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

10 PETITION TO AMEND RULE 7.1
11 OF THE ARIZONA RULES OF
12 CIVIL PROCEDURE

13 Supreme Court No. R-12-_____
14 **Petition to Amend Rule 7.1, Ariz. R.**
15 **Civ. P.**

16 Pursuant to Rule 28 of the Rules of the Arizona Supreme Court, the State
17 Bar petitions the Court to amend Rule 7.1 of the Arizona Rules of Civil Procedure.
18 Specifically, the State Bar proposes the promulgation of a new Rule 7.1(g) to make
19 uniform the manner in which extensions of time for briefing are requested and
20 granted, in order to avoid wasting the time of the trial courts and litigants, and to
21 increase clarity among courts and litigants in this regard. Presently, litigants often
22 agree to extensions of time on briefing schedules without informing the court.
23 This sometimes causes courts to work on motions prematurely, occasionally causes
courts to grant or deny them summarily when the parties did not intend the briefing
period to have closed, sometimes causes courts to hear argument on matters when
replies are lodged just before argument, and other times simply delays cases
needlessly. None of this aids the administration of justice.

The State Bar proposes the addition of a Rule 7.1(g) to address and resolve
these concerns. A redlined version of the proposed amendment to Rule 7.1 is
attached hereto as Appendix A.

1 **I. The Common Practice of Litigants Extending Due Dates for**
2 **Briefs Without Notice to the Court Causes Premature Rulings,**
3 **Degrades the Usefulness of Oral Arguments, and Disserves**
4 **Court Management of Case Schedules.**

5 Rule 7.1 of the Arizona Rules of Civil Procedure governs civil motion
6 practice. Under it, parties must serve and file any answering memorandum within
7 ten days after service of a motion. The moving party must then serve and file a
8 reply, if any, within five days after service of the response.

9 The practice under this rule has been that litigants sometimes agree
10 informally to extend briefing schedules without seeking court permission or
11 otherwise communicating their agreement to the court. This creates several issues
12 about which judges and litigants alike have expressed concern.

13 First, courts sometimes grant motions outright for failure of the nonmovant
14 to oppose. In other cases, where the reply is the brief the litigants agree may be
15 filed later, the court may rule on the motion and the response without a reply.

16 Second, courts sometimes receive briefs less than one week before
17 argument, which can make preparation for the argument more difficult. In some
18 cases, replies are lodged shortly before the argument dates, so that the court may
19 not have had an opportunity to review them. Indeed, this appears to be one reason
20 why Maricopa County Local Rule 3.2(d)(1) specifies that a date for oral argument
21 shall be set so that it falls at least five days after briefing is closed. When
22 consulted by the State Bar about this proposed rule change, judges of the Pima
23 County Superior Court likewise expressed a preference that briefs not arrive less
24 than one week before oral argument.

25 Third, litigants sometimes agree to extend the due dates for briefs so that the
26 court must decide matters at times later than contemplated by a scheduling order.

1 As an example, litigants may agree to extend the timing of summary judgment
2 briefing in a manner that prevents the court from deciding the issues before the
3 litigants must submit a pretrial order. In that and other cases, the litigants'
4 unilateral action creates a chain reaction that disserves the court's other deadlines,
5 which can waste judicial and litigant resources.

6 Fourth, litigants in some circumstances can extend briefing in a manner that
7 the court finds dilatory. In its role as case manager, the court may wish to keep
8 issues moving forward, either to prompt the accurate risk assessment that gives rise
9 to settlement, or simply to move a case toward resolution. Some judges have
10 expressed a concern that agreed-upon extensions not subject to court oversight
11 defeat these good purposes.

11 The specific proposed change addresses each of these problems.

12 **II. Amending Rule 7.1 To Add Proposed Subpart (g), Agreed**
13 **Extensions of Time For Filing Memoranda, Will Solve**
14 **Each of the Foregoing Concerns.**

14 To address each of the foregoing problems, the State Bar suggests the
15 addition of a further subpart within Rule 7.1:

16 **Rule 7.1 Civil Motion Practice**

17 ...

17 (g) Agreed Extensions of Time for Filing Memoranda

18 Subject to the court's power to vacate and disapprove any such
19 agreement, parties may agree to any extension of the dates upon
20 which response and reply memoranda are due when the extension
21 does not otherwise conflict with other scheduling dates set by the
22 court or these Rules. To make an extension effective under this
23 subsection, a notice of the extension to which the parties have
agreed must be filed, setting out the dates on which the response or
reply briefs shall then be due. The notice shall set forth in its title
the number of extensions agreed to with respect to that filing (e.g.,
First Extension of Time To File Response on Motion To Dismiss).

