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

10 In the Matter of:

Supreme Court No. R-24-

11 **PETITION TO AMEND RULES**  
12 **16(b) AND 30(b) OF THE**  
13 **ARIZONA RULES OF CIVIL**  
14 **PROCEDURE**

**PETITION**

15 Pursuant to Rule 28(a) of the Arizona Rules of Supreme Court, the State Bar  
16 of Arizona (the “State Bar”) hereby petitions the Court to amend Rules 16(b) and  
17 30(b) of the Arizona Rules of Civil Procedure (the “Ariz. R. Civ. P.”) to address a  
18 witness’s remote appearance at a deposition.<sup>1</sup> The proposed amendments to Ariz. R.  
19 Civ. P. 16(b) and 30(b) adopt changes to encourage attorneys to discuss early in the  
20 case whether they will agree to remote depositions, to provide notice of whether a  
21  
22

23  
24 <sup>1</sup> A separate Petition filed by the State Bar during this rule petition cycle proposes  
25 additional amendments to Rule 16(b), but the two petitions address different aspects  
of the rule.

1 party intends to take a deposition remotely or in-person, and to require the parties to  
2 meet and confer regarding multiple aspects of a remote deposition.

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4 The attached Appendix A contains a copy of Rules 16(b) and 30(b) showing  
5 all the proposed changes to each rule. A clean version of each rule, incorporating the  
6 proposed changes, is attached at Appendix B.

7 **I. BACKGROUND**

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9 The Arizona Supreme Court’s Administrative Order 2022-46 (“AO”) very  
10 helpfully made recommendations for whether witnesses should be allowed to appear  
11 remotely for in-court appearances but did not address witness’s remote appearance  
12 for depositions. With the increase in witnesses appearing remotely for depositions,  
13 members of the Civil Bench and the Bar have raised concerns regarding the issues  
14 that arise over taking remote depositions and the means to avoid and/or resolve such  
15 issues. Rule 16(b) does not currently require the parties to discuss whether they  
16 anticipate holding remote or in-person depositions and Rule 30(b) does not currently  
17 require the party noticing the deposition to state whether the party intends to take the  
18 deposition in person or remotely. Rule 30(b) also does not require the parties to meet  
19 and confer regarding the details of taking remote or in-person depositions with  
20 sufficient time to bring any issues that arise to the trial court for resolution.  
21  
22

23  
24 The State Bar’s Civil Practice and Procedure Committee (the “Committee”)  
25 created a subcommittee that discussed the appropriate notice and procedures parties

1 should follow when discussing and noticing depositions to address common issues  
2 with taking remote depositions.

3           Accordingly, the State Bar believes that this Court should amend Ariz. R.  
4 Civ. P. 16(b) and 30(b) to clarify the notice and procedures parties must follow to  
5 address whether a deposition will be remote or in-person. The proposed  
6 amendments do not create or suggest a presumption or preference for either remote  
7 or in-person depositions.  
8

9  
10 **II. THE PROPOSED AMENDMENTS TO RULES 16(b) AND 30(b)**

11           The State Bar's proposed amendments to Rule 16(b) require the parties to  
12 address at the Rule 16 early meeting whether the parties anticipate holding remote  
13 or in-person depositions. While this is early in the case, by addressing the topic in  
14 general terms at this early point, the parties will be able to identify whether the  
15 method of taking depositions may become an issue in the litigation.  
16

17           The State Bar's proposed amendments to Rule 30(b) require the party noticing  
18 the deposition to state whether the noticing party intends to take the deposition in  
19 person or remotely. If a deposition is to be held remotely, the State Bar's proposed  
20 amendments to Rule 30(b) require the parties to meet and confer before the  
21 deposition, with sufficient time for the parties to raise any disputes with the court,  
22 regarding:  
23  
24

25           (a) how such deposition will be recorded,

1 (b) how exhibits will be exchanged and presented to the deponent at the  
2 deposition, and

3 (c) who may attend the deposition and how they may appear.  
4

5 The State Bar's proposed amendments to Rules 16(b) and 30(b) are brief but  
6 important to provide adequate notice to allow the parties either to agree to remote  
7 or in-person taking of depositions and to address any issues with such depositions.  
8

9 **CONCLUSION**

10 The State Bar of Arizona respectfully requests that the Court amend Rules  
11 16(b) and 30(b) as set forth in the attached Appendices.  
12

13 RESPECTFULLY SUBMITTED this 10<sup>th</sup> day of January, 2024.

14 

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 10<sup>th</sup> day of January, 2024.

22 by: PSeguin  
23  
24  
25

## Appendix A

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

### **Rule 16. Scheduling and Management of Actions**

**(a) [No change.]**

**(b) Required Early Meeting About Expected Course of Case, Tiering.**

(1) [No change.]

