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ARIZONA SUPREME COURT

In the Matter of:	)	Supreme Court No. R-23-____
	)	
PETITION TO AMEND	)	PETITION
ARIZONA RULES OF EVIDENCE,	)	
RULE 902(1)(A)	)	
_____	)	

Pursuant to Rule 28 of the Rules of the Supreme Court, the Arizona State, Tribal and Federal Court Forum (“The Forum”) respectfully submits an amendment to Evidence Rule 902(1)(A), as written in the attached *Appendix*, for the Court’s consideration and inclusion in the Rules of Evidence.

I. Background for the Proposed Rule Change.

In the course of making stylistic changes to its Rules of Evidence in 2012, the New Mexico Supreme Court added the seal of a “Federally Recognized American Indian Tribe or Nation” to the list of government seals that would make a document self-authenticating under Paragraph (1)(a) of its Rule 11-902. The Forum requests that this Court do the same to Arizona’s Rules of Evidence 902(1)(A). This is consistent with the purpose of the Arizona Rules of Evidence to “eliminate

unjustifiable expense and delay, and promote the development of evidence law, to the end of ascertaining the truth and securing a just determination.” Consistent with Arizona Rule of Evidence 201(b), a judge may take judicial notice of the existence of a functioning federally recognized tribal government as this is a fact “not subject to reasonable dispute” and the identity of these governments that “can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.” These tribal governments have developed laws and rules concerning issuance and maintenance of official records like other governments whose sealed records are currently recognized as self-authenticating under Rule 902.

Despite the authority to take judicial notice of the existence and identity of a functioning federally recognized tribe that produced a record sought to be placed in evidence, Rule 902 has been held to prohibit self-authentication of such records by omission of tribal governments from the types of governments explicitly provided for in Rule 902. *United States v. Alvarez*, 831 F.3d 1115, 1123 (9th Cir. 2016).

Though courts may routinely admit such records in practice, the *Alvarez* decision provides authority for requiring additional authentication of tribal documents. This is inconsistent with the purposes of the Rules of Evidence and specifically Rule 902, to eliminate the unjustifiable expense and delay that occurs when extrinsic evidence of the authenticity of the documents of federally recognized tribes is required.

The proposed amendment would ensure consistency across cases and across the jurisdictional boundaries of the neighboring states of New Mexico and Arizona, which include the Navajo Nation, a federally recognized tribe that straddles the New Mexico and Arizona border. Amending the rule would be efficient, promote fairness, and eliminate unjustifiable expense and delay.

II. Request for Consideration.

The Forum respectfully requests that the Court open this petition for public comment and that the Court consider the petition and comments in the regular course provided by Supreme Court Rule 28.

Respectfully submitted this 9th day of January, 2023.

/s/_____
Honorable Lawrence King,
Chair, Arizona State, Tribal and
Federal Court Forum

/s/_____
Honorable Randall M. Howe
Vice Chair, Arizona State, Tribal and
Federal Court Forum

Appendix

Arizona Rules of Evidence

Rule 902. Evidence That Is Self-Authenticating

(Proposed addition is underlined)

(1) Domestic Public Documents That Are Sealed and Signed. A document that bears:

(A) a seal purporting to be that of the United States; any state, district, commonwealth, territory, or insular possession of the United States; a Federally Recognized American Indian Tribe or Nation; the former Panama Canal Zone; the Trust Territory of the Pacific Islands; a political subdivision of any of these entities; or a department, agency, or officer of any entity named above; and

(B) a signature purporting to be an execution or attestation.

(2) through (14) [No Changes]