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7 IN THE SUPREME COURT

8 STATE OF ARIZONA

9 PETITION TO AMEND THE RULES OF  
10 PROCEDURE FOR EVICTION  
11 ACTIONS

Supreme Court No. R-18-0020

**COMMENTS IN SUPPORT OF  
PETITION TO AMEND THE RULES  
OF PROCEDURE FOR EVICTION  
ACTIONS**

12 Pursuant to Rule 28 of the Rules of the Supreme Court, DNA People’s Legal  
13 Services (“DNA”), Southern Arizona Legal Aid (“SALA”) and the William E. Morris  
14 Institute for Justice (“Institute”) submit these comments in support of this Petition to  
15 Amend the Rules of Procedure for Eviction Actions. The Petition filed by the State Bar  
16 of Arizona requests that Rules 5(b) and (c) be amended to add pleading requirements to  
17 the complaint concerning whether or not the rental is a subsidized unit and, if it is, how  
18 the rent is apportioned between the tenant and the public housing entity and that Rule  
19 13(a) be amended to require the court to determine whether the rental is subsidized and  
20 if it is, to determine whether there is unpaid rent that the tenant is obligated to pay. The  
21 Institute, DNA and SALA fully support the Petition and state the following:

22 **I. Statement of Interest**

23 The Institute is a non-profit program established to advocate and litigate on behalf  
24 of the interests of low-income Arizonans. We work closely with the three federally  
25 funded legal services programs, other legal advocacy programs and community groups.  
26 For the last 13 years, the Institute has had a focus on the rights of tenants in eviction  
27 cases. The Institute prepared a report on eviction cases in Maricopa County, “Injustice In  
28 No Time: The Experience of Tenants in Maricopa County Justice Courts,” June 2005

1 found at [www.morrisinstituteforjustice.org/docs/Final\\_eviction\\_report.pdf](http://www.morrisinstituteforjustice.org/docs/Final_eviction_report.pdf). (“Injustice In  
2 No Time”). The Director of the Institute was a member of the State Bar Task Force that  
3 drafted the original Rules of Procedure for Eviction Actions and previously served on the  
4 Access to Justice Commission.

5 DNA and SALA are federally funded civil legal services programs for low-income  
6 Arizonans. The legal services programs represent tenants in eviction actions throughout  
7 the state and typically are the only attorneys who represent tenants in justice court. Legal  
8 services attorneys understand the significant impact evictions can have on low-income  
9 persons in general and specifically those tenants who live in subsidized housing.

## 10 **II. The Current Rules of Procedure for Eviction Actions Do Not Address** 11 **Subsidized Housing Evictions**

12 In 2008, the Arizona Supreme Court approved the Rules of Procedure for Eviction  
13 Actions. The rules only have one specific reference to subsidized housing. Rule 4(f)  
14 states:

15 **f. Compliance with Laws and Regulations Governing**  
16 **Subsidized Rent.** The parties shall comply with all federal  
17 and state laws and regulations governing subsidized rent.  
(emphasis in original).

18 Rule 5(b) pertains to the pleading requirements for an eviction complaint. The  
19 rule is silent on whether the landlord must disclose whether or not the rental is subsidized  
20 housing and, if it is, whether the landlord must disclose how the rent is apportioned  
21 between the tenant and public housing entity.

22 Rule 5(c) pertains to the pleading requirements in those cases where the complaint  
23 seeks monetary relief, including unpaid rent. Although the rule requires the landlord to  
24 state how rent is calculated, there is nothing in that subsection about whether the rental is  
25 a subsidized housing unit, how rent is apportioned between the tenant and the public  
26 housing entity and whether the tenant’s portion of the rent is owed.

27 In addition, Rule 13(a) pertains to what the Court must review prior to entering a  
28 judgment. There is nothing in Rule 13(a) about the Court determining whether the rental

1 is a subsidized housing unit, and, if it is, how the rent is apportioned between the tenant  
2 and the public housing entity.