1 No extension shall be effective without court approval if it purports
2 to make a reply or other final memorandum due less than five days
3 before a hearing or oral argument date previously set by the court, or
4 if the notice of that extension is filed after the memorandum is due.
5 No order is necessary to obtain an extension under this subsection,
6 and the extension shall be effective upon filing, unless and until the
7 court disapproves the change. The provisions of this subsection do
8 not apply to motion practice under Rule 56.

9 This proposed amendment to Rule 7.1, crafted after significant consultation
10 with judges around the state, creates a device that strikes the appropriate balance
11 between the necessity for notice to the court of changes in schedules and the
12 undesirability of inundating the court with stipulations and forms of order seeking
13 permission for schedule changes that are often trivial.

14 The proposed amendment requires parties in all cases to tell the court of
15 their proposed extension. The filing of the notice required in the proposed rule
16 thus assures that the court knows in all cases what the litigants are doing, and that
17 it can disapprove or alter their agreement if necessary for any reason. The rule
18 prevents extensions from becoming effective if the fact of the extension frustrates
19 other court deadlines. The rule also requires litigants to make sure that extensions
20 will not cause replies to be lodged less than five days before the hearing date on
21 the motion (as in Maricopa County Superior Court Local Rule 3.2(d)(1)), thus
22 helping to assure the quality and usefulness of the oral argument for all. Finally,
23 the proposed rule also requires that the party lodging the notice of extension
indicate how many extensions have been sought. This feature alerts the court to
issues of dilatoriness.

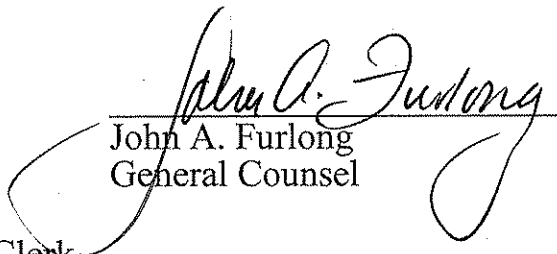
Thus, the proposed amendment addresses all of the concerns the State Bar
has heard expressed about the practice of litigants agreeing to extend briefing
schedules without alerting courts, because under it: (1) courts will not decide

1 motions prematurely since they will have notice of the proposed extensions;
2 (2) oral argument will not be disrupted with filings less than five days before the
3 date they are held; (3) litigants cannot simply agree to scheduling changes that
4 disrupt other court-ordered dates without the court's own approval; and
5 (4) litigants must reveal on the face of the notice of an agreed extension how
6 many times they have agreed to extend the date in order to flag issues of great
7 delay to the court.

8 **Conclusion**

9 Believing that this proposal will solve a modest but pervasive problem, the
10 State Bar asks this Court to amend Rule 7.1 by adding subsection (g) as forth in
11 Appendix A hereto.

12 RESPECTFULLY SUBMITTED this 19th day of December, 2012.

13
14 
15 _____
16 John A. Furlong
17 General Counsel

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

21
22 By: Kathleen A. Lundgren
23

APPENDIX A

State Bar's Proposed Amendment to Rule 7.1 to add new subsection (g)

(Petitioner's proposed additions are shown by underscoring)

Rule 7.1 Civil Motion Practice

(g) Agreed Extensions of Time for Filing Memoranda

Subject to the court's power to vacate and disapprove any such agreement, parties may agree to any extension of the dates upon which response and reply memoranda are due when the extension does not otherwise conflict with other scheduling dates set by the court or these Rules. To make an extension effective under this subsection, a notice of the extension to which the parties have agreed must be filed, setting out the dates on which the response or reply briefs shall then be due. The notice shall set forth in its title the number of extensions agreed to with respect to that filing (e.g., First Extension of Time To File Response on Motion To Dismiss). No extension shall be effective without court approval if it purports to make a reply or other final memorandum due less than five days before a hearing or oral argument date previously set by the court, or if the notice of that extension is filed after the memorandum is due. No order is necessary to obtain an extension under this subsection, and the extension shall be effective upon filing, unless and until the court disapproves the change. The provisions of this subsection do not apply to motion practice under Rule 56.