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

11 PETITION TO AMEND RULE 55  
12 OF THE ARIZONA RULES OF  
13 CIVIL PROCEDURE AND RULE 44  
14 OF THE ARIZONA RULES OF  
15 FAMILY LAW PROCEDURE

Supreme Court No. R-11-0038  
**Comment of the State Bar of  
Arizona on Petition to Amend  
Rule 55 of the Arizona Rules of  
Civil Procedure and Rule 44 of  
the Arizona Rules of Family  
Law Procedure**

16 A petition has been submitted by the Honorable Norman J. Davis, Presiding  
17 Judge of the Superior Court of Maricopa County, to amend the provisions of  
18 Rule 55 of the Arizona Rules of Civil Procedure (“Rule 55”) and Rule 44 of the  
19 Arizona Rules of Family Law Procedure (“Rule 44”) concerning entry of default  
20 in civil actions and family law matters. The petition seeks to clarify that  
21 acceptance for filing by the Clerk of the Superior Court (“the Clerk”) of an  
22 application for entry of default may, in itself, constitute entry of default. The  
23 State Bar supports the clarifying amendments with the minor revisions  
recommended below.

24 **I. The proposed rule clarifies existing practice and should be adopted.**

25 Rule 55(a) provides for entry of default by the Clerk, the first step in the  
26 two-step process of obtaining a default judgment. Rule 44 also provides for entry

1 of default by the Clerk. Entering a default is a ministerial act, which becomes  
2 effective ten days after the filing of an application for entry of default if no  
3 responsive pleading has been filed. As correctly stated in the petition, the rules as  
4 written do not specify the process for the manner in which the Clerk accomplishes  
5 entry of default. In Maricopa County and several other counties, presiding judges  
6 have issued administrative orders that provide for entry of default upon the filing  
7 of an application, with no signing or other action required by the Clerk. As with  
8 all entries of default, a default entered through such a process becomes effective  
9 ten days after the filing of the application for entry of default. This process  
10 streamlines case administration, reduces unnecessary actions by the Clerk (such as  
11 signing or sealing a separate document), and would seem to advance the  
12 efficiencies of e-filing and electronic case management. The petition seeks to add  
13 sections to Rule 55 and Rule 44 to clarify that the Clerk's acceptance of the  
14 application for entry of default is sufficient to accomplish entry of default with no  
15 further action required by the Clerk. The proposal also adds a comment to each  
16 rule to make clear that the rule changes are intended only to clarify existing  
17 practice.

18 In supporting adoption of the proposed rule changes, the State Bar notes  
19 that, at the present time, there is no uniform practice for entering default across  
20 the state. The proposed new sections to the rules would not immediately change  
21 the differences among the counties. They would, however, clarify that  
22 streamlining the process for entry of default, as several counties have already  
23 done, is permissible and desirable. The State Bar therefore supports the substance  
24 of the petition. In so doing, however, the State Bar notes that proposed  
25 Rule 55(a)(2) and proposed Rule 44(A)(2) and their accompanying comments  
26 contain references to an "Application and Affidavit of Default." The existing

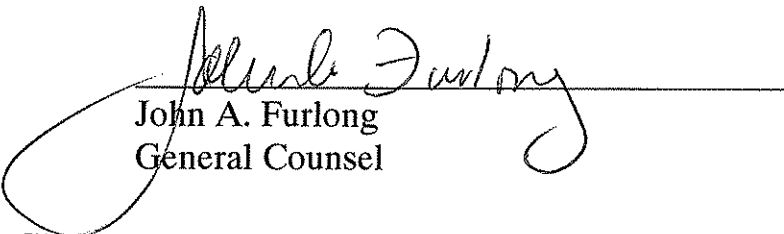
1 rules do not refer to any required affidavit, although affidavits of default are  
2 commonly filed with Rule 55(a) applications due to the requirements of the  
3 Servicemembers Civil Relief Act, 50 app. U.S.C. § 521 (2003). Including  
4 references to the affidavit only in the newly inserted sections of Rules 55 and 44  
5 and their comments, when no references to an affidavit are contained elsewhere in  
6 either rule, might create confusion about what must be filed. The State Bar  
7 therefore suggests that the rule changes be adopted without including any  
8 reference to an affidavit.

9 Additionally, the State Bar recommends the insertion of a period at the end  
10 of the new proposed section (2) of each rule, and suggests that the word  
11 "Application" in those sections not be capitalized, as the word is not capitalized in  
12 other sections of the rules. *See, e.g.*, Rule 55(a)(1)(i); Rule 44(A)(1)(a).

## 13 **II. Conclusion**

14 The State Bar supports the proposed clarifying amendments to Rule 55(a)  
15 of the Arizona Rules of Civil Procedure and Rule 44(A) of the Arizona Rules of  
16 Family Law Procedure with the modifications suggested in this comment.

17 RESPECTFULLY SUBMITTED this 7<sup>th</sup> day of May, 2012.  
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20   
21 John A. Furlong  
22 General Counsel

23 Electronic copy filed with the Clerk  
24 of the Supreme Court of Arizona this  
7<sup>th</sup> day of May, 2012,

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26 by: Kathleen A. Lundgren