### 3 **III. The Importance of Subsidized Housing Units in Arizona**

4 The purpose of subsidized housing is to provide safe, decent and affordable  
5 housing to low-income and other vulnerable tenants. In Arizona, there are several types  
6 of subsidized housing programs which assist a wide range of tenants including the  
7 elderly, veterans, families and those living with disabilities. The federal government's  
8 largest subsidized housing program is referred to as the "Housing Choice Voucher"  
9 program or what we often refer to as "Section 8." [www.hud.gov/topics/housing\\_](http://www.hud.gov/topics/housing_choice_voucher_program_section_8)  
10 [choice\\_voucher\\_program\\_section\\_8](http://www.hud.gov/topics/housing_choice_voucher_program_section_8). at 1. Under this program, a housing entity issues a  
11 family or individual a housing voucher to find decent housing in the community. When  
12 tenants live in subsidized housing, the amount of rent and utilities they pay in general is  
13 limited to 30% of their adjusted monthly income. *Id.* at 2. The rest of the rent is paid for  
14 by the housing entity. *Id.* at 1. As an example, an elderly disabled tenant whose income  
15 is \$800 per month, will be responsible to pay approximately \$240 per month for rent. If  
16 the rent on the subsidized unit is \$1200, then the public housing entity will be responsible  
17 for \$960.

18 In Arizona, over 45,000 households are federally subsidized tenants, not counting  
19 public housing units operated by state and local governments. [https://www.](https://www.cbpp.org/sites/default/files/atoms/files/4-13-11hou-AZ.pdf)  
20 [cbpp.org/sites/default/files/atoms/files/4-13-11hou-AZ.pdf](https://www.cbpp.org/sites/default/files/atoms/files/4-13-11hou-AZ.pdf). As shown by the above,  
21 with average rents about \$900 per month, rental subsidies are an important benefit for  
22 low-come Arizonans.

### 23 **IV. Landlords Fail to Disclose that the Rental Unit is Subsidized**

24 Several years ago, legal services attorneys identified the problem of landlords,  
25 both those represented by attorneys and those unrepresented, filing eviction actions when  
26 the rental is a subsidized housing unit and the tenant's portion of the rent is paid. The  
27 landlords file evictions based on the public entity's unpaid portion of the rent and obtain  
28 judgments against the tenant for the public housing entity's share of the rent and

1 possession of the rental. Under the housing voucher program, the tenant is not obligated  
2 to the pay the public entity's portion of the rent and should not be sued for the unpaid  
3 rent. Nor should the landlord obtain possession of the unit in this manner. HUD Housing  
4 Choice Vouchers Fact Sheet. www.hud.gov. See, e.g., 24 C.F.R. § 983.353 (b) (3)  
5 (landlord may not demand or accept rent from tenant in excess of tenant's portion of the  
6 rent) and (4) (tenant not responsible for public entity's portion of the rent and the  
7 landlord may not terminate the tenancy for nonpayment of public entity's portion of the  
8 rent).

9 To try to address this problem, legal services staff provided training to the justices  
10 on subsidized housing law. Despite the training, legal services staff continued to see  
11 eviction cases where the landlord failed to inform the court that the rental was subsidized.  
12 To rectify this problem, the State Bar Petition was filed with the Court so that landlords  
13 who have tenants with subsidized housing do not obtain judgments for rent and  
14 possession of the rentals improperly.<sup>1</sup>

## 15 **V. Tenant's Property Interest**

16 Tenants have a property interest in their residences. *Greene v. Lindsey*, 456 U. S.  
17 444, 451-52 (1982). See also *Foundation Development Corporation v. Loehmann's*, 163  
18 Ariz. 438, 442, 788 P.2d 1189, 1193 (Ariz. 1990) (recognizing common law right of  
19 tenant's property interest in rental). Eviction proceedings that deprive tenants of that  
20 property must comply with the due process requirements of the 14<sup>th</sup> Amendment to the  
21 United States Constitution. *Greene*, 456 U.S. at 455. Moreover, tenants also have a  
22 property interest in their subsidized housing benefits because they are in the class of  
23 persons, the program is intended to benefit. *Ressler v. Pierce*, 692 F.2d 1212, 1215, (9<sup>th</sup>  
24 Cir. 1982).

25 The plight of low-income tenants and the effect evictions have on their lives has  
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27 <sup>1</sup> Even in situations where the tenant does owe rent, legal services attorneys report  
28 that landlords will seek a judgment against the tenant for both the tenant's portion of the  
unpaid rent and the public entity's portion.

