

ORIGINAL

No. 22-7347

FILED
JUL 21 2023

OFFICE OF THE CLERK
SUPREME COURT, U.S.

IN THE SUPREME COURT OF THE UNITED STATES

KIMBERLEY S. ELKINS,
Petitioner,

v.

KATHY MILLER,
Respondent,

*On Petition For A Writ Of Certiorari
To The Supreme Court Of The United States*

**PETITION FOR REHEARING IN SUPPORT OF
PETITION FOR WRIT OF CERTIORARI**

KIMBERLEY S. ELKINS,
Pro Se
774 Via Lanza
El Paso, Texas 79912
302-342-9271

July 21, 2023.

RECEIVED
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OFFICE OF THE CLERK
SUPREME COURT, U.S.

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PETITION FOR REHEARING

INTRODUCTION: COURT FORMS

Background

Pursuant to Rule 44, Petitioner Kimberley S. Elkins, requests rehearing and reconsideration of the Court's June 26, 2023 order denying the Petition for a Writ of Certiorari, on the grounds of substantial intervening circumstances and substantial grounds not previously presented. Petition prepared according to the rules for Pro Se Petitioners.

Briefly, this case began in New Mexico in 2018, after 6 years of Wage Theft, in violation of Federal Labor Laws, and subsequent Breach of Contract, perpetrated by predatory landlord(s) against this Petitioner. The ensuing court battle was mired at all levels, by numerous factors including, but not limited to, judicial bias, excusable neglect, and a variety of Due Process violations, that ultimately robbed the Petitioner of equitable treatment under the law. One such issue, previously unknown to the Petitioner, and discovered just this week, is the issue of the use of outdated, complex, court Forms, with multiple versions, constituting a disparity of treatment of litigants, across the different state & local courts, in violation of my Due Process Rights .

According to Salyzyn, et al, 2017, in “Literacy Requirements of Court Documents: An Underexplored Barrier to Access to Justice”, p. 2, “...court forms are complex...court form complexity can be a major barrier to accessing justice. As a practical matter, if SRLs (Self-Represented Litigants) have difficulty in understanding or completing a court form, their legal rights may be compromised. Complexity can lead to mistakes in completing court forms or, in some cases, even be so challenging or demoralizing that an individual may choose not to pursue or defend a claim...the stakes are high”.

The authors further state, that “among the reported challenges were difficulties in determining which court forms were necessary to complete and the receipt of contradictory information from court staff about the forms. The forms themselves were also a major source of complaint. As summarized in the report: virtually every SRL in the sample complained that they found the language in the court forms confusing, complex and, and some cases, simply incomprehensible..”. This complexity is bad enough, in & of itself; but, when you combine that with a form with a designated purpose, i.e. Judgment for restitution in the UORRA, (Uniform Owner-Resident Relations Act) Form4-909, with more than one version (in this case, at least 3 versions); that is a recipe for due process disaster.

Furthermore, according to Dyer, et al, 2013, in “Improving Access to Justice: Plain Language Family Law Court Forms in Washington State”, p. 1068, “Plain language is a term commonly used to describe language that is in a format and words that readers find appealing and easy to use and understand. To be clear, “plain language” does not mean drab, ugly, or base...the goal of using plain language is to make documents intelligible to the greatest possible number of intended readers. Though pattern forms have long been used in the legal profession, they have not generally been written in clear and easy-to-understand language”.

In this context, “Plain language” includes clear, concise, equitable, simple and consistent wording, free from multiple versions of the same form, so that it is universally understandable and accepted by the general public. In keeping with this sentiment, Dyer,et al, further state that, “while the Plain Language Movement is but one small example of a national effort to create meaningful access to the courts, it is pushing many in the legal profession and the judiciary to take a critical look at one of the most significant barriers to access: forms written by lawyers and judges in a language only they understand”, p. 1070.

In the case of the 4-909 Form, there was one small area on pg. 2 of the most

recent form, under the Use Notes Section, that stated, somewhat foggily, that a litigant had 5 days to post a bond, after filing the Notice of Appeal. Ironically, this one tiny excerpt of a sub-section (that, apparently carries a lot of weight) was the only thing remotely understandable (but difficult in the total context of the form(s)); and missing from other versions for unknown, inconsistent & confusing reasons.

