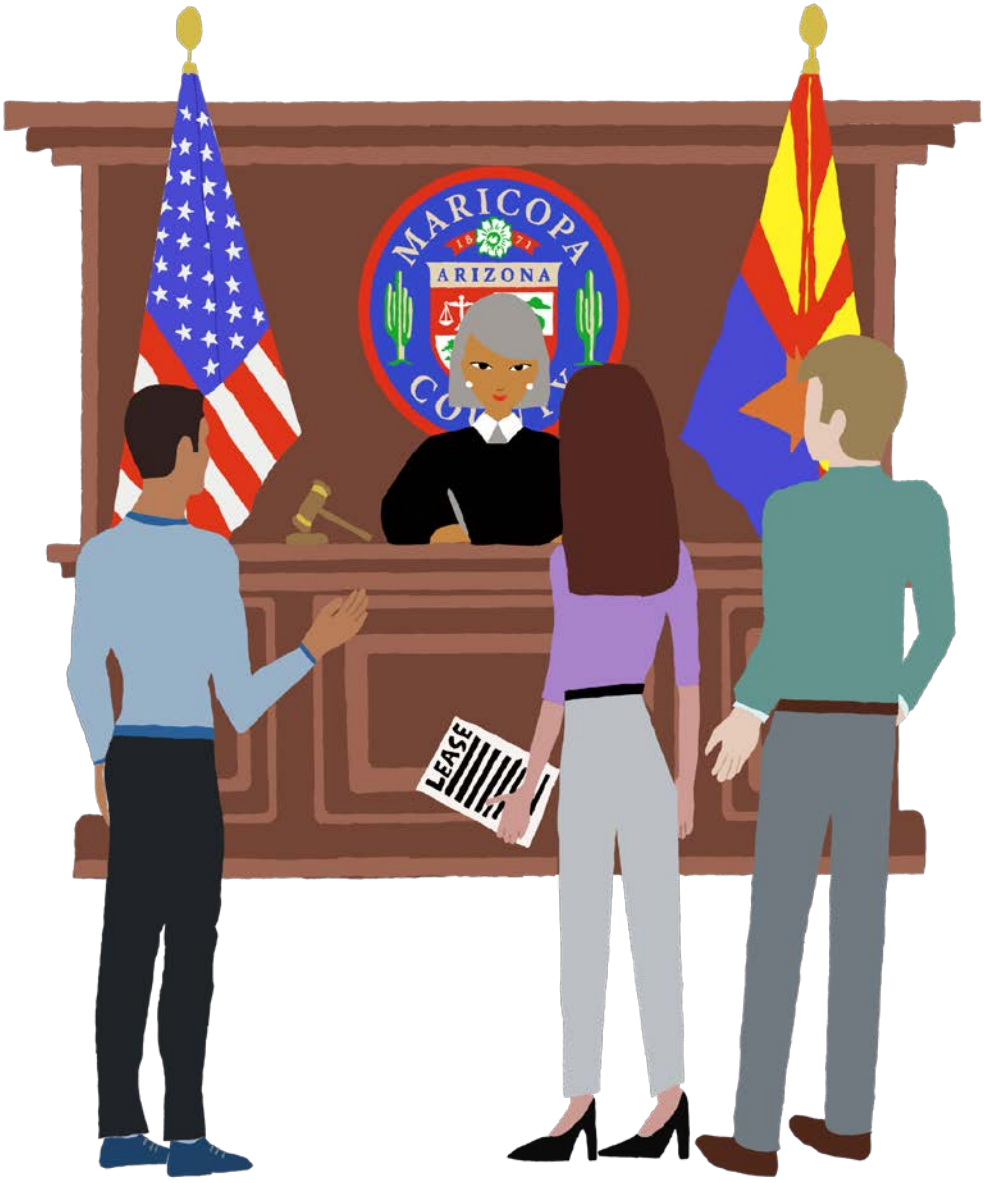
WHAT'S JUSTICE GOT TO DO WITH IT?

The Experience of Tenants in the Maricopa County Justice Courts



William E. Morris Institute for Justice

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MARICOPA COUNTY JUSTICE COURTS EVICTION REPORT

William E. Morris Institute for Justice[1]

Preface: Eviction Report in 2005

The William E. Morris Institute for Justice ("Institute") conducted a study of eviction practices in Maricopa County in summer 2004 and published its findings in a June 2005 report titled *Injustice In No Time: The Experience of Tenants in Maricopa County Justice Courts*.[2] The study was prompted by a lack of data on the eviction process in Arizona and a growing awareness of the impact of evictions nationwide. The Institute was particularly interested in how eviction cases were handled by the justice courts and how unrepresented tenants navigated and fared in the process. Based on the study, the Institute recommended many changes to justice court practice in the report.

The Institute's 2005 report prompted a discussion about evictions in Arizona. In response to the report, the State Bar of Arizona under the leadership of President Helen Perry-Grimwood established a landlord and tenant task force. In 2008, the task force drafted and submitted to the Arizona Supreme Court proposed Rules of Procedure for Eviction Actions ("rules" or "eviction rules"). The proposed rules were adopted in large part and cover the specific requirements for eviction actions, such as pleadings, service of process, writs of restitution and appeals. Since the eviction rules' initial adoption in 2008, the legal services community proposed modifications to the rules and additional rules, which the Arizona Supreme Court has largely adopted.

As discussed throughout this report, the eviction rules address many of the Institute's 2005 recommendations. In some respects, the justice court practices and procedures address other 2005 recommendations. Finally, as to some of our recommendations, the same concerns that existed 15 years ago continue.

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[1] The William E. Morris Institute for Justice ("Institute") is a non-profit program that advocates and litigates on behalf of low-income and other vulnerable Arizonans. This study was conducted by staff attorney Brenda Muñoz Furnish and Andrew Walters, a 2018 law school graduate fellow. Ms. Muñoz Furnish and former staff attorney David Newstone (during the fall of 2019) reviewed the hearing recordings and case files and drafted this report. This project was supervised by Ellen Sue Katz, the Institute's Director. A special thanks to James Driscoll-MacEachron for his edits to the report. Finally, thanks to Geraldine Miranda for the design cover.

[2] The 2005 report can be found on the Institute's website at www.morrisinstitutefor justice.org.

More recently, evictions have captured the attention of local media. The *Arizona Republic* has published several feature articles about evictions.[3]

With the passage of 15 years and continued interest in eviction cases, the Institute conducted this follow-up study of eviction practices in Maricopa County. This report will focus on how the new rules are affecting the eviction process and due process concerns raised by the original report.

I. Introduction: The Importance of Eviction Cases

There are many ways to understand the significance of evictions in Maricopa County, beginning with the number of eviction cases filed each year and the number of persons whose lives are impacted by evictions. In 2018, 65,694 eviction actions were filed in Maricopa County.[4] The average Maricopa County household had 2.75 persons in it.[5] Thus, conservatively, more than 180,000 persons in Maricopa County were affected by evictions in 2018.[6]

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[3] Alden Woods, *44,000 Phoenix Area Households Evicted Last Year as Epidemic Grows*, Arizona Republic (Feb. 18, 2019), https://www.azcentral.com/story/ news/local/ phoenix/2019/02/18/maricopa-county-evictions-up-2018-and-help-slow-arriving/2845095002/.

Alden Woods and Angel Philip, *In the Phoenix Area, Rapid Evictions Leave Delinquent Rents with Almost Options*, Arizona Republic (Sept. 13, 2018), https://www.azcentral.com/story/news/local/arizona-nvestigations/2018/09/13/maricopa-county-justice-courts-rapid-evictions-leave-renters-few-options/865658002/.

Alden Woods, *Here for the Eviction: More Renters Forced from Homes as Affordable-Housing Crisis Deepens,* Arizona Republic (July 16, 2017), https://www.azcentral.com/story/news/local/arizona-best-reads/2017/07/16/arizona-eviction-rates-rise-affordable-housing-dwindles/444495001/.

Alden Woods, *Can't Afford the Rent, Can't Afford to Move*, Arizona Republic (Apr. 24, 2017), https://www.azcentral.com/story/news/local/phoenix-best-reads/2017/04/24/arizona-cannot-afford-rent-cannot-afford-move-new-housing-crisis/ 99546080/.

[4] Arizona Judicial Branch, *Justices of the Peace Courts County Case Activity by Fiscal Year, Maricopa County, Filings (2018)*, https://www.azcourts.gov/Portals/39/2018DR/JPIntro.pdf?ver=2019-06-25-102143-393#page=32.

[5] U.S. Census Bureau, *QuickFacts, Maricopa County, Arizona* (July 1, 2018), https://www.census.gov/quickfacts/maricopacountyarizona.

[6] In 2018, 84,905 evictions were filed in the entire state. Arizona Supreme Court, *Justice of the Peace Courts Statewide Case Activity by Fiscal Year*, https://www.azcourts.gov/Portals/39/2018DR/JPintro.pdf?ver=2019. Thus, over 77% of the evictions in 2018 were filed in Maricopa County.

Maricopa County also has a disturbingly high eviction rate. A 2017 Apartment List survey found that between 2015 and 2017, the Phoenix metropolitan area had the second-highest eviction rate in the country.[7] Indeed, Maricopa County's eviction rate far exceeds the rate in Chicago. In Chicago, there were an average of 23,000 evictions filed each year between 2010 and 2017.[8] Put another way, approximately 1 in 25 renters faced eviction in Chicago each year. Meanwhile, in Maricopa County in 2018, there were approximately 680,500 rental units,[9] and approximately 65,700 evictions filed. Thus, 1 in 10 renters in the county faced eviction in 2018.

However, the impact that evictions have on tenants and their families reaches far beyond the numbers. Eviction actions are expedited proceedings, so tenants are usually required to move out with only a few days' notice. It can be incredibly difficult to find housing on very short notice, particularly for those with low incomes. Low-income tenants almost always find it more difficult to find new homes following eviction. An eviction judgment may mean that a family is not eligible for subsidized housing until they pay the rental judgment. Being evicted can also lead to loss of employment, disruption of children's education, dislocation from health care providers, loss of personal belongings, and, in many cases, homelessness.[10] For tenants who are evicted from subsidized housing, an eviction may mean they are never again eligible for a housing subsidy. Thus, it is not surprising that a study of evictions in New York City found that evictions cause "large and persistent increases in risk of homelessness, elevate long-term residential instability, and increase emergency-room use."[11]

The difficulty in moving out quickly and finding housing in Maricopa County is compounded by increasingly high rents. A 2020 Arizona Republic article reported that the greater Phoenix metropolitan area had the highest rent increases in the country the

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[7] Chris Salviati, *Rental Insecurity: The Threat of Evictions to America's Renters* (Oct. 20, 2017), https://www.apartmentlist.com/rentonomics/rental-insecurity-the-threat-of-evictions-to-americas-renters. *See also* Catherine Reagor, *Valley Has 2nd-Highest Eviction Rate Among Apartment Dwellers in U.S., Study Finds*, Arizona Republic (Oct. 30, 2017), https://www.azcentral.com/story/money/real-estate/catherine-reagor/2017/10/30/phoenix-eviction-rate-second-highest-us-apartment-list-study/80431 9001.

[8] Lawyers' Committee for Better Housing, *Opening the Door on Chicago Evictions: Chicago's Ongoing Crisis* (May 2019), https://eviction.lcbh.org/sites/default/files/reports/chicago-evictions-1-ongoing-crisis.pdf.

[9] U.S. Census Bureau, *QuickFacts, Maricopa County, Arizona* (July 1, 2018), https://www.census.gov/quickfacts/maricopacountyarizona.

[10] *See, e.g.*, National Law Center on Homelessness & Poverty, *Protect Tenants, Prevent Homelessness* at 15-18 (Mar. 2018), https://nlchp.org/wp-content/uploads/2018/10/ProtectTenants2018.pdf.

[11] Robert Collinson and David Reed, *The Effects of Eviction on Low-Income Households* at 1, New York University (Dec. 2018), https://www.law.edu/sites/default/files/ upload_documents/ ecvitions_collinson_reed.pdf.

past year, 7.4%.[12] Approximately 45% of renters pay *more* than 30% of their income for housing. Paying more than one third of income for housing is considered a tipping point for lack of affordability, leaving persons unable to pay for their other basic living expenses such as food, transportation and healthcare.[13]

Evictions also carry consequences long after tenants lose their homes. When tenants are evicted, the judgment against them appears on tenants' records. Thus, their background check may raise a "red flag" with their prospective landlord whenever they apply for housing in the future. In addition, tenants who are evicted often have large monetary judgments awarded against them which can then negatively impact the tenants' credit scores.

Although the harms eviction causes low-income tenants are not new, the plight of low-income tenants and the impact evictions have on their lives have received national attention in recent years. Sociologist Matthew Desmond received a Pulitzer Prize in 2017 for his book, *Evicted: Poverty and Profit in the American City.* Desmond lived in a low-income residential section of Milwaukee for almost two years and carefully documented the many negative effects evictions have on low-income tenants, including increased social and economic instability and significant physical and mental health issues. His findings are similar to other research on the impact of evictions on low-income persons.[14]

A bipartisan group of United States Senators in 2019 introduced the "Eviction Crisis Act" to help prevent evictions and, ultimately, homelessness in order to respond to what they and others call an "eviction epidemic."[15] The bill includes several measures, such as tracking eviction data, creating programs to provide financial assistance and housing stability-related services to eviction-vulnerable tenants, and increased funding for legal representation for tenants with an active eviction case. Senator Michael Bennet of Colorado introduced the Act and described the dangers of evictions: "Today in America, an unexpected illness, a car accident, or a family

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[12] Catherine Reagor, *Metro Phoenix Tops the Nation for Rent Increases, How Affordable is Your City?* Arizona Republic (Mar. 1, 2020), https://www.usatoday.com/story/money/real-estate/catherine-reagor/2020/03/01/phoenix-are4a-top-u-s-rent-increases-how-afforadable-your-city/4890939002.

[13] Joint Center for Housing Studies at Harvard University, *America's Rental Housing 2020*, at 26-29, https://www.jchs.harvard.edu/sites/default/files/Harvard_JCHS_Americas_Rental_Housing_2020.pdf.

[14] *See, e.g.*, Laurie Ball Cooper, *Legal Responses to the Crisis of Forced Moves Illustrated in* Evicted, 126 Yale L.J. Forum 448 (2017); Allyson E. Gold, *No Home for Justice: How Eviction Perpetuates Health Inequity Among Low-Income and Minority Tenants*, 24 Geo. J. on Poverty L. & Pol'y 59 (2016); Chester Hartman and David Robinson, *Evictions: The Hidden Housing Problem*, 14 Housing Policy Debate 461 (2003), https://innovations.harvard.edu/sites/default/files/10950.pdf.

[15] The Eviction Crisis Act, S.3030 116th Congress (2019-2020).

emergency can lead to a family being evicted from their home and falling into a cycle of poverty that lasts for years. The hardship caused by eviction is agonizing for the hundreds of thousands of American families evicted every year – and it's damaging to our communities."[16]

Despite the importance of eviction cases, national research has shown that there are few attorneys available to represent low-income tenants in court.[17] The same is true in Maricopa County. Approximately 4.4 million persons lived in Maricopa County in 2018 and approximately 13.5%, almost 600,000 persons lived at or below the federal poverty line.[18] Yet, there is a small number of attorneys who represent tenants in eviction actions, and an even smaller number of attorneys who will handle these cases at no cost. Community Legal Services, the federally funded legal services program in Maricopa County and its Volunteer Lawyers' Program, represent low-income tenants at no cost and their legal services include advice and representation which results in dismissal and settlement of cases without going to court as well as court representation.

With few attorneys available to represent them, low-income tenants in Maricopa County who face eviction are nearly all unrepresented. Unrepresented tenants increase the courts' responsibility to ensure that these cases are resolved fairly. The fairness of the eviction process depends upon courts requiring the landlords to prove the elements of a case for possession and affording the tenants an opportunity to defend against the allegations.

II. An Overview of the Eviction Process in Arizona

Eviction courts were created in response to the use by landlords of "self-help" measures to evict tenants.[19] Thus, the eviction court system exists to provide an orderly procedure, overseen by an impartial judge, to determine possession of the rental unit. In addition to the requirement of a fair judicial process, it has long been recognized that tenants have a property interest in their residences. This means that eviction proceedings must comport with the due process protections guaranteed by the 14th Amendment to the United States Constitution.[20]

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16 Michael Bennet for Senate, Eviction Crisis Act, https://www.bennet.senate.gov/public/index.cfm/eviction-crisis-act.

17 *See, e.g.*, Natalie J. Kraner & Catherine Weiss, *Preventing Unjust Eviction*, 308 N.J. Law 52 (Oct. 2017).

18 U.S. Census Bureau, *QuickFacts, Maricopa County, Arizona* (July 1, 2018), https://www.census.gov/quickfacts/maricopacountyarizona.

19 Mary Clark-Kilcoyned, *Cause of Action Against Residential Landlord for Wrongful Eviction,* 90 Causes of Action 2d 185, §2 (2019).

20 *Greene v. Lindsey*, 456 U.S. 444, 451-52 (1982); *see also Foundation Dev. Corp. v. Loehmann's,* 163 Ariz. 438, 442 (1990) (recognizing common law right of tenant's property interest in rented dwelling).

In Arizona, eviction cases are formally called "Special Detainer Actions."[21] Throughout this report, however, we use the more common term "eviction" or "eviction action." Although Arizona has laws that govern different types of rental agreements, in this report we focus on evictions governed by the Arizona Residential Landlord and Tenant Act ("ARLTA").[22] The ARLTA applies to tenants who rent an apartment, house, townhouse, condominium or mobile home.[23]

In a common residential eviction action, the landlord alleges that the tenant has violated a term of the rental agreement, typically the timely payment of rent, and sues to have the court evict or remove the tenant from their rental home.[24] The landlord also may claim that the tenant violated another material term of the lease, such as the continual playing of loud music that disturbs neighbors or the improper disposal of trash in the pool area.[25] Eviction actions also may involve claims that a tenant's lease has ended but the tenant has not moved out.[26]

The following is a brief overview of the general process under the ARLTA.[27] First, the landlord must provide the tenant with notice that the tenant violated a material term of the lease. The notice must be in writing and must be served either in person or by certified mail.[28] An eviction may not be filed until the time period in the notice has ended.[29]

The length of the notice depends on the type of breach alleged: (1) a five-day notice for unpaid rent;[30] (2) a five-day notice for health and safety violations;[31] (3) a ten-day notice for other types of lease violations;[32] (4) a thirty-day notice to terminate or end

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21 A.R.S. § 33-1377.

22 A.R.S. § 33-1301 *et seq*. Although some evictions may be brought under the Forcible Entry and Detainer Statute, A.R.S. § 12-1171 *et seq*., statutory references in this report are to the ARLTA.

23 Leases for the rental of a mobile home space in a mobile home park are governed by the Arizona Mobile Home Parks Residential Landlord and Tenant Act. A.R.S. § 33-1401 *et seq*.

24 A.R.S. § 33-1368(B).

25 A.R.S. § 33-1368(A).

26 A.R.S. § 33-1375(C).

27 Different laws apply to the eviction of tenants in public housing and tenants who live in Section 8 housing or have Section 8 vouchers. *See, e.g.,* 42 U.S.C. § 1437f.

