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

9 In the Matter of:

Supreme Court No. R-26-0012

10 **PETITION TO AMEND RULE 25**
11 **OF THE ARIZONA RULES OF**
12 **CIVIL PROCEDURE**

STATE BAR OF ARIZONA
COMMENT

13 Pursuant to Rule 28 of the Arizona Rules of the Supreme Court, the State Bar
14 of Arizona (“State Bar”) submits this Comment in support of the Petition to Amend
15 Rule 25, with modifications. The Petition identifies a gap in the current rules
16 regarding substitution of representative parties upon their death. The State Bar
17 agrees this gap can and should be remedied with amendments to Rule 25, but it
18 proposes different language.
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21 **I. RULE 25 AND THE NEED FOR AMENDMENT**

22 Rule 25 (“Substitution of Parties”) provides as follows:

23 **(a) Death.**

24 (1) *Substitution if the Claim Is Not Extinguished.* If a party dies
25 and the claim is not extinguished, the court may order substitution of the proper party. Any party or the decedent's successor or representative may file a motion to substitute. If the motion is not made within 90 days after a statement noting the

1 death is served, the court must dismiss the claims by or against
2 the decedent.

3 As the Petition points out, the purpose of this Rule is to prevent the abatement
4 of actions when a party dies during litigation. It allows the case to continue despite
5 a party's death via the substitution of a proper party. It also imposes a set deadline—
6 90 days after service of the statement noting death—for the substitution to occur,
7 thus preventing cases from lingering indefinitely. It balances fairness with finality.
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9 The Rule does not, however, distinguish between the death of a real party in
10 interest and an individual acting in a representative capacity (such as a personal
11 representative, guardian *ad litem*, or conservator). See Ariz. R. Civ. P. 17(b)(1)
12 (stating that “[a]n action must be prosecuted in the name of the real party in interest,”
13 and identifying individuals who “may sue in their own names without joining the
14 person or entity for whose benefit the action is brought”). There is no other rule
15 governing substitution in the event of a representative's death.
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18 In its current form, Rule 25 could be interpreted to impose the same 90-day
19 period for substituting representative parties that applies to non-representative
20 parties. This is unfair for two reasons. First, if the real party in interest—the person
21 who holds the claim—has not died, then their representative's death should not allow
22 their claim to abate or be extinguished. Second, the inflexible 90-day substitution
23 period has the potential to prejudice already vulnerable populations who have
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1 limited (if any) capacity to ensure that a new representative is not only promptly
2 appointed but also substituted into a civil case.

3 4 **II. THE STATE BAR'S PROPOSED AMENDMENT**

5 The Petition asks the Court to add a subsection (e) to Rule 25 expressly stating
6 that “[a]n action does not abate when a person dies while representing another who
7 is unable to represent themselves.” Although the State Bar agrees this clarification
8 is necessary, it proposes amending Rule 25(a)(1) to distinguish between the deaths
9 of real parties in interest and representatives, as follows:
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11 **(a) Death.**

- 12
- 13 (1) *Substitution if the Claim is Not Extinguished.* If a party
14 dies and the claim is not extinguished, the court may order
15 substitution of the proper party. ~~Any party or the~~
16 ~~decedent’s successor or representative may file a motion~~
17 ~~to substitute. If the motion is not made within 90 days~~
18 ~~after a statement noting the death is served, the court must~~
19 ~~dismiss the claims by or against the decedent.~~
- 20 (A) Real Parties in Interest. If the party who dies is a
21 real party in interest, any party or the decedent’s
22 successor or representative may file a motion to
23 substitute. If the motion is not made within 90 days
24 after a statement noting the death is served, the court
25 must dismiss the claims by or against the decedent.
- (B) Representatives. If a person who is acting in a
representative capacity, including any of the
representative capacities identified in Rule
17(b)(1)(A)-(G), dies, the claims and defenses of
the persons they represent do not abate. A successor
representative may move to substitute themselves.

23 Proposed subsection (a)(1)(A) (“Real Parties in Interest”) mirrors the existing
24 rule and continues to allow a case to continue after a party’s death while ensuring
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1 finality for the other parties. Subsection (a)(1)(B) (“Representatives”) accomplishes
2 the Petition’s core goal by clarifying that if a representative dies, the claims and
3 defenses of the represented person do not abate. The subsection also allows a
4 successor representative to move to substitute themselves. It does not impose a strict
5 time period to do so, recognizing the need for judicial discretion and flexibility. The
6 lack of a set time period will not unduly prejudice other parties, however, as they
7 can still move for dismissal for failure to prosecute under Rule 41(b) if a new
8 representative is not appointed within a reasonable time period.
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11 **CONCLUSION**

12 The State Bar supports the Petition as reflected in Section II, *supra*.

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14 RESPECTFULLY SUBMITTED this 1st day of May, 2026.

15 *Jessica J. Fotinos*

16 _____
17 Jessica J. Fotinos
18 General Counsel

19 Electronic copy filed with the
20 Clerk of the Supreme Court of Arizona
21 this 1st day of May, 2026.

22 by: PSequin
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