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IN THE SUPREME COURT OF THE STATE OF ARIZONA

In the Matter of:) Supreme Court
) No. R-
PETITION TO AMEND RULES)
5, 11, AND APPENDIX A)
OF THE ARIZONA RULES OF)
EVICION PROCEDURE;)
REMOTE APPEARANCES)

The Petitioner respectfully requests this Court amend Rules 5, 11, and Appendix A of the Arizona Rules of Eviction Procedure. The petition is made *on an emergency basis* because it is necessary to provide a mechanism to implement A.R.S. § 22-206. The new statute governs remote appearances in residential eviction actions.

BACKGROUND ON RESIDENTIAL EVICTIONS

Residential eviction actions are a legal anomaly. They are summary proceedings that are also jury trial eligible.¹ In addition, they often result in a judge handing someone a single sheet of paper and informing that person

¹ A.R.S. § 12-1176 (demand for jury trial); RPEA 11 (Initial Appearance procedures); Gerald A. Williams, *Representing Residential Tenants in Eviction Actions*, Ariz. Attorney (Nov. 2011), 12.

that they, along with their family, have only five days to find a new place to live and to move. Few judicial actions have such an immediate impact.

Justice Courts, especially in Maricopa County, have perhaps the largest volume of residential eviction cases in the country. By way of example, North Charleston, South Carolina was ranked as having the most evictions by city because it had 3,660 evictions in 2016.² However, the data was not collected by county and appears to be incomplete. Prior to the pandemic, Justice Courts in Maricopa County were hearing approximately 6,000 eviction cases each month.³ Courts are required to hear these cases very quickly.⁴

BACKGROUND ON NEW STATUTE

A new law requires any trial court hearing an initial appearance on a residential eviction action to allow any party and to allow any witness to participate by using either a telephone or video conference connection.⁵ During the last legislative session, the legislature passed Senate Bill 1322. On April 16, 2021, Governor Doug Ducey signed the bill, which will become effective 90 days after the end of the legislative session

² Matthew Desmond, The Eviction Lab, Princeton Univ., www.evictionlab.org (last visited Jun. 27, 2021).

³ Gerald A. Williams & Miles Keegan, *Justice of the Peace, Pandemics and Evictions*, Ariz. Attorney (Feb. 2021), 24, 28; See generally, Ari Ramras, *Pandemic Real Estate Fallout*, Ariz. Attorney (Dec. 2020), 40.

⁴ The summons is required to be served only at least two days before the initial appearance. A.R.S. § 12-1175(C). The initial appearance must be set not more than six and not less than three judicial days from the date of the summons. A.R.S. § 33-1377.

⁵ Ariz. Senate Doc., 55th Leg., 1st Reg. Sess., *Amended Fact Sheet for S.B. 1322* (Feb. 26, 2021); Gerald A. Williams, *Remote Appearances for Evictions Become Permanent*, The Foothills Focus (May 31, 2021).

(adjournment sine die). Some justices of the peace agreed with the concepts; but opposed the legislation in favor of a yet to be developed comprehensive set of changes to court rules that implement the lessons learned from the COVID-19 pandemic. When it was clear that the legislation would pass, the Petitioner successfully requested an amendment requiring that someone seeking to appear remotely would notify the court prior to doing so. The text of the new statute reads as follows:

22-206. Virtual appearance; detainer actions

Notwithstanding any other law, in a special detainer or forcible detainer proceeding before the court, any party, including an attorney or witness upon written notice to the court, shall be permitted to participate at the initial appearance remotely by using a telephone or video conference connection. If the court continues a contested matter to a later date, at the discretion of the court, the court may require all parties, attorneys and witnesses to participate in person.

THE PROPOSED RULE AMENDMENTS IMPLEMENT THE STATUTE IN A MANNER THAT BENEFITS SELF-REPRESENTED LITIGANTS WHILE PROVIDING TRIAL COURT JUDGES WITH BOTH ADEQUATE NOTICE AND MAXIMUM FLEXIBILITY.

Ironically, while parties can appear at most eviction proceedings remotely now without any notice, some type of advance written submission will soon become mandatory. The notice is necessary because the statute removed the trial court's control over how the party or witness would be appearing remotely. For example, without additional guidance, a judge would begin each eviction docket not knowing whether the parties would be appearing either in person or remotely. If they were appearing remotely, the

judge would not know whether they would be appearing by telephone conference call or by video, and if by video, on which platform. Consequently, some type of minimal notice to the court is required and under the proposed rule changes, that notice could be in the form of an e-mail to the trial court at least two hours before the case is scheduled to be called. This requirement allows the court an opportunity plan while creating only a minimal burden to a self-represented litigant. Without the proposed rule changes, there could be another problem.

The intent of the statute is to make it easier for participants and witnesses to appear. However, in the absence of a supplemental court rule, it may actually work to the detriment of self-represented litigants: a party may argue, and a court may agree, that the other party or witness must file a written notice to the court that contains all the formalities of a motion.