28 A.R.S. § 33-1313(B).

29 A.R.S. §§ 33-1368(B); 33-1373.

30 A.R.S. § 33-1368(B).

31 A.R.S. § 33-1368(A).

32 *Id.*

a month-to-month tenancy;[33] or (5) a ten-day notice to terminate a week-to-week tenancy.[34] An immediate termination notice may be given in limited situations when the landlord claims the tenant's conduct is a material and irreparable breach, such as "criminal gang activity," the unlawful sale or manufacture of controlled substances, or the illegal discharge of a weapon.[35] For unpaid rent cases, the five-day notice must inform the tenant of the landlord's intent to terminate the rental agreement if the rent is not paid within the specified five-day period.

The content and service of the notice to terminate or end a tenancy must meet specific statutory requirements. A landlord who fails to satisfy these notice requirements is not entitled to possession of the rental premises. Only after a valid notice has been properly served, and the time period in the notice has ended or the tenant has not cured (fixed or corrected) the alleged material breach within the time period in the notice, may the landlord file an eviction action in court seeking possession of the rental unit.[36]

For nonpayment of rent cases, there are additional considerations. If the landlord accepts a partial payment of the total rent owed, the landlord must obtain a waiver signed by the tenant that allows the landlord to proceed with the eviction if the balance of the outstanding rent is not paid.[37] Without the signed waiver, the landlord cannot proceed with an eviction action.

The tenant also has the right to reinstate the rental agreement by paying the rent in full, plus all reasonable late fees set forth in the lease, before the landlord files an eviction action.[38] After an eviction complaint is filed but before a judgment is entered, the tenant has the right to reinstate the rental agreement by paying all past due rent, reasonable late fees, attorneys' fees and costs.[39]

If the landlord claims the tenant breached a material term of the lease unrelated to nonpayment of rent, the tenant may dispute several aspects of the claim. The tenant may:

1. dispute that they committed the alleged material breach;

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[33] A.R.S. § 33-1375(B).

[34] A.R.S. § 33-1375(A).

[35] A.R.S. § 33-1368(A)(2). Immediate termination cases must be heard no later than three days after the filing of the complaint. A.R.S. § 33-1377(E).

[36] A.R.S. §§ 33-1368(B); 33-1373.

[37] A.R.S. § 33-1371(A). As of August 27, 2019, the partial payment waiver provisions in ARLTA were amended and now exempt specified "housing assistance payments" from the statute.

[38] A.R.S. § 33-1368(B).

[39] *Id*.

2. agree the alleged act occurred, but that the breach was not material; and/or

3. claim they have the right to cure and have cured the material breach.[40]

The waiver provision also applies to cases that do not concern nonpayment of rent. If the landlord accepts any rent from the tenant after knowledge of the alleged breach and does not obtain a signed waiver from the tenant, the landlord waives the right to end the tenancy for the breach.[41]

After a landlord files an eviction complaint, the landlord must serve the tenant with the summons and complaint. The summons and complaint may be served in person or, after one unsuccessful attempt at personal service, may be served by posting the court papers on the tenant's door and mailing the court papers by certified mail.[42] The tenant is considered to have received the court papers three days after mailing. Service of process must be completed a minimum of two calendar days before the scheduled court date.[43] The summons must tell the tenant the date, time and location of the eviction hearing.

The court hearing comes next. The outcome of the hearing usually depends in part on who comes to court. For some cases, the landlord may decide to dismiss the case before it is called on the record. The tenant may come to court but sign a stipulated judgment and leave before the case is called. The tenant may come to court and dispute the landlord's case or may appear but not raise a defense.[44] The tenant may not come to court, in which case the justice will typically enter judgment for the landlord. Even if both parties appear, the justice may continue the case to another date. The justice also may hear testimony and enter a judgment. Thus, at the court hearing, the case may be dismissed, continued or heard. If the justice enters judgment for the landlord, a writ of restitution is typically issued five days later.[45] The writ allows the landlord to request a constable to remove the tenant from the rental. If the court enters

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[40] A.R.S. § 33-1368(A)(1) and (2) (five-day notice for health and safety; ten-day notice for other violations).

[41] A.R.S. § 33-1371(B). Amended partial payment waiver provisions went into effect on August 27, 2019.

[42] A.R.S. § 33-1377(B).

[43] *Id*.

[44] Although the above discussion focused on claims related to the notice and whether a material breach occurred, tenants may also raise issues concerning the conditions of their rental and those defenses and counterclaims are discussed in Section XII(C).

[45] A.R.S. § 12-1178(C).

judgment for the tenant, the tenant may continue to live in the rental unit. Either party may appeal the court's decision.[46]

Thus, in a typical eviction, a landlord may evict a tenant in as few as three weeks from the time the landlord serves the notice until a writ of restitution is executed.

III. The Arizona Rules of Procedure for Eviction Actions

One of the most significant changes in eviction practice since publication of the Institute's report in 2005 was the adoption of the Arizona Rules of Procedure for Eviction Actions ("rules" or "eviction rules"). These rules, like similar court rules for other cases, address the procedural requirements for eviction cases in litigation. The Arizona Supreme Court adopted the initial set of rules in 2008, which have been amended and modified over the years. The eviction rules are intended to provide guidance and instruction on court processes not addressed by the ARLTA.

The eviction rules set out the requirements for parties and their attorneys as well as judicial responsibilities in entering a judgment. For example, Rules 4 and 5 set out the requirements for the parties, while Rules 11 and 13 describe the pertinent judicial responsibilities.

Rule 4(a) requires "each party and attorney" to "exercise due diligence to ensure that the action has a good faith basis; that the relief sought is consistent with the applicable rental agreement or applicable law; and that all required notices have been properly served." In addition, Rule 4(a) requires that "[a]ttorneys must exercise reasonable care to ensure that their pleadings are accurate and well-grounded in fact and law."

Similarly, Rule 5(a) details the information that must be included in the summons (the name of the court, the date and time of the hearing, notice that if the tenant fails to appear a default judgment will likely be entered, and how to request reasonable accommodations). Rule 5(b) details the information that must be in the complaint (the legal names and addresses of the parties, the attorneys representing the tenants if applicable, the judicial precinct in which the property is located, the reason for the eviction, a statement verifying the tenant was served with a proper notice to vacate, the amount of rent that is usually paid and the date it is usually due, and the calculation of late fees, attorneys fees, concessions, and other fees and costs). Rule 5(c) provides additional pleading requirements for a complaint that seeks a monetary judgment. In addition, Rule 5(d) requires that if the eviction is for a reason other than nonpayment of rent, the complaint must set out the specific facts forming the basis of the eviction, "so that the tenant has an opportunity to prepare a defense."

Rule 11, meanwhile, addresses judicial responsibilities. As an example, Rule 11(b)(1) states that justices "should determine whether there is a basis for a legal

[46] A.R.S. § 12-1179(A).

defense to the complaint either by reviewing a written answer…or by questioning the defendant in open court." In another significant example, Rule 13 requires that before a judgment is entered, the justice must review the pleadings and determine that certain prerequisites have been met.

The eviction rules are a major step in the right direction to set a framework for the courts to handle eviction cases. They have been a work in progress and are a marked improvement over the lack of any rules 15 years ago.

IV. Methodology

The Institute staff and our law fellow (throughout this report often referred to as "we") conducted this study between September 2018 and March 2019. Most eviction cases in Arizona are filed in justice court, and our study was limited to Maricopa County. There are 26 justice courts in Maricopa County located throughout the greater Phoenix Metropolitan area.[47] Each justice court hears eviction cases on different days, and each court call varies in the number of cases scheduled. Throughout the report, we refer to this process as "eviction court calls" or "court calls."

The first step in the current study was to identify which justice courts we would observe. We selected particular eviction court calls to observe based on the geographic area covered by the court and the number of cases scheduled on the call. The Institute observed 19 court calls for this study, presided over by 13 different justices of the peace throughout Maricopa County, as well as three judges pro tempore. Each court call had between 16 and 155 cases. Thus, at the 19 court calls we observed, there were a total of 1,252 cases scheduled. Of those cases, 1,097 cases were called on the record.[48]

We attended the majority of the eviction court calls we observed in person. After each court call, we requested the audio/visual recording, which is available to the public upon request. Even for court calls we observed in person, the video recordings were very helpful because in some courtrooms it was difficult to hear what the justice, the parties, or their attorneys stated on the record, and the fast pace of the eviction court calls made taking detailed notes challenging. For four court calls included in this study, we did not observe the hearings in person and instead only viewed the recordings.[49]

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[47] Maricopa County Justice Courts Locations, http://justicecourts.maricopa.gov/Locations/index.aspx (last visited Feb. 24, 2020).

[48] Our online spot review of the uncalled cases showed those cases had been dismissed.

[49] In this report, we do not refer to the courts by name but rather by an alphabetical designation (Justice Courts A through O) because the purpose of this report is not to highlight any specific court, but rather the policies and practices of the courts generally. For a court we observed more than once, we added a number to the alphabetical designation. The four court calls we did not observe in person were Justice Courts A2, B3, K and L. We observed the court call at Justice Court J in person, but we only received an audio recording.

The Institute usually arrived at the courthouse 30-60 minutes prior to the time the eviction court call was scheduled to start. We documented the location of the courthouse, the availability of public transportation, the condition of court facilities, and the availability of public information relevant to the scheduled eviction proceedings.

During our courtroom observations, the Institute took notes on each eviction case called. Depending on how many cases were called, the court call could take from 30 minutes to three hours. We made notations concerning the following information:

1. whether the landlord was represented;
2. whether the landlord was present in court for the hearing;
3. whether the tenant was represented;
4. whether the tenant was present in court for the hearing;
5. whether the tenant was present at the courthouse but left before the hearing;
6. what questions the justice asked the landlord or their representative;
7. what questions the justice asked the tenant or their representative;
8. what information was provided to the tenant concerning their rights;
9. whether either party requested a continuance and if the request was granted;
10. what happened when tenants raised defenses;
11. the resolution of each case, including whether the case was dismissed, whether a stipulated judgment was entered, or whether any other judgment was entered, and, if so, for which party; and
12. anything else that was noteworthy.

At least 30 days after an eviction court call occurred, the Institute requested to review at least ten case files from each court call. For some court calls, the Institute subsequently reviewed additional files, for a total of 240 case files reviewed. This represents approximately 22% of the court cases we observed.

In the past, Maricopa County Justice Courts maintained paper files. Currently, the court staff scan all case files into a digital court system and do not keep paper copies of the pleadings and other documents in the case files. If a member of the public requests to review a case file, court staff print out the case file for review. If a person wants a copy of a document in the case file, court staff will make the copy for a fee. To avoid taking court staff time and incurring copying costs, the Institute obtained permission to review printouts of the case files and to take photographs of the documents using our smartphones.

For each case file reviewed, the Institute prepared a written synopsis that included the following information:

1. names of the parties;
2. address of the property;
3. whether the property was located in that justice court's district;
4. type of notice served on the tenant, and when and how the notice was served;
5. when and how the complaint and summons were served;
6. who signed the complaint;
7. information on the amounts of rent, fees and other charges requested in the notice, complaint and proposed judgment;
8. whether the tenant filed a written answer;
9. whether the tenant signed a stipulated judgment;
10. whether the justice modified the judgment requested by the landlord;
11. whether the court documents, such as the notice, complaint, and summons were in the case file, and if those documents complied with the relevant statutory requirements; and
12. the resolution of the case.

V. General Findings

When the Institute published its previous eviction study in 2005, we reported:

1. 87% of the landlords were represented by an attorney;
2. Tenant attendance in court was low, as only 18% of the tenants came to court: and
3. In the 626 cases observed, not a single tenant was represented.

In the Institute's current study, we find that little has changed. In fact, landlords were represented by attorneys in an even higher percentage of cases, as 94% of landlords were represented. Out of 1,097 total cases, landlords represented themselves in only 61 cases.

Tenant attendance in court increased somewhat from the earlier report, as 249 (23%) of the tenants came to court.[50] Thus, tenant attendance only increased by 5% since the previous report. Tenants who came to court remained almost entirely unrepresented. Only two tenants in the cases we observed were represented by an attorney. In one case, an attorney came to court on behalf of a tenant and negotiated a

[50] In addition, there were five cases where someone other than an attorney came to court for the tenant. In each of those cases, the justice entered a default judgment against the tenant and we included those cases in the default judgment count.

dismissal of that tenant from the case, but the case was continued for the other tenants named in the complaint. In the other case, the represented tenant came to court but the tenant's attorney and the landlord's attorney had already agreed to a continuance.

On the other topics we reviewed for each case, we found little to favor the tenants. Of the 249 tenants who came to court, 50 signed a stipulated judgment. Forty-nine tenants (20%) of those who came to court, signed stipulated judgments and left the courthouse before the hearing started. In one case, a tenant agreed to a stipulated judgment but appeared before the justice. In the remaining 199 cases where the tenant appeared before the justice for a hearing, 34 (17%) of the cases were continued, and 152 (76%) resulted in a judgment for the landlord. In 11 (5%) of the cases, the tenant came to court and the case was dismissed, usually because the tenant had paid the rent. In one of those cases the justice dismissed the eviction after the tenant appeared and presented evidence.[51] In two other cases, the case was transferred to Superior Court because issues of title of the property were raised.[52]

The tenant did not come to court in 848 cases. This represented 77% of the 1,097 cases observed. In 600 (70%) of these cases, the justice entered a default judgment against the tenant. The landlords dismissed the rest of the cases without any judgment being entered.

In 2005, the Institute reported that a significant factor in the eviction process was the speed at which the cases were decided. That assessment is still true 15 years later. The average eviction call had approximately 50 cases scheduled for a hearing or disposition in about one hour, but some eviction calls had as many as 150 cases scheduled for a hearing. The time allotted for these calls means that individual cases are set for approximately one minute each. For cases where the tenant did not appear, a default judgment was often entered quickly for the landlord.

VI. The Consolidation into Regional Justice Court Complexes Presents Barriers to Court Access

In 2005, most of the justice courts in Maricopa County were in stand-alone locations in the justice court precinct. Since that time, most Maricopa County Justice Courts have been consolidated into regional court complexes, often at a significant distance from the actual precincts. This consolidation means that more justice court locations are far away from the precincts they cover. For example, the regional court complex located in the City of Avondale, at the crossroads of North 105th Avenue and West Van Buren Street, houses the Maryvale, White Tank, Country Meadows, and Agua Fria Justice Courts. Although this regional court complex is in the Agua Fria precinct, it serves persons living far from the court complex, such as persons living in Buckeye, which is in the White Tank precinct approximately 23 miles away. Similarly,

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[51] CC2019-0136 . . EA. For this report, as we did in the original report in 2005, we deleted the last two digits of the case number.

[52] CC2019-0020 . . EA; CC2019-0041 . . EA.

the Northwest Regional Court Complex is in the City of Surprise and serves persons living in Anthem, more than 30 miles away.

The large distances between a justice court precinct and a regional court complex mean that tenants without a vehicle may have to take two or more busses to get to court. At least one regional court complex, the Northwest Regional Court Complex, does not have a bus stop nearby. The closest bus stop is 1.9 miles away, but this bus stop is for the "Surprise Express," which provides limited bus service for persons traveling to downtown Phoenix in the morning and returning to Surprise in the afternoon. For those tenants who have an 8:00 a.m. eviction hearing, it may be difficult, if not impossible, to arrive at court on time.

We looked at the tenant's address in the eviction case file for approximately 30 cases in order to plot routes to the appropriate court complexes. We used Google maps and then visited the Valley Metro website to determine whether public transportation was available.[53] The following is a sample of what we found if the tenant had to take public transportation to court.[54]

- One tenant would have had to travel 16.7 miles to attend their court hearing.[55] The tenant would have had to take 2 buses (with a combined 51 bus stops) and walk about 9 minutes to reach the complex.
- One tenant would have had to travel 11.8 miles to attend their court hearing.[56] The tenant would have had to take 2 buses (with a combined 53 bus stops) and walk about 4 minutes to reach the complex.
- One tenant would have had to travel 9.9 miles to attend their court hearing.[57] The tenant would have to take 3 buses (with a combined 55 bus stops) and walk for 11 minutes to reach the complex.

For some tenants who had to rely on public transportation, there were no bus routes from their address to the regional court complex. As an example, one tenant would have had to find private transportation, such as a cab or rideshare, to travel 20.9 miles to attend the court hearing.[58] Another tenant would have had to travel 16.5 miles by cab or rideshare to attend their court hearing.[59]

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53 Valley Metro, Trip Planner, https://www.valleymetro.org/trip-planner.

54 Throughout this report we use the pronoun "they" in place of the pronouns "he" or "she."

55 CC2018-2133 . . EA.

56 CC2018-2140 . . EA.

57 CC2018-2119 . . EA.

58 CC2018-2165 . . EA.

59 CC2018-2501 . . EA.

Taking public transportation also has its own set of uncertainties, from bad weather to accidents to mechanical breakdowns. In addition, the tenant may be a person with a disability or otherwise be unable to stand outside in excessive heat or in the rain waiting for public transportation.

Thus, a tenant who does not have access to a vehicle may face insurmountable barriers to get to the regional court complexes. It is possible, if not likely, that some tenants were unable to attend their eviction hearings on time, or at all, because of the distance they had to travel to the courts. If that is the case, they may well have had default judgments entered against them as a result. Indeed, the Institute observed several tenants who arrived for their hearings after their eviction cases had been called and default judgments had been entered against them.

A few justice courts are not located in regional court complexes but in places like a stand-alone court complex and a strip mall. The Institute found some of those locations difficult to find because of the lack of clear and conspicuous signs directing the public to the justice courts. The Institute had a particularly difficult time finding a justice court that is located in a strip mall near a freeway exit. There were only two small street signs to identify the location as a justice court. We did not see the posted street signs and we inadvertently drove past the courthouse several times. We were not the only ones. During our court observation, we heard the courtroom clerk report to the justice that a tenant had called to say that they would be late because they had driven past the court's entrance.[60]

The courts should take an active role in addressing these transportation barriers, particularly when the courts are not located in or near their precincts and when they are not on public transportation routes. In addition, justice courts should have conspicuous signage. If the courts do not address the difficulties tenants may have in reaching the court locations, it may prevent tenants from attending their eviction hearings.

VII. The Courts Provide More Eviction Related Information to the Public

In 2005, the Maricopa County Justice Courts provided no information to tenants. Instead, most information available on the justice courts' website was directed to the landlords. Therefore, the Institute recommended in our 2005 report that justice courts provide more information to tenants facing eviction, particularly information to help them understand and exercise their rights. We specifically recommended that the justice courts' website provide information on tenant defenses, as well as forms tenants could use to file answers, counterclaims, and motions. As explained below, both the Arizona Supreme Court website[61] and the Maricopa County Justice Courts' website[62] have

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60 CC2018-2372 . . EA.

61 Arizona Supreme Court, https://www.azcourts.gov/AZ-Supreme-Court (last visited Mar. 4, 2020).

62 Maricopa County Justice Courts, http://justicecourts.maricopa.gov (last visited Mar. 4, 2020).

since added significant materials concerning evictions for parties and the public. The information now provided to tenants online is a significant improvement from what was available 15 years ago.

A. Arizona Supreme Court Website

The Arizona Supreme Court website has a comprehensive self-service center with materials available in both English and Spanish.[63] The Supreme Court website has a section "Forms and Instructions" with a specific section on evictions.[64] That link contains form pleadings and notices parties may use, short videos on eviction-related topics and information sheets developed to help unrepresented parties navigate the court process.[65] The information sheets include the ARLTA, the eviction rules, the obligations of landlords, the obligations of tenants, the different types of notices, and what tenants should do if an eviction judgment is entered against them. These materials are due largely to the work of the Arizona Commission on Access to Justice.

