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-25-0002
ARIZONA RULES OF	)	
PROCEDURE FOR	)	**REPLY IN SUPPORT OF PETITION**
SPECIAL ACTIONS 2(b)(1)	)	**TO AMEND ARIZONA RULE OF**
	)	**PROCEDURE FOR SPECIAL**
	)	**ACTIONS 2(b)(1)**
_____	)	

Pursuant to Rule 28, Rules of the Supreme Court, and the Court's Order of January 21, 2025, I am filing this reply in my individual capacity as a superior court judge, to support my petition 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. However, as discussed below, the State Bar has suggested changes to my proposal, some of which I agree with. As such, I have amended the proposed

language of the rule change and its placement within the Special Action Rules and ask you to adopt that.

I filed this petition to remove any ambiguity in the new Special Action Rules as to whether a party could file an Original Special Action in the Supreme Court or Superior Court even if that party has an equally plain, speedy, and adequate remedy by law.

The Court has received two responses. The first, from the Attorney General, characterizes the proposed amendment as "contextually discordant and confusing" but helpfully suggests amended language. The second, from the State Bar, supports the Petition, but also suggests different language and placing the language in its own separate rule.

I. THE ARIZONA CONSTITUTION GIVES THE SUPREME COURT AND SUPERIOR COURT JURISDICTION OVER EXTRAORDINARY WRITS, WHICH ARE COVERED UNDER THE SPECIAL ACTION RULES.

In considering this issue, it is worth remembering that the Supreme Court and Superior Court have jurisdiction over extraordinary writs, which are filed as Original Special Actions, under the Arizona Constitution, specifically Ariz. Const. Art 6, § 5 and § 18, respectively. Chapter 11 of Title 12 of the A.R.S. likewise further defines the Supreme Court's and Superior Court's jurisdiction over extraordinary writs. *See* A.R.S. § 12-2001 through 12-2045. The statutes

governing the extraordinary writs of certiorari and mandamus restrict their use to situations where "there is no appeal, nor, in the judgment of the court, a plain, speedy and adequate remedy" in the case of certiorari (A.R.S. § 12-2001), and "when there is not a plain, adequate and speedy remedy at law" in the case of mandamus (A.R.S. § 12-2021).[1] *See also State Bd. of Tech. Registration v. Bauer*, 84 Ariz. 237, 239 (1958) ("It is well settled in this jurisdiction, by statute and court decisions interpreting same, that mandamus will only lie to compel the performance of a ministerial act *which the law specially imposes as a duty resulting from an office, when there is no plain, speedy and adequate remedy at law*.") (italics in original).

That a party cannot seek an extraordinary writ such as mandamus if there is an adequate remedy at law is also the long-standing common law rule. *See e.g. Heckler v. Ringer*, 466 U.S. 602, 616 (1984) ("The common-law writ of mandamus, as codified in 28 U.S.C. § 1361, is intended to provide a remedy for a plaintiff only if he has exhausted all other avenues of relief and only if the defendant owes him a clear nondiscretionary duty."); *U.S. ex rel. Girard Tr. Co. v. Helvering*, 301 U.S. 540, 544 (1937) (It is "the settled rule that the writ of

[1] It should be noted that Rule 1 of the Rules of the Supreme Court provides procedural rules for the filing of a petition for an original extraordinary writ in the Supreme Court.

mandamus may not be employed to secure the adjudication of a disputed right for which an ordinary suit affords a remedy equally adequate, and complete.").

As the new Special Action Rules acknowledge, they serve as procedural rules that govern how a party seeks an extraordinary writ in the Superior Court and Supreme Court. Special Action Rule 2(c). They are not intended to either expand or contract the Courts' jurisdiction over these writs. *Id*. ("These rules do not enlarge the scope of relief those writs formerly granted."). As such, the Rules should mirror the statutes as well as the caselaw interpreting the constitutionally authorized extraordinary writs. That is what my petition seeks to accomplish.

