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5 **IN THE SUPREME COURT**
6 **STATE OF ARIZONA**

7
8 **Petition to Amend 13(b)(4) of Rules of
Procedure for Eviction Actions**

Supreme Court No. R17-0020

9 **COMMENTS IN SUPPORT OF SUPPLEMENT
10 TO PETITION TO AMEND RULE 13(b)(4) OF
11 THE RULES OF PROCEDURE FOR
12 EVICTION ACTIONS**

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14 The Arizona Center for Disability Law (“ACDL”) agrees with the comments and
15 amendments offered by Community Legal Services (“CLS”), and offers additional reasons why
16 those solutions are particularly necessary for individuals with disabilities. The ACDL is the
17 Protection and Advocacy organization designated to “protect[s] the legal and human rights of
18 individuals with developmental disabilities” in Arizona, as required by 42 U.S.C.A. § 15041, et
19 seq.
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21 Under both Arizona and federal law, it is illegal to discriminate against individuals
22 because of their disabilities. Ariz. Rev. Stat. Ann. § 41-1491.19 (2014); 42 U.S.C.A. §
23 3604(f)(3)(B). Individuals with disabilities have nonetheless historically faced a “a pattern of
24 unequal treatment in the administration of a wide range of public services..., programs, and
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1 activities, including unconstitutional treatment in the administration of justice.” Tennessee v.
2 Lane, 541 U.S. 509, 525 (2004).

3 To combat this inequity, the Arizona and federal law make it unlawful for any person to
4 refuse “to make reasonable accommodations in rules, policies, practices, or services, when such
5 accommodations may be necessary to afford ... person(s) [with disabilities] equal opportunity to
6 use and enjoy a dwelling.” Ariz. Rev. Stat. Ann. § 41-1491.19 (2014); 42 U.S.C.A. §
7 3604(f)(3)(B).
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9 Determining appropriate accommodations takes time. Disabilities affect each individual
10 in unique, subtle, and often unobvious ways. Finding accommodations that allow equal access
11 and understanding requires a conversation; an interactive process to discern the “condition that
12 results from the interaction between some physical or mental characteristic labeled an
13 “impairment” and the contingent decisions that have made physical and social structures
14 inaccessible to people with that condition.” Samuel R. Bagenstos, Subordination, Stigma, and
15 "Disability", 86 Va. L. Rev. 397, 426 (2000).
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17 As CLS states in their comments, the process of determining appropriate accommodations
18 is almost never more important than it is in dealing with evictions. Evictions deprive families of
19 their home, saddles them with debts that they may never be able to pay, and cuts many off from
20 subsidies that can help them escape poverty. According to the National Alliance on Mental
21 Illness (NAMI), losing safe and affordable housing is one of the most powerful barriers to
22 recovery. When the basic need of housing is not met, people with mental illness may cycle in and
23 out of homelessness, jails, shelters and hospitals.
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1 But, the process for determining appropriate accommodations is almost never more
2 difficult than it is in negotiating a stipulated judgment in the minutes before an eviction hearing.
3 Evictions are a legal process; full of unfamiliar terms, rules and procedures that are always
4 confusing and intimidating, and certainly moreso for individuals with disabilities that profoundly
5 affect their ability to understand, participate and/or communicate in the proceedings.

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7 The confusion and intimidation that naturally precedes these hearings is only compounded
8 when an attorney then proposes a stipulated judgment to an unrepresented disabled party in the
9 minutes before it begins. Negotiating with unrepresented parties requires the lawyer to explain
10 that she “represents an adverse party and is not representing the person”, because “an
11 unrepresented person, particularly one not experienced in dealing with legal matters, might
12 assume that a lawyer is disinterested in loyalties or is a disinterested authority on the law even
13 when the lawyer represents a client.” Ariz. Sup. Ct. Rule 42, Rules of Prof’l Conduct ER 4.3
14 cmts.1, 2.

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16 The lawyer may then “inform the person of the terms on which the lawyer's client will
17 enter into an agreement or settle a matter, prepare documents that require the person's signature
18 and explain the lawyer's own view of the meaning of the document or the lawyer's view of the
19 underlying legal obligations.” In negotiating a stipulated judgment, all of the information that an
20 attorney is ethically required to explain to an unrepresented disabled party is important and
21 complex. Many individuals with disabilities simply cannot understand the information conveyed
22 in that sort of negotiation without reasonable accommodations.

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24 Reasonable accommodations that result in equal treatment for individuals with disabilities
25 are almost never going to be discovered in a settlement discussion that takes place in a courtroom
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1 lobby a few minutes before the hearing. So, most individuals with disabilities simply will not
2 understand the agreement they are signing, or its potentially devastating implications.

3 As an illustration of this, consider an attorney explaining a stipulated judgment might
4 assume that a hard of hearing party can read lips. According to the National Association of the
5 Deaf (NAD), the ability of a deaf or hard of hearing individual to speak clearly does not mean
6 that he or she can hear well enough to understand spoken communication or to lipread
7 effectively. Forty to sixty percent of English sounds look alike when spoken. On average, even
8 the most skilled lipreaders understand only twenty-five percent of what is said to them, and many
9 individuals understand far less. Lipreading is most often used as a supplement to the use of
10 residual hearing, amplification, or other assistive listening technology. Because lipreading
11 requires some guesswork, very few deaf or hard of hearing people rely on lipreading alone for
12 exchanges of important information. For a powerful visual reminder of why lipreading does not
13 provide effective communication, especially in legal settings, we recommend the YouTube video
14 entitled “Can You Read My Lips.” In a courtroom, an individual who is hard of hearing or deaf
15 would be entitled to auxiliary aids and services to have effective communication.
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18 An attorney reviewing a stipulated judgment with a deaf individual may assume she can
19 read the document without offering an American Sign Language (ASL) interpreter. As the Ninth
20 Circuit Court of Appeals recognized, “ASL is a visual, three dimensional, non-linear language,
21 and its grammar and syntax differ from the grammar and syntax of English and other spoken
22 languages. In many cases, there is no one-to-one correspondence between signs in ASL and
23 words in the English language.” U.S. E.E.O.C. v. UPS Supply Chain Sols., 620 F.3d 1103, 1105
24 (9th Cir. 2010). For many individuals whose first and primary language is American Sign
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1 Language and who graduated from a state school for the deaf, they read English at a 3rd to 5th
2 grade level and may not understand the information in the stipulated judgment without an ASL
3 interpreter to translate the information into their first language.

4 The rule changes proposed by CLS will help mitigate the inequities experienced by
5 individuals with disabilities in the eviction process. The changes will help insure that individuals
6 with disabilities are not being deprived of their rights in a process they were never given a chance
7 to understand. The changes will help insure that individuals with disabilities will be able to avail
8 themselves to the reasonable accommodations afforded by the courts, that they may not even
9 know exist. We believe the rule changes proposed by CLS should be adopted.

11 Respectfully submitted this 31st day of May, 2017.

12 ARIZONA CENTER FOR DISABILITY LAW

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14 By: /s/ Chris Carlsen
15 Chris Carlsen

16 Electronic copy filed with the Clerk
17 of the Supreme Court of Arizona this
18 31st day of May 2017

19 Copy of the foregoing emailed and
20 mail to:

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