B. Maricopa County Justice Courts Website

The Maricopa County Justice Courts' website provides links to the Arizona Supreme Court's self-service section of the website. The Maricopa County Justice Courts' website now provides significant information to the public about the eviction process, including materials on tenant obligations, landlord obligations, security deposits, tenant options if the landlord is not following the rental agreement or the ARLTA, landlord options if the tenant is not following the rental agreement or the ARLTA, what will happen in court, and how the tenant may appeal a judgment.[66]

On the website homepage, there is a link labeled "Forms/Fees"[67] that takes visitors to a page with several forms commonly used in justice court, including those used in eviction actions.[68] In addition the "Forms/Fees" link has a link to "How-To-Packets." The "How-To-Packets" include several forms commonly used in justice court,

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[63] Arizona Supreme Court Self-Service Center, https://www.azcourts.gov/selfservicecenter (last visited Mar. 4, 2020).

[64] Arizona Supreme Court Self-Service Center: Forms, https://www.azcourts.gov/selfservicecenter/Forms (last visited Mar. 4, 2020).

[65] *See, e.g.*, Arizona Supreme Court Self-Service Center: Eviction Actions, https://www.azcourts.gov/selfservicecenter/Landlord-Tenant-Disputes-Eviction-Actions (last visited Mar. 4, 2020).

[66] Maricopa County Justice Courts, Case Types: Eviction Actions, http://justicecourts.maricopa.gov/CaseTypes/eviction.aspx (last visited Mar. 4, 2020).

[67] Maricopa County Justice Courts, http://justicecourts.maricopa.gov (last visited Mar. 4, 2020).

[68] Maricopa County Justice Courts Forms, http://justicecourts.maricopa.gov/Forms/index.aspx (last visited Mar. 4, 2020).

as well as explanations for the forms' use and instructions on how to complete the forms.[69]

The Institute found errors in some of the forms and packets and those errors will be discussed in the relevant sections of this report.

C. The Lack of Information at the Courthouse

Although the information provided to tenants on the justice courts' website is much improved since 2005, the justice courts still only provide limited information to tenants at the courthouse. Of the courts we observed, only one justice court provided printed information for unrepresented tenants. That justice court provided information cards in English and Spanish to tenants at its clerk's window. The information cards directed tenants to AZCourtHelp.org, that provides information to the public on many legal issues, including evictions. AZCourtHelp.org is maintained by the Arizona Bar Foundation and contains a wealth of information on many legal topics including evictions. We did not see any other printed information provided to tenants at the courts we observed.

During our observations, two justice courts showed PowerPoint presentations in English set to run on a loop, in each courtroom before the start of the eviction call. Any PowerPoint presentations should at a minimum be translated into Spanish. Although these PowerPoint presentations addressed some common issues in eviction actions, the information was incomplete and, in many places, not encouraging to tenants. For example, in one courtroom, the PowerPoint presentation informed tenants that they would not be granted a continuance to gather more evidence. This information apparently only applied to tenants because, during the same court call, the court granted a continuance to an unprepared landlord attorney who did not have evidence with him in court to rebut a tenant's claim about the amount of rent owed.[70]

The justice courts also do not clearly explain that parties must be in the courtroom for the court call. Some justice courts had notices on the courtroom door instructing parties to check in with the clerk, but it appeared that the clerks did not always explain that the parties must enter the courtroom for the court call. In Justice Court D, for example, both a sign on the courtroom door and a placard next to the door instructed parties to "Please check in with the court clerk at window #4 before entering the courtroom." The Institute observed several people sitting outside the courtroom before the court call was to begin. Concerned they might miss hearing their case being called, we informed them that they should enter the courtroom if they were tenants in an eviction case in Justice Court D. They thanked us and said the clerk at the window had instructed them to sit outside the courtroom.

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[69] Maricopa County Justice Courts How-to-Packets, http://justicecourts.maricopa.gov/HowTo/index.aspx (last visited Mar. 4, 2020).

[70] CC2019-0035 . . EA.

Some courts need better directional information for unrepresented parties regardless of whether they are there for an eviction case. While at Justice Court F, the Institute observed several tenants walking from courtroom to courtroom looking at notices posted on the doors and peering inside other courtrooms before they eventually found Justice Court F. Identifying each courtroom with a prominent sign and posting the cases on the call for that day on each door would help parties unfamiliar with the courthouse to find the right courtroom.

Justice courts also should make printed versions of the materials on the Supreme Court website available to tenants when they come to court. One-page flyers also could be posted. Printed materials could be attached to the courtroom doors or left at the clerk's office. These materials could include the obligations of landlords and tenants under the ARLTA and the eviction rules; a description of how the eviction hearings work and a list of the consequences of an eviction judgment. The materials should be in Spanish. As discussed in Section X below, we also recommend that when a judgment is entered against a tenant, the justices inform the tenant of the specific terms of that judgment, including whether the tenant must move out and when, and the time period the tenant has to file an appeal. We also recommend that each justice give a handout on the right to appeal an eviction judgment, and the applicable time period, to each tenant who appears in court.

VIII. Practices Unique to Eviction Cases

In general, justice court is less formal than superior court or federal court. Most of the landlord attorneys are from a small group of firms, and those firms handle the overwhelming majority of cases. Typically, before the call, landlord attorneys call out the names of their cases to see if any tenants are present and want to speak with the attorney. The parties move freely in and out of the courtroom even after the call has begun.

Before each eviction court call begins, the landlord attorneys typically already have gathered inside the courtroom and are seated at the tables located in the middle of the room between the bench at the front of the room where the justice presides and the pews at the back of the room where the tenants are seated. Once the court call has begun, the justice hears all cases belonging to each landlord attorney in turn. Sometimes the justice asks the landlord attorneys who would like to go first. Other times, the justice's clerk has already determined the order in which the landlord attorneys' cases will be heard. Unrepresented landlords' cases nearly always are called last.

A number of practices are unique to eviction cases. One practice is that although a specific statutory provision requires verified complaints to be signed under oath, the justices regularly ignore this requirement. Another practice is the justices routinely accept "standard avowals" from landlord attorneys, that typically would not be accepted in other types of civil cases. A third practice is that the justices generally do not expect or require landlord attorneys to have their witnesses or documentary evidence with

them in court. Rather the justices continue the case at the landlord attorney's request when the tenant appears and asserts a defense that the landlord attorney is unprepared to rebut. Notably, each of these practices contributes to a process that operates to the benefit of landlord attorneys and their clients and to the detriment of tenants.

A. The Justices Do Not Require Verified Complaints Under Oath by Landlords

Although A.R.S. § 12-1175(A) requires an eviction complaint to be verified under oath, landlord complaints regularly fail to comply with this requirement.[71] Represented landlords often use an inadequate verification. When the landlord is represented by an attorney, the attorney typically signs the complaint, even though the attorney has no personal or first-hand knowledge of the truth of the allegations made by the landlord in the complaint. Instead, the complaint usually includes the following or similar statement: "The undersigned attorney does hereby verify that the attorney believes the assertions in this complaint to be true on the basis of a reasonably diligent inquiry." The inclusion of such a statement is insufficient to satisfy the requirements of a verified complaint because it is not made under oath and it does not reflect the landlord attorney's own knowledge of the accuracy of the facts.[72] Moreover, unrepresented landlords typically use a form complaint on the Maricopa County Justice Courts website that includes the following statement: "By signing this complaint, I verify that the assertions are true and correct to the best of my knowledge and belief and that they are based on a reasonably diligent inquiry."[73] This form complaint does not require them to verify their statements under oath and the complaints, therefore, are insufficient under A.R.S. § 12-1175(A).

As explained below, although eviction complaints are not verified under oath, justices nevertheless accept the veracity of the claims through use of the second unique practice, the "standard avowals." Thus, one of our recommendations is that the justices require plaintiffs verify their complaints under oath.

B. The Justices Accept "Standard Avowals" from Landlord Attorneys

The lack of verified complaints under oath is further exacerbated by the use of "standard avowals." When one of the landlord attorneys approaches the bench for their cases, the attorney typically states their name and tells the justice they are making what they call "standard avowals." During the Institute's observations, landlord attorneys

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[71] A.R.S. § 12-1175(A) applies to special detainer actions pursuant to A.R.S. § 33-1377(A).

[72] Rule 5(b)(9) provides that the complaint shall "Be verified. This means that the attorney signing the complaint shall verify that the attorney believes the assertions in the complaint to be true on the basis of a reasonably diligent inquiry." This provision is in conflict with the statute. Significantly, this rule does not apply to the party, although many unrepresented landlords use the Rule 5(b)(9) verification as well.

[73] *See* CC2018-2043 . . EA.

routinely approached the bench, stated their names, and then said to the justice, "I make the standard avowals." Few of the landlord attorneys who made the "standard avowals" stated what they were avowing to, and none of the justices asked for such a statement. We observed one attorney say, "All the allegations are accurate and all the rules have been complied with."[74] However, even that minimal level of detail was rare.

In one case, the landlord attorney acknowledged a lack of familiarity with the eviction hearing process, and the judge pro tempore took several minutes to describe what corrections the attorney should make to their form of judgment in the future.[75] The judge pro tempore then asked another landlord attorney who appears frequently on evictions to approach the bench and said to that attorney, "[A]pparently, [the other attorney] is doing this for the first time. What are the avowals that he is required to make? Would you tell him?" The regularly appearing attorney explained: "There's some rules of procedure for eviction actions . . . So, the avowals are that . . . We usually say, 'I make the standard avowal', which covers that you've read the complaint and it's accurate to the best of your knowledge and the other allegations contained in the complaint are true . . . Something to that effect is usually sufficient." The judge pro tempore then turned to the newer attorney and asked, "Do you make the standard avowals on this matter?" When that attorney said "yes," a judgment for possession and $4,487, which included $500 in attorney's fees, was granted to the landlord.

As landlord complaints typically are not verified under oath and the landlord attorneys who sign the complaints are not claiming to have any personal or first-hand knowledge of the claims in the complaint, it is unclear what purpose the standard avowals serve. Certainly, the standard avowals cannot replace the specific determinations the justices are required to make on a case-by-case basis by the eviction rules. These findings include those in Rule 13(a) that service of the complaint was proper, a proper notice was served that allowed for any applicable opportunity to cure, whether a partial payment was accepted and whether the facts as alleged are sufficient to show that the landlord has a superior right to possession of the rental. Moreover, in the cases we observed, the justices allowed the landlord attorneys to make their "standard avowals" for all of their cases at one time. Thus, rather than requiring landlord attorneys to show at each individual hearing that the tenants facing eviction did, in fact, materially breach their rental agreements and were subsequently served with proper notice and provided adequate opportunity to cure or remedy the breach, the justices permitted the landlord attorneys to merely "avow" in advance that, in each of the cases being heard that day, their clients (the landlords and their property managers) did everything in accordance with the law.

We also observed the courts stretch the avowals even further. The landlord attorneys "stand in" for each other. When a landlord attorney stood in to handle another landlord attorney's cases, the justices allowed the avowals of the "stand in" attorney to

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[74] Justice Court H. *See, e.g.,* CC 2018-2340 . . EA.

[75] CC2018-2517 . . EA.

apply to the second attorney's cases.[76] The Institute observed one justice accept "counsel's previous avowals" from an attorney who was making their first appearance in front of the justice that day.[77] It was never stated on the record when the "previous avowals" were made.

In several courtrooms, the justices affirmatively referred to the standard avowals and apparently relied upon those avowals when awarding judgment to the landlord. As an example, in Justice Courts B1 and B2, after calling a case and observing that the tenant was not present in the courtroom, the judge pro tempore would say, "Let the record reflect that the defendant is not present. Avowals are noted. Judgment for the plaintiff." In Justice Court J, the justice would call the case name and number and say, "Pursuant to counsel's previous avowals, the defendant(s) not appearing, I find a factual basis and award judgment to the plaintiff," and then sign the judgment. Despite being required by Rule 13(a) to independently determine whether the landlord has complied with the eviction rules and the ARLTA and has a superior right of possession, the justices apparently simply took the landlord attorneys' word for it.

The use of "avowals" allows errors to be frequently overlooked, resulting in tenants being evicted when they should not be. The "standard avowals" appear to serve no lawful purpose. They are not a proper substitute for the specific determinations justices are required to make. We know of no other type of case where such a practice is allowed. Thus, one of our recommendations is that the justices immediately cease the practice of permitting landlord attorneys to make "standard avowals" in eviction cases.

C. Landlord Attorneys Are Not Expected to Have Their Witnesses and Documentary Evidence in Court

The third practice unique to eviction cases is that landlord attorneys are not expected to come to court prepared for a trial. Eviction Rule 11(c) provides that the trial should be held on the date of the initial hearing "whenever possible" but continuances may be granted for good cause shown or to "accommodate the demands of the court's calendar."

Rule 18(d) defines "good cause" as:

> [A] stated, substantial reason, the accommodation of which will serve the interests of fairness and justice, without also causing a significant delay or harm to the other party. Good cause may include relieving a person from the consequences of a mistake or inadvertence, but not from simple neglect.

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[76] *See*, *e.g.*, CC2018-2001 . . EA.

[77] CC2018-2371 . . EA.

In addition, Rule 11(c) provides that unless the parties agree, continuances are limited to no more than three court days in justice courts.

Despite these rules, we observed justice courts regularly grant continuances solely because the landlord attorney was unprepared. In fact, we observed courts grant continuances even when a landlord requested an immediate eviction based on a material and irreparable breach of the lease because the landlord attorney had not brought the necessary witnesses to court.[78] In one example, the landlord attorney requested an immediate termination of the tenancy, and the tenant came to court to contest the matter.[79] The landlord attorney did not have the witnesses in court and requested a one-week continuance to prepare for trial but the tenant was ready to proceed to trial that day and objected to the continuance. The justice nevertheless granted the landlord attorney's request and told the tenant "If you're contesting it, then we can't do the trial today. Both parties need time to do it." The justice did not follow Rule 18's good cause standard and ignored the requirement in Rule 11(c) that there be "[n]o continuance of more than three court days in justice courts…unless both parties are in agreement."

The justice court practice of providing continuances to unprepared landlord attorneys also conflicts with the information provided to tenants. Rule 5(a)(5) requires a landlord to serve a Residential Eviction Information Sheet, Appendix A, with the complaint and summons. With regard to continuances, the information sheet states:

> Either party may ask that the court date be delayed. The court will agree only if there is a very good reason . . . **There is no assurance a delay will be granted and parties should come to court prepared for trial and bring necessary witnesses and documents.** (emphasis added).

As explained below, the justices have different expectations for when landlord attorneys and unrepresented tenants should bring witnesses and documentary evidence to court to proceed with a hearing.

1. The Justices Overwhelmingly Granted Landlord Attorneys' Requests for Continuances

The court practice of not expecting the landlord attorneys to be prepared has morphed into another common practice in the justice courts: unprepared landlord attorneys suffer no consequences for being unprepared because the justices grant them a continuance. In our 2005 report, we found that the likelihood of a justice granting continuances largely depended on who made the request. That practice continues today. During our current study, the Institute observed that the justices typically continued the case as a matter of course if the landlord attorney did not have their

[78] A.R.S. § 33-1377(E).

[79] CC2019-0079 . . EA.

witnesses or documentary evidence in court, even if the tenant appeared and was ready for a hearing.[80] The landlord attorneys and one unrepresented landlord requested a continuance in 17 cases we observed and only one request was denied, resulting in an approval rate of 94%. The landlord attorneys' continuances were granted even if the tenants were prepared to present their defense(s) and had taken the time and expense to get to the courthouse that day to dispute the landlords' allegations.[81] In the case where the request was denied, the justice entered judgment against the tenant, even though the landlord attorney did not even have their file in court.[82]

Often the justices granted landlord attorneys' requests without consideration for the tenant's availability.[83] For example, in a nonpayment of rent case where the tenant said they had paid their rent, the justice granted the landlord attorney's request for a continuance to allow the attorney to contact the landlord to confirm the receipt and amount of the payment.[84] The justice suggested, "Friday?" The attorney, responded, "Friday's a bad day for me." The justice then asked, "Monday afternoon?" The attorney replied, "Can I check my calendar real quick?" The justice said, "Certainly." The attorney then stated, "Sure, Your Honor. We can do that." The justice never asked what day and time would work best for the tenant.

In other cases, the justice granted the continuance despite the tenant's objections to the proposed continuance. For example, in one case involving nonpayment of rent, the justice granted the landlord attorney's request for a continuance and was about to re-set the case for a date later that week.[85] The tenant spoke up and said they did not know if they could take another day off from work that week. Despite the tenant's concerns, the justice set the hearing for later that week, as originally planned. In another case, the landlord claimed the tenant breached their lease by failing to maintain the property's landscaping.[86] The tenant disputed these allegations and wanted to proceed that day, but the landlord attorney was not ready to go forward. As the justice started to explain to the tenant that the case would be reset for another day, the tenant asked if the re-setting could be for after 4 p.m. so they "can make it to work." The justice explained that they could not do that because they have "these settings for the morning."

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80 *See* CC2018-2332 . . EA; CC2018-2161 . . EA; CC2018-2161 . . EA; CC2018-2140 . . EA; CC2018-2090 . . EA; CC2018-2372 . . EA; CC2018-2329 . . EA; CC2018-2345 . . EA; CC2018-2641 . . EA; CC2019-0035 . . EA; CC2019-0376 . . EA.

81 *See* CC2019-0079 . . EA; CC2018-2332 . . EA.

82 CC2019-0568 . . EA.

83 *See* CC2018-2642 . . EA; CC2018-2370 . . EA; CC2018-2332 . . EA; CC2018-2369 . . EA; CC2018-2161 . . EA.

84 CC2018-2369 . . EA.

85 CC2018-2370 . . EA.

86 CC2018-2332 . . EA.

The Institute observed only one justice consult with the tenant about their schedule before resetting the case to another day, and in that case the landlord attorney did not object. The landlord had sent the tenant a ten-day notice to repair items in the property that were missing or broken and the tenant explained at the hearing that the landlord was responsible for many outstanding repairs at the property.[87] After listening to the tenant's testimony, the justice decided to continue the case. The tenant asked if the hearing could be set out at least two weeks from the initial hearing because they could not afford to take too much time off from work. The landlord attorney did not object to this request because the tenant had already moved out, and the justice reset the hearing for two weeks later.

By regularly providing continuances to unprepared landlord attorneys, courts often unwittingly harm the tenants. The tenant frequently has to travel a long distance to come to court and must take time off from work. Moreover, the landlord attorneys may request additional attorneys' fees resulting from those continuances, which tenants will owe if judgment is ultimately entered against them. Yet, this practice is commonplace.

2. The Justices Granted Tenants' Requests for Continuances Less Often

In marked contrast to the justices' response to the landlord attorneys' requests for continuances, the justices granted a much smaller percentage of tenants' requests for continuances. The Institute observed eight tenants request continuances, three of which were denied. The justices, thus, only granted 64% of the tenants' requests.[88] While this is a small number of requests, it nevertheless reveals that the justices expect tenants to be more prepared than landlord attorneys. This process is inherently unfair to tenants. When the landlord attorney appears at the hearing prepared to present their case and the tenant is not prepared, the tenant's request for a continuance may not be granted. Yet, the justices routinely grant requests for continuances by unprepared landlord attorneys.