In *Turner v. Rogers*, 2011, the U. S. Supreme Court “...was explicit that the defendant must understand his available affirmative defenses, essentially holding that due process, though not necessarily mandating a right to state-appointed counsel in civil contempt proceedings, does require that judiciaries implement “alternative procedures,” such as forms, to ensure that litigants’ due process rights are protected. *Turner* is the first statement by the US Supreme Court describing trial courts’ due process responsibilities to unrepresented litigants”, p. 1071.

Argument

The Form problems began with the New Mexico Magistrate Court Form 4-909 (The Form), of the UORRA, “Judgment for Restitution”, pursuant to NMSA, 1978, Section 47-8-33, 47-8-43, 47-8-46, & 47-8-48. This new information is directly

related to an area more specific and different than the manner in which a clerk fills out any form. This new information is about The Form itself; prior to being filled; and how what is, and is not contained in a variety of versions, negatively effects litigants' understanding of the court processes The Form(s) represent.

Petitioner did not know before this week that so many versions of this form existed & the vital information from the Metro-District version was the most complete, and should be the hallmark for the 4-909 form. The 4-909 form that the Magistrate Judge used in 2018 was only 1 pg long; was dated 1986, 1997, 1998, & 1999; but no Use Notes, and no mention of a 5 day window to post Bond after filing the Notice of Appeal, as exists on the Metro-District 4-909 version. All people, regardless of where they live in the state, and which court their case is originally heard (Magistrate, Metro, or District) should be able to rely on the creation and function of court forms, to be both equitable and consistent across these courts. Given that all these versions of 4-909, are predicated on the UORRA, and titled Judgment for Restitution, uniformity and consistency should be in order; and should contain the 5-day "window" statement found in the Use Notes of the Metro-District version (& one other).

However, these discrepancies played out in the truly complex and confusing

New Mexico Court Form System (whether an electronic or hard-copy version); it is plain to see that if the most recent 2PG Version of 4-909 with the Use Notes on pg 2, containing the information about having 5 days to post the Bond after filing the Notice of Appeal in District Court; would have, unequivocally, mitigated the numerous subsequent, and complicated circumstances that created the Excusable Neglect issues. And, therefore, the original case would have been heard on it's merit when it was new.

Previous mention in lower court documents of a form problem, was strictly about the vague and misleading way the clerk filled out the form. However, this is not the point of this new information. This new information is about the lack of consistency and reliability in the previously unknown number and styles of the same form. The 4-909 form(s), in and of themselves, prior to being filled out, are highly inconsistent from one court to another in the same state. This creates a "risk of erroneous deprivation of liberty" due to the abject confusion they create; and the fact that information provided in the Use Notes Section on pg 2 of these forms, is different and misleading. Had the 4-909 form been written and used uniformly, consistently and fairly, in and among the various courts such as Metro, District and Magistrate, then the 2016 version of 4-909A, and the 2 types of

4-909, would have been identical; and, would have contained the "5day" window of opportunity information in the Use Notes, that would have prevented the Excusable Neglect issues that plagued this case. Petitioner would have not lost the entire 15 days time frame for filing, trying to find some way to pay the bond before being allowed to file the Notice of Appeal.

CONCLUSION

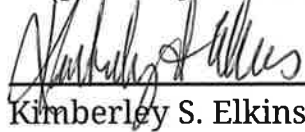
In how many court cases each year, does the use of outdated and complex court forms play a significant role in the outcome of a case, for one party or another, or for both? Furthermore, as a result, how many of these cases make their way to the U.S. Supreme Court, clogging the entire court system as they matriculate upward?

If these Forms were uniform across the board, and free from disparity: 1). The newest Form (2016) would have been used; 2). The Metro-District Form would have equitably matched the Magistrate Court Form, and any other version, and, the 5 Day window would have appeared on the 4-909 Form filled out by the court clerk, and signed by the Judge on July 17, 2018. This, then would have completely prevented the horrific and complicated Excusable Neglect Issues that have plagued this case, repeatedly violating Petitioner's rights, and preventing her

from filing a timely Notice of Appeal. Therefore, none of the subsequent interfering factors would have clouded her "Appeal as of Right", afforded by the United States and New Mexico Constitutions in this case.