By law, eviction initial appearances take place incredibly quickly, generally between three and five days of service. In order to take advantage of the remote appearance option, a self-represented party or witness would have to find a form, download it, and get it to the trial court prior to the initial appearance. If a self-represented litigant or witness could even find the form and then mail it to the court after service, it almost certainly would not arrive at the trial court in time for a clerk to place it into the file prior to the initial appearance. To avoid these potential bad results, court rules must be created so that the purpose of the statute is not frustrated.

CONCLUSION

The Petitioner requests that the Supreme Court consider and adopt the changes recommended in the appendix on an emergency basis.

RESPECTFULLY SUBMITTED, this 29th day of June 2021.

/s/ Gerald A. Williams
Justice of the Peace
Maricopa County
North Valley Justice Court
14264 West Tierra Buena Lane
Surprise, AZ 85374

Electronic copy filed with the
Clerk of the Arizona Supreme Court
This 29th day of June, 2021

At the request of the Petitioner

Attachment:
Proposed Amendments to Rules and to Handout (three pages)

Copy also sent to:

Community Legal Services (Phoenix Office)

Denise Holliday
President, Association of Landlord/Tenant Attorneys

Southern Arizona Legal Aid, Inc.

Attachment Proposed Amendments

The current Rule 5 of the Rules of Procedure for Eviction Actions should be amended as follows (new language in red):

Rule 5. Summons and Complaint: Issuance, Content and Service of Process

a. Summons. The summons in an eviction action shall be a document separate from the complaint, shall be issued in accordance with applicable statutory provisions, and shall identify the defendants to the action. If the name of a defendant is unknown, the summons and complaint may name a fictitious defendant and any occupants of the property. The court shall liberally grant leave to amend the complaint and summons to reflect the true names of defendants if they become known to the plaintiff. The summons shall also include the following:

(1) Name of the court and its street address, city, ~~and~~ telephone number; **facsimile number; e-mail address, and website address;**

(2) Date and time set for the trial of the matter; **and that the tenant, attorney, or any witness may appear at the initial appearance remotely by contacting the court in writing prior to the initial appearance;**⁶ ...

(5) In residential property actions only, on a separate page served upon the tenant, the information contained in the Residential Eviction **Procedures**⁷ Information Sheet substantially in the form included as Appendix A to these Rules.

⁶ During the COVID-19 pandemic, many courts attached information to the summons. For example, one court attached a strip of colored paper that read as follows:

“You will need to appear by telephone for your court case.

Please call (602) 506-5778 on the date and time scheduled. Enter Meeting ID: 17007009007#

If you have any questions, you may call the court at (602) 372-2000 to speak with court staff. You may also e-mail the court (and may send e-mail attachments) at northvalleyjusticecourt@jbazmc.maricopa.gov”

⁷ This amendment is a suggested correction to the current rules so that the name of the handout (Residential Eviction Information Sheet) matches the reference to it.

The current Rule 11 (Initial Appearance) of the Rules of Procedure for Eviction Actions should be amended as follows (new language in red):

Rule 11. Initial Appearance and Trial Procedures.

a. – e. [No changes].

f. Remote Appearances. The Court shall allow any party, attorney, or witness to appear at the initial appearance remotely, by using either a telephone or a video conference connection, as long as the person seeking to appear remotely provides written notice to the court not less than two hours before the initial appearance is scheduled. The notice shall not require an original signature.

(1) For good cause, the judge may waive the two-hour deadline, continue the initial appearance,⁸ or grant additional time for the written notice to be provided.

(2) For the purpose of this paragraph, written notice includes notification either by electronic mail, by facsimile, or by other electronic process established by the court.

(3) An attorney can provide written notice on behalf of a party or a witness.

(4) Either a party or an attorney can provide written notice to a court, on or before a Monday, that contains all of their requests for remote appearances for that calendar week. These standing requests can be modified as needed on a case-by-case basis.

⁸ The phrase “continue the initial appearance” was added for readability and for clarity. A judge already has the authority to continue an initial appearance. RPEA 11(c).

RESIDENTIAL EVICTION INFORMATION SHEET

[First two paragraphs, no change]

Before Court. Eviction cases move through the court system very quickly. If the tenant disagrees with the landlord's allegations, the tenant is encouraged to file a written answer. The answer form available from the justice court allows the tenant to admit or deny the allegations and explain his or her position. If the tenant cannot afford to pay the answer fee, he or she may apply for a waiver or deferral of that fee. If a tenant believes that the landlord owes him or her money, the tenant may under some circumstances file a counterclaim. The summons states that a trial will occur on the date listed, but due to the high volume of cases, a trial may not occur then. **A landlord, tenant, or witness may contact the court to obtain information on how they may appear remotely for the initial court date.** If the tenant fails to appear, and the landlord or his attorney is present, a judgment will probably be entered against the tenant. Tenants can represent themselves or arrange for lawyers to represent them. The court will not provide a lawyer.