Worse, the justices entered a judgment against the tenant in every case in which the Institute observed the court deny a tenant's request for a continuance.[89] In one case involving unrepresented parties, the tenant stated they did not pay rent because the tenant had notified the landlord about mold but the landlord failed to fix the problem.[90] The tenant further explained they had scheduled a service person to inspect the home for mold and needed a continuance for that inspection. The justice denied the

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87 CC2018-2090 . . EA.

88 *See* CC2018-2043 . . EA; CC2018-2216 . . EA; CC2018-2324 . . EA; CC2018-1875 . . EA; CC2018-2331 . . EA; CC2018-2358 . . EA; CC2019-0556 . . EA; CC2019-0568 . . EA.

89 *See* CC2018-2043 . . EA; CC2018-2216 . . EA; CC2018-2324 . . EA.

90 CC2018-2043 . . EA.

tenant's request and told the tenant they could not continue the case for the inspection and then awarded the landlord possession of the property and a monetary judgment.

In another case, the tenant asked for a continuance to seek legal counsel.[91] The tenant's apartment did not have air conditioning, and the tenant wanted to speak to an attorney about how that would affect the eviction. The justice denied the continuance and told the tenant "You haven't at this point offered me any defense for the [month's] rent." The justice signed a monetary judgment and a judgment for possession for the landlord.[92]

3. Even When the Justices Continued Cases on Their Own, the Continuances Primarily Benefited Landlords

The Institute also observed justices continue cases on their own in 13 cases. Of those 13 cases, nine involved continuances that benefited a landlord, and four involved continuances that benefited a tenant.[93]

In conclusion, the justice courts grant continuances in a way that consistently favors landlords. There is no good reason for this double standard. Unless the justices require landlord attorneys to be prepared to present their witnesses and evidence at the first hearing date, the justices should not hold tenants to a different standard.

IX. The Justices Failed to Require Landlords to Meet Their Statutory Obligations, Procedural Obligations and Burdens of Proof

The burden of proof in an eviction action is on the landlord. The landlord must establish their superior right to possession of the rental unit and to monetary relief. To do this, as in any civil court case, the landlord must present evidence that they are entitled to a judgment in their favor. The landlord must establish the necessary elements of an eviction case before the tenant must present a defense. Yet our observations indicate that the justices rarely require the landlords to present evidence and carry their burden.

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91 CC2018-2324 . . EA.

92 In one case, the tenant's adult child appeared in court and stated their father was out of town and wanted to appear by telephone or get a continuance. CC2018-2216 . . EA. The landlord's attorney objected to the tenant's adult child appearing in the case, to the tenant's telephonic appearance and to a continuance. The judge pro tempore denied the request for the tenant to appear by telephone and the request for a continuance and signed a default judgment for the landlord, awarding possession of the property and $1,680.66 in rent and fees.

93 *See* CC2018-2090 . . EA; CC2018-2161 . . EA; CC2018-2332 . . EA; CC2018-2372 . . EA; CC2018-2329 . . EA; CC2018-2345 . . EA; CC2018-2355 . . EA; CC2018-2372 . . EA; CC2018-2627 . . EA; CC2018-2641 . . EA; CC2019-0035 . . EA; CC2019-0376 . . EA; CC2019-0568 . . EA.

To begin with, landlords have specific procedural obligations in eviction actions. Rule 13(a) of the eviction rules requires the justices to determine whether the landlord complied with ARLTA and the other applicable rules governing the eviction process. The requirements in Rule 13(a) apply regardless of whether the tenant appears in court, regardless of whether the tenant disputes or admits to the landlord's allegations, and regardless of whether the matter is concluded at the initial hearing or after a subsequent trial. Indeed, Rule 13(a) requires that *before* a judgment is entered, the justice must make specific findings that:

- The summons and complaint included all the information and the notice(s) required by Rule 5 and they were timely and properly served. (Rule 13(a)(1)).
- The tenant received a proper notice of termination if one was necessary, the notice complied with the ARLTA, the notice was properly served and the tenant was afforded any applicable opportunity to cure. "If the notice does not comply with the statute or is not properly served, the court shall dismiss the action." (Rule 13(a)(2)).
- The facts alleged, if proven, are sufficient to show that the landlord has a superior right of possession due to a material breach of the rental agreement by the tenant or for any other basis in law. (Rule 13(a)(3)).
- If it appears the landlord accepted a partial payment in a case claiming nonpayment of rent, whether the landlord accepted the partial payment, and if so, whether the landlord has a waiver signed by the tenant. "If the landlord is unable to prove that the waiver was signed, the court shall dismiss the action." (Rule 13(a)(4)).
- If the rental unit is subsidized, determine whether any unpaid rent is the tenant's portion to pay. (Rule 13(a)(5)).

In addition, when presented with a stipulated judgment, Rule 13(b)(4) requires the justices to make the findings in Rules 13(a)(1) and (2), above, in addition to the requirements in Rule 13 (b)(4), which we discuss below in Section X.

Despite these many requirements, we observed only two justices refer on the record to the findings required by Rule 13(a).[94] When we reviewed the case files, we found numerous cases where the documents in the file showed that the landlords had not carried their burden under Rule 13(a). We found that the justices' failure to make the required findings led to tenants being evicted in cases where the documents in the file or the parties' testimony during the hearing showed that the landlord had not met their burden of proof or fulfilled their obligations under ARLTA and the rules. Despite these deficiencies in the cases, the justices awarded the landlord a judgment for possession of the rental unit and monetary relief.

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[94] Justice Courts D and N.

A. The Requirements for the Summons and Complaint

If the landlord provided the tenant with written notice as required by A.R.S. § 33-1368(A) or (B) and the landlord claims the tenant has not cured the breach of the rental agreement (if applicable) by the time the notice period ends, then the landlord may file an eviction complaint with the justice court. After the landlord files the eviction complaint with the court, the landlord must serve a conformed (clerk-stamped) copy of the complaint, along with a summons, on the tenant. The summons tells the tenant when and where the hearing on the landlord's complaint will take place. Including a copy of the complaint ensures that the tenant knows the landlord's allegations. It also allows the tenant to determine whether they will deny the allegations, file a formal answer, and/or appear at the hearing to assert a defense and/or counterclaim.

Rule 5 of the eviction rules sets out the requirements for the content of the summons and the complaint as well as the manner in which the two documents must be served on the tenant. Rule 13(a)(1) requires the justices to determine "whether the summons and complaint included all the information and notice(s) required under Rule 5." If the summons or the complaint do not comply with Rule 5, then the case should be dismissed.[95]

The Institute reviewed 240 case files and found that the summons and method of service used by most landlords may contribute to tenants not coming to court, even where neither the summons nor the complaint violated the law. We, therefore, discuss them in this report.

1. The Maricopa County Justice Courts Form Summons Contains Incorrect Information

As explained in Section VII(A), the Arizona Supreme Court website has form pleadings and several other documents that landlords and tenants can use, including a summons. The Supreme Court's form summons meets the requirements outlined in Rule 5(a), and contains additional information that may be helpful to a tenant, such as the following:

> 3. If you do not agree with the claims in the complaint, you ***may*** also file a written answer admitting or denying some or all of the claims and pay the answer fee….
>
> 5. ***If you cannot afford the filing fee***, you may also apply for a deferral or waiver of the filing fee at the court.[96] (emphasis added).

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[95] *See* Rule 13(a)(1).

[96] Arizona Supreme Court Self-Service Center, Eviction Actions Forms and Notices, https://www.azcourts.gov/selfservicecenter/Landlord-Tenant-Disputes-Eviction-Actions/Forms-and-Notices.

The form summons available on the Maricopa County Justice Courts website has two significant differences. That form summons has the following wording:

> If you do not agree with the allegations in the complaint, you ***should*** file a written answer admitting or denying some or all of the allegations and **pay the required answer fee. *In cases of hardship***, you may apply for a deferral or waiver of the answer fee.[97] (emphasis added).

First, the form instructs tenants that they *should* file a written answer, not that they *may* file a written answer. Neither the rules nor the ARLTA require tenants to file written answers. In fact, Rule 11(b)(2) expressly states that "the defendant shall not be required to answer until the initial appearance…if the trial is not continued, the defendant may file an oral answer on the record."

Second, the form tells tenants that they *may only* apply for a fee deferral or waiver in cases of some undefined "hardship." In contrast, the state law establishes that a court may grant a fee waiver or deferral "for good cause shown," such as the party's income and receipt of public benefits.[98] In addition, the Arizona Supreme Court has issued administrative orders and directives that courts must grant a fee deferral or waiver when the litigant receives food stamps or Temporary Assistance for Needy Families; the litigant is represented by certain non-profit legal services programs; the litigant's income is less than 150% of the federal poverty level; or the litigant shows that their income is insufficient or barely sufficient to meet their basic needs.[99]

Every summons we reviewed was either the Maricopa County Justice Courts form summons or the landlord attorneys' forms that included the County's form summons' language. The summonses' wording may well lower tenant attendance at eviction hearings because the tenant may think they need to file an answer and pay the filing fee in order to present a defense.

We recommend that the Maricopa County Justice Court revise its form summons to provide the information included in the Arizona Supreme Court's form. Until that form is revised, we recommend that the justice courts encourage parties to use the Supreme Court's form summons.

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[97] Maricopa County Justice Courts, Forms, Eviction Action Summons and Complaint, http://justicecourts.maricopa.gov/Forms/8150-212-EA-Summons-Complaint pdf (last visited Mar. 4, 2020).

[98] A.R.S. § 12-302(A).

[99] Arizona Code of Judicial Administration, Part 5, Chapter 2, Section 5-206, Fee Deferrals and Waivers.

2. The Increased Use of the Post and Mail Method of Service of the Summons and Complaint

Rule 5(e) sets out the requirements for service of the complaint and summons:

> Service of the summons and complaint shall be accomplished by either personal service or post and mail service for a special detainer action…Return of service and proof thereof shall be made by affidavit.

Generally, landlords, like other parties, must reasonably attempt personal service.[100] In the eviction context, landlords must attempt personal service at least once before post and mail may be used as a method of service. Post and mail means the summons is "conspicuously posted" on the main door to the tenant's home and on the same day is sent by certified mail, return receipt requested.[101] Service by post and mail is considered effective three days after mailing.[102]

Landlords are using post and mail service more frequently now than at the time of our 2005 report. In 2005, 57% of the affidavits of service indicated the summons and complaint were served through post and mail. For the current study, 163 out of 240 (68%) of the summonses and complaints were served through post and mail. Six more case files contained *no* proof of service at all.[103] Two of those cases were dismissed at the first court hearing,[104] one was continued,[105] and one was transferred to superior court.[106] Disturbingly, two of the cases with no proof of service resulted in judgments for the landlord.[107] Under Rule 13(a), these two judgments were improper because of the lack of proof of service.

The frequency of post and mail service is problematic. No other type of civil court action allows service by post and mail unless the serving party obtains a court order allowing an alternative method of service, by showing that personal service is "impracticable."[108] Moreover, eviction actions are a poor fit for post and mail service. In eviction actions, there is little time between the service of the pleadings and the court

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100 *See* Arizona Rules of Civil Procedure, 4.1(k).

101 A.R.S. § 33-1377(B).

102 *Id*.

103 CC2018-1947 . . EA; CC2018-2338 . . EA; CC2018-2369 . . EA; CC2019-0020 . . EA; CC2019-0359 . . EA; CC2019-0376 . . EA.

104 CC2018-2338 . . EA; CC2019-0359 . . EA.

105 CC2018-2369 . . EA.

106 CC2019-0020 . . EA.

107 CC2018-1947 . . EA; CC2019-0376 . . EA.

108 Arizona Rules of Civil Procedure, 4.1(k).

date. Where the summons and complaint are served by mail, the tenants will have even less time to prepare an answer, seek legal counsel and make arrangements to be able to appear at the hearing. Tenants may not pick up their mail quickly or even receive their mail regularly. Many, particularly those living in rural parts of Maricopa County, also experience problems receiving their mail. Several tenants in the eviction cases the Institute observed stated on the record that they had trouble receiving mail at their addresses.[109]

The Institute is concerned that the frequency of post and mail service may contribute to the high default rate in eviction cases. We recommend that the courts encourage the use of personal service whenever possible. The court should dismiss cases without proper proof of service in the file.

3. Landlords Prematurely Filed Eviction Actions

Landlords also must make sure their eviction cases are filed only after the notice period has expired. The landlord may only file an eviction action after the landlord provides the tenant with a properly served notice and the requisite notice period has passed.[110] If the eviction case is filed before the notice period has expired, the eviction case should be dismissed.[111]

The justices must determine whether the landlord complied with these requirements but the notice and filing requirements for eviction cases depend on the type of breach. Thus, courts must determine both the statutory time period of the notice and the manner of service in determining whether proper notice was served, and the required time period had expired as explained in Section II above.

Rule 3 explains how to calculate the notice time period for eviction cases. The time period begins the day after the tenant is personally served. Time is measured in calendar days and the day the notice is served is not included in the calculation. The last day of the notice period cannot end on a Saturday, Sunday or legal holiday. If the notice would end on one of those days, the last day of the notice will be the next day that is not a Saturday, Sunday or a legal holiday. For example, if a tenant is served a five-day notice for a nonpayment of rent on February 20, the five-day notice period begins on February 21. In this example, assuming the last day does not fall on a weekend or holiday, the five days end on February 25 and the complaint may be filed on February 26.

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109 *See, e.g.*, CC2019-0043 . . EA; CC2019-0136 . . EA.

110 A.R.S. § 33-1368 (A)(2) and (B).

111 Rule 13(a)(2) (whether the landlord gave the tenant the applicable time and opportunity to cure). *See* A.R.S. § 33-1368(B) (file complaint after opportunity to cure).

If the notice is served by certified mail, the time period starts when the tenant actually receives the notice by mail, or five days after the notice is mailed, whichever occurs first.[112] Thus, if there is no proof the tenant received the notice, such as a signed return receipt, the landlord cannot act on a five-day notice until ten days have passed. For example, if a tenant is sent a five-day notice on March 10, and there is no signed return receipt requested in the file, then the tenant has ten days from the date of mailing in which to pay the rent owed. That time period would end on March 20, and the complaint may be filed beginning on March 21.

For eviction cases where the landlord has chosen not to renew a periodic tenancy (a lease agreement that has no set end date), the landlord must provide the tenant with a notice to vacate the property within a set time, depending on the length of the periodic tenancy (i.e., 30 days for a month-to-month lease or seven days for a week-to-week lease). In addition to giving the required number of days, for a month-to-month lease, the 30-days to vacate begins at the next billing cycle of the month-to-month lease. For example, if a month-to-month tenant paid rent on the first of the month and a notice was served in the middle of May, the 30 days to move will not end until the last day of the of June.[113]

The premature filing of the complaint harms the tenant by cutting off their opportunity to pay any rent owed, to cure any other breach of the rental agreement or to move out. We saw this issue in a case where the landlord provided a tenant who had a month-to-month tenancy, with a 30-day notice to vacate.[114] The notice did not indicate how it was served, but it was dated July 22, and the rent was due on the first of the month. The complaint was filed on August 22. Although the landlord provided the tenant with 30 days to move, it was the wrong 30 days because the tenant paid rent on the first of each month. Thus, the 30 days to move should have begun on August 1 and the tenant should have been allowed to remain in the rental through August 30. The first day that the landlord could file the eviction was on September 1. The tenant in this case did not appear in court, and the justice signed a default judgment without asking the landlord attorney any questions about the notice or making a finding that the landlord had provided sufficient notice.

The case illustrated above is one example, but we found eight more in our observations,[115] and we highlight three of them below.

- In a nonpayment of rent case involving unrepresented parties where the tenant raised a habitability defense because the apartment had mold, the

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112 A.R.S. § 33-1313(B).

113 A.R.S. § 33-1375(A) and (B).

114 CC2018-1704 . . EA.

115 CC2018-2043 . . EA; CC2018-2331 . . EA; CC2019-0398 . . EA; CC2018-2329 . . EA; CC2019-0136 . . EA; CC2019-0399 . . EA; CC2019-0399 . . EA; CC2018-2077 . . EA.

justice awarded the landlord possession of the property and a monetary judgment.[116] The case file showed the case had been filed just seven days after the five-day notice was mailed to the tenant. Because there was no evidence that the tenant had received the notice, the case should not have been filed until ten days had passed.

This case is noteworthy because at the first hearing, the justice observed the landlord had prematurely filed the eviction case, and the justice continued the case for that reason. But a premature filing is a *defect* in the filing of the complaint that cannot be cured by a continuance.[117] Therefore, the case should have been dismissed at the first hearing.

- In another case, the notice was sent through certified mail on the 8th of the month and there was no evidence of receipt. Thus, the first day the case could be filed was on the 19th of the month. Instead, the summons and complaint were filed seven days after the notice was mailed, on the 15th of the month. The case should have been dismissed.[118]
- In a nonpayment of rent case, the seven-day notice was dated the 15th of the month, and the complaint was filed on the 22nd of the month. The notice did not indicate how it was served, but even if it was hand-delivered, the earliest the case could have been filed was on the 23rd of the month.[119] This case concerned a mobile homeowner who rented space in a mobile home park and should have been dismissed.[120]

The Institute observed one case where a landlord attorney noticed a case was filed prematurely and voluntarily dismissed it. In that case, the landlord personally served the tenant a five-day notice affecting health and safety on the 8th of the month.[121] The first day the landlord could file a complaint would have been the 14th of the month. The complaint was filed on the 11th of the month. At the court hearing, the landlord's attorney told the judge pro tempore they had filed the action prematurely and the judge pro tempore dismissed the case.

Premature filings of the complaint and summons continue to occur. The justices should review these files to ensure that cases are dismissed when they are prematurely filed.

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116 CC2018-2043 . . EA.

117 *See* A.R.S. §33-1368(B); Rule 13(a)(2).

118 CC2018-2331 . . EA.

119 CC2019-0398 . . EA.

120 A.R.S. § 33-1476(E).

121 CC2018-2517 . . EA.

4. Landlords Failed to Plead Adequate Facts in the Complaint

Rule 5(d)(2) requires complaints based on material noncompliance with the rental agreement other than nonpayment of rent to "state the reason for the termination of the tenancy with specific facts, including the date, place and circumstances of the reason for termination, so the tenant has an opportunity to prepare a defense." The Institute reviewed eviction complaints that failed to satisfy this pleading requirement. As an example, in two cases, the landlord's complaint alleged only that the tenant had "committed a material noncompliance in violation of A.R.S. § 33-1368(A)."[122] Despite the lack of the required specificity, the justices did not dismiss either complaint and the hearing still took place.

B. Landlords Relied on Defective Notices

As discussed above, Rule 13(a)(2) requires the justices to determine that each tenant received proper notice. However, the Institute found that the justices rarely required landlords to provide evidence that the notice was proper. We also found that many notices served in eviction cases are deficient. The ARLTA requires notices to specify the acts and omissions constituting the alleged material breach of the lease, the time the tenant has to remedy the material breach, and the date of the termination of the lease agreement.[123] Yet justices signed judgments in the favor of the landlord even when tenants brought defective notices to the justices' attention.

