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

9 In the Matter of:

Supreme Court No. R-23-0033

10 **PETITION TO AMEND RULE 5.1**
11 **OF THE RULES OF CIVIL**
12 **PROCEDURE AND RULE 43.1 OF**
13 **THE RULES OF FAMILY LAW**
14 **PROCEDURE**

COMMENT

15 The State Bar of Arizona (the “State Bar”) submits this Comment on the
16 above-captioned Petition. The Petition proposes amend Rule 5.1 of the Rules of Civil
17 Procedure and Rule 43.1 of the Rules of Family Law Procedure to permit subpoenas
18 to be filed. The State Bar supports the proposed amendment.

19 **I. THE RULES AND THE PETITION’S PROPOSED CHANGE**

20 The Rules currently list subpoenas among the types of documents that “may
21 not be filed separately and may be filed as attachments or exhibits to other
22 documents only if relevant to the determination of an issue before the court.” Ariz.
23 R. Civ. P. 5.1(c)(2); Ariz. R. Family Law 43.1(d)(2). The proposed amendment
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1 would eliminate subpoenas from the list of prohibited document types, thus allowing
2 subpoenas to be filed directly in the record as a separate filing.
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4 The Petition, submitted by the Clerk of the Maricopa County Superior Court,
5 urges this change to facilitate the clerk’s ability to electronically issue subpoenas
6 using existing eFile platforms. According to the Petition, electronically issuing a
7 subpoena through the eFile platform “would more than likely require that the
8 subpoenas issued through such platforms to be filed into the case file, as such would
9 be an automated process at the completion of issuance.” Pet. at 2.
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11 **II. REASONS TO GRANT THE PETITION**
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13 There are several reasons to support the Petition’s proposed change.

14 First, according to the clerk, making this change will speed up the ability of
15 the clerk’s office to electronically issue subpoenas using existing technology.
16 Increased access to electronic subpoenas promotes access to justice by eliminating
17 the need for parties, including self-represented litigants, to physically travel to court
18 to obtain a subpoena. Currently, in Maricopa County, represented parties may obtain
19 electronic subpoenas through the State Bar but unrepresented parties are required to
20 travel to a Clerk’s office location for a subpoena.
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1 Second, allowing the filing of subpoenas and promoting electronic issuance
2 may help facilitate parties' compliance with Rule 45(d)(3), which requires a party to
3 provide a copy of subpoenas to other parties.
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5 Third, there does not seem to be any substantial need to maintain the
6 prohibition on filing of subpoenas directly in the case file, rather than only as exhibits
7 or attachments. Such a prohibition may make good sense when the file consists of
8 printed paper rather than electronic documents because of the associated burden on
9 the clerk's office to process, file, and maintain paper copies of subpoenas. Those
10 burdens are minimized if the documents are filed in primarily electronic form.
11 Moreover, as the Petition explains, allowing subpoenas to be issued via existing
12 eFile platforms should reduce the burden on both the parties and clerk's office to a
13 degree that "far outweighs any detriment" caused by the filing of electronically
14 issued subpoenas. *See* Pet. at 2-3.
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18 Fourth, the Petition's proposed change does not impose any additional
19 requirements on parties or the court. Although the rule change would remove the
20 prohibition on the filing of subpoenas, the change would not *require* the filing of
21 subpoenas.
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1 **III. CONCLUSION**

2 The State Bar supports the Petition’s proposed changes to Civil Rule
3 5.1(d)(2)(a) and Family Law Rule 43.1(d)(2)(A).
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6 RESPECTFULLY SUBMITTED this 1st day of May 2023.
7

8 */s/ Lisa M. Panahi*

9 _____
10 Lisa M. Panahi
11 General Counsel

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13 Electronic copy filed with the
14 Clerk of the Supreme Court of Arizona
15 this 1st day of May 2023.

16 by: PSeguin
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