This is to be contrasted with the Court of Appeals' jurisdiction to hear Appellate Special Actions, where the Special Action Rules themselves define that Court's jurisdiction. *See* A.R.S. § 12-120.01(A)(4) ("The court of appeals shall have … [j]urisdiction to hear and determine petitions for special actions brought pursuant to the rules of procedure for special actions, without regard to its appellate jurisdiction."); *State v. Avila*, 147 Ariz. 330, 333, 710 P.2d 440, 443 (1985) ("The court of appeals is a legislative court and has only such jurisdiction specifically given it by statute.").

The absence of conformity between the constitution and statutes on the one hand, and the Special Action Rules on the other, could breed confusion or even

mischief as to Original Special Actions filed in the Supreme Court and Superior Court.

II. THE RESPONSES MAKE GOOD RECOMMENDATIONS AS TO THE LANGUAGE AND PLACEMENT OF THE PROPOSED AMENDMENT.

In my Petition, I recommended adding the following language to Rule 2(b)(1) (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.**

I recommended placement in Rule 2(b)(1) because the "plain, speedy, and adequate remedy" language for Appellate Special Actions is located next paragraph of the rule, specifically Rule 2(b)(2).

The State Bar suggests that instead of placing the language in existing Rule 2(b)(1), it should be in a new rule, 3.1, entitled "Original Special Actions Other than Statutory Special Actions." This new Rule 3.1 would follow Rule 3, which defines Original Special Actions. Rule 3 also distinguishes between special actions that seek an extraordinary writ (where the equally plain, speedy, and adequate remedy language is needed) from those where jurisdiction is based on a specific statute (where the equally plain, speedy, and adequate remedy language is not needed). The State Bar suggestion makes perfect sense and is well-taken.

Likewise, the Attorney General, in her response, points out that the 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." In other words, the old rule limited the "equally plain, speedy, and adequate remedy by appeal" language to non-statutory special actions.

The State Bar's proposed language properly addresses the Attorney General's concern. While the Attorney General suggests her own language, the State Bar's proposed language is more textually concordant.

III. THE SPECIAL ACTION RULE AS TO ORIGINAL SPECIAL ACTIONS SHOULD NOT ADDRESS JURISDICTION.

The State Bar proposes the following language.

> **Rule 3.1. Original Special Actions Other Than Statutory Special Actions**
>
> With respect to any original special action that is not a statutory special action as defined in Rule 3, the court may only take jurisdiction if there is no available equally plain, speedy, and adequate remedy at law.

The State Bar's proposed language states that "the court can only take special action jurisdiction if there is no available equally plain, speedy, and adequate remedy at law." (emphasis added). I do have a concern about the reference to "jurisdiction" in the State Bar's proposed language. In my Petition, I

proposed that "A party cannot seek original special action relief if an equally plain, speedy, and adequate remedy exists at law."

As discussed above, unlike an Appellate Special Action, the Special Action Rules do not grant jurisdiction over Original Special Actions. Rather, the Constitution grants jurisdiction. As such, if a party seeks Original Special Action relief where an equally plain, speedy, and adequate remedy exists, relief should be denied on that basis, not on the ground that the Court lacks jurisdiction to hear the case. It is a fine distinction, but omitting any mention of jurisdiction in the Rule prevents the Rule from impinging on the Courts' constitutional authority to grant extraordinary writs. Accordingly, I propose the following language:

> **Rule 3.1. Original Special Actions Other Than Statutory Special Actions**
>
> With respect to any original special action that is not a statutory special action as defined in Rule 3, a party cannot seek special action relief if an equally plain, speedy, and adequate remedy exists at law.

If a party seeks special action relief even though an equally plain, speedy, and adequate remedy existed at law, the Court would simply enter an order dismissing the case under Special Action Rule 10(a)(4).

CONCLUSION

I respectfully request that the Court adopt a new Special Action Rule 3.1 with an effective date of January 1, 2026 as follows:

Rule 3.1. Original Special Actions Other Than Statutory Special Actions

With respect to any original special action that is not a statutory special action as defined in Rule 3, a party cannot seek special action relief if an equally plain, speedy, and adequate remedy exists at law.

DATED this 14th day of May, 2025.

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