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7 **IN THE SUPREME COURT**

8 **STATE OF ARIZONA**

9 **Petition to Amend the Rules of
10 Procedure for Eviction Actions**

Supreme Court No. R-16-0022

**COMMENTS IN FURTHER SUPPORT
OF PETITION TO AMEND THE
RULES OF PROCEDURE FOR
EVICION ACTIONS AND TO MAKE
PERMANENT THE CHANGE OF
JUDGE RULE**

14 Pursuant to Rule 28 of the Rules of the Supreme Court, the William E. Morris
15 Institute for Justice (“Institute”), Community Legal Services (“CLS”), DNA People’s
16 Legal Services (“DNA”) and Southern Arizona Legal Aid (“SALA”) submit these
17 comments in further support of the Petition to Amend the Rules of Procedure for Eviction
18 Actions by adding a change of judge rule, as Rule 9(c). The Petition originally was filed
19 by the State Bar of Arizona in 2016 and permits a change of judge as a matter of right
20 and for cause in eviction actions in justice court. Rule 9 (c) is patterned after Rule 133(d)
21 of the Justice Court Rules of Civil Procedure that permits a change of judge in other civil
22 cases heard by the justice court.

23 On September 2, 2016, the Court amended Rule 9 of the Arizona Rules of
24 Procedure for Eviction Actions, by adding subsection (c) on a one-year experimental
25 basis to start on January 1, 2017. The Court requested that the justice courts collect data
26 on the effect the change of judge rule had on court administration. The Court also
27 reopened comments until July 14, 2017, to determine whether the Rule 9(c) experiment
28 should be extended or made permanent.

1 The Administrative Office of the Courts (“AOC”) collected data on the change of
2 judge requests submitted statewide. Based on this data and the reasons for the Petition,
3 the Institute, CLS, DNA and SALA request that the Court make the one-year experiment
4 permanent.

5 **I. Statements of Interest**

6 The Institute is a non-profit public interest program that works on issues of
7 importance to low-income Arizonans. The rights of tenants in eviction cases is such an
8 issue. In 2005, the Institute published a study of eviction cases in Maricopa County:
9 “Injustice In No Time: The Experience of Tenants in Maricopa County Justice Courts”
10 found at morrisinstituteforjustice.org.

11 CLS, DNA and SALA are federally funded civil legal services programs for low-
12 income Arizonans. The legal services programs represent tenants in eviction actions
13 throughout the state. They typically are the only attorneys who represent tenants in
14 justice court. Legal services attorneys understand the significant impact evictions can
15 have on low-income persons. They also understand the public perception of unfairness
16 when a litigant cannot remove his or her case from a judge they think is unfair. This
17 Petition addressed that public perception.

18 **II. Background to the Proposed Rule Amendment**

19 As discussed in the Petition, eviction cases in justice court were the only civil
20 cases in justice or superior courts without a change of judge rule.¹ The legal services

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22 ¹ Rule 1 of the Rules of Procedure for Eviction Actions provides that Rule 42(f) of
23 the Arizona Rules of Civil Procedure applies to evictions in superior court. The change
24 of judge provision in Rule 42(f) permits changes of judge as a matter of right and for
25 cause. In addition to eviction cases, the Justice Court Rules of Civil Procedure do not
26 apply to civil traffic, civil boating, protective orders and injunctions against harassment.
27 Rule 101(b). These other cases have change of judge rules. Changes of judge are
28 permitted in orders of protection and injunctions against harassment cases because
pursuant to Rule 1 of the Arizona Rules of Protective Order Procedure, the Arizona Rules
of Civil Procedure apply to those cases. Thus, as relevant here, Rule 42(f) applies to
those cases, as well. For civil traffic and boating cases, Rule 7 of the Rules of Procedure
in Civil Traffic and Civil Boating Violation Cases provides that a change of judge as a
matter of right does not apply in these cases except for cases consolidated with a criminal

1 community identified the failure to have a change of judge rule as a matter of
2 fundamental fairness and access to justice and the issue was a high priority for the legal
3 services programs. The Petition only sought parity, that is, a peremptory provision that
4 allows for litigants in eviction cases in justice court to have the same right to change
5 judge as litigants in eviction actions in superior court and litigants in other cases in justice
6 court.

7 To address concerns previously raised by the Justice Courts and others and to
8 provide the justice courts time to obtain data on the effect the rule petition would have on
9 justice court administration, the State Bar proposed a one-year limit on the rule change.

