D. Douglas Metcalf
Pima County Superior Court Judge
110 West Congress Street
Tucson, AZ 85711
Tel. (520) 724-3708
Fax (520) 724-8136

IN THE SUPREME COURT
STATE OF ARIZONA

In the Matter of	
	Arizona Supreme Court No. R-20-____
ARIZONA RULES OF PROCEDURE FOR SPECIAL ACTIONS 2(b)(1)	**PETITION TO AMEND ARIZONA RULE OF PROCEDURE FOR SPECIAL ACTIONS 2(b)(1)**

Pursuant to Rule 28, Rules of the Supreme Court, and in my individual capacity as a superior court judge, I petition the Supreme Court to amend newly enacted Special Action Rule 2(b)(1) by returning the language that special action relief cannot be had in an Original Special Action if there is an equally plain, speedy, and adequate remedy by law. While the Court retained this language for Appellate Special Actions in the new rules, it did not do so for Original Special Actions. Without that provision, a party could attempt to use an Original Special Action to bypass the requirements of a statute such as the Administrative

Procedures Act when seeking review of a decision by an administrative agency. The proposed language is included in attached Exhibit A.

I. INTRODUCTION AND BACKGROUND

This Court recently re-wrote the Special Action Rules effective January 1, 2025. Arizona Sup. Ct. No. R-23-0055. Among other changes, the new rules differentiate between special actions that initiate a court proceeding (generally in the Superior Court), known as Original Special Actions, and special actions to review a decision of a lower court, known as Appellate Special Actions. *See* Special Actions Rule 2.

The former Special Actions Rules provided that "the special action shall not be available where there is an equally plain, speedy, and adequate remedy by appeal." This standard applied to all special actions.

The new Special Actions Rules retain the requirement that a court will generally not accept special action jurisdiction for an Appellate Special Action if there is an equally plain, speedy, and adequate remedy by appeal. However, the new rules do not retain that language for Original Special Actions. Thus, a person could attempt to file an Original Special Action in the Superior Court seeking relief from an administrative agency even if there was a remedy by law, such as the Administrative Procedures Act, A.R.S. § 12-901 *et seq.* Another example of a

statutory administrative appeal is A.R.S. § 15-543, which allows a public-school teacher to appeal his dismissal to the Superior Court. There are no doubt others.

While the statute providing for a legal remedy generally includes an exclusivity provision,[1] the new Special Action Rules create ambiguity and the potential for mischief because Rule 2(b)(1) does not contain language making clear that the legal remedy must be used when available. At the same time, because special actions are constitutionally based, *see* Art. 6 § 18, Ariz. Const., a potential conflict may occur as to whether a party could pursue a special action notwithstanding a statute to the contrary, since the special action rules no longer prohibit special actions where a plain, speedy and adequate remedy at law exists.

At the same time, case law has developed around special actions holding that a party cannot seek special action relief in the Superior Court if an equally plain, speedy, and adequate remedy existed at law. *See e.g. Rhodes v. Clark*, 92 Ariz. 31, 34–35, 373 P.2d 348, 350 (1962) ("A writ of mandamus … will lie only where no other plain, speedy and adequate remedy at law [exists]."). It is unclear, or at least

[1] For example, the APA has an exclusive remedy provision as follows: "Unless review is sought of an administrative decision within the time and in the manner provided in this article, the parties to the proceeding before the administrative agency shall be barred from obtaining judicial review of the decision." A.R.S. § 12-902(B). Likewise, A.R.S. § 15-543 provides that the decision of the governing board is final unless the teacher files an appeal within 30 days.

potentially unclear, whether this case law survives the amended rule. If the case law does survive, it should match the rule with no daylight between them.

There are several reasons why a party may seek a special action remedy against an administrative agency instead of pursuing a statutory appeal. First, unlike a statutory appeal, there is a right to a jury trial in an original special action. *See* Special Action Rule 7(h). Second, unlike a statutory appeal, there is no short deadline to file a special action. Third, the remedies for a special action may be broader than those available by appeal. Fourth, there are instances where a statutory appeal is not an adequate remedy, such as when an agency is acting outside its jurisdiction, where the right to a special action should be preserved. *See e.g. Rosenberg v. Ariz. Bd. of Regents*, 118 Ariz. 489, 493, 578 P.2d 168, 172 (1978) ("Common law extraordinary writs may be used to attack the jurisdiction of the agency where there is no plain, speedy and adequate remedy at law.").

If the Supreme Court returns the "plain, speedy and adequate remedy at law" requirement to Original Special Actions, it should not increase the number of special actions, but rather make clear that a party cannot pursue a special action if there is an adequate remedy by appeal.

II. PROPOSED LANGUAGE

The "plain, speedy and adequate remedy at law" language can be returned to the Special Action Rules by amending Rule 2(b)(1) as follows. The amendment is shown in **bold with double underline**:

> *Original Special Actions.* An original special action begins a case in court. It does not request review of an earlier decision of a court. A party seeks original special action relief by filing a complaint. With few exceptions, jurisdiction is mandatory in original special actions. **A party cannot seek original special action relief if an equally plain, speedy, and adequate remedy exists at law.**

CONCLUSION

I respectfully request that the Court consider this Petition and proposed rule change at its earliest convenience. I additionally request that the Court circulate the Petition for public comment until May 1, 2025, and then adopt the proposed rules as presented, or as modified in light of comments received from the public, with an effective date of January 1, 2026.

DATED this 7th day of January, 2025.

/s/ D. Douglas Metcalf
D. Douglas Metcalf
Judge of the Superior Court

Exhibit A

The proposed amendment to Special Action Rule 2(b)(1) is shown in **bold and underline** as follows:

> *Original Special Actions.* An original special action begins a case in court. It does not request review of an earlier decision of a court. A party seeks original special action relief by filing a complaint. With few exceptions, jurisdiction is mandatory in original special actions. **A party cannot seek original special action relief if an equally plain, speedy, and adequate remedy exists at law.**