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**IN THE SUPREME COURT
STATE OF ARIZONA**

In the Matter of

PETITION TO AMEND RULE 25,
ARIZONA RULES OF CIVIL
PROCEDURE

Supreme Court No. R-26-_____

**Petition to Amend Rule 25,
Arizona Rules of Civil Procedure**

Pursuant to Rule 28, Rules of the Supreme Court, the Honorable Andrew M. Jacobs and the Honorable Michael S. Catlett respectfully petition this Court to amend Rule 25, Arizona Rules of Civil Procedure, governing substitution of parties, for the reasons set forth in this petition and as proposed in the contemporaneously submitted Appendix.

I. Background and Purpose of the Proposed Rule Amendment.

Arizona Rule of Civil Procedure 25 serves to prevent the abatement of actions when a party dies during litigation, ensuring that cases can continue despite a party's death while balancing the need for finality and protecting parties from indefinite uncertainty. The rule's

underlying policy reflects a fundamental shift from common law principles that automatically terminated actions upon a party's death, instead promoting judicial efficiency and the resolution of disputes on their merits. The core policy of Rule 25 is to prevent the unnecessary dismissal of suits and to allow continuation with appropriate parties, balancing finality with fairness.

A seemingly unintended consequence of Rule 25 can disadvantage vulnerable populations – *i.e.*, minors and incompetent adults – who rely on a representative to bring their claims. Subsection (a)(1), as currently written, mandates dismissal when a party dies, unless a motion to substitute is “made within 90 days after a statement noting the death is served.” Ariz. R. Civ. P. 25(a)(1). The problem is that those vulnerable persons are represented by other persons, and the fact of their representative's death should not have claim-terminating consequences for vulnerable persons – they have not themselves died, and a functionary's death is no reason their claim should abate or be extinguished. Nor should those parties, who are not able to effectively represent themselves, be accountable when no successor representative appears within the 90-day timeframe required by Rule 25(a)(1). In short, Rule 25 should not mandate the dismissal of their claims after 90 days have elapsed from the filing of the statement noting the death of their representative, but should instead reflect the reality that the claim-holder has not died and that their rights should not be abridged because of the unfortunate death of that representative.

Indeed, Rule 25 was amended in 1963 to prevent the “hardships and inequities of” a similarly “unyielding requirement,” which was triggered then by death and not by the filing of a suggestion of death. *See* Ariz. R. Civ. P. 25, Committee Note (Westlaw). The

1963 amendment to “Rule 25(a)(1) was not intended . . . to act as a bar to otherwise meritorious actions.” *Ray v. Rambaud*, 103 Ariz. 186, 190 (1968).

The further amendment proposed here carries that point forward. It aims to prevent the misuse of Rule 25 so that if the party who dies is a trustee, conservator, guardian ad litem, or is otherwise acting in a representative capacity, the court should allow a substitution of a successor representative, just as Rule 25(d) requires the court to permit the substitution of a successor public officer when a predecessor officer dies or leaves office. Ariz. R. Civ. P. 25(d). The proposed amendment harmonizes with related provisions dealing with incapacitated persons, guardians, and transfers of interest, allowing judicial flexibility while maintaining procedural rigor and protecting vulnerable parties.

II. Conclusion

We respectfully urge the Court to adopt the proposed amendments to Rule 25 to accommodate the realities of litigation involving changing parties while protecting procedural rights and minimizing delay, error, or injustice. For the contents of the proposed rule amendment, please see the Appendix, which shows the proposed change in clean and blackline versions.

RESPECTFULLY SUBMITTED this 12th day of January, 2026

By: /s/ Andrew M. Jacobs
Hon. Andrew M. Jacobs
Judge, Arizona Court of Appeals
Division One

By: /s/ Michael S. Catlett
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