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**IN THE SUPREME COURT
STATE OF ARIZONA**

PETITION TO AMEND RULE 15(a)(1)
OF THE ARIZONA RULES OF CIVIL
PROCEDURE

Supreme Court No. _____
**Petition to Amend Rule 15(a)(1),
Ariz. R. Civ. P.**

Pursuant to Rule 28 of the Rules of the Arizona Supreme Court, the State Bar of Arizona hereby petitions the Court to amend Rule 15(a)(1) of the Arizona Rules of Civil Procedure. This Court recently amended that rule to incorporate, with a few changes, amendments to the Federal Rules of Civil Procedure. One of the intents of the petition prompting the amendment was to expand upon the long-standing principle of Arizona law that a party may amend once as a matter of right until a responsive pleading has been filed, allowing amendment up to twenty-one days after service of a responsive pleading. However, the unintended consequence of the language the Court used is that a party may only amend the party's pleading once as a matter of course *after* service of a responsive pleading. The State Bar's proposed amendment is intended to restore a party's right to amend a pleading once as a matter of course *before* service of the pleading (if the pleading is one to which no responsive pleading is permitted) and *before* a responsive pleading has been

1 filed (if the pleading is one to which a responsive pleading is required). A red-lined
2 version of the proposed amendment is attached hereto as Appendix A.

3 **Rationale Supporting Proposed Amendment of Rule 15(a)(1)**

4 Effective January 1, 2012, this Court amended Rule 15(a)(1) of the Arizona
5 Rules of Civil Procedure to incorporate, with a few modifications, the December
6 2009 amendments to Rule 15(a)(1) of the Federal Rules of Civil Procedure. *See*
7 *Ariz. Sup. Ct. Order R-11-0010* (Sept. 1, 2011). The Court acted after considering
8 the State Bar's Petition to Amend Arizona Rules of Civil Procedure to Abrogate
9 Rule 13(f) and Amend Rule 15(a)(1) (Petition No. R-11-0010).

10 The State Bar's proposed amendments differed from the federal rule
11 amendments in a few key respects. Among them, the State Bar recommended using
12 the phrase "no later than" to describe the periods during which an amendment could
13 be made as a matter of course rather than the word "within," which appears in
14 Federal Rule 15(a)(1). (Petition No. R-11-0010 at 7.) This Court rejected that
15 recommendation and instead used the word "within." The State Bar requests that
16 this Court reconsider the earlier recommendation and substitute the phrase "no later
17 than" for the word "within" to explicitly authorize amendment of a pleading as a
18 matter of course both (a) *before* the affected pleading is served, if the pleading is
19 one to which no responsive pleading is permitted, and (b) *before* a responsive
20 pleading is filed, if the pleading is one to which a responsive pleading is required.

21 The only reported Arizona decision interpreting revised Rule 15(a)(1) noted
22 that it is a deviation from the long-standing principle that a party could amend a
23 pleading as a matter of right before service or before a responsive pleading is filed.
24 In *Sierra Tucson, Inc. v. Lee ex rel. County of Pima*, Division Two of the Court of
25 Appeals looked "to the plain language of the rule as the best reflection of [this
26 Court's] intent." 2 CA-SA 2012-0025, 2012 WL 2498820 *5 ¶ 16 (Ariz. Ct. App.

1 June 28, 2012). The court noted that “[t]he former version of Rule 15(a)(1) had
2 permitted a party to amend the party’s pleading ‘once as a matter of course at any
3 time before a responsive pleading [was] served.’” (Emphasis added.) The court
4 concluded that “[t]he current version of the rule is clear; it permits a party to amend
5 a pleading at the earlier of within twenty-one days of service of a responsive
6 pleading or the day on which a response to specified Rule 12 motions is due.” *Id.*
7 ¶ 17.

8 As the court noted in *Sierra Tucson*, historically under Rule 15(a)(1), a party
9 was permitted “to amend the party’s pleading once as a matter of course at *any time*
10 before a responsive pleading was served,” including *before* the party’s pleading had
11 been served.¹ (Emphasis added.) The State Bar’s proposed amendment merely
12 removes the ambiguity in the Rule 15(a)(1) to conform to what was historically
13 allowed under the rule. Moreover, this rule change would not prejudice in any way
14 the party that has not been served with a pleading or who has not yet served a
15 responsive pleading. For these reasons, this Court should make this minor
16 amendment to Rule 15(a)(1).

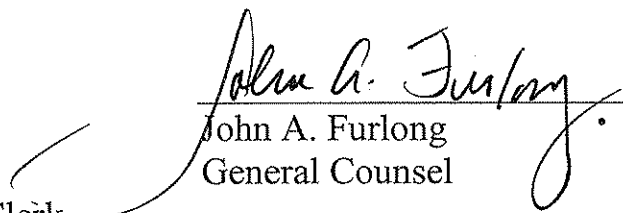
17 Conclusion

18 The State Bar of Arizona respectfully requests that the Court amend
19 Rule 15(a)(1) of the Arizona Rules of Civil Procedure as shown in Appendix A.
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23 ¹ As written, the plain language of Rule 15(a)(1) could be interpreted to mean that a
24 “[p]laintiff could not amend his complaint before a complaint was served on [defendants].” *See,*
25 *e.g., Brogdan v. Phoenix Police Dept.*, CV 11-1675-PHX-RCB, 2012 WL 1658040 (D. Ariz.
26 May 11, 2012). The District of Arizona rejected this interpretation in the *Brogdon* case, finding
that “Rule 15(a) appears to apply to amendments after service of a complaint, which would be the
usual sequence of events.” Nevertheless, the distinct possibility remains that an Arizona court
applying basic rules of statutory construction to Rule 15(a)(1) could find otherwise.

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RESPECTFULLY SUBMITTED this 19th day of December, 2012.



John A. Furlong
General Counsel

Electronic copy filed with the Clerk
of the Supreme Court of Arizona this
20th day of December, 2012.

By: Kathleen A. Lundgren

APPENDIX A

Rule 15(a)(1)

1. A party may amend the party's pleading once as a matter of course:

A. no later than ~~within~~ twenty-one days after serving it if the pleading is one to which no responsive pleading is permitted; or

B. no later than ~~within~~ twenty-one days after service of a responsive pleading if the pleading is one to which a responsive pleading is required or, if a motion under Rule 12(b), (e), or (f) is served, on or before the date on which a response to the motion is due, whichever is earlier.

Otherwise a party may amend the party's pleading only by leave of court or by written consent of the adverse party. Leave to amend shall be freely given when justice requires. Amendment as a matter of course after service of a motion under Rule 12(b), (e), or (f) does not, by itself, moot the motion as to the adequacy of the allegations of the pleading as revised in the amended pleading and does not relieve a party opposing the motion from filing a timely response to the motion.

(No changes are proposed to the remainder of the rule.)