No matter what kind of legal case it is, assuring the use of the proper, current, complete and fair legal forms, free from disparity, will help preserve due process rights for all litigants. Purging the system of these glaring fallacies is the right thing to do. It's simple, feasible, universal and, very importantly, Constitutional.

Respectfully submitted,



July 21, 2023

Kimberley S. Elkins

Pro Se

774 Via Lanza

El Paso, Texas 79912


302-342-9271

Email: kse2468@hotmail.com

CERTIFICATE OF COUNSEL

PETITIONER APPEARING PRO SE

Pursuant to Rule 44.2, Counsel certifies that the Petition is restricted to the grounds specified in the Rule with substantial grounds not previously presented. Counsel certifies that this Petition is presented in good faith and not for delay.



Kimberley S. Elkins
July 21, 2023.

Exhibit A

STATE OF NEW MEXICO
OTERO COUNTY MAGISTRATE COURT IN ALAMOGORDO

FILED ON

Kathy Miller, Plaintiff(s)

JUL 17 2018

v.

Kimberly S Elkins, Defendant(s)

OTERO COUNTY
MAGISTRATE COURT
JUDGMENT FOR RESTITUTION
(Uniform Owner-Resident Relations Act)¹

No. M-38-CV-2018-00191

This matter was set for trial on Tuesday, July 17, 2018 and the following parties appeared for the trial:

[X] Kathy Miller ***APPEARED***
[X] Kimberly S Elkins ***APPEARED***

Having heard the evidence and argument presented, the court finds in favor of: Kathy Miller

IT IS THEREFORE ORDERED:

1. The premises at:
1323 James Canyon HWY APT 4 Cloudcroft,
NM 88317
be restored to: Kathy Miller
2. The rental agreement is terminated;
(check, if applicable, and complete)
[X] Plaintiff shall recover from defendant the following amounts:

Rents	\$3,362.00
Rent Per Day	\$60.15
Utilities	\$17.41
Lock Replacement	\$65.00
Costs	\$127.00
Deposit	-\$200.00
Total Judgment	\$3,431.56

Plus 8.75% interest per year until the judgment is paid.
- [] A writ of restitution to be issued effective ,³
- [] The court further orders _____ (other relief).
3. A hearing on the issue of damages will be held by this court
[] on, (date) at ..²
[] only upon request for a setting.
4. If this case is appealed and the resident wants to stay the eviction pending appeal, the resident shall pay rent in the manner set forth in section 47-8-47 NMRA in the amount of \$3,431.56.
If the money judgement is appealed, the court sets the appeal bond at \$3,431.56.(if left blank, the appeal bond is set at zero dollars (\$0)).

Comments:

Mickie L. Vega, Judge⁴

CERTIFICATE OF SERVICE

I CERTIFY that a copy of the foregoing was served on 7.17.18 to:

Kathy Miller

P. O. Box 102
Mayhill, NM 88339

Kimberly S Elkins

1323 James Canyon HWY
APT 4
Cloudcroft, NM 88317

Hannah Burleson, Clerk

Distribution 1 copy - Court 1 copy - Defendant 1 copy - AOC 1 copy - Plaintiff [Rule 4-909 SCRA 1986; as amended, September 2, 1997; January 1, 1999; Approved November 17, 1998]
M-CV-LT JUDGMENT ON WRIT OF RESTITUTION (UORRA) PACKET: Civil Form 4-909, 4-913

Court Information:

Otero County Magistrate Court 263 Robert H. Bradley Drive

Alamogordo NM 88310 phone 575-437-9000 (fax) 575-439-1365 web site: www.nmcourts.com

Exhibit B

4-909A. Judgment for restitution.

[For use in Magistrate Court]

[Sections 47-8-33, 47-8-43, 47-8-46, 47-8-48 NMSA 1978]

STATE OF NEW MEXICO

COURT
COUNTY

_____, Plaintiff,

v.

No. _____

_____, Defendant.

JUDGMENT FOR RESTITUTION (Uniform Owner-Resident Relations Act)¹

This matter was set for trial on _____, _____ (date). The plaintiff appeared (in person) (and) (by attorney _____). The defendant (did not appear) (appeared) (in person) (and) (by attorney _____). Having heard the evidence and argument presented, the court finds in favor of:

☐ the plaintiff.

☐ the defendant.

