

1 Honorable Jay M. Polk
2 Probate and Mental Health Department Presiding Judge
3 Superior Court in Maricopa County
4 101 W. Jefferson Street
5 Phoenix, Arizona, 85003
6 (602) 372-0879

7 IN THE SUPREME COURT
8 STATE OF ARIZONA

9 In the Matter of } Supreme Court No. R-23-0005
10 PETITION TO AMEND RULE 56, } COMMENT TO PROPOSED
11 OF THE ARIZONA RULES OF } AMENDMENT OF RULE 56,
12 CIVIL PROCEDURE } RULES OF CIVIL PROCEDURE

13 Pursuant to Rule 28, Rules of the Supreme Court of Arizona, the Presiding
14 Judge of the Probate and Mental Health Department of the Superior Court in
15 Maricopa County submits the following comment regarding the proposed
16 amendment of Rule 56, Arizona Rules of Civil Procedure (“Civil Rule”).

17 The undersigned takes no position with respect to the requested addition
18 to Civil Rule 56(b) of a new subpart (4) that would limit each side of a case to
19 one summary judgment motion without leave of the court. However, if this
20 Court does amend Civil Rule 56 as requested, the undersigned respectfully
21 requests that this Court amend Rule 19, Arizona Rules of Probate Procedure
22 (“Probate Rule”), by adding a new subpart (j) that reads either as follows:

23 OPTION 1

24 (j) **Summary Judgment Motions.** Civil Rule 56(b)(4)
25 does not apply to a probate proceeding.

26 OPTION 2

27 (j) **Number of Summary Judgment Motions.** Civil Rule
28 56(b)(4) applies in probate proceedings but its limitations apply to

1 each petition filed in a probate case rather than to each “case” as that
2 term is used in these rules.

3 The reason for this request is explained below.

4 A probate *case* is a court case initiated by the filing of a probate
5 *proceeding*, and each probate *case* includes one or more probate *proceedings*.
6 Ariz. R. Prob. P. 3(b). A probate proceeding is a proceeding arising under either
7 A.R.S. Title 14 (including any associated proceeding for declaratory relief under
8 A.R.S. Title 12, Chapter 10, Article 2) or A.R.S. Title 36, Chapter 32. Ariz. R.
9 Prob. P. 3(c).

10 The Probate Rules govern procedures in all probate proceedings. Ariz. R.
11 Prob. P. 1(a). In addition, the Civil Rules apply to probate proceedings unless
12 the Civil Rules are inconsistent with the Probate Rules or A.R.S. Title 14. Ariz.
13 R. Prob. P. 4(a)(1). Although Probate Rule 19 governs motions in general,
14 neither Probate Rule 19 nor any other Probate Rule specifically governs
15 summary judgment motions. Thus, Civil Rule 56 applies to summary judgment
16 motions filed in probate proceedings.

17 As previously mentioned, a probate *case* often will involve multiple
18 probate *proceedings* (e.g., a case might be initiated by a petition to appoint a
19 fiduciary, and years later a petition to remove that fiduciary might be filed).
20 Each petition filed in the probate case may raise factual and legal issues that are
21 distinct from the issues raised in other petitions filed in the same case. In other
22 words, each petition is the equivalent of a new complaint. *See* Ariz. R. Prob. P.
23 17 cmt. (eff. 1/1/09) (“A petition in a probate proceeding is the equivalent of a
24 complaint in a civil action.”).¹ As a result, if this Court adopts the proposed
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26 ¹Effective January 1, 2020, the Probate Rules were restyled and
27 amended. As explained in the Prefatory Comment to the 2020 Amendments to the
28 Probate Rules, “[t]he new rules incorporate any important substantive
provisions that were contained in the former comments, and therefore most
comments have been deleted.” However, that prefatory comment then states,
“The former comments and case law continue to be authoritative unless

1 amendment to Civil Rule 56, it should amend Probate Rule 19 to clarify that
2 either (1) the presumptive limit on summary judgment motions simply does not
3 apply to probate proceedings, or, in the alternative, (2) the presumptive limit on
4 summary judgment motions applies to each probate *proceeding* (i.e., each
5 petition filed), not the entire probate *case*.

6 As between the two proposed options, the undersigned does not believe
7 that summary judgment motions are abused in probate proceedings and,
8 therefore, prefers Option 1 above (i.e., adding to Probate Rule 19 a new
9 subsection (j) that states that Civil Rule 56(b)(4) does not apply to probate
10 proceedings). However, if this Court is concerned about possible abuses of
11 summary judgment motions in probate proceedings, the undersigned urges the
12 Court to adopt Option 2 above, which clarifies how the limitations of Civil Rule
13 56(b)(4) apply to probate cases and proceedings.

14 For these reasons, the undersigned respectfully requests that, if this Court
15 grants the Petition to Amend Rule 56 of the Rules of Civil Procedure, this Court
16 also amend Probate Rule 19 to add a provision that either states Civil Rule
17 56(b)(4) does not apply to probate proceedings or, in the alternative, clarifies that
18 Civil Rule 56(b)(4) applies to each individual proceeding within a probate case.

19 RESPECTFULLY SUBMITTED this 30th day of MARCH, 2023.

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22 
23 Hon. Jay M. Polk, Presiding Judge
24 Probate and Mental Health Department
25 Superior Court in Maricopa County
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28 rendered inapplicable by the changes in the 2020 rules." The substance of
former Probate Rule 17 is now contained in current Probate Rule 15.

1 Electronic copy filed with
2 the Clerk of the Arizona Supreme Court
3 this 30th day of March, 2023

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