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**IN THE SUPREME COURT STATE OF ARIZONA**

In the Matter of:	)	Supreme Court No. R-16-0010
	)	
PETITION TO AMEND THE	)	COMMENT
ARIZONA RULES OF CIVIL	)	
PROCEDURE AND RELATED	)	
RULES	)	
	)	

David K. Byers, Administrative Director, Administrative Office of the Courts (AOC), respectfully submits this Comment to inform the Court of the position of the AOC regarding the proposed amendment to Civil Rule 5(j), now Rule 5.1(d).

The AOC is implementing a new statewide e-filing system, eFile.AzCourts.gov, in superior court. During this process, several Clerks of Court have expressed concerns regarding the need for an amendment to Rule 5(j) of the Rules of Civil Procedure. The rule directs Clerks of Court on how to process proposed orders and proposed judgments submitted by parties. The current rule instructs clerks not to file or docket these documents until the judge takes action on them. The Task Force is proposing modest changes to this rule that preserve the

prohibition against filing proposed orders and judgments. The Clerks are concerned that the way their case management system, AJACS, handles electronically-filed proposed orders and judgments is prohibited by the rule as it currently reads and as the Task Force is proposing.

When a party wants to submit a proposed order or judgment through eFile.AZCourts.gov, the party is required to include it with either a notice of filing or motion. It cannot be electronically submitted as a stand-alone document. Once properly submitted, AJACS automatically file stamps the notice or motion and includes this event in the publicly-viewable register of actions/docket. AJACS handles the proposed order or judgment separately; it logs the receipt of the proposed order or judgment, but does not show the log entry in the publicly-accessible register of actions/docket. AJACS also does not file stamp the proposed order or judgment, and does not permit public access to the document.

The Clerks are concerned that because AJACS automatically logs the receipt of a proposed order or judgment, it violates the rule's prohibition against filing and docketing proposed orders and judgments. Accordingly, we are proposing additional changes to the Task Force's Rule 5.1(d)(2) that will authorize the manner in which AJACS processes proposed orders and judgments.

In the process of reviewing this Comment with the Clerks of Court and the Presiding Judge of Yavapai County, we received two suggestions for related amendments to subsection 5.1(d)(2) of the Rule. A proposed order is no longer

“proposed” once the judge signs it; and other rules already allow the clerk to file and docket a signed order or judgment. Accordingly the language in the second sentence, which prohibits filing a proposed order “until the court has signed it and authorized its entry” is unnecessary and confusing. The last sentence that permits a party to file a proposed order or judgment *only if necessary to preserve the record on appeal* may be overly restrictive, and is reportedly not in keeping with current practices. The Civil Rules apply to Family Law and Probate Rules. ARFLAP Rule 48 and Probate Rule 15 both provide for lodging proposed orders. Some judges ask a party to lodge a form of order or judgment so the court can hear argument on the appropriate language. Accordingly we have asked for language expanding the parties’ opportunities to file proposed orders.

### **Conclusion**

The amendment to Rule 5.1(d)(2) set forth in Appendix A is recommended for consideration to address the concerns presented in this Comment.

By: /S/  
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## APPENDIX A

(Changes are shown to the rule as proposed in the Task Force's Amended Petition)

### Rule 5.1 Filing Pleadings and Other Documents

(a) through (c) [no changes]

**(d) Proposed Orders; Proposed Judgments.**

**(1) *Required Format.*** A proposed order or proposed judgment must be prepared and submitted as a separate document and may not be included as an integral part of a motion, stipulation, or other document. The proposed order or proposed judgment must be prepared in accordance with this rule, and must comply with the provisions of Rule 5.2. On the signature page, there must be at least two lines of text above the signature.

**(2) *Service and Filing.*** Any proposed order or proposed judgment must be served on all parties at the same time it is submitted to the Court. The clerk may not file a proposed order or proposed judgment ~~until the court has signed it and authorized its entry.~~ The clerk must accept electronically-submitted proposed orders and proposed judgments; however, these electronically-submitted documents must not be included in the publicly-displayed court record. A party may file an unsigned proposed order or proposed judgment as an attachment or exhibit to a Notice of Lodging or other filing if directed by the court, required by rule, or only if necessary to preserve the record on appeal.

**(3) *Stipulations and Motions; Proposed Forms of Order.***

**(A)** All written stipulations must be accompanied by a proposed order. If the proposed order is signed and entered, no minute entry need issue.

**(B)** If a motion is accompanied by a proposed order, no minute entry need issue if the order is signed and entered.

(e) [no changes]