10 **III. The Rule Change Continues to be Necessary for Fairness for Litigants in**
11 **Eviction Cases in Justice Court**

12 Eviction cases are very important. Tenants have a property interest in their
13 residences. *Greene v. Lindsey*, 456 U. S. 444, 451-52 (1982). *See also Foundation*
14 *Development Corporation v. Loehmann's*, 163 Ariz. 438, 442, 788 P.2d 1189, 1193
15 (Ariz. 1990) (recognizing common law right of tenant's property interest in rental).
16 Eviction proceedings that deprive tenants of that property must comply with the due
17 process requirements of the 14th Amendment to the United States Constitution. *Greene*,
18 456 U.S. at 455.

19 The plight of low-income tenants and the effect evictions have on their lives has
20 received national attention. In 2015, Mathew Desmond, a professor at Harvard published
21 the book *Evicted: Poverty and Profit in the American City* ("Evicted"). Professor
22 Desmond lived in a low-income residential part of Milwaukee for almost two years and
23 observed the interaction of low-income tenants and eviction actions. He documented the
24 resulting loss of shelter and increased social and economic instability.

25 Others also have written about this problem. It is well recognized that for low-
26 income persons, an eviction action may threaten their only means of shelter. *See, e.g.,*

27 _____
28 matter.

1 Chester Hartman and David Robinson, *Evictions: The Hidden Housing Problem*, Housing
2 Policy Debate, Vol. 14, Issue 4 (2003) found at [http://content.knowledgeplex.org/kp2/
3 cache/kp/10950.pdf](http://content.knowledgeplex.org/kp2/cache/kp/10950.pdf). The inability to find other housing on short notice can lead to the
4 disruption of children’s education, interruption of employment, dislocation from health
5 care providers, loss of personal belongings and homelessness. In addition, the eviction
6 process may lead to monetary judgments. The result of an eviction may be that a family
7 is living in a car. The effects of an eviction can go beyond the immediate situation and
8 linger long term as an eviction on a tenant’s record may make it harder to obtain
9 subsidized housing or a housing voucher in the future. Thus, the consequences of eviction
10 cases make them very important to tenants and especially low-income tenants, who often
11 lack back-up resources. The supporters of the Petition, continue to think the importance
12 of these cases and the property interest at stake certainly is undercut by not allowing a
13 change of judge.

14 Although eviction cases have shorter statutory time frames than some of the other
15 civil cases heard in justice court, the supporters of the Petition do not think these time
16 frames are a sufficient reason to deny the litigants the right to request a change judge. If
17 a tenant or a landlord believes that he or she cannot get a fair trial before a justice, then
18 they should be allowed, as other litigants are, to request a change of judge. The change
19 of judge requests can be handled like other continuances for cause. As an example, the
20 common practice in many justice courts is that if a tenant appears on the court date noted
21 in the summons and has a defense, the case is continued to another date for a trial. *See*
22 Rule 11(c) of the Rules of Procedure for Eviction Actions (continuances may be granted
23 “on the request of a party for good cause shown or to accommodate the demands of the
24 court’s calendar”); Arizona Residential Landlord and Tenant Act, A.R.S. § 33-1377(C).
25 These continuances are usually granted to accommodate landlords who typically do not
26 bring witnesses to court on the initial trial date.

27 The following examples highlight the fundamental unfairness of not having a
28 change of judge for eviction cases in justice court. Using Maricopa County as an

1 example, if a person lives in the Encanto Precinct, all the cases against them will be
2 assigned to the one Encanto Justice of the Peace. If a resident in the Encanto Precinct is
3 sued on a credit card debt, the person appears before the Encanto Justice and that justice
4 resolves the case. The defendant may think he or she was not treated fairly by the justice.
5 If the person is sued again on another credit card debt 10 months later and still lives in the
6 Encanto Precinct, his or her case will be assigned to the same justice. In this situation,
7 the person can request a change of judge under Rule 133(d) of the Justice Court Rules of
8 Civil Procedure. However, if the person is served an eviction action, he or she cannot
9 request a change of judge. This differential treatment is unfair and undercuts the public's
10 confidence in our judicial system.

11 Finally, take the case of a tenant who files an appeal of the eviction judgment. If
12 the tenant wins the appeal, with no change of judge rule, on remand this case would go
13 back to the same justice. Rule 42(f)(1)(E) of the Rules of Civil Procedure recognizes the
14 inherent problem this situation may create and provides that when on remand a new trial
15 is ordered, "then all rights to change of judge are renewed and no event connected with
16 the first trial shall constitute a waiver." Certainly, the same reasons behind Rule
17 42(f)(1)(E) apply in the eviction context.

18 The reality is that vast majority of tenants who lose their eviction case do not have
19 an attorney or the resources to file an appeal. For these tenants, the initial trial is their
20 only opportunity for relief. For all these reasons, the Institute, CLS, DNA and SALA
21 request that the change of judge rule in eviction cases be made permanent.

