Section 8 Housing Choice Voucher Program, are more than often
13 permanently barred from obtaining subsidized housing once they suffer an
14 eviction, losing one of their few opportunities to afford to house their families and
15 gain enough wealth to improve their situation.
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20 Also, tenants do not understand that they do not have any right to appeal a
21 stipulated judgment. Contrary to Mr. Parham's comments, many of the stipulated
22 judgments used in Arizona waive the tenant's right to file a Motion to Vacate or
23 Motion to Reconsider. Since tenants can file a Motion to Reconsider on a default
24 judgment, these tenants perversely would have had more recourse if they had
25 stayed home.
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1 **VI. Asking that a Judge Determines that a Tenant Understands the Terms**
2 **Will Not Back Log the Court.**

3 While the comments in opposition complain that the proposed rule change
4 will backlog eviction dockets, they have failed to provide any data to support this
5 argument. The justice courts in Pima County have ready successfully implemented
6 the procedures set forth in the proposed rule change and provide tenants this access
7 to justice without experiencing a backlog in their calendars. Additionally, housing
8 courts in other states with large cities, including New York, accept stipulated
9 judgments from tenants only if the tenant is present and the judge determines the
10 tenant understood the terms in which they agreed.
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12 (<https://www.nycourts.gov/COURTS/nyc/housing/stips.shtml>.)
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16 In Maricopa County, each justice court has set times during the week to hear
17 evictions. During the summer of 2016, the law students in the pilot program
18 documented every stipulated judgment filed in the five justice courts in the
19 Downtown Justice Center and at the Country Meadow Justice Court. Usually,
20 there was only one stipulated judgment filed in a court per day. At the most, they
21 saw three stipulated judgments filed on a day and that was very rare. In 2016,
22 there were approximately 200 stipulated judgments filed per month in Maricopa
23 County shared among 26 justice courts. With approximately 20 court days per
24 month, this means that stipulated judgments only account for one judgment per
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1 court, about every three days.

2 Further, Justice Court judges already make similar determinations that we
3 are requesting here in criminal pleas, and they are most often able to determine the
4 defendant understands the terms of the plea in less than five minutes.
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7 **IV. Requesting Tenants Remain to Appear before a Judge is Not**
8 **Detrimental to the Tenant.**

9 Some of the opposition comments state that the proposed rule change will be
10 detrimental to tenants because it will prohibit the landlord from granting more time
11 in the unit or reducing the monetary judgment. Others argue that it will result in
12 increased attorney's fees and require the tenant to remain at court longer.
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14 First, under the proposed rule change, if the parties are both represented by
15 attorneys, they will not need to appear before the court for the stipulated judgment
16 to be accepted. When a party is represented, it is understood that he/she has
17 consulted with an attorney whose interests are to his/her benefit and will explain
18 the terms to him or her. Therefore, the amended language attached at Appendix A
19 makes an exception for situations in which both parties are represented.
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22 Second, under the proposed rule change, the parties can still change the terms
23 of the stipulated judgment and add time or reduce money before it is filed with the
24 Court. Nothing in the proposed rule change prohibits that. However, because the
25 tenant is still signing a stipulated judgment, it is imperative that the tenant
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1 understands what he or she signed.

2 Third, the prospect that attorney's fees will be raised against tenants if
3 tenants remain in the courtroom so that the judge can determine if they understand
4 the document that will legally bind them is spurious. Attorneys are already
5 receiving up to \$300 in attorney's fees in stipulated judgments against self-
6 represented tenants when the tenant leaves the courtroom and does not appear.
7 This is generally the same amount they receive when the tenant appears at the
8 initial return when the judge determines the tenant does not have a defense and
9 orders a judgment against a tenant. Surely, judges will not grant additional
10 attorney's fees when the judge himself or herself determines the tenant did or did
11 not understand the terms of the stipulated judgment.
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16 Fourth, for the tenant who took the time to come to court at his or her
17 subpoenaed time, the benefit of making sure the tenant understands the judgment
18 outweighs the minutes the tenant will need to remain in the courtroom. As
19 described above, there are set times in which courts hear evictions. Generally,
20 justice court judges determine the order of the case by which landlord attorney is in
21 the room. Judges usually provide the professional courtesy of taking all of a
22 landlord attorneys' cases together. If the justice court judges decided to hear
23 stipulated judgments first during the eviction call, those tenants would not have
24 prolonged waits.
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1 Importantly, the proposed Petition provides that the judge can accept a
2 stipulated judgment without the tenant being present for good cause and in the
3 interests of justice. Therefore, if the tenant informs the clerk or writes
4 affirmatively that he or she needs to leave, but understands the stipulation, the
5 judge would still be able to accept the stipulation without the tenant present.
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8 **V. Proposed Changes to the Current Supplemental Petition.**
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10 While Community Legal Services supports the objective of the Petition to
11 ensure that self-represented litigants understand a stipulated judgment before it is
12 signed, we believe the amended language attached to this Comment goes further to
13 accomplish that objective than the language currently proposed in the Petition.
14

