

Gerald A. Williams
Arizona Bar No. 018947
North Valley Justice Court
14264 West Tierra Buena Lane
Surprise, AZ 85374

IN THE SUPREME COURT OF THE STATE OF ARIZONA

In the Matter of:)	
)	Supreme Court
PETITION FOR)	No. R-07-0023
PROCEDURE FOR)	
EVICITION ACTIONS)	COMMENT ON PETITION
)	FROM
)	MARICOPA COUNTY
)	JUSTICE OF THE PEACE
)	ASSOCIATION

This Court has announced that it “tentatively intends” to adopt the proposed Rules of Procedure for Eviction Actions. In doing so, it allowed additional public comment until November 15, 2008. These comments are submitted on behalf of the Maricopa County Justice of the Peace Association.

THE PROPOSED RULES ARE DESIGNED TO SOLVE A PROBLEM THAT DOES NOT EXIST.

The State Bar’s Landlord Tenant Task force was formed in large part because of the concerns raised in a report titled, “Injustice in No Time: The Experience of Tenants in Maricopa County Justice Courts.” Although this document is often presented as an objective or even scholarly study, it is, in reality, an advocacy piece that is summarized on the advocacy group’s web page as concluding, “that in almost every respect, court practices benefited landlords and disadvantaged tenants.”¹ Former Chief Justice Charles E. Jones, in his published comments to the proposed rules, noted this 2005 report “displayed a severe bias in favor of tenants and against landlords in eviction litigation.”

Unfortunately, the vast majority of the attorneys appointed to the task force are currently or formerly employed by Community Legal Services or are currently or formerly board members of Community Legal Services.² While there was a vocal

¹ Web page of William E. Morris Institute, February 2007 Newsletter. This newsletter remains posted on their web page as of the date of this filing.

² While the State Bar may have intended to originally invite a cross section of stake holders, the proposed rules were drafted primarily by tenants’ rights attorneys in Maricopa County. For example, many of the justice court judges listed as task force members in Appendix B to the petition could not or did not participate in either the full task force meetings or in the subcommittee meetings that drafted the proposed rules. The two justice court judges that were actively involved in the rule drafting process were Judge C. Steven McMurry and Judge Gerald A. Williams.

minority on the task force and on the various subcommittees that were created, the clear majority of the task force was composed of attorneys who essentially believe that justice courts, especially justice courts in Maricopa County, are biased against tenants. In its reply to the comments, the State Bar claims disbelief at concerns of an unbalanced membership by noting that the task force also included an Assistant U.S. Attorney and the executive director of a state agency. While this is technically correct, both of those attorneys held prior positions with Community Legal Services.

It appears, however, that these rules are going to be adopted in some form and even if these rules are a solution in search of a problem, it may be appropriate to distribute procedures commonly used in eviction cases somewhere other than the materials contained within new judge orientation programs. The greatest advantage to having a set of uniform rules is that individuals, who are not familiar with the summary nature of residential eviction cases (and this includes attorneys who do not routinely practice in this area and as well as superior court judges assigned to hear lower court appeals), have a written reference of the procedures.

SOME TECHNICAL CORRECTIONS AND MINOR CHANGES ARE REQUIRED PRIOR TO ANY FORMAL ADOPTION OF THE RULES OF PROCEDURE FOR EVICTION ACTIONS

Proposed Rule 4d.

In a section that sets forth the duties of the litigants and of counsel, an affirmative duty to file a Satisfaction of Judgment is created. It even authorizes a trial court to deem a judgment to be satisfied. This paragraph was intended in part to solve the problem that occurs when people are attempting to improve their credit rating and are willing to pay the judgment; but are unable to do so because they are unable to locate the plaintiff. However, the phrase “*or if possession of the premises has been delivered to the prevailing party,*” is included as an event that triggers a requirement to file a Satisfaction of Judgment. This phrase was included to resolve issues in connection with judgments for possession only; however, when read in the context of this proposed rule, would require a landlord to file a Satisfaction of Judgment after the tenant has moved out, whether any money has been collected or not. Clearly, successful parties to litigation should not be required to file a Satisfaction of Judgment prior to receiving the amount due in full. Consequently, that phrase should be omitted from the proposed rules.

Proposed Rule 5b(7)

The last sentence of this proposed subsection states, “*A copy of the notice shall be attached as an exhibit to the complaint.*” This language requires that every tenant be served with the cure notice twice, once prior to the lawsuit and then again as part of the lawsuit. The value added for doing so for both the judge and the tenant is minimal. This rule was put in at the request of tenants’ rights attorneys because it increases the chance that their client will bring at least one copy of their notice to the initial meeting. In short, for the extremely small percentage of cases where organizations like Community Legal

Services are involved, a significant burden was placed on the entire system in every case. In addition, and perhaps just as significant, this “serve the tenant twice” requirement has the potential to create significant problems as courts move toward electronic filing options. Although we will defer technical discussions to subject matter experts in those areas, it certainly appears that while a summons and complaint could be prepared through a web based system where the litigant or attorney answers a series of questions, this notice would have to be scanned in separately and then somehow matched with the summons and complaint. While this is probably possible, the additional burden and cost this would create cannot be justified. Therefore, the last sentence of proposed Rule 5b(7) should be deleted.

Proposed Rule 5b(8).

As part of a fairly lengthy list of requirements as to what must be included in the complaint, this rule requires that the complaint shall “*Be verified.*” However, it is not clear what that means. If it means that every complaint must be notarized, then it will create an administrative nightmare and complicate current efforts to move toward electronic filing. If it means that every complaint must be signed under penalty of perjury, then it should just state that. However, there is no value added to this additional requirement because landlords will still be held accountable for whatever is in their lawsuit with or without it. As such, it should be deleted as well.

Proposed Rule 10d.

This Court re-wrote proposed Rule 10d and incorporated the requirements of Ariz.R.Civ.P. 45. As has been noted in other comments, the rules subcommittee considered but specifically rejected doing so. Even those that are familiar with the technical requirements of civil procedure most likely believe that an individual receiving a subpoena has 14 days to object to it. This fourteen day window is in direct conflict with the rapid fire pace that eviction cases are docketed and heard. However, Ariz.R.Civ.P. 45 actually says, “Any objection to this subpoena must be made within 14 days after it is served upon you, or before the time specified for compliance,” Even so, requiring someone to consult a different set of rules to determine what the eviction rules mean defeats the purpose of having a single stand alone reference for eviction cases. If this proposed change to the subcommittee’s draft is adopted, it will create some confusion; but given how rare subpoenas are likely to be utilized, any problems should be relatively minor.

SAMPLE FORMS SHOULD BE ADOPTED PRIOR TO THE RULES GOING INTO EFFECT.

The State Bar’s Landlord and Tenant Task Force did include a forms subcommittee. To the best of our knowledge, it never recommended that any forms be created because it, quite properly, was waiting to see what the proposed rules would be. For everyone’s reference, a proposed Summons and Complaint, that attempt to meet all of the current requirements of the proposed rules, are attached to this pleading at Exhibit A.

DATED this 14th day of November 2008.

Gerald A. Williams, President
Maricopa County JP Association

Attachments:
Proposed Summons & Complaint

A copy of this comment and the attachments to it have been mailed this 14th day of November 2008 to:

Robert B. Van Wyck
Chief Bar Counsel
State Bar of Arizona
4201 North 24th Street, Suite 200
Phoenix, AZ 85016

Exhibit A