1. Landlords Relied on Notices with Improper or No Service

The Institute observed five cases where tenants stated in court that they did not receive notice from the landlord.[124] In one particular egregious case, a justice entered judgment for the landlord despite the landlord conceding that they failed to give proper notice to the tenant.[125] Both parties were unrepresented and when the justice asked the tenant if they received a five-day notice, the tenant appeared confused. When the justice showed the notice in the court's file to the tenant, the tenant said they had not received it. The justice then showed the landlord the notice and that it stated it was hand-delivered. The landlord conceded they had left the "the paper on the gate." Even though the landlord acknowledged that they had never personally served the tenant with the notice or sent it by certified mail as required by the law, the justice entered a judgment for possession of the property in the landlord's favor.

We also observed many cases where although nothing was said on the record regarding the notice, our case file review revealed problems with the notice. In 25

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122 CC2018-2090 . . EA; CC2018-2332 . . EA.

123 A.R.S. § 33-1368(A) and (B).

124 *See*, *e.g.*, CC2018-1964 . . EA; CC2018-2000 . . EA; CC2018-2222 . . EA; CC2018-2620 . . EA; CC2019-0043 . . EA.

125 CC2018-1964 . . EA.

cases, the notices did not indicate at least one of the following: how the notice was served, when the notice was served or who served the notice.[126] As an example, one case file included a five-day notice that had blank spaces for how the notice was served, the date of service, the landlord's agent's name and the tenant's name.[127] Despite these obvious deficiencies, the justice entered judgment for the landlord. Similarly, justices entered a judgment in five cases where the case file did not contain any notice.[128]

2. Landlords Relied on Notices with Improper or Inadequate Language

The Institute also reviewed the language contained in notices and found some notices had improper information. For example, in the case file for a nonpayment of rent case, the notice incorrectly instructed the tenant to pay the amount of rent owed or move out within 24 hours: "You are required to either pay the total amount owing, as indicated below, or move out within TWENTY FOUR (24) hours after the service of this Notice."[129] (capitalization in original). Although the case should have been dismissed, judgment was entered for the landlord.

In another case the notice stated, "Should management elect to file a special detainer against you, **the court will render a judgment terminating your rental agreement** . . . ."[130] (emphasis added). Other notices we reviewed contained language informing tenants that if legal action was taken, it was "likely" that the court would enter judgment against the tenant for the rent owed and for a whole host of additional fees and costs.[131] Notices like this are misleading. They do not account for the landlords' burden of proof in eviction cases or the fact that tenants may present defenses in court. Instead, they may well lead tenants to believe that a judgment is all but assured unless they do what their landlords ask. Other notices incorrectly informed the tenant that if

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126 CC2018-2000 . . EA; CC2018-1993 . . EA; CC2018-2070 . . EA; CC2018-2126 . . EA; CC2018-2119 . . EA; CC2018-2216 . . EA; CC2018-2368 . . EA; CC2018-2359 . . EA; CC2018-2521 . . EA; CC2018-2641 . . EA; CC2018-2627 . . EA; CC2018-2593 . . EA; CC2018-2628 . . EA; CC2019-0079 . . EA; CC2019-0123 . . EA; CC2019-0399 . . EA; CC2019-0399 . . EA; CC2019-0398 . . EA; CC2019-0376 . . EA; CC2019-0376 . . EA; CC2019-0398 . . EA; CC2019-0557 . . EA; CC2019-0557 . . EA.

127 CC2018-7000 . . EA.

128 CC2019-0359 . . EA; CC2018-2140 . . EA; CC2018-2216 . . EA; CC2018-2483 . . EA; CC2018-2620 . . EA. In the latter case, the tenant stated they had not received a notice.

129 CC2018-2370 . . EA.

130 CC2019-0568 . . EA.

131 CC2018-1991 . . EA; CC2018-2122 . . EA.

they remained in the rental after the termination of the rental agreement for nonpayment of rent, the landlord could request additional rent and actual damages.[132]

We did observe rare exceptions to this pattern. In a case involving a subsidized rental unit the justice dismissed the case after the landlord attorney alerted the justice that the notice did not say the unit was subsidized or what amount of rent the tenant owed under the subsidy agreement.[133] The tenant was not present at the hearing, but relying on the fact that the landlord attorney conceded the notice did not state the rental unit was subsidized or what the tenant's portion of the rent under the subsidized program was as required by Rule 13(a)(5), the justice dismissed the case. Despite the wording of Rule 13(a)(5), the landlord's attorney asked what the justice's policy was. The justice explained: "I have to dismiss when it's not telling us it's a subsidy. . . And you did accept payment from the program . . . the five-day notice needs to reflect their portion of the rent . . . the five-day was improper."

Similarly, the Institute observed a judge pro tempore dismiss a case after hearing argument because the landlord had served the tenant the wrong type of notice.[134] The landlord had served a five-day nonpayment of rent notice but the tenant explained at the hearing that there was no written lease agreement and that the landlord had verbally agreed the tenant could live on the property in exchange for performing work. The landlord's attorney did not provide evidence in court to dispute the arrangement described by the tenant. As a result, the court found that a 30-day termination notice, not a five-day notice for nonpayment of rent, should have been served on the tenant.

Notably, the Arizona Supreme Court's website form notices do not suffer from any of these flaws.[135] Unlike the notices described above, the form Five-Day Notice to Pay Rent informs the tenant that: "Your landlord ***may*** file an eviction action asking the judge to order you to move unless you do one of the following . . . ." and "If you do not pay the amount owed, move out of the rental unit and return the keys, or settle this matter (it is best to get this agreement in writing), the landlord ***may*** file an eviction action . . . if an eviction action is filed, you have the right to appear in court and dispute the eviction action." (emphasis added).

In 2016, the Arizona Commission on Access to Justice filed a petition to amend the eviction rules to require the standardization of form notices and complaints used in eviction cases. In response, the Arizona Multi-Housing Association successfully lobbied

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132 *See, e.g.,* CC2018-7000 . . EA.

133 CC2019-0554 . . EA.

134 CC2019-0136 . . EA.

135 Arizona Supreme Court Self-Service Center, Eviction Actions Forms and Notices, https://www.azcourts.gov/selfservicecenter/Landlord-Tenant-Disputes-Eviction-Actions/Forms-and-Notices (last visited Mar. 4, 2020).

the Arizona State Legislature to pass a law that prohibits the courts from requiring the use of specific forms and pleadings.[136]

As discussed above, however, the justices generally signed judgments for landlords even when the required notices were deficient and the cases should have been dismissed on that basis. As will be discussed in Section XII below, while the justices failed to require landlords to meet their obligations under the law, the justices held tenants to a high standard of compliance.

X. The Sanctioned Use of Stipulated Judgments

Approximately 20% of the tenants who came to court never appeared before a justice. Instead, they signed stipulated judgments and left the courthouse before the hearings. Before the start of each eviction call, we observed most landlord attorneys attempting to meet with unrepresented tenants. Generally, the attorneys would enter the courtroom and call out the names of tenants until someone responded. The attorneys would then take the tenants outside the courtroom and speak with them. It appeared that the attorneys used these meetings to try to obtain the tenant's signature on a pre-typed form judgment. If the tenant signed the form judgment, the tenant usually left court before their case was called and the landlord attorney presented the form judgment to the court as a "stipulation."

The practice of landlord attorneys speaking with tenants before their hearings about entering into stipulated judgments is such an accepted practice that it appeared that the start of some eviction calls were delayed to give the landlord attorneys more time to enter into these judgments with unrepresented tenants.[137]

Stipulated judgments are allowed in the eviction rules but must meet specific requirements. Rule 13(b)(4) sets out what the parties must do and what must be included in the stipulated judgment before the court may accept it:

> (4) *Stipulated Judgments*. The court may accept a stipulated judgment only when the court finds one of the following:
>
> A. Both parties or their attorneys personally appear before the court;
>
> B. The plaintiff's attorney asserts to the court that the defendant was informed of the right to appear and declined;
>
> C. The court determines that, because of distance or other circumstances, the defendant cannot personally appear, that

[136] *See* A.R.S. §§ 12-1175(D); 33-361(F); 33-1305(C).

[137] The Institute observed several court calls begin between 15 and 28 minutes late.

> good cause exists and it is in the interest of justice to proceed; or
>
> D. An attorney for the defendant has signed the stipulation.

In addition, prior to accepting the stipulated judgment, the court must determine that the requirements in Rule 13(a)(1)-(2) (requiring proper summons, complaint and proper termination notice) have been satisfied. The court also must determine that the defendant has signed the following warning language on the stipulated form judgment.

> **WARNING!**
>
> **1. The plaintiff's representative is not a court employee.**
>
> **2. By signing below, you are consenting to the terms of a judgment against you and the plaintiff will now be able to evict you.**
>
> **3. You may have your wages garnished and the judgment may appear on your credit report.**
>
> **4. You may lose your right to subsidized housing.**
>
> **5. You may NOT stay at the property, even if the amount of the judgment is paid in full, unless you get the agreement in writing or get a new written rental agreement.** (emphasis in original).

The standard stipulated judgment form found online at the Maricopa County Justice Courts' website uses the language in the eviction rules and bolds the same language as in the eviction rule. By contrast, most stipulated judgment provisions used by landlord attorneys do not bold the relevant language as in the rule and include additional language requiring tenants to waive their rights to a trial, to file a motion to request reconsideration and to file an appeal. A typical stipulated judgment provision used by landlord attorneys contains the following language:

> Pursuant to Rule 13(b)(4), RPEA, you are notified as follows: WARNING! [1] Plaintiff's representative is not a court employee. [2] By signing below, you are consenting to the terms of a judgment against you and that Plaintiff will now be able to evict you. [3] You may have your wages garnished and the judgment may appear on your credit report. [4] You may lose your right to subsidized housing. [5] You may NOT remain at the property, even if the amount of the judgment is paid in full, unless you obtain in writing either an agreement

> to stay or a new rental agreement. **Furthermore, you hereby and hereinafter waive all rights to demand a trial, submit a motion for reconsideration, and/or appeal this action**.[138] (emphasis added).

Tenants signed stipulated judgments in 50 cases the Institute observed. This represented 20% of the total number of tenants who came to court. In all the cases we observed, there was only one case where the tenant received any consideration, such as a reduced monetary judgment or more time to remain in the rental unit, in return for signing the judgment.[139] Rather, the stipulated judgments typically included no extension of the date the writ of restitution would issue and no reduction in the monetary award. As discussed above, not only did tenants typically receive no consideration for signing the stipulated judgments but these judgments also included a provision requiring the tenant to waive their right to file an appeal or request reconsideration of the judgment. Thus, tenants who entered into stipulated judgments before the hearing were actually worse off than if they had waited to appear before the justice or did not come to court at all. While a tenant who did not come to court or a tenant who came to court and appeared before the justice may have had a judgment entered against them, the judgment would not have included a provision that the tenant give up their rights to file an appeal or to ask for reconsideration.

Many tenants have traveled long distances to get to court. Unfortunately, as explained above, the tenant who leaves court without signing the stipulated judgment is better off because they have not waived their rights. Often a tenant comes to court thinking they can resolve their case by explaining their situation to the justice. After a judgment is entered, a tenant may realize they did not get to explain their case to the justice or should have consulted with an attorney to fully understand the rights and defenses. By signing a stipulated judgment, that opportunity is foreclosed.

Because the vast majority of tenants who signed a stipulated judgment did not appear before the court, the justices cannot inquire whether the tenants understood the stipulations and their consequences. Instead, the justice only learns of the stipulated judgment when, after the justice calls the case, the landlord attorney informs the justice that the tenant stipulated to the judgment and left the courthouse.

Tenants who sign stipulated judgments rarely appear before the justice and tenant advocates have raised concerns about whether tenants understand what they are waiving. The Institute spoke with some tenants about this issue and results lent credence to these concerns. In one case, a young man and woman told us they signed the judgment because the landlord attorney told them they would be able to “work something out” with the landlord, and that it was okay for them to leave.[140] The tenants

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138 CC2018-2216 . . EA.

139 CC2019-0129 . . EA.

140 CC2018-1948 . . EA.

also explained that the landlord attorney appeared "to be on our side." The tenants said they did not understand they had agreed to be evicted or had waived any rights by signing the stipulation.

Stipulated judgments not only harm tenants through their waiver of rights provisions, they also sometimes rewarded landlords with monetary awards beyond those normally allowed when justices heard their cases. Rule 13(c)(2)(C) provides that if the court is presented with evidence that a written rental agreement has a specified provision for periodic late charges, the court shall award "reasonable" late charges. Several justices routinely limit late fees if they find the amounts in the rental agreements are unreasonable or unconscionable. The justices' practices with regard to late fees are well known among landlord attorneys.

Despite the justices' practice of routinely capping late fees, we observed landlord attorneys present stipulated judgments that included more late fees than the justices considered reasonable. In one case, the justice reviewed the stipulated judgment and reduced the amount of late fees to their usual cap.[141] In another case, however, when a justice was presented with a stipulated judgment that included a higher late fee than the justice considered reasonable, the justice signed the stipulated judgment and commented that it was "too bad they stipulated to all those late fees."

Our observations indicate there may be an ethical issue here as well. Arizona Rules of Professional Conduct 4.3 ("ER 4.3") prohibits attorneys from giving the appearance of being impartial and from providing legal advice to unrepresented opposing parties. As Comment 1 to ER 4.3 states, unrepresented persons who are "inexperienced in dealing with legal matters" may mistakenly assume that an attorney who approaches them to suggest a settlement is "disinterested in loyalties or is a disinterested authority on the law." Moreover, as Comment 2 states, what constitutes impermissible legal advice depends on "the experience and sophistication of the unrepresented person, as well as the setting in which the behavior and comments occur."[142] Thus, the responsibility is on the attorney to make every effort to be certain that the attorney is not misrepresenting the purpose, content and consequences of whatever settlement is reached and they must do so *from the perspective of the unrepresented tenant* .[143]

Thus, Institute's observations raise several questions. Is it appropriate for an attorney to ask an unrepresented tenant to sign a stipulated judgment for more late fees than the attorney knows the justice will allow? Should a landlord attorney be obligated to

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141 CC2018-1948 . . EA.

142 Arizona Rules of Professional Conduct, ER 4.3 ("Dealing with Unrepresented Person"), https://www.azbar.org/Ethics/RulesofProfessionalConduct/ViewRule?id=47.

143 *See, e.g.*, Russell Engler, *Out of Sight and Out of Line: The Need for Regulation of Lawyers' Negotiations with Unrepresented Poor Persons*, 85 Calif. L. Rev. 79, 82 (1997), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=835604.

explain to a tenant that the court routinely caps late fees, but the stipulated judgment does not include this cap? Is it appropriate for an attorney to ask an unrepresented tenant to sign a stipulated judgment for more damages in any other category than the attorney knows the justice may award?[144] Should the landlord attorney be required to explain to the tenant that the stipulated judgment includes a waiver of rights but, if the tenant appears before the justice and is ordered to move out, the justice will not include such a waiver provision in the court's judgment? Should the landlord attorney be required to explain to the tenant that the stipulated judgment includes a waiver of rights but, the justice will not include such a waiver provision in the court's judgment even if the tenant leaves and does not appear at the hearing?

The Institute considers the current use of stipulated judgments with unrepresented tenants inherently unfair. The Institute recommends that these questions be seriously considered in deciding whether the courts should continue to allow the use of stipulated judgments with unrepresented tenants in eviction cases. Although Rule 13 was amended, those amendments did not stop these unfair practices.

XI. The Justices' Responsibilities to Unrepresented Tenants

In an eviction proceeding, it is the justice's responsibility to ensure that the landlord has established the requisite facts and followed the proper procedures. As noted in the previous section, our review revealed a number of cases where the documents in the file did not satisfy the requirements in the ARLTA and/or the eviction rules. In most of these cases, the unpresented tenant at the hearing did not know or was unable to articulate that the landlord had failed to comply with the law. Instead, tenants typically raised objections in only a few factual situations, such as when they did not receive a notice or the rental unit had major repair issues.

It is up to the justice to ensure that the landlord has followed the law, because the justice has no legal basis to enter a judgment against the tenant if the landlord has not complied with ARLTA or the eviction rules.[145] However, the Institute found that landlords frequently failed to meet their obligations under the ARLTA and the eviction rules and that the justices did not catch the resulting deficiencies and entered judgment for the landlord.

When an unrepresented tenant comes to court, the eviction rules also hold the justices responsible for ensuring that the tenant is able to present any legal defenses

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144 Some justices also reduce the rental concessions owed when the term of the lease is close to ending. The same issue with late fees applies to the cases where the landlord attorney knows the justice's practice to scrutinize rental concessions. We did not review any stipulated judgments that included rental concessions, although we observed some justices scrutinize and reduce or eliminate the rental concessions in judgments in other cases. *See, e.g.*, CC2019-0544 . . EA.

145 *See* Rule 13.

they may have.[146] After the landlord has established that they followed the proper procedures, the justice must require the landlord or landlord attorney to meet their burden of proof that the tenant breached the rental agreement as stated in the landlord's complaint. After the landlord has presented their case, the justice must turn to the tenant and ensure that the tenant has an opportunity to defend themselves against the landlord's claims. Given that the eviction rules were designed in large part to protect tenants' right to due process under the law, the manner in which the justices interact with and respond to unrepresented tenants is a major interest of this report. As will be shown below, there are several significant areas of concern in the way justices interact with unrepresented tenants.

A. The Justices Must Ensure a Fair Hearing

In his 2014-2019 strategic agenda, *Advancing Justice Together: Courts and Communities*, Retired Arizona Supreme Court Chief Justice Scott Bales drew attention to the challenges faced by parties who prepare for and come to court on their own. He stated that it is up to the courts to ensure that such persons are able to navigate the process: "Many people cannot afford or choose not to obtain legal representation in court proceedings. Consequently, the courts must be prepared to assist self-represented individuals in understanding court processes and legal procedures."[147]

Due process requires that civil proceedings be "fundamentally fair,"[148] which is why it is now widely recognized that judges not only *may* intervene in proceedings for the purpose of ensuring fairness, but also *should* intervene if and when due process require.[149] Also, the comment to Rule 2.2 of the Arizona Code of Judicial Conduct, which addresses impartiality and fairness, explicitly states that judges may "make reasonable accommodations to ensure self-represented the opportunity to have their matters fairly heard."

Rule 11(b) of the eviction rules provides an important due process backstop for eviction proceedings. Rules 11(b) instructs justices to "determine whether there is a basis for a legal defense to the complaint" if the tenant appears at the hearing and "contests any of the factual or legal allegations in the complaint or desires to offer an

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[146] *See* Rule 11(b).

[147] Arizona Supreme Court, *Advancing Justice Together*, https://www.azcourts.gov/portals/0/AdvancingJusticeTogetherSA.pdf.

[148] *See Turner v. Rogers*, 564 U.S. 431, 444 (2011).

[149] *See, e.g.*, Russell Engler, *Turner v. Rogers and the Essential Role of the Courts in Delivering Access to Justice*, 7 Harv. L. & Pol'y Rev. 31 (2013); Laura K. Abel, *Turner v. Rogers and the Right of Meaningful Access to the Courts*, 89 Denv. U. L. Rev. 805 (2012); Richard Zorza, *A New Day for Judges and the Self-Represented: Toward Best Practices in Complex Self-Represented Cases*, 51 Judges' J. 36 (Winter 2012); Richard Zorza, *A New Day for Judges and the Self-Represented: The Implications of Turner v. Rogers*, 50 Judges' J. 16 (Fall 2011).

explanation." The justice may do this by either (1) reviewing the written answer that the tenant filed with the court before the hearing or (2) questioning the tenant at the hearing. As discussed further in Section XI(B) below, some justices took this requirement literally and only asked the tenant if they had a "legal defense." Other justices asked only cursory questions. In Section XII below, we examine what happened when tenants raised defenses to their eviction. Given that Rule 11(b) requires the justices to ask tenants questions that will enable the justice to determine whether the tenant has a legal basis to challenge the landlord's complaint, one of the justices' major responsibilities is to ensure that tenants are able to recognize and assert their defenses.