15 CLS supports the following changes to the Petition:
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- 17 1. When a party is being represented by counsel, it is understood that the terms
18 in the stipulated judgment are being explained to the party. Therefore, we
19 suggest adding language to allow stipulated judgments to be accepted
20 without the appearance of the parties if the parties are both represented by
21 attorneys and the attorneys signed the document.
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23 2. Legal Services advocates believes the current language of Petition which
24 permits stipulated judgments to be accepted if the landlord attorney informs
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1 the court that the tenant was told he or she could appear and declined does
2 not serve the Petition's objective. This change merely codifies the current
3 inadequate practice in Maricopa County and fails to ensure the tenant
4 understood the stipulation. Additionally, as discussed above, the proposed
5 Petition allows a judge to accept a stipulated judgment without the tenant
6 being present for good cause and in the interests of justice. Therefore, if the
7 tenant informs the clerk or writes affirmatively that he or she needed to
8 leave, but understands the stipulation, the judge would still be able to accept
9 the stipulation without the tenant present.
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14 3. As discussed above, if the justice court judges decided to hear stipulated
15 judgments first during the eviction call, self-represented litigants who
16 reached stipulated judgments would be able to leave the court without delay.
17 Therefore, we propose adding language to the Petition that provides that
18 courts shall call cases with stipulated judgments first.
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21 **VII. CONCLUSION**

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23 For low income persons, an eviction action may threaten their only means of
24 shelter. The inability to find other housing on short notice can lead to the
25 disruption of children's education, interruption of employment, dislocation from
26 health care providers, loss of personal belongings and homelessness. In addition,
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1 the eviction process may lead to monetary judgments. Thus, the consequences of
2 eviction cases make them very important to tenants and especially low income
3 tenants, who often lack back-up resources. The result of an eviction may be that a
4 family is living in a car or shelter.
5

6 Surely, the courts have a duty to attempt to ensure the tenants who took the
7 time to appear at court understand the terms of the document that has such
8 dramatic consequences on a tenant's family, and from which misunderstandings so
9 often arise. The purpose of the Petition is to improve access to justice for self-
10 represented litigants by attempting to ensure they fully understand stipulated
11 judgments. Legal Services advocates look forward to working with the courts and
12 the landlord attorneys in other ways to increase access to justice for self-
13 represented litigants in justice courts and believe this proposed rule change is an
14 important step to assisting access to our courts.
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19 For these reasons, Community Legal Services supports the Petition by the
20 Arizona Commission on Access to Justice and asks that the Petition along with
21 CLS' proposed changes be adopted.
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23 Respectfully submitted this 31st day of May.
24

25 COMMUNITY LEGAL SERVICES
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27 By/s/ Pamela M. Bridge
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Electronic copy filed with the Clerk
of the Supreme Court of Arizona this
31st day of May 2017

Copy of the foregoing emailed and
mail to:

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1 **APPENDIX A**

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

4 ***

5 **b. Forms of Judgment.**

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7 (4) Stipulated Judgments.

8 A. The court may accept a stipulated judgment, ~~but~~ only ~~if~~ when the court finds
9 one of the following conditions is met:

10 1. When both parties are represented by attorneys and both attorneys sign the
11 stipulation, or

12 2. When one or both parties is unrepresented and the unrepresented
13 party/parties appear before the court and court determines the
14 unrepresented party/parties understand the document signed, or

15 3. The court determines that because of distance or other circumstances, the
16 unrepresented party cannot personally appear before the court and good
17 cause exists and it is in the interest of justice to proceed.

18 B. In addition, the court may accept stipulated judgment when the court
19 determines the conditions of Rule 13(a)(1)-(2) have been satisfied and the
20 form to which the defendant stipulated contains the following warning and the
21 defendant has signed the warning language. :

1 **~~Read carefully!~~ WARNING!**

- 2 **1. The plaintiff's representative is not a court employee.**
- 3
- 4 **2. By signing below, you are consenting to the terms of a judgment**
- 5 **against you and the landlord will now be able to evict you.**
- 6
- 7 **3. You may be evicted as a result of this judgment have your wages**
- 8 **garnished and, the judgment may appear on your credit report,**
- 9
- 10 **4. You may lose your right to subsidized housing, and**
- 11
- 12 **5. You may NOT stay at the rental property, even if the amount of the**
- 13 **judgment is paid in full, without your landlord's express consent**
- 14 **unless you get the agreement in writing or get a new written rental**
- 15 **agreement with your landlord.**

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- 18 **C. The court should call cases with stipulated judgments first so that any**
- 19 **unrepresented party can leave the court without delay.**
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