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North Valley Justice Court
14264 West Tierra Buena Lane
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IN THE SUPREME COURT OF THE STATE OF ARIZONA

In the Matter of:	)	Supreme Court
	)	No. R-18-0021
PETITION TO AMEND	)	
RULES OF PROCEDURE	)	Objection to Some of the
FOR EVICTION ACTIONS	)	Proposed Language and
	)	Suggested Improvements

BACKGROUND

The author of this pleading is a Justice of the Peace in Maricopa County. The following Arizona Justices of the Peace join in these comments in their individual capacities: Judge Cecil Ash, North Mesa JP (Maricopa County); Judge Frank Conti, Dreamy Draw JP (Maricopa County); Judge Keith Frankel, San Marcos JP (Maricopa County); Judge Joe Getzwiller, Ironwood JP (Maricopa County); Judge Andrew Hettinger, Moon Valley JP (Maricopa County); Judge Miles Keegan, Hassayampa JP (Maricopa County); Judge John McComish, Kyrene JP (Maricopa County); Judge Wyatt Palmer, Justice of the Peace 2 (Graham County); Judge Michael Reagan, McDowell Mountain JP (Maricopa County); Judge Keith Russell, East Mesa JP (Maricopa County), and Judge Donald Watts, Manistee JP (Maricopa County).

Petitions to amend the Rules of Procedure for Eviction Actions (RPEA) have become an annual occurrence. This year's proposed amendments to the eviction rules concerned federally subsidized (e.g. Section 8) housing. While a judge needs to know if an eviction action includes a residence involving subsidized housing, some of the proposed rules create merely meaningless burdens with no value added.

I.

THE FIRST PROPOSED AMENDMENT CONTAINS LANGUAGE THAT IS CONFUSING, DUPLICATIVE, AND REQUIRES COMPLAINTS IN EVICTION ACTIONS TO ALLEGE WHAT THE CASE IS NOT ABOUT.

The proposed RPEA 5(b)(8) reads, "The complaint shall: … (8) State whether or not the rental is a subsidized housing unit and, if it is, state the total rent per month and specify the amount of rent per month is the tenant's responsibility." There are three problems with this sentence.

First, the use of the term "rental" is, at best, unhelpful. When people refer to their "rental," if they do so at all, they are most likely either referring either to a vehicle or to vacation property (e.g. Airnb, VRBO, etc.). Tenants refer to their residence as "my apartment" or "my house." They do not claim something concerning "my rental" as part of a landlord and tenant

case. The only time "rental" consistently refers to residential rental property is in rule change petitions filed with this Court.

Seeking the use of clear and understandable language may seem inconsequential; but if a goal of these and other court rules is to also provide clear guidance for self-represented litigants, then terms or phrases that are either obscure or colloquial should be avoided. At a minimum, the proposed use of the term "rental" should be replaced with the easily understood word, "property." The rule could then read, "The complaint shall … State whether or not the property is a subsidized housing unit …" In the alternative, both could be combined and the rule could refer to "rental property."

Second, the proposed amendments to RPEA 5 duplicate each other. Stating substantially similar language in two different paragraphs of RPEA 5 neither contributes to its' regulatory authority nor to its' impact.

Proposed RPEA 5(b)(8)	**Proposed RPEA 5(c)(8)**
The complaint shall: … State whether or not the rental is a subsidized housing unit and, if it is, state the total rent per month and specify the amount of rent per month that is the tenant's responsibility.	If the rental is a subsidized housing unit, the landlord must state the total amount of the rent per month, the tenant's portion of the monthly rent and the amount of the tenant's portion of the rent that the tenant owes.

Only one, in this case the proposed RPEA 5(c)(8), is needed.

Third, as a matter of public policy, court rules should not require a party to allege what the case is not about. Arizona is a notice pleading

jurisdiction.[1] However, given the numerous specific items that must be listed in a residential eviction summons and complaint,[2] arguably Arizona has adopted more of a plausibility standard, where the trial judge is a gatekeeper, making sure only properly pled complaints can move forward.[3] But even with such a heightened standard, mandating complaints that do not involve subsidized housing to affirmatively allege that they do not and then mandating that that the judge confirm they do not, is an exercise in inefficiency. Judges need to know what a case is about, not what it is not about.

Rather than proposed RPEA 5(b)(8), a better alternative would be to add the following language as a new RPEA 5(d)(3):

> ***If the action involves a subsidized housing unit, either the landlord or the landlord's attorney must so inform the court at the beginning of the initial appearance***.

This simple obligation would alert the judge to what he or she needs to know at the moment he or she needs to know it.

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[1] Ariz.R.Civ.P. 8(a); JCRCP 110(b); *Cullen v. Auto-Owners Insurance Co*., 218 Ariz. 417, 189 P.3d 344, (2008)("We granted review to dispel any confusion as to whether Arizona has abandoned the notice pleading standard …").

[2] RPEA 5.

[3] Rather than merely require the trial judge to apply the law to the facts, RPEA 13(a) contains a list of things the judge is required to do in each case. *See also*, Mitchell Turbenson, *Negative Implications of State Law Entrenchment in Federal Courts*, 57 Ariz. L. Rev. 849 (2015)(Discusses notice pleading vs. plausibility standards); Christopher M. Fairman, *The Myth of Notice Pleading*, 45 Ariz. L. Rev. 987 (2003).

II.

THE SECOND PROPOSED AMENDMENT IS A GOOD IDEA AND, AFTER A MINOR CHANGE IS MADE FOR CLARIFICATION, SHOULD BE ADOPTED.

Proposed RPEA 5(c)(8) should be adopted. It would be placed in the correct paragraph (Complaint for Monetary Damages) and requires the collection of useful information. However, the use of the term "rental" should be abandoned for reasons previously stated.

III.

THE THIRD PROPOSED AMENDMENT SHOULD BE REJECTED IN ITS' ENTIRETY BECAUSE IT REQUIRES JUDGES TO DETERMINE WHAT EVICTION CASES ARE NOT ABOUT

Proposed RPEA 11(a)(5) requires the trial judge to make a finding as to whether each case does or does not involve subsidized rental property. Judges have no similar requirement in any other type of case. For example, if the only basis of an eviction action is nonpayment of rent, judges are not required to determine that the judgment is not based on a violation of a crime free lease addendum.

Judges could comply with proposed RPEA 11(a)(5) by announcing after every case, "Based on the pleadings and documents before me, this

case does not involve subsidized housing." Doing so would add no value to the process. Proposed RPEA 11(a)(5) is feel good legislation in the form of a court rule. It should be rejected completely.

CONCLUSION

The rule change petition contains amendments that would provide useful information to trial court judges hearing residential eviction actions. However, as proposed, they are troublesome for the reasons stated. We respectfully request that our proposed changes to the rules proposed in the Appendix to the Petition be adopted.

RESPECTFULLY SUBMITTED, this 17th day of MAY 2018.

/s/ Gerald A. Williams
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