(2) *Topics for Early Meeting.* The parties should discuss at least:

(A) their anticipated disclosures concerning witnesses, including the number of fact witnesses, whether they will seek to use expert witnesses, and how much deposition testimony they expect will be necessary;

(B) their anticipated disclosures of documents, including any issues already known to them concerning electronically stored information;

(C) motions they expect to file, so that the parties can determine whether any of the motions can be avoided by stipulations, amendments, or other cooperative activity;

(D) any agreements that could aid in the just, speedy, and inexpensive resolution of the case;

(E) the discovery tier to which the case should be assigned under Rule 26.2, and whether the parties wish to stipulate--or any party wishes to move for--assignment to a tier other than that to which the case would be assigned given the amount in controversy; ~~and~~

(F) the subjects set forth in Rule 16(c~~);~~); and

(G) whether the parties anticipate holding depositions in person or remotely.

**(c) – (j) [No change.]**

## **Rule 30. Depositions by Oral Examination**

**(a) [No change.]**

### **(b) Notice of a Deposition; Method of Recording; Deposition by Remote Means; Deposition of an Entity; Other Formal Requirements.**

(1) *Notice Generally.* Unless all parties agree or the court orders otherwise, a party who wants to depose a person by oral questions must serve written notice to every other party at least 10 days before the date of the deposition. The notice must state the date, time, and place of the deposition and, if known, the deponent's name and address. The notice must state whether the noticing party intends to take the deposition in person or remotely. If the deponent's name is unknown, the notice must provide a general description sufficient to identify the person or the particular class or group to which the person belongs.

(2) – (3) [No change.]

(4) *By Remote Means.* The parties may agree or the court may order that a deposition be taken by telephone or other remote means. If a deposition is to be held remotely, the parties must confer before the deposition, with sufficient time for the parties to raise any disputes with the court, regarding:

(a) how such deposition will be recorded;

(b) how exhibits will be exchanged and presented to the deponent at the deposition; and

(c) who may attend the deposition and how they may appear.

For the purposes of this rule and Rules 28(a), 37(a)(2), 45(b)(3)(B), and 45(e), the deposition takes place where the deponent answers the questions. If the deponent is not in the officer's physical presence, the officer may nonetheless place the deponent under oath or affirmation with the same force and effect as if the deponent was in the officer's physical presence.

(5) – (6) [No change.]

**(c) – (g) [No change.]**

## Appendix B

### **Rule 16. Scheduling and Management of Actions**

**(a) [No change.]**

**(b) Required Early Meeting About Expected Course of Case, Tiering.**

(1) [No change.]

(2) *Topics for Early Meeting.* The parties should discuss at least:

(A) their anticipated disclosures concerning witnesses, including the number of fact witnesses, whether they will seek to use expert witnesses, and how much deposition testimony they expect will be necessary;

(B) their anticipated disclosures of documents, including any issues already known to them concerning electronically stored information;

(C) motions they expect to file, so that the parties can determine whether any of the motions can be avoided by stipulations, amendments, or other cooperative activity;

(D) any agreements that could aid in the just, speedy, and inexpensive resolution of the case;

(E) the discovery tier to which the case should be assigned under Rule 26.2, and whether the parties wish to stipulate--or any party wishes to move for--assignment to a tier other than that to which the case would be assigned given the amount in controversy;

(F) the subjects set forth in Rule 16(c); and

(G) whether the parties anticipate holding depositions in person or remotely.

**(c) – (j) [No change.]**

## **Rule 30. Depositions by Oral Examination**

**(a) [No change.]**

### **(b) Notice of a Deposition; Method of Recording; Deposition by Remote Means; Deposition of an Entity; Other Formal Requirements.**

(1) *Notice Generally.* Unless all parties agree or the court orders otherwise, a party who wants to depose a person by oral questions must serve written notice to every other party at least 10 days before the date of the deposition. The notice must state the date, time, and place of the deposition and, if known, the deponent's name and address. The notice must state whether the noticing party intends to take the deposition in person or remotely. If the deponent's name is unknown, the notice must provide a general description sufficient to identify the person or the particular class or group to which the person belongs.

(2) – (3) [No change.]

(4) *By Remote Means.* The parties may agree or the court may order that a deposition be taken by telephone or other remote means. If a deposition is to be held remotely, the parties must confer before the deposition, with sufficient time for the parties to raise any disputes with the court, regarding:

(a) how such deposition will be recorded;

(b) how exhibits will be exchanged and presented to the deponent at the deposition; and

(c) who may attend the deposition and how they may appear.

For the purposes of this rule and Rules 28(a), 37(a)(2), 45(b)(3)(B), and 45(e), the deposition takes place where the deponent answers the questions. If the deponent is not in the officer's physical presence, the officer may nonetheless place the deponent under oath or affirmation with the same force and effect as if the deponent was in the officer's physical presence.

(5) – (6) [No change.]

**(c) – (g) [No change.]**