B. The Justices Must Elicit Sufficient Testimony from Tenants to Determine Whether the Tenants have Defenses

In general, the justices asked limited questions to tenants. It appeared that the justices limited their inquiry to what they thought were a very restrictive list of tenant defenses. Some justices that the Institute observed interpreted Rule 11(b) literally and they only asked the tenant if they had a "legal defense." As an example:

- In Justice Court I, the justice would begin the hearings in nonpayment of rent cases by asking the tenant, "Did you pay your rent?" When the tenant said, "No," the justice usually would ask, "Any legal defense to not paying the rent?" When the tenant said, "No," the justice would then read aloud the individual monetary amounts, as well as the total, requested by the landlord in the complaint, and then ask, "So are you admitting or denying the amounts in the complaint?" When the tenant said, "admitting," the justice would grant a judgment to the landlord.

- In Justice Court J, the justice would ask the tenant their name, to swear that any testimony they gave to the court would be the truth, and if they owed rent to the landlord. If the tenant said "Yes," the justice would ask the tenant, "Is there any legal reason why it hasn't been paid, or is it a matter of personal hardship?" The justice did not explain what a "legal" defense or a "personal hardship" was. Most tenants answered that they had a personal hardship, such as medical issues that resulted in them losing their job. This may have been because they did not know what was considered a "legal defense." The justice generally did not ask any follow up questions and immediately replied, "I find there's a factual basis to award a judgment for the Plaintiff . . . ."

Other justices asked only a predetermined set of cursory questions. Often these questions were so basic and so general that they completely failed to elicit any potential defenses testimony from the tenant.

- In Justice Court C, the justice would call a case on the record, swear in the tenant, and then start with "This is a nonpayment of rent case. For the month of _____?" If the tenant said "Yes" or admitted that they owed

rent, the justice would then ask, “What would you like to tell me?” or “Do you have anything you want to tell me?” or “What else do you want to tell me?”

- In Justice Courts B1 and B2, the judge pro tempore would call the case on the record and then say to the tenant “The complaint is alleging _____. What do you want to tell me about this?”
- In Justice Court E, the justice would call the case on the record and then ask the landlord or the landlord attorney “What’s the allegation here?” After the landlord or landlord attorney recited their claims, the justice would ask the tenant, “Is that correct?” If the tenant replied “Yes,” the justice would say “Then I’ll have to sign a judgment.” In some cases, the justice would follow up with “Is there a reason why?” But the justice never changed their decision because of the tenant’s explanation.

In nonpayment of rent cases, some justices only asked questions about whether the rent was paid. If the tenant answered that they had not paid the rent, then the justice would stop asking questions and sign the judgment.

- In Justice Court B3, the justice began each hearing by saying to the landlord or the landlord attorney, “It looks like a matter of nonpayment of rent. Is that correct?” The justice would ask the tenant, “Do you owe the rent?” If the tenant said “Yes,” then the justice would ask, “Do you have it?” When the tenant said “No,” the justice would ask no more questions and sign a judgment for the landlord for possession of the property and any rent owed, plus with costs and fees.
- In Justice Court K1, the judge pro tempore would ask, “Is the rent current?” If the tenant said “No,” then the judge pro tempore would respond, “I have to sign this then. You understand?” The judge would then sign the judgment without asking the tenant any other questions.
- In Justice Court F, the justice would call the case on the record, swear in the tenant, and then ask, “Did you pay any money before coming here?” If the tenant said “No,” the justice would enter a judgment for the landlord.

Even worse, during our review of case files, the Institute found cases that had deficient notices that were heard in the same justice courts cited above. These cases were discussed above in Section IX(B).

Even though the eviction rules require justices to ask sufficient questions about legal defenses, justices did not do so in the overwhelming majority of the more than 163 contested eviction hearings the Institute observed. This failure to ask sufficient questions of tenants, combined with the failure to carefully review the documents in the case files, unfortunately resulted in tenants being improperly evicted.

XII. Tenants' Defenses Raised in Court

Rule 11(b) states that the justice must determine whether the tenant may have a defense and if the court determines that a defense or counterclaim may exist then the justice must "order a trial on the merits." Rule 11(c) states that the trial should be held on the same date as the initial hearing "whenever possible." In practice, the initial hearing and the trial are often a single proceeding.[150] Nevertheless, Rule 11(b) expressly requires the justices to take this two-step approach toward tenant defenses.

The justices often ignored or discounted the defenses the tenants did raise despite the requirement that the justices conduct a "trial on the merits" if and when it appears there is a defense. The justices often either refused to allow the tenant to argue their case or held tenants to an exceptionally high standard of proof – a higher standard of proof than the ones they applied to landlords or landlord attorneys. In our 2005 report, we found that tenants who raised legal defenses almost never succeeded, even though justices regularly granted judgments to landlords even if they failed to establish their right to possession of the rental unit or to monetary relief. Our present study reached a similar result. Even though in the cases we observed many tenants raised potentially meritorious defenses, not one of contested eviction hearings concerning a defense that was not related to the service or the type of notice concluded in a dismissal for the tenant on the merits. [151]

Approximately 47 tenants who came to court and appeared at their hearing raised a defense that was not related to the service or type of notice. Here are the most common defenses we observed.

A. The Tenants Paid or Attempted to Pay the Rent Owed

Under the ARLTA, if a tenant fails to pay their rent on time and the landlord wishes to evict the tenant for nonpayment of rent, the landlord must first provide the tenant with a five-day written notice.[152] If the tenant attempts to pay all past due rent and whatever reasonable late fees were specified in the rental agreement within five days after receiving this notice or at any time before the landlord files an eviction complaint against the tenant, then the landlord must accept the tenant's payment.[153] Between the time the eviction complaint is filed and judgment is entered against the tenant, the tenant has the right to reinstate the rental agreement by paying all past due rent, late fees, court costs, and reasonable attorneys' fees.

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150 The exception is when the case is continued.

151 In one case that was continued for hearing and is discussed in Section XII(B), a judgment was entered for the tenant.

152 A.R.S. § 33-1368(B).

153 *Id*.

In 15 cases the Institute observed, the tenant appeared and told the justice that they had either paid or attempted to pay all the rent owed.[154] The ARLTA places the burden on the landlord to prove that the tenant owed rent, but the justices in the cases we observed often transferred the burden of proof to the tenant.

In one case, the tenant explained they had attempted to pay rent in person with a money order on the sixth day of the month but were told by their apartment building's management office to "hold off."[155] The tenant further explained that the management office had told them that someone would call them about their payment, but no one ever called. The tenant then found the summons and complaint posted to their door. The tenant told the judge pro tempore that they never received a five-day notice. The landlord attorney insisted that the five-day notice was sent to the tenant through certified mail and the judge pro tempore asked no further questions on this issue. The judge pro tempore asked the landlord attorney whether the client had refused to accept the money order. The landlord attorney replied, "I don't know yet. It's a little vague." The judge pro tempore nevertheless entered judgment for the landlord despite the landlord attorney's inability to dispute that the landlord had refused payment.

When the amount of rent owed was in dispute, the justices rarely required landlords or landlord attorneys to provide a detailed accounting of past rent charges and payments. In some cases, the justice asked the landlord or landlord attorney if they had a copy of the tenant's rent ledger in court. However, even if the landlord did have the rent ledger with them in court, the justices rarely looked at it or entered it into evidence. Indeed, they typically did not even require the landlord to show the ledger to the tenant. Most of the files we reviewed in cases involving nonpayment of rent did not contain a copy of the rent ledger or a copy of the rent receipts.

This informational disadvantage can take a number of forms. In one case, the tenant explained they had intended to pay their rent but wanted the landlord to explain the late fees charged.[156] The tenant testified that the charges listed on the landlord's online payment portal were incorrect and that they had been locked out of the portal and could not access it in order to prepare for the hearing because the tenant did not pay the full amount the landlord listed. The landlord attorney had a copy of the rent ledger in court but had not previously provided it to the tenant. The justice did not grant the tenant more time to dispute the ledger's contents and told the tenant that the justice would have to sign a judgment for the landlord because the tenant did not provide their own documentation contradicting the amounts that the landlord alleged the tenant owed.

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154 CC2019-0043 . . EA; CC2018-2140 . . EA; CC2018-2216 . . EA; CC2018-2356 . . EA; CC2019-0398 . . EA; CC2018-1899 . . EA; CC2018-1964 . . EA; CC2018-2368 . . EA; CC2018-2369 . . EA; CC2018-2385 . . EA; CC2019-0554 . . EA; CC2018-2355 . . EA; CC2018-2000 . . EA; CC2019-0567 . . EA; CC2018-1923 . . EA.

155 CC2018-2000 . . EA.

156 CC2018-1923 . . EA.

In another case, the tenant had brought payment receipts to court and disputed the amount that the landlord claimed was owing.[157] The justice asked the landlord attorney for the rent ledger, but the justice did not review the ledger or ask any questions about it. Instead, the justice handed the ledger to the tenant and instructed the tenant to compare their receipts to the amounts listed in the ledger. The tenant spent a couple of minutes hurriedly scanning the ledger and comparing it to their receipts. The tenant then informed the justice that they thought it looked like all the payments were there. The justice then said the issue was "more of a miscommunication" and signed a judgment for the landlord. Rather than make the required factual findings, the justice placed the burden on the tenant to quickly review a ledger while standing in open court that the tenant had not previously seen.

This lack of documentary evidence put tenants at a severe disadvantage in nonpayment of rent cases. It also made it difficult for the Institute to determine if the tenants owed any rent and, if they did, what amount. To address this matter, the Arizona Supreme Court adopted new Rule 5(d)(4), effective January 1, 2020, which requires the landlord in an eviction case based on nonpayment of rent to serve "a copy of the accounting of charges and payments for the preceding six months" on the tenant with the eviction complaint.[158] Rule 5(d)(4) provides tenants with the landlord's accounting of rent owed and payments made prior to the trial and should give tenants sufficient time to review the landlord's records and prepare a defense. With the adoption of new Rule 5(d)(4), we hope these cases will be handled more fairly.

B. The Tenants Did Not Materially Breach the Rental Agreement

While most eviction complaints allege nonpayment of rent, landlords also may seek to evict tenants for materially breaching the rental agreement in other ways. The Institute observed a small number of cases where the tenant faced eviction either for failing to remedy a material noncompliance with the rental agreement after receipt of a five or ten-day notice or for materially and irreparably breaching the rental agreement based on immediate notice. In both situations, the tenant often appeared at the hearing to defend against their landlord's allegations.

Under the ARLTA, if the landlord alleges that the tenant is in "material noncompliance" with the rental agreement, the landlord may serve the tenant with a written notice identifying the factual basis of the alleged material breach and informing the tenant that the rental agreement will terminate if the breach is not remedied within a set period of time: ten days for most cases and five days if the breach is for a health and safety hazard.[159] The breach of the lease must be a "material" one. If the tenant

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157 CC2019-0043 . . EA.

158 New Rule 5(d)(3) also requires the landlord to attach a copy of the lease agreement and any addendums related to the underlying basis of the eviction action to the eviction complaint.

159 A.R.S. § 33-1368(A).

does not remedy the alleged breach within the specified time period, then the landlord may file an eviction complaint against the tenant. If the landlord alleges that the tenant's breach is "material and irreparable," for example, by selling illicit drugs or discharging a firearm on the premises, then the termination of the rental agreement is immediate.[160]

The Institute observed cases where the claimed breach of the rental agreement did not appear to be a material one. For example, in one case, the landlord provided a notice to the tenants that alleged that the tenants had made too much noise on one particular day.[161] In court, the tenants explained that they had lived in the apartment for seven years and had never received complaints until a new neighbor moved in. The tenants further testified that they were not even home on the day of the alleged noise identified in the notice. The landlord attorney had no witnesses in court so they requested a continuance, which the justice granted.[162]

In another case, the landlord claimed the tenant breached their lease by failing to maintain the property's landscaping.[163] The ten-day notice claimed that there were weeds and other debris in the rental's yard. When the justice called the case, the tenant disputed these allegations and asked to have their hearing. The justice instead continued the case because the landlord attorney was not prepared for trial. The tenant filed a written answer and stated they used a monthly landscape service. At the continued hearing, which we did not observe, a judgment was entered for the tenant.[164]

When a landlord alleges that the tenant has committed a material and irreparable breach of the rental agreement, the landlord is permitted to serve the tenant with an immediate notice of termination because the landlord is claiming that the breach is so serious that it cannot be cured. The eviction rules give priority to hearing and resolving cases alleging material and irreparable breaches.[165] Moreover, even if the tenant does not appear in court the rules require the court to "hear evidence establishing such a

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160 *Id.*

161 CC2019-0565 . . EA.

162 In addition to the issue of whether excessive noise on one day is a material breach of the lease, this case presented another potential defense. Even if the justice had determined at the hearing that the excessive noise had occurred and that it constituted a "material" breach of the rental agreement, under A.R.S. § 33-1368(A) a tenant has the right to cure a material breach within the ten-day notice period. The landlord's complaint stated that the noise had occurred just one time. This means that the alleged breach appears to have been cured before the hearing and this would provide another basis to deny relief to the landlord.

163 CC2018-2332 . . EA.

164 This was the only case file we reviewed that showed a judgment for the tenant.

165 Rule 11(c).

breach before ordering a writ of restitution in not less than 12 nor more than 24 hours."[166] The Institute observed cases in which these requirements were not met.

In one case, the landlord's complaint alleged that the tenant had engaged in threatening behavior toward members of the property management staff, who called the police when the tenant refused to leave their office.[167] As soon as the justice called the case, the landlord attorney told the justice that the tenant contested the eviction and because the attorney was not prepared to prove up their case, the attorney requested a one-week continuance. The tenant, who had received an immediate notice of termination and was ready to defend themselves against the landlord's allegations, told the justice, "I would like to get it done today." The justice responded, "If you're contesting it, then, we can't do the trial today. Both parties need time to do it." The trial was set for seven days later.

The justice clearly did not follow Rule 11(c) in this case. Here, the landlord attorney had arrived in court unprepared to provide witness testimony or other evidence in support of the landlord's claim that the tenant had engaged in conduct so egregious that it merited the tenant's immediate eviction. Rather than dismiss the case, the justice continued it for a full week. Even though the tenant was accused of committing a material and irreparable breach of the rental agreement and even though Rule 11(c) expressly states that "[n]o continuance of more than three court days in justice courts . . . may be ordered unless both parties are in agreement," the trial was postponed for seven days over the tenant's objection.

Even when a tenant presented testimony in court contradicting the landlord's claims, the tenant was evicted. In one case, the landlord had provided the tenant with multiple ten-day notices alleging that the tenant was disturbing their neighbor's "peaceful enjoyment of the community."[168] During the hearing, the landlord attorney alleged that the tenant had repeatedly knocked on a neighbor's door in the middle of the night despite being asked not to. In response, the tenant testified that the neighbor was a friend who had invited the tenant to come to the apartment. The landlord attorney then claimed that the tenant had entered a different neighbor's apartment without being invited. The tenant denied this as well. The landlord attorney presented no testimony in court to support their client's allegations. Although the tenant acknowledged receiving ten-day notices, the notices merely showed that the tenant was notified that someone had complained to the landlord. Any statements in the notices were hearsay. The notices did not establish that the tenant had committed the actions alleged and were not sufficient evidence to rebut the tenant's testimony in court. Nevertheless, the justice entered a judgment for the landlord without acknowledging the tenant's testimony or finding it not credible on the record.

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166 Rule 13(b)(3)(B). *See also* A.R.S. § 33-1377(E).

167 CC2019-0079 . . EA.

168 CC2019-0041 . . EA.

C. The Landlords Failed to Maintain the Premises

Under the ARLTA, landlords must ensure that the dwellings they lease to tenants are properly maintained. Pursuant to A.R.S. § 33-1324(A), landlords' obligations include to:

- comply with the requirements of applicable building codes materially affecting health and safety (subsection (A)(1));
- make all repairs and do whatever is necessary to put and keep the premises in a fit and habitable condition (subsection (A)(2));
- keep all common areas of the premises in a clean and safe condition (subsection(A)(3));
- maintain in good and safe working order and condition all electrical, plumbing, sanitary, heating, ventilating, air-conditioning and other facilities and appliances (subsection(A)(4)); and
- supply running water and reasonable amounts of hot water at all times, reasonable heat and reasonable air-conditioning or cooling where such units are installed and offered, when required by seasonal weather conditions. (subsection (A)(6)).

The ARLTA requires that these obligations on the part of the landlord are incorporated into every rental agreement. That means that whenever a landlord agrees to rent a dwelling to a tenant in exchange for the payment of rent, the landlord promises to ensure that the dwelling is and will remain in a "fit and habitable" condition.[169] As a result, it is often said that whenever a tenant rents a dwelling, the dwelling comes with a "warranty of habitability" that the landlord must honor.[170]

Just as each tenant who enters into a rental agreement promises to pay a specific amount of rent by a specific date each month, each landlord promises to maintain the rented premises.[171] The landlord's obligation to maintain the rented premises is so central to the landlord and tenant relationship that a tenancy does not even begin under the ARLTA until after the landlord has delivered possession of the rental unit to the tenant "in compliance with the rental agreement and section 33-1324."[172]

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169 A.R.S. § 33-1324(A).

170 *See, e.g.*, Donald E. Campbell, *Forty (Plus) Years After the Revolution: Observations on the Implied Warranty of Habitability*, 35 U. Ark. Little Rock L. Rev. 794 (2013).

171 In addition, a landlord cannot require a tenant to waive any of their rights under the ARLTA. A.R.S. § 33-1315(A).

172 A.R.S. § 33-1323.

If a landlord fails to make required repairs, ARLTA and/or the rental agreement gives the tenant multiple options including:

- If the landlord is not in material compliance section 33-1324, the tenant may notify the landlord in writing that repairs need to be made, request that the repairs be made as soon as possible, and state that if the repairs are not made within five days if the problem presents a material threat to the tenant's health and safety, after the landlord's receipt of the tenant's notice, then the rental agreement will terminate.[173]

- If the landlord fails to materially comply with the rental agreement, including the condition of the premises, services provided and utility services provided, the tenant may give the landlord written notice of the landlord's breach and that the rental agreement will terminate if the breach is not remedied.[174]

- If the landlord fails to comply with the rental agreement or with section 33-1324, the tenant may recover in court monetary damages.[175]

- If the landlord fails to comply with the rental agreement or section 33-1314, the tenant may seek injunctive relief.[176]

- If the landlord fails to maintain the rental in a "fit and habitable condition," the tenant may notify the landlord in writing that the tenant intends to make the required repairs themselves at the landlord's expense (at a cost of up to $300 or one-half of the tenant's monthly rent, whichever is greater) if the landlord does not make the required repairs within ten days after the landlord's receipt of the tenant's notice, "or as promptly thereafter as conditions require in case of emergency."[177]

- If the landlord fails to maintain the rental in a "fit and habitable condition" the tenant also may sue for damages (up to $300 or one-half of the tenant's monthly rent, whichever is greater).[178]

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173 A.R.S. § 33-1361(A).

