

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
7 13(b)(4) OF THE RULES OF
8 PROCEDURE FOR EVICTION
9 ACTIONS

Supreme Court No. R-17-0020

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

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

- 17 • both parties or their attorneys personally appear before the court;
- 18 • the plaintiff's attorney asserts to the court that the defendant was
19 informed of the right to appear and declined;
- 20 • the court determines that, because of distance or other circumstances,
21 the defendant cannot personally appear, that good cause exists and it
22 is in the interest of justice to proceed; or
- 23 • an attorney for the defendant has signed the stipulation.
24

25 Additionally, prior to accepting the stipulated judgment, the court determines:

- 26 • the conditions of Rule 13(a)(1)-(2) and (b)(4) have been satisfied;
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- the form to which the defendant stipulated contains the specific warning in RPEA 13(b)(4); and
- the defendant has signed the warning language in (b).

The first comment period ended on March 14, 2017. In response to those comments, the Commission filed a supplement to the petition on April 26, 2017, outlining some modifications to the proposed rule. The second comment period ended on May 31, 2017.

First Round of Comments

There were a total of six comments submitted in objection. Objections to the petition came from a realtor/investor association, law firms specializing in representing landlords and residential owners, law firms specializing in representing private tenants, and two justices of the peace.¹

Second Round of Comments

There were a total of five comments submitted. One comment from a law firm specializing in representing landlords and residential owners supported the modified proposal if some additional technical corrections were incorporated. Four comments were submitted in objection. Objections to the modified petition came from legal aid and tenant advocacy organizations.²

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

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

² Manufactured Housing Communities of Arizona and Michael A. Parham; Southwest Fair Housing Council; Community Legal Services; Morris E. Institute for Justice; and Arizona Center for Disability Law

- 1 1. The modified proposal does not go far enough to ensure self-represented
- 2 litigants understand the terms and effects of the stipulated judgment.
- 3 2. The proposal should include language that provides that courts call cases
- 4 with stipulated judgments first.
- 5 3. Technical corrections are needed.
- 6

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

8

9 **I. Commenters claim that the modified proposal does not go far enough to**

10 **ensure self-represented litigants understand the terms and effects of**

11 **stipulated judgments. That is incorrect.**

12 Pamela M. Bridge, Page 11, “supports the objective of the Petition to

13 ensure that self-represented litigants understand a stipulated judgment before

14 it is signed” but believes that “the [proposed] amended language attached to

15 this Comment goes further to accomplish that objective than the language

16 currently proposed in the Petition.”

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18 Ellen Sue Katz, Page 3, “suggests that the Commission’s modified

19 petition simply codifies the current practice in Maricopa County Justice

20 Courts without the needed reforms.”

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23 In response to the first round of comments, the Commission revised

24 the language in Rule 13. An option was added for the landlord attorney to

25 avow to the court that the defendant was informed of the right to appear but

26 chose not to attend or stay for the hearing. Additionally, the language was

27 revised so only the defendant, not the landlord attorney, is required to sign

28 the warning language in (b). Finally, the Commission divided Rule 13(b)(4)

1 and the warning language into subsections to provide clarification and
2 improve readability for self-represented litigants. For example, the first item
3 in the warning is that “the plaintiff’s representative is not a court employee.”
4 The Commission continues to believe that both landlord attorneys and
5 defendants would benefit from these changes.
6

7 Ms. Bridge, Page 11, suggests “adding language to allow stipulated
8 judgments to be accepted without the appearance of the parties if the parties
9 are both represented by attorneys and the attorneys signed the document.”
10 Additionally, Ms. Bridge, Page 11, notes that “the current language of
11 Petition which permits stipulated judgments to be accepted if the landlord
12 attorney informs the court that the tenant was told he or she could appear
13 and declined does not serve the Petition’s objective. This change merely
14 codifies the current inadequate practice in Maricopa County and fails to
15 ensure the tenant understood the stipulation.”
16

17 The Commission believes its proposed language goes further than the
18 current language and practice and strikes a reasonable balance between the
19 landlord attorneys and the tenant advocates. The Commission does not
20 believe the commenters’ suggestions would solve the issue. Instead,
21 alternative methods should be employed to ensure self-represented litigants
22 understand the terms and effects of stipulated judgments, such as judicial
23 education, implementing an eviction “navigator” program,³ housing clinics
24 with volunteer lawyers, and short educational videos about the eviction
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26
27 ³ Such a program could be sponsored and administered by the Maricopa County Justice Courts,
28 training and supervising undergraduate students, similar to the Court Navigator Program
currently available to assist self-represented family court litigants. Over the last year, that
program has assisted over 100,000 self-represented litigants.

1 process. These videos could be accessible in the court house and available
2 on the web via the AZCourtHelp.org website and on YouTube.

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4 The Commission’s goal is to ensure that self-represented defendants
5 who take the time to appear in court and are offered a stipulated judgment
6 are sufficiently informed and understand what they are signing and,
7 importantly, the effect the agreement may have on their credit and housing
8 opportunities. Moreover, by making an appearance, tenants should not be in
9 a worse position than someone who just stayed home, which would result in
10 a default judgment. According to a report from the Maricopa County Justice
11 Courts Administration, there were at least 200 stipulated judgments per
12 month in 2016. Even if there was only one person who did not understand
13 what they were signing, it is one too many.

