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

10 PETITION TO AMEND RULES 5(c)
11 AND 6(e), ARIZONA RULES OF
12 CIVIL PROCEDURE

Supreme Court No. R-11-0009

**Reply to Comment re Petition to
Amend Rules 5(c) and 6(e),
Arizona Rules of Civil Procedure**

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14 The State Bar of Arizona has petitioned the Court to amend Rules 5(c) and
15 6(e) of the Arizona Rules of Civil Procedure to permit service through either a
16 court-authorized electronic transmission system or by electronic mail. Attorney
17 Jonathan Millet has submitted a comment generally supporting the petition but
18 suggesting a modification to the proposed rule change requiring return receipts for
19 email service. While the comment raises legitimate concerns, the State Bar
20 believes that those concerns are resolved by the rule change as proposed. The
21 State Bar further believes that for both technical and practical reasons return
22 receipts should not be required for email service.

23 The comment raises the specific concern that an email attaching a motion
24 for summary judgment which itself has several attachments may exceed size
25 limitations imposed by a recipient's email server and thus may not be received,
26 which could lead to disputes in court as to why no response to the emailed motion

1 was filed. The comment suggests the use of return receipts for email service to
2 avoid disputes between the parties over whether a particular emailed filing was
3 received or not.

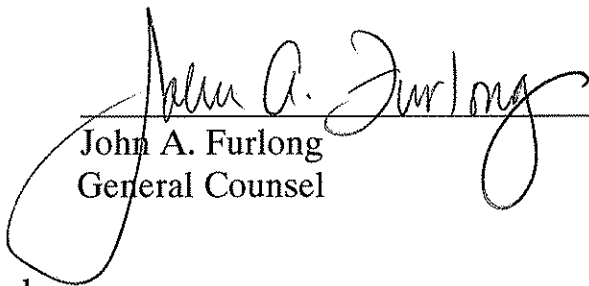
4 In crafting the proposed changes to Rule 5(c) regarding email service, the
5 State Bar considered imposing a requirement for return receipts but decided
6 against doing so for both technical and practical reasons. From a technical
7 standpoint, requiring return receipts is impractical because not all email
8 applications provide return receipt capability (for example, a Gmail user does not
9 have it); so users of such email applications could not comply with a return-receipt
10 requirement. From a practical standpoint, requiring return receipts would place a
11 party attempting to effect service by email at the whim of a recipient who could
12 avoid a return receipt request by either not opening the email or choosing not to
13 confirm its receipt.

14 In addition to these problems with return receipts, a method already exists
15 for determining whether an email failed to reach a recipient due to excessive file
16 size; namely, if an email exceeds the size limits of a recipient's email server, the
17 standard email protocol is for an automated message (known as a "delivery status
18 notification") to be delivered to the email's sender from either the recipient's or
19 the sender's email server. Therefore, a written record of the failed transmittal
20 would already exist without the need for a return receipt.

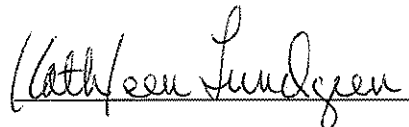
21 The petition further seeks to resolve any size-limitation issues by proposing
22 a comment to the rule change encouraging lawyers to cooperate with one another
23 regarding email service, including the exchange of information as to any size
24 limitations imposed by each party's email server. Exchanging such information
25 should assist the parties in ascertaining whether or not an email, based on its size,
26 will transmit successfully.

1 Although the comment raises legitimate concerns over the effects of size
2 limitations on email service, the State Bar opposes requiring return receipts for
3 email service. Other methods already exist for resolving potential problems with
4 email file size limitations, and requiring return receipts would raise technical and
5 practical problems which would outweigh any potential benefits.

6 RESPECTFULLY SUBMITTED this 15th day of June, 2011.

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11 _____
12 John A. Furlong
13 General Counsel

14 Electronic copy filed with the Clerk
15 of the Supreme Court of Arizona
16 this 20th day of June, 2011.

17 By: 
18 _____

19 A copy was mailed to:

20 Jonathan A. Millet, Esquire
21 Boyle, Pecharich, Cline,
22 Whittington & Stallings, P.L.L.C.
23 125 North Granite Street
24 Prescott, AZ 86301-3001

25 this 20th day of June, 2011,

26 By: 