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

10 PETITION TO AMEND RULE 28,
11 RULES OF THE SUPREME COURT
12 OF ARIZONA

Supreme Court No. R-13-0025

**Comment of the State Bar of Arizona
on Petition to Amend Rule 28, Rules
of the Supreme Court of Arizona**

13 The State Bar of Arizona, which is a valuable stakeholder in the rules process,
14 asks the Court to reject this petition.

15 This Court created the State Bar to engage in following activities:

16 [T]o advance the administration of justice according to law, to aid
17 the courts in carrying on the administration of justice; to provide for
18 the regulation and discipline of persons engaged in the practice of
19 law; to foster and maintain on the part of those engaged in the
20 practice of law high ideals of integrity, learning, competence and
21 public service, and high standards of conduct; to provide a forum for
22 the discussion of subjects pertaining to the practice of law, the
23 science of jurisprudence, and law reform; to carry on a continuing
24 program of legal research in technical fields of substantive law,
25 practice and procedure, and to make reports and recommendations
thereon; to encourage practices that will advance and improve the
honor and dignity of the legal profession....

26 Rule 32(a)(1), Ariz. R. Sup. Ct. As a non-profit corporation, the State Bar
27 may "promote and further the aims as set forth herein and hereinafter in these rules."
28 *Id.* The State Bar carries out the Court's charge by, among other activities, filing and

1 commenting on filed rule-change petitions.

2 In addition to Rule 32, A.R.S. § 12-110 specifically directs the State Bar to
3 “act as an advisory board” to the Court on rules matters:

4 **A.** The state bar, or a representative group selected by the bar,
5 shall act as an advisory board and shall either voluntarily or
6 upon request of a majority of the judges of the supreme court,
7 consult with, recommend to or advise the court on any matter
8 dealt with or proposed to be dealt with in the rules.

9 **B.** Any member of the state bar or a private citizen may object in
10 writing to a rule or part thereof and may request changes. The
11 court shall consider the objections and requests as advice and
12 information only and may act thereon at its discretion.

13 By virtue of its membership – all lawyers – the State Bar as a representative
14 entity has unique expertise and experience to provide the Court on rules. Many rule-
15 change petitions directly affect the mechanics of the practice of law. Others impact
16 the general administration of justice, rule changes intended to expand access to
17 justice, the Uniform Interstate Deposition and Discovery Act, and the Justice Court
18 rules of procedure.

19 In all situations, the State Bar files rule-change petitions or comments on
20 existing petitions typically only after a lengthy vetting process that includes seeking
21 input from its members and culminates in a review by the State Bar Board of
22 Governors, which has 26 voting members, 19 of which are lawyers elected through a
23 representational voting process. Rule 32(e)(2), Ariz. R. Sup. Ct. When it authorizes
24 the filing of rule-change petitions or comments, the Board of Governors thus
25 represents its membership in the same manner as any elected, representative body.

26 The State Bar is not, as Petitioner claims, in a lawyer-client relationship with
27 its members, and thus his arguments relying on the Ethical Rules, Rule 42, Ariz. R.
28 Sup. Ct., are simply inapt.

1 It also is certainly not improper nor constitutes an appearance of impropriety
2 for the State Bar, as an arm of this Court, to file or comment on rule-change
3 petitions. Stakeholders, such as the State Bar, court committees and other court-
4 related entities, as well as interested, non-lawyer citizens such as Petitioner and
5 community organizations, must not only be allowed but encouraged to contribute to
6 the process by which the Court sets the rules that govern lawyers and the legal
7 system.

8 Precluding the State Bar of Arizona from filing or commenting on rule-change
9 petitions would silence the very organization this Court created, in part, to help the
10 courts "carry[] on the administration of justice." It also would silence an organization
11 that, by an extensive representative process, seeks to provide input to the Court on
12 rules, as explicitly directed by state law.

13 RESPECTFULLY SUBMITTED this 29th day of April
14 2013.

15
16 By John A. Furlong
17 John A. Furlong
18 General Counsel

19 Electronic copy filed with the Clerk
20 of the Supreme Court of Arizona this
21 29th day of April, 2013.

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23 By: Kathleen A. Lundgren
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