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IN THE SUPREME COURT

STATE OF ARIZONA

In the Matter of:

SUPREME COURT NO. R-18-0020

PETITION TO AMEND RULES 5(a) AND (b),
AND RULE 13(a) OF THE ARIZONA RULES
OF PROCEDURE FOR EVICTION ACTIONS

COMMENT BY ARIZONA
COMMISSION ON ACCESS TO JUSTICE

Introduction

The Arizona Commission on Access to Justice (ACAJ) was established by Administrative Order 2014-83, pursuant to the Court’s 5-year strategic agenda of “Advancing Justice Together: Courts and Communities.” The order specifically directs the ACAJ, among other things, to make recommendations that provide meaningful access to the court system, particularly for those individuals representing themselves in eviction matters.

The Need for Rule Changes

The proposed Rule changes provide (1) that the landlord is required in the complaint to advise the court that the subject housing unit is a subsidized unit, and if so, to specifically allege what portion of the unpaid rent is the responsibility of the tenant (proposed Rule 5(b)(8)); and (2) that the court determine whether the rental is subsidized, and if so, determine whether there is unpaid rent that the tenant is obligated to pay as his/her portion of the rent. (proposed Rule 13(a)(5)).

Whether a tenant being sued for forcible detainer is living in subsidized housing is an important factor for the court's consideration in determining whether and to what extent, if at all, a tenant is in default as to his or her portion of the total rent allegedly owed for the premises. The proposed Rule change is critical because, under the existing Rule, the judges are not in some instances being advised whether the property is subsidized. Without requiring that information, the court may inadvertently and illegally evict a tenant who is not in default.

The ramifications of a tenant being evicted from subsidized housing are significant, and likely permanent in nature, particularly as it relates to that tenant's ability to obtain alternative housing and continue to participate in a subsidized

housing program, all as detailed in the original petition (see p. 7, lines 6-18). This information is clearly within the knowledge and control of the landlord, and does not require any additional information or impose any additional legal expense on the landlord to be included in the complaint for possession and damages.

This issue, and the subject Rule petition, has been discussed at length in the Commission's work group dedicated to limited jurisdiction court issues. Members of that work group include justices of the peace (who primarily deal with residential landlord-tenant and eviction issues), court administrators, attorneys representing landlords, and legal services attorneys who periodically are involved in representing tenants who qualify for civil legal aid in Arizona. All members generally agree that whether the subject premises are part of a subsidized housing program is an important and relevant piece of information, and that the FED complaint should indicate whether the subject property is subsidized housing.

There were some divergent views on the exact language to be utilized in the proposed subsections. The Commission voted to advise the Court of its overall support for the proposed rule change, and to advise the Court in this comment of alternative suggestions offered with respect to these two proposed new subsections.

Proposed Rule 5 (b)(8)

The proposed language for Rule 5 (b)(8) requires the complaint to “State whether or not the rental is a subsidized housing unit ...” The judicial members of our workgroup propose that the pleading shouldn’t have to say what it is not; it just needs to state if it is a subsidized rental, and they respectfully suggest such designation be identified in bolded font.

In light of the importance of the issue, however, other members of the workgroup urge that the complaint contain the basic question: “Is the property subsidized? ___ Yes ___ No.” The landlord would then check the appropriate space and the information would be provided to the judge. Utilizing this approach eliminates uncertainty, and provides the judge with the critical information that is needed.

Rule 13 (a)(5)

The judicial members of the work group also noted that proposed Rule 13 (a)(5) change indicates that the judge must “determine whether the rental is subsidized.” They are unclear whether the intent of the proposed new language is that the judge must make a specific finding in each individual case that either “This case does involve

a subsidized rental,” or that “This case does not involve subsidized housing.” Some judges are concerned that specifically making and documenting such a finding would be burdensome and inefficient, particularly in light of already-lengthy dockets. Those judges propose that the operative language should just be the following proposed sentence: “If the court determines the rent is subsidized ...”

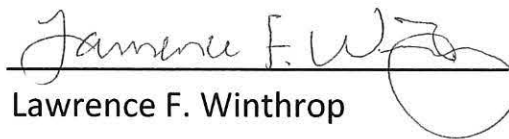
Other workgroup members note that current Rule 13(a) sets out important items the judge is to review that are vital in determining whether a landlord should be awarded possession or not. For example, the current Rule requires the court determine if service was proper, whether proper notice was provided, whether a right to cure, where applicable, was provided, and if the facts alleged support the landlord’s right to possession. As the Rule currently exists, the inquiry as to whether the subject property is subsidized – a fact that may be just as critical in determining whether the landlord is entitled to possession -- is not listed. These members believe there is an important safeguard in requiring the court to specifically make the determination as to whether the subject property is subsidized or not.

Conclusion

The Commission strongly believes that adopting changes to address the issue of subsidized housing will ensure due process and serve as an important safeguard to

prevent eviction where a tenant in a subsidized housing unit is current in his or her portion of the rent. Accordingly, the Commission urges the Arizona Supreme Court to adopt appropriate changes to Rules 5(a) and 13(b) to the Rules of Procedure for Eviction Actions.

RESPECTFULLY SUBMITTED this 4th day of May, 2018.

A handwritten signature in cursive script, reading "Lawrence F. Winthrop", written over a horizontal line. The signature is positioned to the left of a large, circular scribble or stamp.

Lawrence F. Winthrop
Chair, Arizona Commission on Access
to Justice