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SUPREME COURT OF ARIZONA

In the Matter of: PETITION TO AMEND SPECIAL ACTION RULE 2(b)(1)	Supreme Court No. R-25-0002 **COMMENT ON PETITION TO AMEND SPECIAL ACTION RULE 2(b)(1)**

Pursuant to Supreme Court Rule 28(e), the Arizona Attorney General's Office submits this comment on the Petition to amend the special action rules to provide that original special action relief is unavailable "if an equally plain, speedy, and adequate remedy exists at law." While we strongly supported the retention of this standard in the rules governing appellate special actions last year, the proposed amendment appears to introduce unnecessary conflict and ambiguity into the original special action rules. We therefore oppose the proposal as written

and would either forgo a change or adopt the modified language that we suggest below.

As initially proposed, last year's extensive rewrite of the special action rules would have omitted any reference to the "equally plain, speedy, and adequate" standard entirely. This omission received substantial pushback from commenters (including this Office) who argued that the language was ingrained in case law and that it ought to be retained as the umbrella standard for discretionary special actions. After considering these comments, the Special Action Task Force agreed that Rule 12 should provide that "[i]n accepting or declining [appellate special action] jurisdiction, the court is determining whether remedy by appeal is equally plain, speedy, and adequate." *See* RPSA 12(a).

This year's Petition argues (at 2) that the "equally plain, speedy, and adequate" standard historically applied to all special actions, and that it was therefore a mistake to omit it in relation to original special actions in the new rules. But that historical characterization is not wholly accurate. Rather, old Rule 1(a) provided that "*[e]xcept as authorized by statute*, the special action shall not be available where there is an equally plain, speedy, and adequate remedy by appeal." (Emphasis added.) And because numerous Arizona statutes establish mandatory jurisdiction in original special actions, that caveat was highly significant. *See* RPSA 3, 2025 com.

Rule 2(b)(1) defines an "original special action" under the new special action rules. The Petition would amend Rule 2(b)(1) by adding the following boldfaced language:

> *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.**

In the Office's view, this revision is contextually discordant and confusing. The previous line states that "[w]ith few exceptions, jurisdiction is mandatory in original special actions." It is therefore unclear whether the appended language is saying that within the "few exceptions," a party must demonstrate that there is no "equally plain, speedy, and adequate remedy"—or alternatively (and less plausibly), that an original special action should never be available where there is another "equally plain, speedy, and adequate remedy," even if jurisdiction would otherwise be mandatory.

Given that there are only a "few exceptions" where original special action is not mandatory—and that it would not make sense to restrict jurisdiction where it is mandatory—we do not see the inclusion or exclusion of the "equally plain, speedy, and adequate" standard in Rule 2 as a critical issue. However, to the extent that the Court is inclined adopt an amendment, we would suggest the following easy fix:

> "To the extent special action jurisdiction is not mandatory, a party cannot seek original special action relief if an equally plain, speedy, and adequate remedy exists at law."

This would eliminate the ambiguity that the proposed amendment introduces and make clear that the "plain, speedy, and adequate standard" comes into play only if jurisdiction is not mandatory. Alternatively, the Court could restore the old Rule 1(a) language—"Except as authorized by statute . . ."—but we believe that our suggestion is contextually clearer given the statement in the previous sentence that original special action jurisdiction is almost always mandatory.

Respectfully submitted this 25th day of April 2025.

By: /s/ Clinten N. Garrett

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