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

10 In the Matter of:

Supreme Court No. R-14-0003

11 **PETITION TO AMEND RULE**
12 **5(c)(2) AND 6(e) OF THE**
13 **ARIZONA RULES OF CIVIL**
14 **PROCEDURE**

COMMENT OF
THE STATE BAR OF ARIZONA

15 The State Bar of Arizona endorses the amendments proposed by the
16 Administrative Office of the Courts to Rules 5(c)(2) and 6(e) of the Arizona Rules
17 of Civil Procedure. The amendment to Rule 5(c)(2) would authorize litigants to
18 electronically serve papers on attorneys of record through the Court's electronic
19 filing system, at the same time as the papers are filed. The corresponding
20 amendment to Rule 6(e) would provide that, for papers served through the Court's
21 electronic filing system, an additional five days are added to the prescribed response
22 time.

23 The State Bar believes these amendments are worth adopting for two reasons:
24
25

1 *First*, with the successful adoption and use of AZTurboCourt, a gap exists in
2 the current system of service: Although the system gives users the option of serving
3 papers electronically through AZTurboCourt, the rules do not currently authorize
4 service in this manner. The proposed amendments address that gap, furthering the
5 Supreme Court’s strategic priority of a comprehensive system of electronic filing
6 in Arizona.

7 *Second*, the proposed amendments bring Arizona practice in line with e-
8 service procedures under the federal rule. The Arizona federal court authorizes
9 electronic service through the Court’s electronic transmission system. Fed. R. Civ.
10 Proc. 5(b)(3); LRCiv 5.5(h). It also provides, in Rule 6(d), that papers served
11 through the Court’s electronic transmission service are treated as if they were served
12 by regular mail, allowing additional time for response. Fed. R. Civ. Proc. 6(d)
13 (adding 3 days to period). Allowing this additional time for electronic service under
14 the proposed amendments to Rule 6(e) will avoid confusion among lawyers
15 practicing in both court systems, will avoid having the practical effect of shortening
16 response times for practitioners who are used to service by mail, and will be
17 consistent with current practice allowing additional time for all forms of service
18 except for hand delivery.

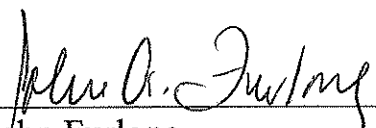
19 The State Bar also agrees with the Amended Petition’s proposal to use the
20 word “paper,” rather than the word “document.” This change is consistent with
21 terminology used in other procedural rules that refer to “papers” rather than
22 “documents.” *See, e.g.*, Ariz. R. Civ. Proc. 6(e) (additional time for service applies
23 to “papers”), 7.1(a) (rule applies to “all motions and other papers provided for by
24 this rule....”), 56(e) (1) (if a “paper or part of a paper is referred to in an affidavit”
25

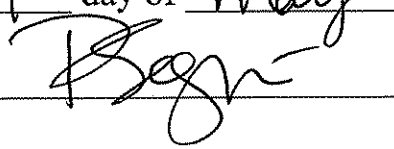
1 submitted on summary judgment, it must be attached to or served with the affidavit).
2 Consistent with this change, however, one remaining reference to "document"
3 needs to be replaced with the word "paper" in the proposed amended rule. Attached
4 as Appendix A is an excerpt of the proposed amended rule that makes the needed
5 correction.

7 **CONCLUSION**

8 For the stated reasons, the State Bar of Arizona supports the Amended
9 Petition, with one correction as reflected in the attached Appendix, changing the
10 word "document" to the word "paper" in Rule 5(c)(2)(e).
11

12 RESPECTFULLY SUBMITTED this 7th day of May, 2014.
13

14
15 
16 _____
17 John Furlong
18 General Counsel
19

20 Electronic copy filed with the
21 Clerk of the Arizona Supreme Court
22 this 9th day of May, 2014.
23 by: 
24
25

1
2 **Appendix A**

3 **Showing Correction to Proposed Rule 5(c)(2)(E)**
4 **(deletion shown by strike-through and addition shown in bold italics)**

5 **Arizona Rules of Civil Procedure**

6 **Rule 5. Service and filing of pleadings and other papers**

7 ***

8 **Rule 5(c) Service after appearance; service after judgment; how made.**

9 * * * *

10 (E) Transmitting the document *paper* through an electronic filing service
11 provider approved by the Administrative Office of the Courts, if the
12 recipient is an attorney of record in the action - in which event service is
13 complete upon transmission.