174 *Id.*

175 A.R.S. § 33-1361(B).

176 *Id.*

177 A.R.S. § 33-1363(A).

178 *Id*.

- If the landlord either deliberately or negligently fails to supply running water, gas and/or electrical service, reasonable amounts of hot water or heat, air-conditioning or cooling, or any other "essential" service, then the tenant may give reasonable notice to the landlord of the problem and do one of the following: (a) pay for the service themselves and then deduct the cost of the service from the tenant's next rent payment; (b) recover in court from the landlord monetary damages based on the diminution in the fair rental value of the tenant's home; or (c) obtain reasonable substitute housing during the period of the landlord's noncompliance (at a cost equal to no more than the amount of rent that the tenant would otherwise have been expected to pay plus an additional 25%).[179]

- If the landlord willfully diminishes services by interrupting or cause the interruption of electric, gas, water or other essential services, the tenant may terminate the rental agreement and recover two months' rent or two times the actual damages, whichever is greater. [180]

As shown above, the tenant has a variety of options if their landlord does not maintain the rental unit. Moreover, ARLTA's remedial options are not necessarily mutually exclusive.[181] For example, a tenant may provide notice to the landlord requesting repairs without being required to move out if the landlord ignores the request.[182] In addition, tenants are permitted to withhold their rent if authorized by the ARLTA.[183]

1. The Tenants Told the Court about Habitability Conditions

Under Arizona law, a tenant may raise the issue of "habitability . . . as an affirmative defense to the nonpayment of rent" when the landlord fails to maintain the premises.[184] The ARLTA also allows the tenant to counterclaim *in the eviction action* for the amount the tenant may recover under the rental agreement or the ARLTA if the

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179 A.R.S. § 33-1364(A).

180 A.R.S. § 33-1367.

181 *See, e.g.,* A.R.S. § 33-1361(C) which expressly provides that "[t]he remedy provided in subsection B of this section is in addition to any right of the tenant arising under subsection A of this section."

182 *See, e.g.*, A.R.S. § 33-1363(A).

183 A.R.S. § 33-1368(B) ("A tenant may not withhold rent for any reason not authorized by this chapter.").

184 *See* A.R.S. § 12-1179(D) ("If the tenant raises habitability . . . as an affirmative defense to the nonpayment of rent . . . ."). An "affirmative" defense is "a defendant's assertion of facts and arguments that, if true, will defeat the plaintiff's or prosecution's claim, even if all the allegations in the complaint are true." *Black's Law Dictionary* (11th ed. 2019).

landlord is not in compliance with the ARLTA and/or the rental agreement.[185] In addition, ARLTA provides for the process where when the tenant is in possession of the rental and files a counterclaim, the court may require the tenant to pay the undisputed rent to the court. After a hearing if the tenant owes no rent or if the tenant "acted in good faith" and satisfies any judgment for rent owed, then the court is required to award the tenant possession of the rental.[186]

In many of the nonpayment of rent cases where the tenant appeared in court, the tenant asserted a "habitability" defense. The tenant told the justice that the reason they had not paid all or part of their rent was because the landlord had not maintained the premises. Not a single tenant who did so was able to prevent their eviction. Worse, except for one case, the justice did not ask the landlord or landlord attorney in any of these cases to rebut the tenant's testimony about the condition of the rental unit and the need for repairs. Instead, the justice's inquiry ended as soon as the justice decided that the tenant owed rent. This failure to question landlords concerning tenants' habitability claims was in marked contrast to the court practice of often asking the tenants to admit they owed rent.

The best the tenants in the cases we observed could hope for was that the justice would reduce the amount of the monetary judgment against the tenant because of the landlord's failure to maintain the premises. This appeared to reflect the "diminished value" that the tenant had received for their rent. In these instances, the justices would reduce the monetary judgment to reflect the extent that the landlord's failure to make required repairs meant that the tenant did not get what had been promised in exchange for paying rent.

Unfortunately, the justices did not consider the tenant's showing of a failure to maintain the premises as an affirmative defense in any of the cases we observed. Even when a tenant established the landlord had not properly maintained the premises, the justices still evicted the tenant. This happened even when the tenant had repeatedly asked the landlord to make repairs consistent with the landlord's obligations under the ARLTA.

Instead, the justices routinely informed tenants that they had forfeited their right to raise a habitability defense. The justices told some tenants who raised the habitability defense that the landlord's failure to maintain the premises was no longer relevant because the tenant had not paid their rent. The justices told other tenants that the landlord's failure to maintain the premises was no longer relevant because the tenant had not provided sufficient notice to the landlord. As discussed below, neither of these reasons is required by the statute or the eviction rules. Finally, even when the justice considered the tenant's defense of habitability, the justice did not assign it much weight when determining whether the tenant should be evicted.

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185 A.R.S. § 33-1365(A).

186 *Id.; see also* A.R.S. § 12-1179(D) ("tenant has filed a counterclaim asserting a habitability issue").

a. The Justices Denied Relief to the Tenants Because the Tenants had not Paid Rent

In a number of cases**,** the justices told the tenant that the protections provided to tenants by the ARLTA were no longer available to them because the tenant had "withheld" their rent. Although A.R.S. §33-1368(B) provides that "the tenant may not withhold rent for any reason not authorized by this chapter," the ARLTA explicitly recognizes the fit and habitable defense[187] and a tenant's ability to counterclaim in the eviction action for damages.[188] Instead, the justices relied on an improperly restrictive interpretation of the ARLTA to either ignore evidence for these defenses and counterclaims or to insufficiently develop this evidence. As a result, tenants who may have had viable defenses or counterclaims were denied any relief. Here are some examples of how this played out in cases we observed.

- In one case, the tenant informed the justice that they had asked the landlord "numerous times" to address safety and maintenance issues in their home but the landlord had not done anything. The justice responded, "You can keep working on that, but . . . you still have to do the rent."[189] When the tenant asked if they could get a second court date "so we can talk about this," the justice said, "No, my hands are tied by the law, and it says that if you're here and you don't have the rent . . . I have to sign the judgment." The justice awarded possession to the landlord.

- In another case, the tenant informed the judge pro tempore that they had told the property manager "many times" about serious electrical problems.[190] The tenant had submitted work orders over the telephone requesting that the landlord repair several appliances that were turning on and off unexpectedly. The landlord attorney did not dispute the tenant's allegation, nor did the judge pro tempore ask the landlord attorney any follow-up questions. The judge pro tempore told the tenant, "The problem I've got . . . is I can't refuse to sign a judgment where, essentially, you're withholding rent because of some deficiencies in the utilities or the living conditions of the unit . . . I'm going to have to issue a judgment today." The judge pro tempore granted judgment to the landlord.

- In another case, the tenant stated that they had not paid their rent for the current month because they had not had air-conditioning for the prior two months. The tenant had emailed the property manager and called the maintenance emergency number.[191] The landlord attorney did not dispute

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187 A.R.S. § 33-1364(A)(2); *see also* A.R.S. §12-1179(D).

188 A.R.S. § 33-1365; *see also* A.R.S. §12-1179(D).

189 CC2019-0543 . . EA.

190 CC2018-1993 . . EA.

191 CC2018-2324 . . EA.

the tenant's allegation and the justice did not ask the landlord attorney any follow-up questions. Upon hearing these undisputed facts the justice said, "So here's the issue . . . You maintained the residency. So it's not a defense to the [current] month's rent. . . And you haven't at this point offered me any defense . . . You paid for those months. . . I'm gonna sign off on this judgment." In this case, as well, judgment was entered for the landlord.

- In another case, after the tenant acknowledged owing rent, the justice asked the tenant if they had "any legal defense to not paying the rent?" The tenant responded, "Yes, there's certain issues going on in my apartment that I brought to their attention that have not been fixed. And it's actually costing me money."[192] The justice replied, "OK, but . . . here's the way this sorta works. You can't withhold your rent . . . You can give notice, and you can move out, but you can't withhold the rent." The tenant described leaks caused by holes in their windows and cracks in their ceiling that had caused a 20-degree difference in temperature between their living room and their bedroom. On a $600 apartment, the tenant's monthly electric bills were $180. The justice responded, "[A]gain, you can't do it the way you did it . . . You can't do it that way . . . You can't stage a rent strike." The landlord attorney said nothing and the justice entered judgment for the landlord.

- In another non-payment of rent case, the tenant stated they had not paid their rent because they had texted, called, and emailed the landlord multiple times to report a roach infestation and a broken back window but the landlord never responded.[193] The justice told the tenant their options (give notice and move out or do self-help up to $350) but that the tenant could not "withhold your rent, which basically waived all the other rights." The justice informed the tenant that "you can sue them civilly for breach of contract." When the tenant informed the justice that they had a witness ready to testify to the seriousness of the roach infestation, the justice responded, "I understand, but I really can't get into that." Once again, the justice entered judgment for the landlord despite the tenant's attempt to raise a habitability defense.

In each of the cases described above, the court entered a monetary judgment to the landlord that matched the amount sought in their complaint. The courts did so even when tenants described living in rental units with serious safety concerns, including electrical problems, broken windows, pest infestations, and no air-conditioning, and the ARLTA describes each of these as "a condition that materially affects the health and

192 CC2018-2324 . . EA.

193 CC2018-2381 . . EA.

safety of the occupants of a residential rental dwelling unit."[194] Thus, the tenant was not only evicted but also deprived of compensation for the diminished value of the premises they received for their rent.

b. The Justices Denied Relief to the Tenants Because the Tenants Purportedly Provided Insufficient Notice to the Landlords

In other cases, the justices told the tenant that they could not succeed on a habitability defense because the specific means the tenant used to request repairs or other remedial action from the landlord were inadequate. In these cases, too, the tenant was evicted and the court did not reduce the monetary judgment for the landlord. Disconcertingly, the justices scrutinized the notices these unrepresented tenants used far more closely than the lax (or nonexistent) scrutiny given to eviction notices used by landlords that we describe in Section IX(B) above. In the cases we observed, the justices held unrepresented tenants to strict standards of compliance with ARLTA and in some cases, to standards that appeared to go beyond the statutory requirements.

In one case, for example, the tenant acknowledged that they owed rent but told the justice that the lock on their front door had been broken for more than a month.[195] Despite the tenant's repeated requests to fix the lock, the landlord had not repaired it and the tenant had resorted to sleeping with a chair jammed under the front door.[196] The landlord attorney had no witness in court, did not dispute the tenant's claims and the manner in which tenant had notified the landlord. Nevertheless, the justice told the tenant that the court could not consider their landlord's failure to fix the lock because the tenant had only notified the landlord through phone calls and text messages. The justice also told the tenant that they had forfeited their rights and should have sent a letter to the landlord by certified mail: "Any time someone's not responding to your phone calls, and you're relying on text messages. My suggestion to everybody in this courtroom is that you do it in writing . . . send a letter." The justice granted judgment for the landlord even though the tenant had spent many weeks afraid that someone might enter their apartment through their broken front door in the middle of the night.

In another case, the tenant filed a written answer stating they had texted the landlord multiple times asking them to remediate the mold growing inside their home.[197] The justice told the tenant, "what you are claiming is not a defense to the nonpayment of rent, unless you had actually . . . filed some kind of written notice for essential

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194 A.R.S. § 33-1324. Also A.R.S. § 9-1303 addresses the building code violations referred to in A.R.S. § 33-1324.

195 CC2018-2616 . . EA.

196 Among the conditions that A.R.S. § 9-1303 describes as materially affecting a tenant's health and safety are "broken or missing windows or doors that create a hazardous condition or a potential attraction to trespassers."

197 CC2018-2043 . . EA.

services before . . . I see that you're having some text messages . . . All I'm telling you is that the **statute says that you're not allowed to withhold rent for any reason**.**"** (emphasis added). The justice then told the tenant that they needed proof the landlord responded to the text message. When the tenant tried to show the justice proof of the landlord's response, the justice arbitrarily raised the evidentiary bar by stating that the tenant had no proof there was mold. The justice also said that the tenant had not followed the proper procedures because they had not moved out or fixed the mold. The justice never asked the unrepresented landlord any questions about the tenant's claims of mold, notice of the mold and the landlord's failure to get rid of the mold. Instead, the justice concluded by telling the tenant, "This does not preclude you from filing another action if you believe you are owed money because of this."[198]

c. The Justices Gave Little Weight to the Tenants' Defense of Habitability

Even when a justice appeared to consider a tenant's habitability defense, the justice did not assign it the same weight they had assigned to the landlord's allegation of nonpayment of rent. We did not observe a single case in which a justice found that an unrepresented tenant should not be evicted because of the landlord's failure to maintain the premises. Justices granted possession of the rental to the landlord even when the landlord had failed to honor the "warranty of habitability" in a way that endangered the tenant's health and safety. Below are some examples.

- In one case, the tenant told the justice that the landlord had ignored the tenant's repeated and urgent requests for repairs during the winter. The tenant had informed the landlord they had no heat and, at one point, that their roof had caved in, ruining their clothes with water and mold and spoiling their food because it had broken their refrigerator.[199] The tenant had a copy of the five-day health and safety repair notice they sent to the landlord, that the landlord ignored, as well as photographs showing the conditions inside the tenant's dwelling. The tenant had not moved out because the tenant had nowhere else to go. The landlord attorney did not dispute the tenant's allegations and the justice did not ask the landlord attorney any questions about the conditions inside the tenant's home or about the written notice that the tenant had sent to the landlord. The justice told the tenant that the tenant had done everything right, but that the justice had to evict them because the tenant had continued to live in the dwelling: "If you stay, you have to pay the rent." After the tenant explained they had not paid the month's rent because they had to spend their limited funds replacing their ruined clothes, bedding and spoiled food, the justice reduced the amount of rent owed from $900 to $600. The justice then entered a judgment for the landlord, awarding them

[198] As noted in Section IX(A)(3), this case had been prematurely filed by the landlord.

[199] CC2019-0568 . . EA.

possession and $846, which included the $600 in rent as well as fees and costs.

- In another case, the tenant did not pay rent because they had mold in their home for six months.[200] The tenant explained that parts of the roof were caving in and this allowed water to leak inside when it rained. The tenant asked for the case to go to trial. The justice responded that they would set the matter for a hearing on the "diminution of value" but that "on the rent issue . . . possession and the amount of the judgment will be separate." The case was continued for two days. At the conclusion of the trial, which the Institute did not observe, the justice granted judgment to the landlord and only reduced the rent awarded by $350.

- In another case, the tenant stated that they had not paid rent because, "I don't have hot water. I have mice. I have roaches. I can't even eat there. They go in my fridge. I don't even have any food in there right now because of all that . . . I don't have a heater."[201] The justice explained to the unrepresented landlord that just as a tenant is obliged to pay rent, the landlord is obliged to provide "basic services." After listening to both parties' testimony, the justice said, "Based on the fact that the water was cut off and no heat was provided as testified to by the plaintiff, I have found that there's a diminished value." The landlord had requested $792 but the justice reduced the total amount owed for the "diminished value." Although the tenant owed no money to the landlord, the justice nevertheless, granted a judgment for possession to the landlord and the tenant had to move.

Among all the cases we observed where the tenant asserted the defense of habitability, this last case in which the tenant owed no money to the landlord but was evicted was the best outcome that any tenant was able to achieve. In this case, the tenant stated they had not received a five-day notice and there was none in the file so this case should have been dismissed. [202]

XIII. Many Justices Failed to Explain the Terms of the Judgments Entered Against the Tenants and the Tenants' Right to Appeal

Many justices failed to state on the record that a judgment was entered for the landlord and did not explain each term of the judgment. We expected to hear the justices explain to each tenant that the tenant had to move out, when the time period to move out ended, and when the landlord could request that the constable come out.

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200 CC2018-2358 . . EA.

201 CC2018-2620 . . EA.

202 *See* footnote 129.

Under Arizona law, a tenant has five days to appeal an eviction judgment.[203] Because the time to appeal is a short period, we expected the justices to inform the tenants of this very short deadline to appeal. This rarely happened, despite the importance of this critical information. In most courts, the justices did not tell tenants anything about their right to appeal or the time period to appeal.

Worse, in one case we could not determine from the courtroom statements how the justice ruled. We could only determine that a judgment was entered against the tenant after we reviewed the case file and listened to the recording of the hearing.[204] It is quite possible that the tenant did not understand that they had lost at the hearing. The tenant had brought money orders to court totaling $1,200, but the landlord, who was represented by an attorney, was seeking a judgment of $1,593. Using a courtroom interpreter, the justice explained to the tenant that landlords have no obligation to accept partial payments. The tenant told the justice, "Right now I have the money orders for $1,200." The justice replied, "Let me have what you have . . . and we will reduce the judgment amount." The justice instructed the tenant to make the money orders out to the landlord. While the tenant was filling out the money orders, the justice signed the judgment and stated, "That's that," and as soon as the clerk "gives you your documents, you'll be free to go. Good luck to you." The justice did not inform the tenant that the tenant had been evicted or tell the tenant they had to move out regardless of whether the tenant made the in-court partial payment. A writ of restitution was issued nine days later.

In many cases the Institute observed, the justices' failure to explain the judgment made it unclear whether the tenant understood the consequences of the judgment. Some justices did not explain the meaning and consequences of the eviction judgment. As an example, in a nonpayment of rent case, after hearing testimony from the tenant and landlord attorney about a rental payment, the judge pro tempore signed a judgment for the landlord and wished the tenant "Good luck." The justice did not explain the judgment or explain the tenant's right to appeal.[205]

In another case, all the justice said to the tenant while signing the judgment was, "I hope this works out for you quickly. Good luck."[206] In another case, the tenant acknowledged owing rent but said they needed more time to pay the rent.[207] The justice responded, "Well, I can only give you up 'til the 21st," the first date the writ of restitution could issue. The tenant replied, "That's fine. I get paid this Friday." The justice stated that if the tenant worked out something with the manager to get it in writing. A judgment was granted to the landlord, but it was not clear that the tenant

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203 A.R.S. § 12-1179(A).

204 CC2018-1899 . . EA.

205 CC2018-2000 . . EA.

206 CC2018-1960 . . EA.

207 CC2019-0036 . . EA.

understood that *there was a judgment* and that satisfying the monetary portion of the judgment before the writ could issue would not automatically permit the tenant to stay in their home.

In other cases, justices explained that paying off the judgment in full did not mean that a tenant could continue to stay in their home. In one courtroom, when the justice signed a judgment against the tenant for nonpayment of rent, the justice told the tenant what would happen if the judgment was not satisfied before the writ date. For example, in one case, the justice said, "I just need to make sure you understand where you stand with regards to the law. Today I need to sign off on the judgment. From today, you have five days to vacate the unit. If you haven't vacated on the fifth day, your landlord could – I stress *could* – have you removed by the constable. If you work something out, if you get a new lease in writing, you can continue to stay there."[208]

Another justice explained to the tenant that the landlord had a judgment and the tenant had to leave the premises in five days.[209] The justice also explained the date the tenant had to move out and if the tenant did not move out the constable could come out and give the tenant 20-30 minutes to gather their important possessions and leave. The justice told the tenant if they subsequently returned it would be criminal trespass.

