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**IN THE SUPREME COURT  
STATE OF ARIZONA**

In the Matter of	)	Arizona Supreme Court No. R-_____
	)	
PETITION TO AMEND RULE 4,	)	PETITION TO AMEND RULE 4(g),
ARIZONA RULES OF CIVIL	)	ARIZONA RULES OF CIVIL
APPELLATE PROCEDURE	)	APPELLATE PROCEDURE
_____	)	

**PETITION**

Pursuant to Rule 28, Rules of the Supreme Court, this petition asks the Court to adopt an amendment to Rule 4(g) of the Arizona Rules of Civil Appellate Procedure (“ARCAP”) as reflected in the attachment hereto, effective as soon as possible but no later than January 1, 2023.

**I. SUMMARY OF PROPOSED CHANGES**

This Petition seeks to resolve issues created by the current rule, which allows a certificate of service to be filed 5 days after a document is filed.

Every party filing a document in the Arizona Court of Appeals and the Arizona Supreme Court must serve the document on all other parties to the

appeal. ARCAP 4(f). A signed certificate of service that identifies the date of service, the name of each person served, and the manner of service must accompany every filed document. ARCAP 4(g). The date a document is served dictates the deadline for any response or subsequent brief. For instance, the time to respond to a motion is “within 10 days after service of the motion” and the time to reply is “within 5 days after service of a response.” ARCAP 6(a)(2). Similarly, an answering brief is due “within 40 days after service of the” opening brief and a reply brief is due “within 20 days after service of the answering brief.” ARCAP 15(a)(2), (3). If a document is not properly served, the court and the parties cannot accurately calculate deadlines for future filings. In addition, lack of proper service interferes with the due process rights of other parties to an appeal.

Although a certificate of service must accompany every filed document, ARCAP 4(g) currently allows a party to file a certificate of service within 5 days after a document is filed. When a document is filed without a certificate of service, the appellate court is unable to immediately act to obtain the certificate. Instead, the court must wait until 5 days have elapsed before contacting the party about the lack of a certificate of service, which requires the court to create and track another deadline. In the interim, the

court cannot docket a deadline for any response to the filed document because the court requires the information from the certificate of service to accurately calculate the deadline. *See* ARCAP 5(a) (computation of deadlines varies depending on the manner of service).

Further, because ARCAP 4(g) currently allows a party to file a document without contemporaneously filing a certificate of service, sometimes a certificate of service is not filed at all. Despite best efforts, the appellate court may not discover this omission until significant time has passed, creating a period of uncertainty and delay in processing an appeal. If a party must file a certificate of service when the document is filed, most service issues can be addressed and resolved immediately.

This Petition seeks to change ARCAP 4(g) to remove the provision allowing a party to file a certificate of service within 5 days after filing a document. The Petition suggests that removing the 5-day requirement will allow the Arizona Court of Appeals and the Arizona Supreme Court to immediately identify and address service issues, leading to fewer delays.

In preparing this proposed change, Petitioner has consulted Division One and Division Two of the Arizona Court of Appeals, members of the Arizona Supreme Court Staff Attorneys' Office, and the Arizona Supreme

Court Clerk. Petitioners understand that members of those groups individually support the proposed change.

## II. TEXT OF PROPOSED CHANGES

It is therefore proposed that ARCAP 4(g) be modified to provide as follows (with deletions in strikeout):

### **Rule 4. Filing Documents with an Appellate Court; Format; Service**

(g) Certificate of Service. Every document filed with an appellate clerk must be accompanied by a certificate of service that identifies the names of each person served with the document, and the date and manner of service. The party, attorney for the party, or an agent of the party that served the document must sign the certificate of service, and may use an electronic signature as provided by Rule 4.2(f)(1). The filing party may file the certificate as a separate document, or, if filed in paper or if allowed by the electronic filing system, the certificate may appear at the end of a document, or as an attachment. ~~An appellate clerk must permit a party to file a document without a certificate of service, but the party must file the certificate within the following 5 days.~~

DATED this 6th day of December, 2021.

\_\_\_\_\_/s/ \_\_\_\_\_  
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