

1 Lisa M. Panahi  
2 Bar No. 023421  
3 State Bar of Arizona  
4 4201 N. 24th Street, Suite 100  
5 Phoenix, AZ 85016-6288  
6 (602) 340-7266

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

9 In the Matter of:

Supreme Court No. R-25-0002

10 **PETITION TO AMEND ARIZONA**  
11 **RULE OF PROCEDURE FOR**  
12 **SPECIAL ACTIONS 2(b)(1)**

**STATE BAR OF ARIZONA**  
**COMMENT**

13 Pursuant to Rule 28, Ariz. R. Sup. Ct., the State Bar of Arizona (“State Bar”)  
14 submits the following comment in support of Petition R-25-0002 (the “Petition”)  
15 filed by the Honorable D. Douglas Metcalf.

16 The Petition seeks to add a sentence to Rule 2(b)(1) of the Rules of Procedure  
17 for Special Actions (“Special Action Rules”) stating that “[a] party cannot seek  
18 original special action relief if an equally plain, speedy, and adequate remedy exists  
19 at law.” Having reviewed the Petition and examined the circumstance it seeks to  
20 address, the State Bar recommends that the Court grant the requested amendment  
21 but place alternative proposed language in a new Rule 3.1 of the Special Action  
22 Rules entitled “Original Special Actions Other than Statutory Special Actions.”

1 **I. Analysis.**

2 On August 22, 2024, in response to a Petition filed by the Court’s Task Force  
3 on Rules of Procedure for Special Actions (R-23-0055), this Court abrogated the  
4 Special Action Rules then in effect and adopted a proposed set of new rules  
5 applicable to special actions. Among other substantive and stylistic revisions, the  
6 new Special Action Rules were reorganized into four parts, Part I (General  
7 Provisions), Part II (Original Special Actions), Part III (Appellate Special Actions),  
8 and Part IV (Actions Involving Industrial Commission Awards). Additionally, a  
9 new Rule 12 setting forth factors supporting acceptance or denial of jurisdiction  
10 was included in Part III pertaining to appellate special actions. New Rule 12(a),  
11 which addresses the discretionary nature of appellate special action jurisdiction,  
12 provides that, “[i]n accepting or declining jurisdiction, the court is determining  
13 whether remedy by appeal is equally plain, speedy, and adequate.” The Task Force  
14 did not recommend inclusion of a corresponding rule pertaining to original special  
15 actions, and the Court did not adopt one.

16 The Petition posits that parties seeking original special action relief may  
17 argue that the lack of “equally plain, speedy, and adequate” language in Part II of  
18 the Special Action Rules may be construed to signal that parties may seek original  
19 special action relief without first exhausting available legal remedies. The State  
20 Bar agrees with Petitioner and recommends the Court grant the Petition but resolve  
21 the issue by placing language similar to that proposed in a new Rule 3.1 as described  
22 in this Comment.

1           The lack of reference to the need for parties to pursue equally plain, speedy,  
2 and adequate remedies available at law prior to pursuing original special actions  
3 creates an ambiguity as to applicability of this requirement to this class of special  
4 actions. Moreover, the continued viability of Arizona’s existing case law holding  
5 that special action relief is not available in the presence of an equally plain, speedy,  
6 and adequate remedy at law (*see* Petition at 3 citing *Rhodes v. Clark*, 92 Ariz. 31,  
7 34-35, 373 P.2d 348, 350 (1962)) may be questioned by those who note the  
8 inclusion of the requirement in Rule 12(a) relating to appellate special actions and  
9 its omission from the Special Action Rules concerning original special actions.

10           As noted in Rule 3 of the Special Action Rules, various statutes authorize  
11 special actions which “are governed by [the Special Action Rules] unless the statute  
12 authorizing a particular special action contains specific procedures supplementing  
13 or contradicting these rules.” The Court’s extensive comment to Rule 3, in turn,  
14 catalogues a variety of both original and appellate statutory special actions. To  
15 render clear that the requirement that parties seeking special action relief must first  
16 pursue equally plain, speedy, and adequate remedies available at law in connection  
17 with non-statutory original special actions, the State Bar recommends that instead  
18 of addressing the issue raised by Petitioner in Rule 2(b)(1), a new Rule 3.1 instead  
19 be adopted, providing as follows:  
20  
21  
22