1 received national attention. In 2015, Mathew Desmond, a professor at Harvard published  
2 the book, *Evicted: Poverty and Profit in the American City*. Professor Desmond lived in  
3 a low-income residential section of Milwaukee for almost two years and observed the  
4 intersection of low-income tenants and eviction actions. He documented the resulting  
5 loss of shelter and the increased social and economic instability.

6 Others also have written about this problem. It is well recognized that for low-  
7 income persons, an eviction action may threaten their only means of shelter. *See, e.g.,*  
8 Chester Hartman and David Robinson, *Evictions: The Hidden Housing Problem*, Housing  
9 Policy Debate, Vol. 14, Issue 4 (2003) found at [http://content.knowledgeplex.org/kp2/](http://content.knowledgeplex.org/kp2/cache/kp/10950.pdf)  
10 [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  
11 disruption of children's education, interruption of employment, dislocation from health  
12 care providers, loss of personal belongings and homelessness. In addition, the eviction  
13 process may lead to monetary judgments. These monetary judgments make it difficult  
14 for tenants to secure new rental housing. Thus, the consequences of eviction cases make  
15 them very important to tenants and especially low-income tenants, who often lack back-  
16 up resources. The result of an eviction may be that a family is living in a car.

17 These consequences are even more pronounced when the loss of a subsidized  
18 housing is at issue. An improper eviction and judgment can have long term adverse  
19 effects on access to subsidized housing. First, if the tenant is evicted, the result will be  
20 that their housing voucher or section 8 certificate will be terminated. If the tenant has a  
21 section 8 certificate that is project based, this will be terminated. If there is a monetary  
22 judgment against the tenant, the result will be that wages may be garnished, and the  
23 tenant's credit adversely affected. This judgment also will adversely impact the tenant's  
24 chances of obtaining other residential rentals and specifically in obtaining a subsidized  
25 rental in the future. Thus, the importance of this Petition cannot be overstated.

## 26 **V. Response to Filed Comments**

27 The Access to Justice Commission comment notes that regarding proposed rule  
28 5(b)(8), the judicial members of the Commission workgroup did not think the landlord

1 should be required to state that the rental is not subsidized.<sup>2</sup> Others suggested a “yes” or  
2 “no” response to the question “Is the property subsidized?” The Institute, DNA and  
3 SALA have no objection to the rule requiring the question “Is the rental subsidized” and  
4 a yes/no response on each complaint. But the Institute, DNA and SALA strongly urge  
5 the Court to require that the landlord affirmatively state whether or not the rental is  
6 subsidized. Landlords should be making this disclosure now and do not. If left to the  
7 landlord’s discretion to state the rental is subsidized, the very discretion they have now  
8 and fail to exercise, then the court will not know if the rental is subsidized.<sup>3</sup>

9       Regarding proposed rule 13(a)(5), the Commission notes that the judicial members  
10 were concerned that if the justices had to make and document a specific finding that the  
11 rental was subsidized this would be “burdensome and inefficient, particularly in light of  
12 the already-lengthy dockets.” First, if the landlord must affirmatively state whether or  
13 not the unit is subsidized, this will be an easy fact for the justice to review. Second, the  
14 judgment form can easily have boxes to check for whether or not the unit is subsidized or  
15 not, just like the judgment form posted on the Court’s website has boxes to check for  
16 whether the defendant appeared in person, by counsel or failed to appear; was or not  
17 properly served with a notice; was or was not properly served with a summons and  
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21 <sup>2</sup> This issue also was raised by a group of justices in their comments and the justices  
22 suggest that this disclosure apparently be made orally at the beginning of the initial  
23 appearance. The justices could have been asking this question and landlord and their  
24 attorneys could have been making these disclosures all along. The reason for the Petition  
is that these disclosures are not being made. We request that the Court reject the justices’  
suggestion.

25 <sup>3</sup> Requiring a party to state whether or not a fact is at issue in a case is common. As  
26 an example, on the form Petition for Dissolution of Non-Covenant Marriage (DRDC15f-  
27 032018), for the following statements, a box is provided for each response: significant  
28 domestic violence has or has not occurred; Party A is or is not pregnant; the parent has or  
has not completed the parent information program; and Party A does or does not have  
separate property. <http://www.superiorcourt.maricopa.gov/SSCDocs/pdf/dfdc15fz.pdf>.  
(The Court links to these forms on its website).

