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Artificial Intelligence and the Courts  
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**IN THE SUPREME COURT OF THE STATE OF ARIZONA**

In the matter of:	)	
	)	
PETITION TO AMEND ARIZONA	)	Supreme Court No. 25-0030
RULE OF PROTECTIVE ORDER	)	
PROCEDURE 36; RULE OF	)	
PROCEDURE FOR THE JUVENILE	)	<b>REPLY</b>
COURT 315; AND RULE OF	)	
EVIDENCE 901	)	
_____	)	

Robert M. Brutinel, Petitioner in this matter on behalf of the Arizona Steering Committee on Artificial Intelligence and the Courts, hereby replies pursuant to Rule 28(e)(5), Rules of the Supreme Court of Arizona and this Court’s Order dated January 21, 2025.

The Arizona Steering Committee on Artificial Intelligence and the Courts (“Committee”) was established on January 24, 2024, by Administrative Order [2024-33](#) and among other tasks, was charged with making recommendations, including rule changes, related to AI technologies and their impact on judicial proceedings. In carrying out this charge, the Committee undertook review of all rule sets and recommended amendments to Rule 36, Arizona Rules of Protective Order

procedure, Rule 315 Rules of Procedure for Juvenile Court, and a comment to Rule 901(b), Rules of Evidence. Accordingly, Petitioner filed Petition R-25-0030 and this Court opened the Petition for public comment until May 1, 2025, with any Reply due by June 2, 2025. Petitioner files this Reply to address the comments received during the comment period.

The petition received three comments, summarized as follows:

- Committee on the Impact of Domestic Violence and the Courts (CIDVC) - *opposing* the proposed amendment to Rule 36, Arizona Rules of Protective Order Procedure.
- State Bar and the Directors of Maricopa County Indigent Services Agencies - both filed replies address the proposed comment to Rule of Evidence 901(b) and generally *oppose* the amendments.
- Arizona Commission on Access to Justice - *neutral* position as to the petition's adoption, noting that a self-represented litigant may struggle to understand the proposed comment to Arizona Rule of Evidence 901(b).

## **I. Background of the Petition**

The Petition asks the Supreme Court to adopt amendments to three rules across three different rule sets to address the lack of sufficient and adequate procedures to address issues arising about manipulated or inauthentic evidence, particularly digital media evidence. As noted in the Petition, not every rule set was

analyzed for possible revision, and Petitioner acknowledges that work to review additional rule sets may be needed. The proposed amendments in R-25-0030 attempt to: 1) close existing gaps in existing rule sets that prevent the court from imposing sanctions when faced with digital forgeries; and 2) insert a comment to Rule 901 of the Arizona Rules of Evidence to encourage parties to bring reliability questions posed by AI-generated material to the trial court's attention early in the litigation and to reference other rules that may provide guidance to the parties and the court on how to address this type of challenging dispute.

## **II. Reply to Comments on General Timing and Necessity of the Proposed Rule Changes.**

Two comments generally opposed amendment of any court rules to address impacts of generative artificial intelligence on the basis that rule amendments are premature. First, it was asserted that until all rule sets are reviewed and all rules that may require amendment are included in a single petition, no rule changes are appropriate. Second, it was asserted that unless and until there is a crisis related to generative AI-created or manipulated evidence, no rule changes are appropriate.

Petitioner respectfully disagrees with these positions. Many judiciaries across the nation are grappling with how to be prepared to address the impacts of generative AI on evidence in courts, particularly considering the ubiquitous and increasing availability of generative AI technologies to anyone and everyone. Petitioner has

carefully considered the necessity and appropriateness of rule changes, seeking to act with restraint while also balancing the need of ensuring that parties and the courts have the tools necessary to address all issues that arise in relation to evidence in the current and imminent landscape of generative AI. This is demonstrated by the Petition only including amendments for the gaps identified in rule sets by the Committee's members thus far, as opposed to broad, sweeping changes or an ill-fitting brand-new rule or rules.

