

1 Cliff J. Vanell, Director  
2 Office of Administrative Hearings  
3 1400 West Washington, Suite 101  
4 Phoenix, Arizona 85007  
5 Telephone Number: 602-542-9826  
6 State Bar Number: 010735

7 **IN THE SUPREME COURT OF THE STATE OF ARIZONA**

8 COMMENT TO PETITION TO AMEND  
9 RULE 31, RULES OF THE SUPREME  
10 COURT  
11

SUPREME COURT NO. R-08-0012

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13 **Comment**

14 Pursuant to Rule 28, Arizona Rules of the Supreme Court, the Office of Administrative  
15 Hearings (OAH) offers its comment with regard to the Petition to Amend Rule 31.  
16

17 The stated purpose is to assist a particular population in hearings arising out of landlord/  
18 tenant disputes in mobile home and recreational vehicle parks that fall under the  
19 regulatory authority of the Department of Fire Building and Life Safety (FBLS). See  
20 "Overview and Summary of Proposed Change" in Petition To Amend Supreme Court  
21 Rule 31(d)(11), March 17, 2009. While the OAH is neutral regarding the stated need for  
22 non-attorney representation, the proposed language is not sufficiently tailored to  
23 address the need and will affect matters unrelated to FBLS landlord/tenant cases.  
24

25 **1. Amendment of Rule 31(d)(11), as crafted, creates unintended consequences**  
26 **affecting the administration of justice before OAH.**  
27

28 Amended Rule 31(d)(11), as proposed, is overly broad and would confer the right to be  
29 represented by an unlicensed person in any OAH proceeding (not otherwise the subject  
30

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1 of a specific rule), including the regulatory and licensing agencies, boards and  
2 commissions,<sup>1</sup> based solely on the status of a party being a tenant in a mobile home  
3 or recreational vehicle park. This result is neither intended nor addressed in the  
4 petition.

5  
6 <sup>1</sup> Impacted agencies, boards and commissions include:

- 7 Arizona Board Funeral Directors and Embalmers
- 8 Arizona Board of Appraisal
- 9 Arizona Board of Behavioral Health Examiners
- 10 Arizona Board of Examiners of Nursing Care Institution Administrators and Assisted Living Facility Managers
- 11 Arizona Board of Osteopathic Examiners
- 12 Arizona Board of Psychologist Examiners
- 13 Arizona Criminal Justice Commission
- 14 Arizona Department of Administration
- 15 Arizona Department of Administration - Capitol Police Parking
- 16 Arizona Department of Agriculture
- 17 Arizona Department of Commerce
- 18 Arizona Department of Economic Security
- 19 Arizona Department of Education
- 20 Arizona Department of Environmental Quality
- 21 Arizona Department of Financial Institutions
- 22 Arizona Department of Gaming
- 23 Arizona Department of Health Services
- 24 Arizona Department of Housing
- 25 Arizona Department of Insurance
- 26 Arizona Department of Liquor Licenses and Control
- 27 Arizona Department of Racing
- 28 Arizona Department of Veterans' Services
- 29 Arizona Department of Water Resources
- 30 Arizona Department of Weights and Measures
- Arizona Division of Emergency Management
- Arizona Lottery
- Arizona Medical Board
- Arizona Peace Officer Standards and Training Board
- Arizona State Board of Dental Examiners
- Arizona State Board of Massage Therapy
- Arizona State Board of Optometry
- Arizona State Board of Pharmacy
- Arizona State Board of Physical Therapy
- Maricopa County Recorder and Elections Department
- Arizona State Board of Technical Registration
- Arizona State Retirement System
- Board of Medical Students Loans
- Citizens Clean Elections Commission
- Department of Fire, Building and Life Safety
- Medical Radiologic Technology Board of Examiners
- Office of the Attorney General
- State of Arizona Acupuncture Board of Examiners
- State of Arizona Board of Athletic Training
- State of Arizona Board of Chiropractic Examiners
- State of Arizona Board of Occupational Therapy
- State of Arizona Board of Podiatry Examiners
- State of Arizona Department of Public Safety
- State of Arizona Department of Real Estate
- State of Arizona Naturopathic Physicians Medical Board
- State of Arizona Office of Pest Management
- State of Arizona School Facilities Board

1 **2. The stated purpose of the Petition is served, and unintended consequences**  
2 **avoided, by creating a narrowly tailored exemption.**

3  
4 To conform to the stated intention of the Petitioners, the proposed amended language  
5 should be limited to landlord/tenant actions arising under FBLS' jurisdiction. Crafting  
6 the proposed amendment in this manner would be consistent with Rule 31(d)( 8), which  
7 addresses matters before the Department of Health Services in behavioral health  
8 matters; Rule 31(d)(12), involving administrative appeals involving the Arizona Health  
9 Care Cost Containment System; Rule 31(d)(13), dealing with administrative matters  
10 arising out of the Department of Revenue, and Rule 31(d)(15), which refers to  
11 administrative proceedings involving special education.

12  
13 **3. Proposed amendment should be an additional exception under Rule 31(d).**

14  
15 Rule 31(d)(11) was adopted by the Supreme Court on Petition by the OAH submitted  
16 April 1, 1999 to allow a very narrow set of individuals to represent legal entities before it,  
17 specifically those who have some connection to a legal entity, including corporate  
18 officers and duly authorized employees. It was OAH's experience that such individuals  
19 were in a position to competently present the issues for the legal entities. The proposed  
20 amendment bears no relationship to the legal entity representation issue addressed in  
21 Rule 31(d)(11). Consequently, providing for representation of parties in landlord/tenant  
22 disputes before FBLS in Rule 31(d)(11) would not be appropriate.

23  
24 The concerns of the OAH can be addressed by limiting the representation in a new  
25 subsection under Rule 31(d) as follows:

26  
27 **Proposed New Subsection:**

28 ~~In Proceedings before the Office of Administrative Hearings, a Petitioner~~  
29 ~~who is a tenant in a mobile home and recreational vehicle park A~~  
30 **PETITIONER IN ANY LANDLORD/TENANT DISPUTE BEFORE THE**

1 ARIZONA DEPARTMENT OF FIRE, BUILDING AND LIFE SAFETY may  
2 be represented by a non-licensed person provided that the Petitioner has  
3 specifically authorized such person to represent ~~them~~ the Petitioner and  
4 the person is not receiving compensation (other than reimbursement for  
5 actual costs) for such representation.  
6

7 Respectfully submitted, this 8<sup>th</sup> day of May, 2009.  
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10 \_\_\_\_\_  
11 Cliff J. Vanell, Director  
12 Office of Administrative Hearings  
13

14 Original and six copies  
15 Copy in Microsoft Word and PDF on 3.5" Floppy Disk  
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17 May, 2009, to:

18 Clerk of the Court  
19 Arizona Supreme Court  
20 1501 W. Washington  
21 Phoenix, AZ 85007

22 COPY MAILED this 8<sup>th</sup> day of  
23 May, 2009, to:

24 Ron Feinstein, President  
25 Arthur Chick, 1st Vice-President  
26 Arizona Association of Manufactured Home and R.V. Owners  
27 2334 S. McClintock Dr.  
28 Tempe, AZ 85282

29 Gerald B. Adcock  
30 10397 Meandering Trail Lane  
Gold Canyon, AZ 85218

By JS