

1 **WILLIAMS & ZINMAN P.C.**
Attorneys at Law
2 7701 East Indian School Road
Suite J
3 Scottsdale, Arizona 85251
(480) 994-4732
4 Scott E. Williams #012417
Mark B. Zinman #024028
5

6 IN THE SUPREME COURT OF THE STATE OF ARIZONA
7

<p>8 In the Matter of:</p> <p>9</p> <p>10 Petition for Procedure for</p> <p>11 Eviction Action Rules</p> <p>12</p> <p>13</p> <p>14</p>	<p>No. R-07-0023</p> <p>Response to Supreme Court</p> <p>Changes to Proposed Rules of</p> <p>Procedure for Eviction Actions</p>
--	---

15 GENERAL STATEMENT

16 The undersigned attorneys, Scott E. Williams and
17 Mark B. Zinman, hereby submit their comments regarding
18 the Supreme Court changes to the Proposed Rules of
19 Procedure for Eviction Actions. Undersigned counsel
20 previously provided comments to the initial Proposed
21 Rules. The issues raised herein were not previously
22 addressed.
23
24
25

26 ...
27 ...
28

1 SPECIFIC ANALYSIS OF THE PROPOSED RULES

2 1. Rule 1

3
4 **Objection:** The Rule fails to provide for Rule
5 80(i), Ariz.R.Civ.P., which is common practice in all
6 courts. Rule 80(i) permits sworn statements by
7 declaration.
8

9 **Recommendation:** Modify Rule 1 as follows,
10 incorporating the italicized language:

11 Rule 1. Title and Scope of Rules

12
13 These rules shall be known and cited as the Rules
14 of Procedure for Eviction Actions ("RPEA"). These
15 rules shall govern the procedure in the superior
16 courts and justice courts involving forcible and
17 special detainer actions, which are jointly
18 referred to in these rules as "eviction actions."
19 For purposes of these rules, there shall be only
20 one form of action known as an "eviction action."
21 The Arizona Rules of Civil Procedure apply only
22 when incorporated by reference in these rules,
23 except **that Rule 80(i) shall apply in all courts**
24 **and** Rule 42(f) shall apply in the superior
25 courts.
26

27 2. Rule 17(a)

28 **Objection:** The Supreme Court's addition does not
provide a procedure for determination of each party's
entitlement to the bonds prior to disbursement. The
Rule would allow the Clerks to send out the bonds

1 without judicial determination of the rights of the
2 parties in those remaining proceeds.

3
4 **Recommendation:** Modify Rule 17(a) as follows,
5 incorporating the italicized language:

6 Rule 17. Appeals

7
8 a. General. Appeals from a lower court to the
9 superior court shall be taken in the manner
10 prescribed by A.R.S. § 12-1179 and by the Superior
11 Court Rules of Appellate Procedure. Appeals from
12 superior court shall be governed by A.R.S. § 12-
13 1182 and the Rules of Civil Appellate Procedure.
14 Unless otherwise ordered by the court, in all
15 cases in which a party files a cost or supersedeas
16 bond or pays rent to the clerk pending an appeal
17 ~~the clerk shall return to that party any remaining~~
18 ~~portion of the bond or rent upon final~~
19 ~~adjudication of the case, *or upon motion of any*~~
20 ~~*party, the court shall notice a bond disbursement*~~
21 ~~*hearing whereupon the court shall determine the*~~
22 ~~*amount, if any, to be disbursed to each party.*~~
23
24
25
26
27
28

1 **Analysis:** Currently, the full amount of the
2 bonds remain with the trial court until the case is
3 remanded to the trial court after final appeal
4 determination. Counsel's experience is that currently
5 the courts, upon remand, regularly set hearings for
6 determination of the disbursement of any remaining
7 bonds.
8

10 2. Rule 17(d)

11 **Objection:** The Supreme Court's deletion of
12 subsection (d) jeopardizes the health, safety and
13 welfare of the community, in that no procedure is
14 afforded the court to weigh the interests of the
15 community under the specific factual determinations
16 resulting in eviction of a tenant.
17

18 **Recommendation:** Re-instate Rule 17(d) or formulate
19 a procedure which will allow the trial court to
20 consider the health, safety and welfare of the
21 community as it relates to a tenant's continued
22 possession during appeal.
23

24 **Analysis:** Counsel has personally been involved in
25 numerous cases where severe hostilities existed
26
27
28

1 between residents which have resulted in violence
2 and/or death following a judgment of eviction but
3
4 prior to the tenant being removed from possession. In
5 one case a tenant shot another tenant because of her
6 race, after being evicted for racial comments.

7
8 In another case, after being evicted for gang
9 activity, the following weekend resulted in a shootout
10 between tenants injuring several persons, placing the
11 community as a whole at risk, and ultimately killing
12 the tenant who was evicted but had not been removed
13 from possession by the constable.

14
15
16 ...
17 ...
18 ...
19 ...
20 ...
21 ...
22 ...
23 ...
24 ...
25 ...
26 ...
27 ...
28 ...

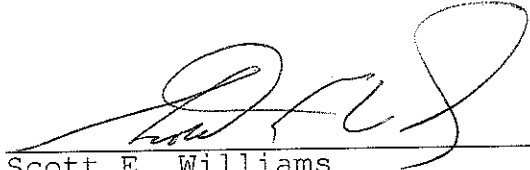
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Although rare occurrences, these cases, and many more, illustrate the necessity for the court to have a procedure to evaluate these factual situations, and to require, after balancing the interests of the parties and community, that the tenant should not be allowed to remain in possession pending appeal.

RESPECTFULLY SUBMITTED this 14th day of November, 2008.

WILLIAMS & ZINMAN P.C.

WILLIAMS & ZINMAN P.C.



Scott E. Williams
7701 E. Indian School Road
Suite J
Scottsdale, Arizona 85251

Mark B. Zinman
7701 E. Indian School Road
Suite J
Scottsdale, Arizona 85251