IT IS THEREFORE ORDERED:

1. The premises at: _____, New Mexico be restored to (plaintiff) (defendant);

2. The rental agreement (is) (is not) terminated;

(check, if applicable, and complete)

☐ Plaintiff shall recover from defendant the following amounts:

Rents \$ _____

Damages \$ _____

Attorneys' fees \$ _____

Costs \$ _____

TOTAL \$ _____²

Plus _____ % interest per year until the judgment is paid.³

(check, if applicable, and complete)

☐ A writ of restitution be issued effective _____, _____ (date).⁴

(check, if applicable, and complete)

☐ The court further orders _____ (other relief).

3. A hearing on the issue of damages shall be held by this court only upon request for setting.²

4. If this case is appealed and the resident wants to stay the eviction pending appeal, the resident shall pay rent in the manner set forth in Section 47-8-47 NMRA. If the money judgment is appealed, the court sets the appeal bond at \$ _____ (if left blank, the appeal bond is set at zero dollars (\$0)).

Judge

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was served on all parties and counsel on _____:

Signature

Title

USE NOTE

1. This form may also be used for a mobile home park with less than 12 units. *See* NMSA 1978, § 47-10-2(C).

2. Use Form 4-701 NMRA if damages are determined at a separate hearing.

3. Interest is calculated at the statutory rate set forth in NMSA 1978, Section 56-8-4(A), unless the judgment is rendered on a lease having a different rate of interest.

4. Insert a date which is not less than three (3) nor more than seven (7) days from the date of filing of the judgment.

[Adopted by Supreme Court Order No. 16-8300-033, effective for all cases pending or filed on or after December 31, 2016.]

Exhibit ~~118~~ C

4-909

[Sections 47-8-33, 47-8-43, 47-8-46, 47-8-48]

STATE OF NEW MEXICO

COURT

COUNTY

No. _____

_____, Plaintiff

v.

_____, Defendant

JUDGMENT FOR RESTITUTION
(Uniform Owner-Resident Relations Act)¹

This matter was set for trial on _____, _____ (date) the plaintiff appeared (in person) (and) (by attorney _____). The defendant (did not appear) (appeared) (in person) (and) (by attorney _____). Having heard the evidence and argument presented, the court finds in favor of:

- ☐ the plaintiff
☐ the defendant.

IT IS THEREFORE ORDERED:

1. The premises at:

_____, New Mexico _____
be restored to (plaintiff) (defendant);

2. The rental agreement (is) (is not) terminated;

(check, if applicable, and complete)

☐ Plaintiff shall recover from defendant the following amounts:

Rents	\$ _____
Damages	\$ _____
Attorney's fees	\$ _____
Costs	\$ _____
TOTAL	\$ _____] ²

(check, if applicable, and complete)

[] A writ of restitution be issued effective _____, _____
(date).³

(check, if applicable, and complete)

[] The court further orders _____ (other relief).

(check, if applicable, and complete)

[] A hearing on the issue of damages will be held by this court on
_____, _____ (date) at _____ (a.m.) (p.m.).²

3. If this case is appealed, the (plaintiff) (defendant) shall
_____.⁴

Dated: _____

Judge⁴

USE NOTES

1. *This form may also be used for a mobile home park with less than 12 units. See Subsection C of Section 47-10-2 NMSA 1978.*
2. *Use Civil Form 4-701 if damages are determined at a separate hearing.*
3. *Insert a date which is not less than three (3) nor more than seven (7) days from the date of filing of the judgment.*
4. *Section 47-8-47 NMSA 1978 provides for a stay of execution upon appeal. If the defendant appeals a writ of restitution, the court shall require an escrow to be paid into the court within five (5) days after the notice of appeal is filed to stay the execution. If a money judgment is appealed the court may require a deposit with the court or a supersedeas bond be filed. See Section 47-8-47 NMSA 1978 for appeals by the plaintiff.*

[Rule 4-909 SCRA 1986; as amended, effective September 2, 1997; January 1, 1999.]

Exhibit D

4-909. Judgment for restitution.

[For use in Metropolitan and District Courts]

[Sections 47-8-33, 47-8-43, 47-8-46, 47-8-48 NMSA 1978]

STATE OF NEW MEXICO

COURT
COUNTY

_____, Plaintiff,

v. No. _____

_____, Defendant.

JUDGMENT FOR RESTITUTION
(Uniform Owner-Resident Relations Act)¹

This matter was set for trial on _____, _____ (date). The plaintiff appeared (in person) (and) (by attorney _____). The defendant (did not appear) (appeared) (in person) (and) (by attorney _____). Having heard the evidence and argument presented, the court finds in favor of:

☐ the plaintiff.