### **III. Reply to Comment on Rule 36, Arizona Rules of Protective Order Procedure**

The Committee on Domestic Violence and the Courts (CIDVC) filed a comment expressing concerns as to inconsistency of language proposed for a new subsection (c) of Rule 36 compared to the language of proposed amendment to other rules in the Petition. Having considered the concerns of CIDVC, Petitioner agrees that further refinement of the proposed amendment is appropriate and suggests the following:

(c) **Sanctions.** The court may impose sanctions, which may include granting a continuance, awarding monetary expenses, including attorney fees, or dismissing an action if the court finds that a party or attorney submits evidence that has been materially altered or generated with the intent to deceive the court.

This creates consistency with the language proposed for the Rules of Procedure for Juvenile Court. This proposed revision also addresses the concerns of CIDVC about the initial proposed amendment's language being overly broad.

#### **IV. Reply to Comments on Rules of Evidence proposal**

First, Petitioner notes a technical revision to the proposed amendment. The heading should be **2026 Comment to Rule 901(b)**, not "2025 Comment . . .".

Second, two comments specifically raised concerns regarding the language of the comment that requires disclosure of metadata. The proposed amendment at issue is found in the second sentence of the sixth (final) paragraph of the proposed comment:

Further, to provide the adverse party with an opportunity to properly analyze the issue of authenticity of AI-generated evidence, the "record" provided by the proponent of the evidence must include the metadata for the material in question is reasonably necessary to assess the material's authenticity.

The comments of the State Bar and the Directors of Maricopa County Indigent Services note concern that there may not be metadata available, easily accessible, or that tools to assess metadata might come at a cost to lawyers and litigants. The proposed comment intends to highlight that the court may need to analyze metadata when addressing an allegation that evidence was AI-generated. Existing rules provide the court and parties with avenues to address whether the production of

metadata is inaccessible, unavailable, or cost prohibitive. Petitioner, like, those filing the comments, wishes that advancing technologies were not creating additional burdens on parties, attorneys, or the courts, but unfortunately today's emerging technologies, particularly generative AI are drastically changing not just aspects of legal procedure but our lives in ways that challenge us when it comes to obtaining knowledge and skill to assess the authenticity of all digital media. Some guidance is needed. Petitioner proposes an alternative, abbreviated version of the proposed Comment—it is intended to be easier to understand.

**2026 Comment to Rule 901(b).**

Courts are well-equipped to handle most situations involving AI-generated evidence through the application of existing rules and the trial court's broad authority to manage how evidence is presented. *See* Ariz. R. Evid. 611(a). Courts should not automatically reject AI-generated evidence simply based on concerns about its reliability. Instead, questions about whether such evidence is trustworthy should be raised and addressed as early as possible. This can happen through a joint filing, such as a Rule 16(c) Joint Report, a joint statement about a discovery or disclosure dispute, or during a pretrial or status conference.

Rule 706 of these rules also provides a solution “if a judge believes there is a substantial possibility that a jury might be misled or fooled by plausible but very untrustworthy” AI-generated material. Similarly, Ariz. R. Civ. P. 53(a) allows pretrial appointment of a special master when warranted by “some exceptional condition” or, for instance, AI-generated matters in a case that tax beyond the time and efficiency allowed by a trial court's docket. *See* Ariz. R. Civ. P. 53(a)(1)(B)(i), (C).

Petitioner respectfully requests that the Court adopt the proposed Rule 901(b) comment as originally proposed, or, in reasonable alternative, in the form of the

shortened version proposed here. The Federal Committee on the Rules of Evidence and other states are also wrestling with addressing the impact of deepfake and otherwise manipulated evidence due to generative AI. The federal rule change process is lengthier than Arizona's process, and final federal rule amendments are not likely for a few years, at the earliest. Adoption of Petitioner's proposed comment, in either its original or amended form, will encourage practitioners to bring forth these issues in a timely manner while simultaneously providing judicial officers the guidance necessary to address such issues. The comment will be interim guidance until such time as consensus is reached on evidentiary rule changes appropriate to address the impacts of generative AI on courts.

## **V. Request for Adoption**

Petitioner respectfully requests that this Court adopt the amendments proposed by its Petition, as further amended herein.

Respectfully submitted this 2nd day of June, 2025.

/s/ Robert M. Brutinel  
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