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6 IN THE SUPREME COURT OF THE STATE OF ARIZONA

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8 IN THE MATTER OF:

R-13-0017

9 PETITION TO AMEND 16, 16.1, 26, 37,
10 38, 38.1, 72, 73, 74 and 77 OF THE
ARIZONA RULES OF CIVIL
PROCEDURE

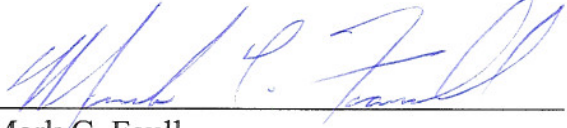
MARICOPA COUNTY ATTORNEY'S
OFFICE COMMENT TO PETITION TO
AMEND RULES 16, 16.1, 26, 37, 38, 38.1,
72, 73, 74 AND 77, OF THE ARIZONA
RULES OF CIVIL PROCEDURE

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12 The Maricopa County Attorney's Office hereby comments to the Petition to Amend
13 Rules 16, 16.1, 26, 37, 38, 38.1, 72, 73, 74 and 77, of the Arizona Rules of Civil Procedure.

14 Respectfully submitted this 29th day of March, 2013.

15 WILLIAM G. MONTGOMERY
16 MARICOPA COUNTY ATTORNEY

17 BY:


18 Mark C. Faull
19 Chief Deputy
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1 The Maricopa County Attorney’s Office believes that the Rule 16 petition represents
2 a step in the right direction by eliminating a number of traps for the unwary under the
3 current rules and under Rule 38. The County Attorney therefore supports the Petition with
4 the following suggestions and exceptions:

5 With regard to discovery and Alternative Dispute Resolution (ADR), the Petition
6 creates an artificial presumptive 13 months deadline, requiring that discovery be completed
7 and a settlement conference or mediation occur within 13 months after the commencement
8 of the action (unless good cause is shown). The County Attorney believes this can be too
9 soon a deadline for many complex cases. This “one size fits all” solution to the problems
10 identified in the Petition is not an optimal approach. The County Attorney believes that
11 lawyers should be able to determine their own deadlines based on the needs of the case,
12 which lawyers routinely do as a matter of practice. Dictation of a mandate within the Rules
13 with a “good cause” contingency creates a rule which could be swallowed up by the
14 exception. Thirteen months is an unrealistic assessment of the life of every single case, and
15 the lawyers should be left to maturely and professionally determine the realistic time frame
needed.

16 Further, the County Attorney doesn’t believe that each and every case should be
17 subject to a settlement conference or private mediation. This too should be left to the
18 discretion of the lawyers. The County Attorney suggests eliminating from the proposed rule
19 the requirement that a trial date not be set until the parties certify that they have participated
20 in mediation or a settlement conference. Some cases simply do not lend themselves to these
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1 types of ADR. Perhaps an alternative should be that both sides should simply certify that
2 they have engaged in "a" form of ADR and describing what that was. This may be as
3 simple as certifying that that an offer or demand was conveyed by one party on a particular
4 date and rejected and/or responded to, or that one party has determined that there should be
5 no ADR attempted in the matter, and stating the reasons why it would not be appropriate.

6 With those two suggestions, the County Attorney supports the Petition.

7 Respectfully submitted this 29th of March, 2013.

8 WILLIAM G. MONTGOMERY
9 MARICOPA COUNTY ATTORNEY

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