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5 **IN THE SUPREME COURT**
STATE OF ARIZONA

6 In the Matter of:

Supreme Court No. R-25-0030

7 **PETITION TO AMEND RULE 36**
8 **OF THE ARIZONA RULES OF**
9 **PROTECTIVE ORDER**
10 **PROCEDURE; RULE 315 OF THE**
11 **ARIZONA RULES OF**
PROCEDURE FOR THE
JUVENILE COURT; AND RULE
901 OF THE ARIZONA RULES OF
EVIDENCE

STATE BAR OF ARIZONA
COMMENT

12 **I. INTRODUCTION**

13 Pursuant to Rule 28(a) of the Arizona Rules of Supreme Court, the State Bar
14 of Arizona (“State Bar”) hereby submits this comment regarding Petition R-25-
15 00030. The State Bar supports the goal of the Petition, namely, to provide courts
16 with additional tools to address ever more sophisticated artificial intelligence (“AI”)-
17 generated “deep fakes” that may be presented in judicial proceedings. The State Bar
18 believes that additional work would be beneficial to cover additional rule sets, as
19 well as to avoid technology-specific approaches that may be superseded by later
20 developments.

1 **II. THE PETITION**

2 The Petition seeks to amend three different rules:

- 3 ➤ Rule 36, Arizona Rules of Protective Order Procedure.
- 4 ➤ Rule 315, Arizona Rules of Procedure for the Juvenile Court.
- 5 ➤ Rule 901, Arizona Rules of Evidence.

6 Although the amendments themselves are different, the purpose of these
7 amendments is the same: “to create consistent and sufficient methods for litigants
8 and courts to address AI-generated or substantially altered evidence across case
9 types.” Petition at 3.

10 **III. THE PETITION IS A GOOD START, BUT MORE SHOULD BE**
11 **DONE TO ADDRESS ADDITIONAL RULE SETS**

12 The State Bar agrees that advances in artificial intelligence complicate the
13 evaluation of the authenticity of evidence, and that revisions to court rules will be
14 needed. The State Bar also agrees, with one limited exception noted below, with the
15 proposed changes in the Petition. But the State Bar recommends that the Petition in
16 its current form be denied simply to allow additional rule sets to be addressed,
17 including at least Rule 11 of the Arizona Rules of Civil Procedure.

18 The standard for submission of evidence should not be so onerous as to require
19 parties or counsel to scrutinize each document, photograph, or other item for
20 authenticity. But the standard should also not be so lax as to permit overlooking

1 reasonable indicia of fabrication. The State Bar suggests that when additional rule
2 sets are addressed, the Court consider a standard similar to that contained in A.R.S.
3 § 33-420 with respect to false liens, namely, penalizing a party or attorney who
4 submits a document “knowing or having reason to know” that the document is
5 forged, manipulated, or otherwise inauthentic. For instance, as currently drafted,
6 revised Rules 36 and 315 allow the imposition of sanctions for presenting false or
7 materially altered evidence, with no requirement that the attorney knew or had
8 reason to know that the evidence was false. The Court should also avoid technology-
9 specific standards or tests, as such specificity may be mooted by future
10 developments.

11 Finally, the State Bar suggests that the proposed comment to Evidence Rule
12 901(b) (requiring disclosure of metadata) rests on the incorrect assumption that the
13 proponent of evidence will know, or admit, that the evidence was created by
14 artificial intelligence:

15 Further, to provide the adverse party with an opportunity
16 to properly analyze the issue of authenticity of AI-
17 generated evidence, the “record” provided by the
18 proponent of the evidence must include the metadata for
19 the material in question if reasonably necessary to assess
20 the material’s authenticity.

Petition at 10. It is reasonable to require disclosure of metadata for evidence that is
created by AI. But the indication that the proponent of the evidence “must include
the metadata for the material in question if reasonably necessary to assess the

1 material's authenticity" assumes that the metadata exists and is available to the
2 proponent. Damaging fabrications may predate metadata, such as photographs taken
3 on film or photocopies of original documents. Metadata may not even be available,
4 or only available if extraordinary measures are undertaken. Further analytical tools
5 will likely be required, perhaps at disproportionate expense. The absence of the
6 metadata may ultimately warrant the exclusion of the proffered evidence, but the
7 requirements should not be absolute.

8 For the above reasons, the State Bar respectfully requests this Court deny
9 Petition R-25-0030 to permit consideration of amendments to additional rule sets,
10 including referring this issue to the Arizona Steering Committee on Artificial
11 Intelligence and the Courts as appropriate.

12 RESPECTFULLY SUBMITTED this 1st day of May 2025.

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15 Lisa M. Panahi
FOR THE STATE BAR OF ARIZONA

16 Electronic copy filed with the
17 Clerk of the Supreme Court of Arizona
this 1st day of May 2025.

18 by: PSequin
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