☐ the defendant.

IT IS THEREFORE ORDERED:

1. The premises at: _____, New Mexico be restored to (plaintiff) (defendant);

2. The rental agreement (is) (is not) terminated;
(check, if applicable, and complete)

☐ Plaintiff shall recover from defendant the following amounts:

Rents	\$ _____
Damages	\$ _____
Attorney's fees	\$ _____
Costs	\$ _____
TOTAL	\$ _____ ²

(check, if applicable, and complete)

☐ A writ of restitution be issued effective _____, _____ (date).³

(check, if applicable, and complete)

☐ The court further orders _____ (other relief).

(check, if applicable, and complete)

[] A hearing on the issue of damages will be held by this court on _____, _____ (date) at _____ (a.m.) (p.m.).²

3. If this case is appealed, the (plaintiff) (defendant) shall _____⁴

Dated: _____

Judge⁴

USE NOTE

1. This form may also be used for a mobile home park with less than 12 units. *See* Subsection C of Section 47-10-2 NMSA 1978.

2. Use Civil Form 4-701 if damages are determined at a separate hearing.

3. Insert a date which is not less than three (3) nor more than seven (7) days from the date of filing of the judgment.

4. Section 47-8-47 provides for a stay of execution upon appeal. If the defendant appeals a writ of restitution, the court shall require an escrow to be paid into the court within five (5) days after the notice of appeal is filed to stay the execution. If a money judgment is appealed the court may require a deposit with the court or a supersedeas bond be filed. *See* Section 47-8-47 NMSA 1978 for appeals by the plaintiff.

[Rule 4-909 SCRA 1986; as amended, effective September 2, 1997; January 1, 1999; as amended by Supreme Court Order No. 16-8300-033, effective for all cases pending or filed on or after December 31, 2016.]

**Supreme Court of the United States
Office of the Clerk
Washington, DC 20543-0001**

Scott S. Harris
Clerk of the Court
(202) 479-3011

June 26, 2023

Ms. Kimberley S. Elkins
774 Via Lanza
El Paso, TX 79912

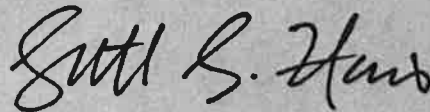
Re: Kimberly S. Elkins
v. Kathy Miller
No. 22-7347

Dear Ms. Elkins:

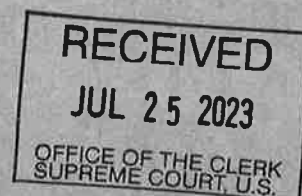
The Court today entered the following order in the above-entitled case:

The petition for a writ of certiorari is denied.

Sincerely,



Scott S. Harris, Clerk



CERTIFICATE OF SERVICE

No. 22-7347

IN THE SUPREME COURT OF THE STATE OF THE UNITED STATES

KIMBERLEY S. ELKINS,
Petitioner

v.

KATHY MILLER,
Respondent

***On Petition For A Writ Of Certiorari
To The Supreme Court Of The United States***

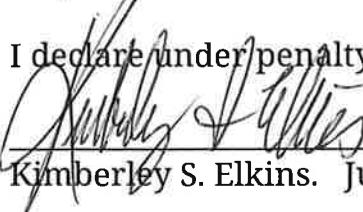
**PETITION FOR REHEARING IN SUPPORT OF
PETITION FOR WRIT OF CERTIORARI**

PROOF OF SERVICE

I, do swear or declare that on or about this date, July 21, 2023, as required by Supreme Court Rule 29 I have served the enclosed PETITION FOR REHEARING IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI on each party to the above proceeding or that party's counsel, and on every other person required to be served, by depositing an envelope containing the above documents in the United States mail properly addressed to each of them and with first-class postage prepaid, The names and addresses of those served are as follows:

Kathy Miller
P.O. Box 102
Mayhill, N.M. 88339

I declare under penalty of perjury that the foregoing is true and correct.



Kimberley S. Elkins. July 21, 2023.