14
15 **II. Commenters suggest including language that provides that courts call**
16 **cases with stipulated judgments first.**

17 Ms. Ellen Katz, Page 7, notes that the “current court practices are set
18 for the convenience of the landlord attorneys. As an example. It is typical
19 court practice in Maricopa County for the cases where landlord attorneys are
20 present to be heard first. The amended proposal suggests that the courts call
21 the stipulated judgment cases first so that the tenants who have missed work
22 can have their cases heard quickly and then leave.”

23
24 While the Commission agrees with the commenters’ intent, the
25 Commission believes that instead of instructing judges to run their calendars
26 in a certain way, courts should be encouraged to consider best practices and
27 develop their own internal protocols. The Commission recommends working
28

1 with courts and addressing the issue in judicial training rather than in the
2 proposed rule.

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4 The voluntary pilot program implementing the procedure outlined in
5 this rule petition began on a trial basis on January 1, 2017 in the 26 Justice
6 Courts in Maricopa County. The purpose of the pilot program was to
7 evaluate the proposed rule change's impact and whether the rule was
8 necessary. Additionally, the pilot project was intended to explore alternative
9 court dockets and calendaring options to ensure that court appearances by
10 plaintiffs and defendants proceeded in an efficient manner. However, the
11 Commission never had the opportunity to test the alternatives when, by their
12 own admission, several landlord attorneys stopped proposing stipulated
13 judgments. Without adequate data, the Commission is unable to verify and
14 analyze the impact of the pilot program on the length of court eviction
15 dockets and the courts' processing of eviction cases. Therefore, the
16 Commission is unable to make an informed recommendation to the court,
17 except to reiterate the continuing goal that tenants and defendants
18 understand their rights and the potential consequences of the court
19 proceeding.

20
21 **III. Commenters noted technical corrections are needed. The**
22 **Commission agrees.**

23 Michael A. Parham, Page 2, points out that the "language requires the
24 court to find that *all listed factors* have occurred prior to accepting the
25 stipulation, but the enumerated factors are mutually exclusive and cannot
26 occur together." The Commission agrees with the comment and incorporates
27 changes as follows (new changes appear in yellow highlights):
28

1 (4) Stipulated Judgments. The court may accept a stipulated
2 judgment, ~~but only if~~ when the court finds one of all the following:

3 A. Both parties or their attorneys personally appear before
4 the court; ~~or~~

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6 B. The plaintiff's attorney asserts to the court that the
7 defendant was informed of the right to appear and
8 declined; ~~or~~

9 C. The court determines that, because of distance or other
10 circumstances, the defendant cannot personally appear,
11 that good cause exists and it is in the interest of justice to
12 proceed; ~~or and~~

13 D. An attorney for the defendant has signed the stipulation.

14
15 Mr. Parham, Page 2, also notes that language in (D) in the revised
16 proposal “creates a conflict under it” when one party chooses not to appear
17 personally. As a result, the Commission has removed the paragraph.

18 D. ~~The court determines that the parties understand the terms in the~~
19 ~~document and defendant has signed the warning language in (b).~~

20 The Commission clarified some additional inconsistencies in Rule 13. For
21 example, “tenant” has been replaced with “defendant,” “landlord” has been
22 replaced with “plaintiff,” “rental property” has been replaced with
23 “property,” and “form” has been replaced with “judgment form.” Finally,
24 “contains the following warning” has been replaced with “that reads as
25 follows.” “Prior to accepting the stipulated judgment” has been added to the
26 beginning of the paragraph in (b)(4).

27 Prior to accepting the stipulated judgment, the court determines that
28 the conditions of Rule 13(a)(1)-(2) and (b)(4) have been satisfied, and
that defendant has signed the warning language on and the judgment

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form to which the defendant stipulated **that reads as follows** contains the following warning:

Conclusion

For all the above reasons, as well as those stated in the initial petition and the supplement to 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 7th day of July, 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 7th day of July 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~~
7 only ~~if~~ when the court finds one of ~~all~~ the following:

8 A. Both parties or their attorneys personally appear before the
9 court; ~~or~~

10 B. The ~~plaintiff's~~ attorney asserts to the court that the ~~defendant~~
11 was informed of the right to appear and declined; ~~or~~

12 C. The court determines that, because of distance or other
13 circumstances, the defendant cannot personally appear, that
14 good cause exists and it is in the interest of justice to proceed;
15 ~~or and~~

16 D. An attorney for the defendant has signed the stipulation.

17 Prior to accepting the stipulated judgment, the court determines that the
18 conditions of Rule 13(a)(1)-(2) and (b)(4) have been satisfied, and that
19 defendant has signed the warning language on ~~and~~ the ~~judgment~~ form to
20 which the defendant stipulated ~~that reads as follows~~ contains the following
21 warning:

22 **~~Read carefully!~~ WARNING!**

23 **1. The plaintiff's representative is not a court employee.**

24 **2. By signing below, you are consenting to the terms of a**
25 **judgment against you ~~and the plaintiff landlord will now be~~**
26 **able to evict you.**

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- 3. ~~You may be evicted as a result of this judgment~~ have your wages garnished and, the judgment may appear on your credit report.,
- 4. ~~You may lose your right to subsidized housing.,~~ **and**
- 5. You may NOT stay at the rental property, even if the amount of the judgment is paid in full, without your landlord's express consent 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).