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5 **IN THE SUPREME COURT**
6 **STATE OF ARIZONA**

7
8 **PETITION TO AMEND RULE**
9 **47(a)(3), ARIZONA RULES OF**
10 **CIVIL PROCEDURE, AND RULE**
11 **18.6(b), ARIZONA RULES OF**
12 **CRIMINAL PROCEDURE**

Supreme Court No. R-13-0022

Comment of the State Bar of Arizona
on Petition to Amend Rule 47(a)(3),
Arizona Rules of Civil Procedure, and
Rule 18.6(b), Arizona Rules of Criminal
Procedure

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14 The State Bar of Arizona generally supports the Petition to Amend Rule
15 47(a)(3) of the Arizona Rules of Civil Procedure and Rule 18.6(b) of the Arizona
16 Rules of Criminal Procedure, which seeks to establish one uniform jurors' oath in
17 both civil and criminal cases. The State Bar, however, suggests one modification to
18 the single oath for use in both case types.

19 Using the oath administered in criminal cases as its template for the uniform
20 oath, the Petition seeks to add the phrase "comply with the admonition" to the oath
21 currently set forth in the Rule 18.6(b) of the Arizona Rules of Criminal Procedure,
22 and to supplant the current oath set forth in Rule 47(a)(3) of the Arizona Rules of
23 Civil Procedure with the oath administered in criminal proceedings as modified. The
24 stated purpose behind the addition of the phrase "comply with the admonition" is to
25 call particular attention to this "separately titled and distinctive instruction" in order
"to emphasize to [the jurors] the importance of abiding by the admonition,

1 notwithstanding the ubiquitous availability of technology and other available means
2 that may tempt a juror to not comply.” Petition at 4. The State Bar acknowledges
3 the important function that the “admonition” serves and the need for jurors to
4 appreciate the admonition’s import.¹

5 The State Bar agrees that there is no justification for having different jurors’
6 oaths for criminal and civil proceedings, and supports using one uniform oath in all
7 proceedings. The State Bar, however, is concerned that the proposed amendments
8 appear to distinguish the “admonition” from “the court’s instructions.” As proposed,
9 the oath in both criminal and civil proceedings would read as follows:

10 Do you swear (or affirm) that you will give careful
11 attention to the proceedings, abide by the court’s
12 instructions, comply with the admonition, and render a
13 verdict in accordance with the law and evidence
14 presented to you, so help you God?

15 Petition at 6-7, Appendix (emphasis added). The admonition, however, is one of
16 court’s instructions, routinely given as a standard preliminary jury instruction in both
17 civil and criminal cases. See RAJI (Criminal) 3rd, Preliminary 13; RAJI (Civil) 4th,
18 Preliminary 9.

19 “The purpose of jury instruction is to inform the jury of the applicable law in
20 terms they can readily understand.” *Noland v. Wootan*, 102 Ariz. 192, 194, 427 P.2d
21 143, 145 (1967). Instructing jurors on what is and what is not legally permissible
22 during the course of the trial in the form of the admonition is, to be sure, important,
23 but it should be no more important than any other instruction given by the court—
24 *e.g.*, the substantive elements of a claim or crime; the relative burdens of proof on
25 claims and defenses.

¹ The Petition discusses the drafting of a revised jury admonition which is
designed to address a number of issues, including the emergence of new technologies
and methods of instant communication. See Petition at 2-3. This comment, however,
is limited solely to the proposed amendments to the Rules of Civil and Criminal
Procedure and is not intended to address the draft of the revised admonition.

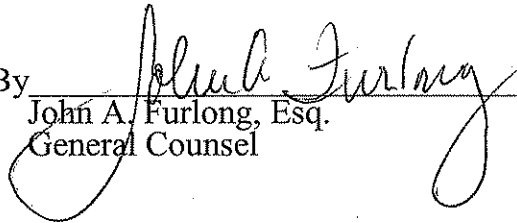
1 In an effort to make clear that the admonition is one of the court's instructions,
2 while at the same time highlighting its importance at the inception of a trial without
3 also running the risk of ascribing to the admonition more weight than the other
4 instructions, the State Bar suggests the following stylistic and substantive
5 modification (deletions are shown by ~~strike-through~~ and proposed additions are
6 shown by underscoring):

7 Do you swear (or affirm) that you will give careful
8 attention to the proceedings, ~~abide by~~ comply with the
9 court's instructions, ~~comply with~~ including the
admonition, and render a verdict in accordance with the
law and evidence presented to you, so help you God?

CONCLUSION

10 For the foregoing reasons, the State Bar supports the Petition, with the
11 suggested proposed modification set forth above.

12 RESPECTFULLY SUBMITTED this 29th day of April 2013.

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15 By 
16 John A. Furlong, Esq.
General Counsel

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18 Electronic copy filed with the
19 Clerk of the Supreme Court of Arizona
this 27th day of April, 2013.

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21 By: 