

Mark Meltzer, as staff to and on behalf of the
Task Force on Rules of Procedure for Special Actions
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SUPREME COURT OF ARIZONA

PETITION TO AMEND THE	)	Supreme Court No. R-23-_____
RULES OF PROCEDURE FOR	)	
SPECIAL ACTIONS	)	Motion to Suspend Rule 28(a)(2) &
	)	Request for Expedited Consideration
_____	)	

Introduction. Undersigned is filing this this motion as staff for, and with the authority of, the Supreme Court’s Task Force on Rules of Procedure for Special Actions (“Task Force”).

Background. This Court entered Administrative Order No. 2023-128 on August 4, 2023. The Order established a Task Force on the Rules of Procedure for Special Actions and appointed its members. The Order directed the Task Force to restyle the Special Action Rules, to integrate case law principles into those rules, and to propose other substantive changes. The Order further provided,

The Task Force shall file a rule petition proposing amendments to the Rules of Procedure for Special Actions at its earliest opportunity, but not later than June 30, 2024.

Discussion. The Task Force held its first meeting on September 8, 2023. During that meeting, the Chair established three workgroups and assigned each workgroup the duty to review specified rules. The Chair directed the workgroups, after discussing their respective rules, to propose revisions to those rules at a subsequent Task Force meeting.

The Task Force and its workgroups have made excellent progress. As of the filing date of this motion, the Task Force has met 4 times. Workgroups have held 12 meetings. In sum, in less than 3 months, there have already been 16 meetings.

Considering its progress thus far, the Task Force could readily achieve the goal of filing a rule petition by June 30, 2024, as set forth in A.O. No. 2023-128. The Task Force, however, originally discussed filing a rule petition before January 10, 2024, if possible. Such an earlier filing date would permit the Court's consideration of the rule petition at its August or September 2024 Rules Agenda, as provided by Supreme Court Rules 28(a)(2) and 28(g)(1).

The filing of a petition by January 10, 2024, however, does not currently appear to be feasible. The tentative Task Force recommendations involve substantive and organizational changes to these rules. Although significant work has been accomplished thus far, the Task Force as a practical matter needs more than the few weeks remaining before January 10, 2024, to work through and finalize these complex issues.

If the Task Force is unable to file a rule petition by January 10, 2024, and the Court is unable to consider the petition at its August or September 2024 rules agenda, then the Court would probably not consider the petition until the August or September 2025 Rules Agenda. If the proposed special action rules are adopted in August or September 2025, they would not become effective until January 2026. *See* Supreme Court Rule 28(g)(2). The Task Force would like to avoid such a protracted outcome. The proposed new rules would provide greater clarity for judges and litigants regarding the special action process and thereby make special action procedures more productive and efficient. The Task Force therefore recommends that the Court consider the proposed changes in August or September 2024 rather than a full year later.

Pertinent Rules. Supreme Court Rule 28(i) provides, “For good cause, the Court may suspend a provision of this rule as provided in Rule 26.” Rule 26 further provides. “These Rules shall be liberally construed in the furtherance of justice.”

Supreme Court Rule 28(a)(2) says,

(2) *Due Date.* Petitions filed by January 10 will be considered at the Court’s annual rules agenda the following August or September.

Motion. The Task Force moves the Court to suspend that portion of Rule 28(a)(2) that requires the Task Force to file a rule petition by the January 10, 2024, due date, but to keep intact that portion of Rule 28(a)(2) that would allow the Court’s

consideration of the petition its August or September 2024 Rules Agenda. Doing so would serve two goals. It would allow the Task Force to submit a more complete and better work product after the January 10, 2024, due date. It would also allow the Court to consider the petition in August or September 2024, a year sooner than it would without the rule suspension.

Proposed Schedule. If the Court grants this motion, undersigned requests that the Court's Order permit the Task Force to file a rule petition not later than February 23, 2024. Undersigned also proposes that the comment period for this petition remain open until May 17, 2024, and that the Task Force file its reply to the comments by June 21, 2024.

RESPECTFULLY SUBMITTED this 13th day of December 2023.

By /s/ _____
Mark Meltzer
on behalf of the Task Force