Another justice informed the tenant that the monetary judgment against them accrued interest and "If you can work this out, make sure you get that in writing. Because this order terminates any lease that you have." The justice told the tenant the date the writ could issue and that the tenant could try to negotiate to stay, but the tenant will only have a few minutes to gather their things if the constable comes out.[210]

In most courts, the justices failed to inform the tenants of their right to appeal or the short time period to appeal. However, one justice informed the assembled tenants as a group at the beginning of the call about their right to appeal a judgment. That justice told those seated in the courtroom, "You do have the right to appeal my decision . . . My staff will have you sign a piece of paper that says we've advised you of that. But if you choose to appeal me, then you need to go up to window 9 and there's this whole packet that you need to fill out."

A copy of the document the justice required each tenant to sign was in the court file. It is entitled a "Notice of Right to Appeal-Civil" and it is a Maricopa County Justice Courts form. The information is in very small font and is not specific to eviction cases. Instead it covers several categories of appeals, including but not limited to evictions. As a result, the unrepresented tenants were only given information about appealing an adverse judgment that would be difficult for them to read and that did not necessarily apply to their case.

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208 CC2018-2355 . . EA.

209 CC2019-0379 . . EA.

210 CC2018-2119 . . EA.

There is a similar issue with the packet for eviction appeals on the Maricopa County Justice Courts website.[211] Despite the title, the packets also are not specifically tailored for eviction actions. For example, in the "Appeal an Eviction Action Judgment" packet, the first page of the packet is for evictions, but the rest of the packet is for all appeals including evictions. The packet includes a "Notice of Right to Appeal – Civil" described above. The Justice Court Rules of Civil Procedure are listed on the form, but these rules do not apply to eviction actions.[212] This makes the instructions longer than necessary. It also can be confusing to an unrepresented party in an eviction who are expected to learn and understand the rules relevant to their case. Finally, the font used for the instructions is small and difficult to read.

With over 65,000 eviction cases filed in 2018, we recommend that the justice courts develop informational and pleading packets that are specific to eviction cases with simpler instructions. The justices and clerks should hand out the revised packet whenever a judgment is entered against a tenant who is in court. Each unrepresented tenant should know the terms of the judgment entered against them including when the writ may issue and the time period to file an appeal when they leave the courtroom. We also recommend that the eviction rules be amended to require that the judgment include the time to appeal on it.

XIV. Most Eviction Cases Resulted in Default Judgments

As discussed throughout this report, eviction hearings are unlike any other court hearing in Arizona. The practice with regards to default judgments in eviction actions highlights the differences between eviction actions and other proceedings. In other equivalent proceedings, a plaintiff must take a variety of steps to obtain a default judgment. If the defendant fails to appear the plaintiff must file an application and affidavit for default with the court, serve it on the defendant, and then wait at least ten days before requesting that the court enter a default judgment.[213]

In eviction actions, justices typically enter judgments against tenants who fail to appear at the initial hearing. Justices will generally grant the landlord possession of the rented dwelling and for whatever monetary damages the landlord requested, including rent, utilities, late fees, compensation for rental concessions, administrative fees, court costs, and attorneys' fees. Landlords, unlike other civil plaintiffs, do not have to apply to the court for a default, serve the default application on the tenant, or wait a set period before obtaining a default judgment.

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[211] Maricopa County Justice Courts, Appeal an Eviction Action Judgment, http://justicecourts.maricopa.gov/HowToEA_Appeal_packet.pdf.

[212] Justice Court Rules of Civil Procedure, Rule 10(a) "These rules apply to civil lawsuits in justice courts in Arizona. These rules do not apply to eviction actions …."

[213] *See, e.g.*, Justice Court Rules of Civil Procedure at Rule 140; Arizona Rules of Civil Procedure at Rule 55; Arizona Rules of Family Law Procedure at Rule 44.

Most justices entered a default judgment against the tenant within a matter of seconds. If the tenant did not appear, most justices signed the judgment without asking the landlord or the landlord attorney any questions about the case or saying anything on the record. In two courts we observed, the justices would call the name of the case and if the tenant did not appear, the justice would sign the judgment as soon as it was clear the tenant was not in the courtroom. The justice did not say anything else after calling the case. They simply signed the judgment for the landlord.[214]

Justices in other courts also signed the default judgments in a matter of seconds. In Justice Court B3, the justice called the case number and the names of the parties. If the justice saw that the tenant was not present in the courtroom, the justice then entered the judgment after spending only seconds stating for the record, "Service was proper, and the tenant failed to appear. Judgment for the plaintiff." In Justice Court M, the justice would call the case and enter judgment after saying either, "The defendant did not show" or "The tenant did not appear." In Justice Court J, the justice would call the case name and number and enter judgment after saying, "Pursuant to counsel's previous avowals, the defendant(s) not appearing, I find a factual basis and award judgment to the plaintiff."

In a few courtrooms, the justices referred to some documents in the case file on the record. In one courtroom, the justice would look through the plaintiff's case file page by page, identifying each of the documents aloud for the record: "I have a complaint. I have a summons. I have a five-day notice. I have a declaration of service. I have a [proposed] judgment form." The justice would then read aloud the specific amounts listed in the complaint (rent, late fees, previous balance, utilities, court costs, attorneys' fees, etc.).[215] The justice only entered judgment after this recitation.

Another justice similarly looked through the plaintiff's case file identifying documents aloud for the record: "Court has a complaint alleging that rent hasn't been paid since [date]. On [date], defendant was served [by certified mail/hand-delivery] with a 5-day notice demanding payment of [amount] … Court has proof of service on the defendant on [date] for today's hearing. Court is entering judgment for the plaintiff." The justice read aloud the individual amounts and total, asked the landlord's attorney to clarify broadly named fees (such as "administrative fee") and confirm their express inclusion in the lease. The justice also would state when the writ of restitution would issue.[216]

As illustrated above, when a landlord was represented in court by an attorney and the tenant did not appear, the justices rarely asked the attorney any questions. However, the justices would ask more questions when the landlord was unrepresented. For example, one justice would always ask if the unrepresented landlord had a written

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214 Justice Courts E and G.

215 CC2019-0379 . . EA; CC2019-0378 . . EA.

216 CC2018-2119 . . EA; CC2018-2109 . . EA.

rental agreement with the tenant and had the lease with them in court.[217] In one case, the justice asked the landlord for the lease, which the landlord provided and asked the landlord to confirm the payment terms. The justice asked the landlord if the tenant had made either a full or partial payment and asked the landlord if the tenant was still living on the property.[218]

Despite what we observed, a tenant's absence at an eviction hearing does not permit the justice to forego their duties under the eviction rules. The rules require the justices to make sure the landlord or landlord attorney has met the basic requirements to maintain an eviction case before signing a judgment.[219] As we emphasized in Section IX, landlords must be required to prove their cases, regardless of whether they are represented or if the tenants appear in court.

Finally, as discussed in Section VI, due to a variety of reasons, tenants sometimes showed up to court after their case had been called. Even though these tenants made it to court, they still received a default judgment. To provide assistance to these tenants, the Institute recommends that the justice court clerks in the courtrooms hand out a Motion to Vacate Judgment Eviction Action packet. Currently, there is a "Motion to Vacate Judgment Eviction Action" packet on the justice courts website,[220] but we recommend that this packet be revised. While the first page concerns evictions, the rest of the pages pertain to other categories of civil cases and this makes the information difficult to understand. As with all the packets, the font size is too small.

The courts should review the materials and correct any incorrect statements. Although these packets provide information to litigants, they do not provide complete or, in some places, correct, information. Currently, the "Motion to Vacate Judgment Eviction Action" packet instructs parties: "If this is your first filing in the case, you will be required to pay an answer fee." This statement is incorrect for many persons because, as discussed in Section IX(A)(1), parties can request and qualify for a fee waiver or deferral based on the parties' income or receipt of public benefits.[221] This packet also includes motion to vacate or set aside for other types of cases and cites to the general justice court rules. Also, the packet instructs parties that: "An appeal cannot be taken from a default judgment," but fails to inform them that the filing of a Motion to Vacate Judgment will not extend the time to file an appeal.[222]

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217 CC2018-2620 . . EA; CC2018-2642 . . EA; CC2018-2645 . . EA.

218 CC2018-2646 . . EA.

219 *See* Rule 13.

220 Maricopa County Justice Courts, Motion to Vacate Judgment Eviction Action, http://justicecourts.maricopa.gov/HowTo/EA_Motion_to_Vacate_Judgment_packet.pdf.

221 A.R.S. § 12-302(A).

222 A.R.S. § 12-1179(A).

The forms and packets on the Maricopa County Justice Courts website can be a source of helpful information to the public and unrepresented parties. We strongly encourage the courts to review and revise these materials accordingly.

XV. The Monetary Judgments Often Increased Significantly Beyond the Rent Owed

In reviewing the monetary judgments, it is important to consider two factors. First, although in recent years the Phoenix rent increases were among the highest in the nation,[223] recent data shows that metropolitan Phoenix has had *the* highest rates of rent increases in the nation.[224] Second, in the 240 eviction case files we reviewed, more than half of the eviction cases alleging nonpayment of rent were based on only one month of rent owed.[225] Thus, in a good rental market, landlords appear quick to file evictions.

Most eviction cases resulted in a judgment for possession of the property awarded to the landlord and a monetary award that included the rent owed as well as additional fees and costs. These additional fees and costs often had a profound impact. A judgment against a tenant who owed one month's rent could be double the rent owed. For example, many judgments included a "notice fee" charge for when the landlord, or someone working for the landlord, personally serves, posts, or mails a notice to the tenant, stating the tenant has violated the lease agreement. In many cases this fee was charged for an employee of the landlord to serve the notice. We highlighted this fee in our 2005 report, but the fee has increased over the years. In the judgments we reviewed, the fee typically assessed was between $25-$50,[226] but it could be as high as $75.[227]

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[223] Anita Snow, *Once Affordable, Phoenix Rents Among Fastest Rising in U.S*, Associated Press News (Dec.16, 2019), https://apnews.com/ae1aed4b8c1303e57fe1ef6b148af222.

[224] Catherine Reagor, *Metro Phoenix Tops the Nation for Rent Increases, How Affordable is Your City?* Arizona Republic (Mar.1, 2020); https:www.usatoday.com/story/money/real-estate/catherine-reagor/2020/03/01/phoenix-are4a-top-u-s-rent-increases-how-affordable-your-city/4890939002.

[225] Similarly, in Chicago, between 2010 and 2017, 18% of the eviction cases filed claimed that less than $1,000 rent was owed and another 44% claimed less than $2,500 rent was owed. Lawyers' Committee for Better Housing, *Opening the Door on Chicago Evictions: Chicago's Ongoing Crisis*, (May 2019), https://eviction.lcbh.org/sites/default/files/reports/chicago-evictions-2-forced-out-for-less.pdf.

[226] *See* CC2018-1991 . . EA; CC2018-2003 . . EA; CC2018-2091 . . EA; CC2018-2078 . . EA; CC218-2139 . . EA; CC2018-2139 . . EA; CC2018-2122 . . EA; CC2018-2123 . . EA; CC2018-2165 . . EA; CC2018-1271 . . EA; CC2018-2370 . . EA; CC2019-0374 . . EA; CC2019-0558 . . EA.

[227] *See* CC2018-2078 . . EA.

Most judgments for landlords also included late fees. The ARLTA allows landlords to seek "reasonable late fees set forth in a written rental agreement,"[228] but as previously discussed in Section X, not all justices cap these fees, resulting in very high late fee awards. Even when a justice had a policy of limiting unreasonable late fees, late fees still significantly increased the size of the judgment against the tenants.[229]

In one case, a tenant's monthly rent was $2,300 and the landlord sought $555 in late fees for one month rent owed.[230] According to the rental agreement, the late fees were 5% of the monthly rent, plus $20 per day. When the judge pro tempore pointed out that the landlord was asking for almost 25% of the monthly rent owed as a late fee, the landlord attorney said, "That's per the contract." When the judge pro tempore stated their inclination to cap the late fees at 10% of the monthly rent -- $230 – the landlord attorney repeated that it is "per the contract" and told the judge that there is no "legal basis to do that." When the judge pro tempore stated that $555 in late fees would be unconscionable even if it was consistent with the rental agreement, the landlord attorney said, "Yeah, but even unconscionability requires a whole other set of rules to go through to make … such a determination." In the end, the judge pro tempore capitulated and entered a judgment against the tenant that included the full $555 in late fees.

The effect of the late fees was compounded by the attorney's fees and court costs that also are awarded to landlords. These additional fees and costs often significantly increased the amount of the judgment. Here are a few examples:

- In one case, the landlord claimed the tenant owed $843 in rent, and the landlord received a judgment of $1,631.58, including $575 in late fees, a transaction fee of $25, $98 in court costs, and $90 in attorney's fees.[231]

- Another landlord claimed a tenant owed $1,365.56 in rent and received a judgment of $2,478.95, including $641.42 in late fees, $33.60 in tax, a notice fee of $25.45, $91 in court costs and $322 in attorney's fees.[232]

- Another landlord claimed the tenant owed $914 and received a judgment of $1,850.42, including $310.49 in late fees, $35.63 in "Eviction Turn Over" fee, $25.45 in a notice fee, $27.29 in tax, $25.25 in pet rent, $10 in

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228 A.R.S. § 33-1368(B).

229 *See* CC2018-2139 . . EA; CC2018-2129 . . EA; CC218-2165 . . EA; CC2018-2165 . . EA; CC2018-2340 . . EA.

230 CC2019-0127 . . EA.

231 CC2018-2129 . . EA.

232 CC2018-2340 . . EA.

insurance fees, $7.13 in storage fees, $81.98 in utilities, $91 in court costs and $322 in attorneys' fees.[233]

- Another landlord claimed the tenant owed $939 in rent and received a judgment of $1693.08, including late fees of $269.73, notice fee of $25.44, tax of $28.79, insurance of $10, storage of $7.12, court costs of $91 and attorney's fees of $322.[234]

- In another case, a landlord claimed the tenant owed $673.68 in rent and received a judgment of $1198.49, including $50 in late fees, $50 in service of notice fee, $91 in court costs, $11.81 in tax and $322 in attorney's fees.[235]

The gap between the rent owed and the judgment awarded often causes significant harm to the tenants. Many of the tenants we observed in court had experienced an unforeseen event that kept them from paying their rent on time, Some tenants lost their jobs,[236] some experienced a medical emergency,[237] and some had to pay other unexpected expenses.[238] In the 240 eviction case files we reviewed, more than half involved only month of rent owed. Yet, these tenants were quickly taken to court, evicted, and, as illustrated above, subjected to monetary judgments that were two times the amount of the rent owed. Such high judgments can be devastating to tenants and only compound the effects of the life events that led to the tenants missing their rent payments. As noted above, these large judgments can make it impossible for tenants to be eligible for a housing subsidy.

That reality is played out daily in Maricopa County Justice Courts eviction cases. As Senator Bennet acknowledged when sponsoring the bipartisan "Eviction Crisis Act," many tenants are only one unexpected event away from an eviction.[239]

Conclusion:

As we have discussed throughout this report, evictions can be life-altering events with the effects continuing to be felt long after the judgment is signed. With over 65,000

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233 CC2018-2331 . . EA.

234 CC2019-0109 . . EA.

235 CC2019-0558 . . EA.

236 *See* CC2018-2178 . . EA; CC2018-2370 . . EA; CC2019-0356 . . EA.

237 *See* CC2018-2001 . . EA; CC2018-2149 . . EA; CC2018-2504 . . EA; CC219-0379 . . EA.

238 *See* CC2018-1960 . . EA; CC2018-2324 . . EA; CC2018-2372 . . EA.

239 Michael Bennet for Senate, Eviction Crisis Act, https://www.bennet.senate.gov/public/index.cfm?p=eviction-crisis.

eviction cases filed in 2018, the impact these cases have on residents of Maricopa County is enormous. Because the impacts of an eviction can be so far reaching, it is crucial that tenants have a fair and equitable chance in court. The Institute hopes this report will encourage the public to become more engaged in the judicial overview process and that the justice courts will review their policies and practices to ensure that the judicial system protects the rights of tenants.

Recommendations:

Just as we did in our initial report, we make recommendations based on the eviction proceedings we observed and the eviction files we reviewed. Some of our recommendations track those in our initial study, some fine-tune our prior recommendations, and some of these recommendations are new:

Preliminary Issues:

1. Courts should reduce the number of cases in each eviction court call and more time should be spent on these very important cases.

2. Landlords should be required to verify their complaints and they should be required to plead the requisite elements for possession and monetary award.

3. Justices should review all court files prior to the start of the daily calendar to ensure that the requirements in Rule 13(a) have been satisfied and the justices also should be required to state on the record for each case that they reviewed the case file and that the documents satisfy the requirements of Rule 13(a).

4. Justices should review landlords' pleadings, including notices, summons and complaints to determine if the documents contain incorrect information on court procedures, tenant obligations or landlord rights.

5. The justice courts should provide better directions on how to find the courthouses and how to locate courtrooms once in the courthouses.

Training:

6. Justices should be trained (or retrained) on the requirements in the Rules of Procedure for Eviction Actions and the ARLTA.

7. Justices should be trained about the requirements for subsidized housing terminations, service of notices and other aspects of that rental relationship that affect the eviction process.

8. Justices should be trained on their obligations to ensure that unrepresented tenants receive a fair hearing.

During the Court Hearing:

9. Justices should ask questions of unrepresented tenants that are intended to illicit any defenses to the eviction.

10. Justices should not accept and rely upon standard avowals by landlord attorneys.

11. The process for stipulated judgments should be reviewed. In the interim, at a minimum, the justices should ensure that tenants who stipulate to judgments with a waiver of any rights or the imposition of fees and costs not typically granted by the justice are required to appear before them and the justice should explain the consequences of the stipulation. Long term changes may ultimately require an eviction rule amendment, but the justices could begin the process by refusing to enter a stipulated judgment that includes a waiver of rights or an award that exceeds the court's practice unless the tenant appears in court.

12. Justices should grant continuances to tenants on the same basis as continuances to landlord attorneys and when continuances are granted, the justices should consider the tenant's schedule and availability.

13. Justices should announce on the record the relief awarded in each case and if the judgment is against the tenant, specifically state the time period when the writ will issue.

14. For cases where the tenant is in court, and judgment is for the landlord, in addition to the relief granted, the justice should state on the record that the tenant may file an appeal and the time period to file the appeal is five days. A rule petition should be filed that requires that the time to appeal an eviction judgment be affirmatively stated on the judgment. The court should develop easy to understand appeal forms with instructions specific to eviction cases. The justices should give the tenant those appeal forms along with an easy to understand handout that explains the appeal period and the necessary steps to appeal a judgment. These documents should be available online and at the clerk's office.

15. For cases where the tenant came to court after their case was called, or the tenant did not appear in court for any other reason, and a default was entered, the court should develop simpler form motions to vacate the judgment in an eviction case with instructions. At a minimum, these documents should be posted on the court website, made available at the clerk's office and given to tenants in the courtroom.

Self-Service Forms

16. The justice courts should review all the forms and packets on their website to ensure they comply with the law. We suggest that the justice courts promote and use of the landlord and tenant forms on the Arizona Supreme Court website. All the forms should accurately explain the right to request a fee waiver or deferral and the standard to obtain one.

PowerPoint/ Audio/Visual Presentations

17. The justice courts should provide all public information in Spanish and other languages identified in each court ‘s Language Access Plans.

Although this report does not pertain to the Arizona Supreme Court, we hope the Court will develop additional notices and forms for the use of unrepresented parties in eviction cases.

Finally, the Institute suggests that it may be an appropriate time to convene a landlord and tenant task force similar to the prior task force.

The William E. Morris Institute for Justice

Phoenix, Arizona

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