1 complaint; and for a partial payment, whether or not a non- waiver was produced. [http://](http://www.azcourts.gov/selfservicecenter/Eviction-Actions)  
2 [www.azcourts.gov/selfservicecenter/Eviction-Actions](http://www.azcourts.gov/selfservicecenter/Eviction-Actions). Form AOCLJEA6F.docs.082517.<sup>4</sup>

3 Finally, the eviction case dockets in many justice courts are crowded because that  
4 is how the justices want to hear these cases. They often set 45-60 eviction cases for one  
5 hour. As an example, the Country Meadows Justice Court set 52 cases on its eviction  
6 court calendar for one hour beginning at 9:30 a.m. on May 18, 2018. [http://](http://justicecourts.maricopa.gov/FindACase/calList.asp?id=4554&startdate=5/162018)  
7 [justicecourts.maricopa.gov/FindACase/calList.asp?id=4554&startdate=5/162018](http://justicecourts.maricopa.gov/FindACase/calList.asp?id=4554&startdate=5/162018). Thus,  
8 any time a tenant appears in court or additional questions need to be asked, the court's  
9 fast pace is slowed. The justices' responsibilities are to fairly hear and resolve these  
10 important cases, not to process them as quickly as possible. Thus, the justices can choose  
11 to set cases in a more reasonable manner or have a longer eviction call. Regardless how  
12 the justices schedule eviction cases, a tenant's rights should not suffer or be abridged  
13 because of the scheduling by the court. The court's review of the pleadings and asking  
14 the landlord or the tenant if the rental is subsidized should take limited time as the court  
15 makes the other required findings under Rule 13(a)(1)-(4). The priority of the courts must  
16 be fairness to litigants' due process rights and not speed of review. This Petition furthers  
17 fairness and due process in eviction cases.

18 As noted in footnotes 2 and 4, a small group of justices filed comments. They  
19 raise two additional comments besides those noted in footnotes 2 and 4. First, they raise  
20 a concern that the use of term "rental" is not a term used by tenants. A review of the  
21 rules shows that the terms "rent" and "rental agreement" are used often. *See, e.g.*, Rules  
22 5(c)(1), (3), (5) and (6) (the term rent is used); Rules 13 (c)(2),(2)(C),(D),(E ) and (d) (the  
23 term rental agreement is used). Rental agreement is defined in Rule 18(j). The rules use  
24 several terms to refer to the rental, including the "premises," "property" and "residence."  
25 The rules do not use the terms "my house" or "my apartment." The Institute, DNA and  
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27 <sup>4</sup> The group of justices also request that Rule 13 (a)(5) be rejected because they  
28 claim a judge should not have to make a finding on whether or not the rental is  
subsidized.

1 SALA support clarity and the use of understandable language and have no objection to  
2 the use of the word “rental property” if the Court finds the use of the word “rental” by  
3 itself is confusing.

4 Second, the justices fault the proposed rules because Rules 5(b)(8) and 5(c)(8),  
5 repeat the calculation of the rent for subsidized housing. That is a stylistic issue and  
6 simply reinforces the obligation to explain the rental calculation to the tenant and the  
7 court. The Court should reject the justices’ suggestion that Rule 5 (b)(8) be eliminated  
8 because that is the only place in the proposed rules where the requirement to disclose  
9 whether or not the rental is subsidized is found.

10 **Conclusion**

11 The Institute, DNA and SALA request that the Court approve the Petition filed by  
12 the State Bar of Arizona. The Petitions seeks to amend Rules 5(b) and (c) by adding  
13 pleading requirements to the complaint concerning whether the rental is a subsidized unit  
14 and, if it is, how the rent is apportioned between the tenant and the public housing entity  
15 and to amend Rule 13(a) to require the Court to determine whether the rental is  
16 subsidized and if it is, to determine whether there is unpaid rent that the tenant is  
17 obligated to pay. These modest changes in the rules will ensure that tenants in subsidized  
18 housing are not improperly evicted from their rentals when the public entity has not paid  
19 its portion of the rent. For all these reasons, the Institute, DNA and SALA request the  
20 Court approve this Petition.

21 Respectfully submitted this 21<sup>st</sup> day of May 2018.

22 DNA PEOPLE’S LEGAL SERVICES  
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2 Clerk of the Supreme Court of Arizona  
3 this 21<sup>st</sup> day of May 2018.

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