22 **IV. The One Year Experimental Change Gave the Justice Courts Time to Obtain**
23 **Data on the Effect the Change of Judge Rule Would Have on Court**
24 **Administration**

25 During the initial comment period for the Petition, the Committee on Limited
26 Jurisdiction Courts and attorneys who represented landlords filed comments in opposition
27 to the Petition. The State Bar suggested that if the Court had concerns about the effect
28 the proposal would have on justice court administration, that the Court approve the rule

1 change for one year. The State Bar suggested that this limited time period, would give all
2 sides of the issue, sufficient time to see the effects, if any, on court administration. The
3 Court approved the rule change for the limited one-year period.

4 **V. Data and Information Collected During the Experimental Period**

5 Since January 1, 2017, the AOC has collected data and information on the impact
6 of the rule change on justice court administration. The AOC submitted its report to the
7 Court on July 11, 2017. The AOC requested information from all the justice courts on:
8 (1) the number of change of judge requests and the number of continuances that resulted;
9 (2) additional costs resulting from the change of judge requests; and (3) any other impacts
10 to the courts from the change of judge requests. Eighty-eight justice court precincts
11 reported over the six-month period from January through June 2017. During this period,
12 11 change of judge requests were made and all were granted. The requests were made in
13 the following counties: one request each in Greenlee and Pima Counties; two requests in
14 Mohave County; and 7 requests in Maricopa County.

15 To accommodate these requests, one continuance occurred in Pima County and
16 Mohave County reported a \$98 cost. Based on this data, the AOC concludes that “[a]fter
17 six months of experience, the data shows little impact on justice court case processing or
18 new costs to the local budget.”

19 During the experimental period, as of the filing of this follow-up, only Justice K.
20 Slaughter of the Salome Justice Court submitted a comment in opposition to the Petition
21 on February 3, 2017, incorporating the comments submitted by others in 2016 prior to the
22 Court approving the one-year experiment. Justice Slaughter thought “[t]he one year trial
23 basis makes no since (sic)” and that there should not be a “change of judge as a matter of
24 right for any civil matter.” The Institute, CLS, DNA and SALA respectfully respond that
25 litigants in eviction cases should have the same right to a change of judge as in other
26 cases and the trial basis has shown the limited impact the change of requests had on the
27 justice courts.

28 The data and information collected so far is that the justice courts were able to

1 process the modest number of change of judge requests without administrative burden
2 and without causing any undue delay in the hearing of these cases. Thus, the
3 experimental phase has shown that a change of judge rule in eviction cases in justice
4 courts does not create undue administrative burdens. This is expected to continue to be
5 the case, even if over time, the availability of the request becomes more known to the
6 public. Certainly, attorneys representing landlords already know of the change of rule.

7 Finally, the number of eviction cases filed in 2016 was below the number filed in
8 prior years. In fiscal year 2016, 79,332 eviction cases were filed with 61,425 filed in
9 Maricopa County and 11,813 filed in Pima County. [www.azcourts.gov/Portals/39/
10 2016DR/LJC CaseActivity.pdf#page=3](http://www.azcourts.gov/Portals/39/2016DR/LJC%20CaseActivity.pdf#page=3). This represents a reduction in eviction case
11 filings from 2014, when 86,000 evictions were filed. *See* [http://www.azcourts.gov/sta-
12 tistics/AnnualDataReports/2014DataReport/2014CaseActivitybyCounty.aspx](http://www.azcourts.gov/statistics/AnnualDataReports/2014DataReport/2014CaseActivitybyCounty.aspx), Approxi-
13 mately 84,000 eviction cases were filed statewide in 2012 and 2013, with 78,000 filed in
14 Maricopa and Pima Counties. *See* [http://www.azcourts.gov/statistics/AnnualData
15 Reports/2013/DataReport/2013CaseActivitybyCounty.aspx](http://www.azcourts.gov/statistics/AnnualDataReports/2013/DataReport/2013CaseActivitybyCounty.aspx). Thus, eviction cases, overall,
16 have less impact on the justice courts as their numbers decrease.

17 **Conclusion**

18 For all the above reasons, the Institute, CLS, DNA and SALA request that the
19 Court make permanent the change of judge process in Rule 9(c) of the Rules of
20 Procedure for Eviction Actions. The Petition removes the disparity caused by a lack of
21 change of judge rule for eviction actions in justice court. Eviction court litigants should
22 have the same right to a change of judge as a matter of right and for cause as other civil
23 litigants in justice court and superior court.

24 Respectfully submitted this 14th day of July 2017.

25 WILLIAM E. MORRIS INSTITUTE FOR
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27 By /s/Ellen Sue Katz

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2 of the Supreme Court of Arizona this
3 14th day of July 2017

4 Copy of the foregoing emailed and
5 mailed to:

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