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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**  
11 **OF THE ARIZONA RULES OF**  
12 **CIVIL PROCEDURE**

**COMMENT**

13 The State Bar of Arizona (the “State Bar”) submits this Comment to the  
14 above-captioned Petition. After study and discussion by the State Bar’s Civil  
15 Practice and Procedure Committee, the State Bar opposes the Petition to amend Rule  
16 56 of Civil Procedure to presumptively limit summary judgment motions to one per  
17 side for the reasons discussed herein.

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19 **I. THE HISTORY AND PURPOSE OF MOTIONS FOR SUMMARY**  
20 **JUDGMENT**

21 Summary judgment has been a feature of Arizona practice since at least the  
22 Code of 1939. A.C.A. §§ 21-1210–21-1216. Motions for summary judgment have  
23 salutary purposes. *Orme School v. Reeves*, 166 Ariz. 301, 304 (1990). “Essentially,  
24 the rule [56] was intended as an efficient instrumentality to expedite the business of  
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1 the court by permitting the summary adjudication of meritless claims without the  
2 necessity of trial.” *Id.* at 305. Motions for summary judgment are useful to dispose  
3 of whole cases or streamline cases. As examples of the latter, motions for partial  
4 summary judgment can be used to eliminate one or more of multiple claims,  
5 determine liability, and eliminate certain damage claims such as punitive damages.  
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## 7 **II. THE PROPOSED AMENDMENT**

8 The Petition submits that “[t]he proposed amendment would enable trial  
9 judges to ensure dispositive motion practice is, like discovery, proportional to the  
10 needs of the case.” However, the amended rule would impose a presumptive a one-  
11 size-fits-all limit on all cases.  
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## 13 **III. REASONS FOR DENYING THE PETITION**

### 14 **A. A Presumptive Limit Is Too Rigid**

15 A rigid limit such as the one proposed serves judicial economy at the expense  
16 of the public interest.  
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18 A motion for summary judgment is an important tool. As has been recognized  
19 for decades, summary judgment motions help to determine and simplify cases.  
20 Although such motions have the attendant costs of attorneys’ fees and judicial time,  
21 they can produce an overall net savings of both.  
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23 In contrast to the rationale set forth in the Petition, the practitioners on the  
24 State Bar’s Civil Practice and Procedure Committee raised the concern that a  
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1 presumptive limit can actually increase total litigation costs. A one-motion limit  
2 could cause parties to delay moving for summary judgment. Meanwhile, fees and  
3 costs are incurred in perhaps avoidable discovery, discovery disputes and motions,  
4 trial preparation, and other litigation activities.

6 Moreover, Rule 56 should not limit the filing of motions for summary  
7 judgment because their usefulness and appropriate number varies from case to case.  
8 In some cases, summary judgment is unobtainable and should not be sought. At the  
9 other end of the spectrum, are cases in which discrete issues can ripen for summary  
10 judgment throughout the case. And in the middle, are cases in which an early motion  
11 could be filed on some threshold issue like a statute of limitations defense, and if it  
12 is denied, another motion might become viable on some other basis later in the case.

15 The proposed rule's mention of judicial discretion to file more than one  
16 motion is not a safe harbor. The rule states no standards guiding the exercise of that  
17 discretion. And wide experience in both state and federal trial courts that have *sua*  
18 *sponte* imposed a one-motion limit has shown that the exercise of discretion can be  
19 inconsistent from one judge to another.

21 **B. Having to Seek Leave to File More Than One Motion Increases**  
22 **Motion Practice**

23 The proposed amendment creates a situation where a party must move the  
24 court for leave to file a second motion for summary judgment. The motion for leave  
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1 would presumably have to show good cause to exceed the presumptive limit.  
2 Beyond demonstrating that circumstances justify another motion, a judge might  
3 require the movant show that the motion is worth the court’s time, in other words, is  
4 likely to succeed. Indeed, there is anecdotal evidence of that happening. In that  
5 event, the motion for leave becomes something of a mini motion for summary  
6 judgment.  
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9 **C. A Limit Per “Side” Can Be Unfair and Also Increase Motion Practice**

10 Although the simplest cases have only two “sides” – one plaintiff and one  
11 defendant – many cases have multiple parties on each “side” who may have differing  
12 interests, even different claims, and defenses. Imposing a one-motion limit in such  
13 cases is unfair. Seeking relief from the limit to avoid the unfairness requires more  
14 motion practice.  
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17 **D. A One-Motion Limit Disserves Proportionality**

18 The Petition asserts that “dispositive motion practice is frequently  
19 disproportionate to the needs of the case.” While the petitioner trial judge certainly  
20 has a perspective of motion practice, some other judges and many lawyers see it  
21 differently. As mentioned above, the propriety of a motion for summary judgment  
22 varies widely from case to case. Therefore, a one-motion limit is inherently  
23 disproportionate in some cases.  
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1 **IV. CONCLUSION**

2 For the reasons set forth above, the State Bar requests that the Court deny the  
3 Petition.  
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5 RESPECTFULLY SUBMITTED this 1<sup>st</sup> day of May, 2023.  
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7 */s/ Lisa M. Panahi*

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9 Lisa M. Panahi  
10 General Counsel

11 Electronic copy filed with the  
12 Clerk of the Supreme Court of Arizona  
13 this 1<sup>st</sup> day of May, 2023.

14 by: P Seguin  
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