

1 Lisa M. Panahi, Bar No. 023421
2 General Counsel
3 State Bar of Arizona
4 4201 N. 24th Street, Suite 100
5 Phoenix, AZ 85016-6288
6 (602) 340-7236

7 **IN THE SUPREME COURT**
8 **STATE OF ARIZONA**

9 In the Matter of:

10 **PETITION TO AMEND RULE 34**
11 **OF THE ARIZONA RULES OF**
12 **FAMILY LAW PROCEDURE**

Supreme Court No. R-23-

PETITION

13 Pursuant to Rule 28(a) of the Arizona Rules of Supreme Court, the State Bar
14 of Arizona (the “State Bar”) hereby petitions the Court to amend Rule 34 of the
15 Arizona Rules of Family Law Procedure (the “Family Rules”). This proposed
16 amendment will provide clarity regarding the authority of an attorney or
17 unrepresented party to seek to continue a trial, hearing, or conference.
18

19 Rule 34(a) of the Family Rules is titled “Motion to Continue; Unavailability
20 of a Witness or Party.” That subsection then provides the unavailability of a witness
21 or party for a trial, hearing, or conference as the sole basis for seeking a continuance.
22 Subsection (b) of Rule 34 addresses a continuance based solely on a scheduling
23 conflict between two trials, hearings, or conference at the same time. Subsection (c)
24
25

1 of Rule 34 addresses the duty to consult the other party before requesting the
2 continuance.

3 Under this Rule, as currently written, the only explicit bases for a continuance
4 of a trial, hearing, or conference are: 1) the unavailability of a party or witness; or,
5 2) a conflict in schedules. No authority is provided by the Rule to seek a continuance
6 in any other circumstance and, therefore, arguably no authority exists for an attorney
7 or unrepresented party to request a continuance for any other reason.
8
9

10 In practice, continuances are sought, and often granted, for a myriad of
11 reasons, including but not limited to illness, the unavailability of documents in time
12 for the trial, reports from third parties not being complete, technology failures (for
13 video trials), a change in circumstances since the trial date was scheduled requiring
14 further discovery, and/or the parties being very close to settlement. The
15 circumstances justifying a continuance to ensure that due process is afforded and
16 that the Court has the most complete information available for the trial, hearing, or
17 continuance vary greatly and are not restricted to the unavailability of a party/witness
18 or a schedule conflict.
19
20

21 The Rule should be amended to provide for a request to continue a trial,
22 hearing, or continuance “for other good cause.” In addition to clarity, this is an issue
23 of access to justice. While many attorneys are aware that continuances are granted
24 for reasons not set forth in the Rules, unrepresented parties could read the Rule to
25

1 limit continuances to the two circumstances explicitly stated. As a result, an
2 unrepresented party may not be aware that they have opportunity to seek a
3 continuance if other circumstances warrant a continuance.
4

5 The proposed amendment will provide authority, clarity, and bring the Rules
6 into conformance with current common practices.
7

8 **CONCLUSION**

9 The State Bar of Arizona respectfully requests that Court modify Rule 34 as
10 set forth in the attached Appendix.
11

12 RESPECTFULLY SUBMITTED this 9th day of January 2023.
13

14 */s/ Lisa M. Panahi*

15 _____
16 Lisa M. Panahi
17 General Counsel
18

19 Electronic copy filed with the
20 Clerk of the Supreme Court of Arizona
21 this 9th day of January 2023.

22 by: P Seguin
23
24
25

1 **APPENDIX**

2 *(Please note: deletions are reflected by ~~strikethrough~~ and additions are reflected*
3 *by underline.)*

4
5 **(a) Motion to Continue; Unavailability of a Witness or Party.**

6 On a motion to continue a trial, hearing, or conference based on the
7 unavailability of a party or witness, the party requesting the continuance
8 must show:

9 (1) why the testimony of the party or witness is material;

10 (2) when the party learned of the party's or witness's unavailability;

11 (3) the party's diligence and efforts in attempting to obtain the party's or
12 witness's testimony; and

13 (4) the postponement is for good cause and not for delay.

14 **(b) Scheduling Conflicts Between Courts.**

15 (1) *Notice to the Courts and Counsel.* Upon learning of a scheduling
16 conflict between a trial, hearing, or conference in superior court and another trial or
17 hearing in state or federal court, counsel must promptly notify the affected judges
18 and counsel.

19 (2) *Resolving a Conflict.* Upon being notified of a scheduling conflict, the
20 respective judges should confer with each other and counsel to resolve the conflict.
21 Neither federal nor state court actions have priority in scheduling. A court may
22 consider the following factors in resolving the conflict:

23 (A) whether the other action is a criminal matter, and, if so, whether
24 postponement of that matter will deprive a defendant of a speedy trial;

25 (B) each action's relative length, urgency, or importance;

1 (C) whether the conflicting trials or hearings involve out-of-town
2 witnesses, parties, or counsel;

3 (D) the actions' respective filing dates;

4 (E) which action was first set for trial;

5 (F) any priority granted by rule or statute; and

6 (G) any other pertinent factor.

7 (3) *Inter-Division Conflicts*. Conflicts in scheduling between divisions
8 of the same court may be governed by local rule or general order.

9
10 **(c) Motion to Continue: Other Good Cause**

11 On a motion to continue a trial, hearing, or conference based on other good
12 cause, the party requesting the continuance must show:

13 (1) the basis for the good cause for a continuance;

14 (2) when the party learned of the circumstance(s) which form(s) the basis
15 for the good cause and why the motion was not or could not have been brought at
16 an earlier date;

17 (3) the party's diligence and efforts in attempting to avoid the
18 circumstance(s) which form(s) the good cause for the continuance;

19 (4) the prejudice which may be caused to either party or any children at
20 issue in the action by granting the continuance and by denying the continuance;
21 and,

22 (5) the continuance is sought in good faith and not for delay or another
23 improper purpose.

1 **(d) Duty to Consult.** Before filing a motion to continue a trial, hearing, or
2 conference, the moving party must consult with other parties in the case and advise
3 the court whether the other parties object to the motion. This requirement does not
4 apply when there is a protective order in the case or a history of domestic violence
5 between the parties.
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25