

William G. Klain and David B. Rosenbaum, Co-Chairs
Task Force on the Arizona Rules of Civil Procedure, Petitioner
1501 W. Washington St., Ste. 410
Phoenix, AZ 85007

SUPREME COURT OF ARIZONA

PETITION TO AMEND THE ARIZONA)
RULES OF CIVIL PROCEDURE AND)
RELATED RULES) Supreme Court No. R-16-0010
)
) **Reply in Support of**
) **Rule Petition**
)
_____)

Pursuant to this Court’s January 13, 2016 Order, the Task Force on the Arizona Rules of Civil Procedure (“the Task Force”) hereby submits its reply in support of its rule petition.

Final Submissions

Attached to this reply are the following appendices that are submitted for the Court’s consideration:

(a) **Appendix A** contains redlines showing changes the Task Force has made in its proposed rule amendments since filing its amended petition in May. The specific rules affected are proposed amended Rules 1, 5.1, 45, 54, 59,

and 62, along with Forms 4, 6, and 9 of Rule 84. The changes are described later in this reply.

(b) **Appendix B** contains a “clean” version of the Task Force’s proposed amended and restyled rules, rule comments, and forms. The proposed rules incorporate the changes shown in Appendix A.

(c) **Appendix C** contains a revised version of Appendix C to the Task Force’s original petition. Like the prior appendix, Appendix C provides a detailed, rule-by-rule description of the proposed amendments. If the Task Force has made a substantive change in a proposed amendment since the original petition’s filing, the change is discussed in Appendix C. Additions are shown by underscoring and deletions by strike-through.

(d) **Appendix D** contains a revised “disposition table,” identifying the current rules that will be deleted or relocated. The Task Force proposes publishing the table with the proposed amended rules to assist courts and practitioners to determine whether prior rule provisions have been abrogated or moved.

(e) **Appendix E** contains proposed amendments to other rules that contain cross-references to the Arizona Rules of Civil Procedure. The Court should note that the Task Force did not attempt to amend the cross-references contained in the Justice Court Rules of Civil Procedure and the Arizona Rules of

Family Law Procedure. Those rules do more than merely incorporate by reference particular Rules of Civil Procedure. Instead, they set forth independently-based rules that correspond to particular Civil Rules. Updating those rules' Civil Rule references would impart substantive changes to the Justice Court and Family Law rules if the substance of an amended Civil Rule has changed. The Task Force considered such changes to be beyond its expertise and authority. The Task Force, however, proposes to amend several provisions in those rules to make it clear that the cross-references are to the Arizona Rules of Civil Procedure as those rules existed before the adoption of Task Force's proposed amendments.

Changes from the Amended Petition

The Task Force has made the following changes to its proposed amendments since filing its amended petition:

(a) **Rule 1:** Last December, Rule 1 of the Federal Rules of Civil Procedure was amended to provide that the civil rules “should be construed, ~~and~~ administered, and employed by the court and the parties to secure the just, speedy, and inexpensive determination of every action and proceeding.” The Task Force initially decided against proposing to incorporate the underscored phrase into Rule 1 of the Arizona Rules of Civil Procedure, reasoning that it was unnecessary because the amended language was already implicit in the rule. But since the filing of the amended petition, the Task Force has reconsidered its position and decided

to propose the adoption of the amended federal language. Although it can be readily inferred from the rule without the added language, the Task Force sees value in emphasizing that Rule 1’s objectives are the shared responsibilities of the court and the parties.

(b) Rule 5.1(d)(1): In response to a comment filed by the Administrative Office of the Courts (“AOC”), the Task Force added a provision to proposed Rule 5.1(d) to clarify the rule’s requirements regarding proposed orders. As revised, the provision states that: (1) in a county with electronic filing, the clerk must accept electronically-submitted proposed orders and judgments, but they may not be included in the publicly-displayed court record; and (2) a party may file an unsigned proposed order or judgment as an attachment or exhibit to a notice of lodging or other filing if directed by the court, required by rule, or done to preserve the record on appeal. AOC has informed the Task Force that it consulted with Arizona’s Superior Court clerks in coming up with the proposed language.

(c) Rule 45(c)(2)(B): The Task Force made a small change to one of the provisions governing the production of electronically stored information in response to a third-party subpoena. As previously proposed, the provision stated that if the subpoena did not specify the form in which the information should be produced, “the person responding *must produce it in a form or forms in which it is ordinarily maintained* or in another reasonably usable form” (Emphasis

added.) To conform with similar provisions in Rules 26.1(b)(2)(D) and 34(b)(3)(D), this provision was changed to say “the person responding *may* produce it *in native form* or in another reasonably usable form” (Emphasis added.)

(d) Rule 54:

(1) The Task Force proposes editorial revisions to proposed Rule 54(b) to conform its language to the corresponding federal rule. The revisions effect no substantive change to Arizona’s current Rule 54(b).

(2) In addition, as noted in the amended petition filed in May, the Task Force received comments noting some inconsistency in the use of the terms “judgment” and “final judgment” in Rule 54, as well as throughout the Rules of Civil Procedure. After further review, the Task Force has determined that the scope and complexity of the issue requires further evaluation, which should be undertaken by the State Bar’s Civil Practice and Procedure Committee or another appropriate body. As an interim measure, the Task Force has made selective revisions to proposed Rule 54 to clarify use of the terms “judgment” and “final judgment,” as shown in Appendix A. Among other things, the term “judgment” has been added to proposed Rules 54(f)(2)(C) and (g)(3)(B) to make clear that those subdivisions also apply to Rule 54(b) judgments that do not adjudicate all the

claims or liabilities of a party. The term “final” has been eliminated as unnecessary in reference to judgments entered under Rules 54(b) or (c).

(e) **Rule 59(a):** The Task Force proposes to eliminate the following text that its original petition had proposed in Rule 59(a): “This rule governs motions for a new trial or to alter or amend a judgment following a trial, the grant of summary judgment, or other proceeding that results in a final judgment.” This language does not appear in Arizona’s current rule or in the corresponding federal rule. It originally was proposed by the Task Force to clarify the circumstances in which it is permissible to move for a new trial or to alter or amend a judgment. On further review, however, the Task Force concluded that the proposed language did not adequately address all of the scenarios where such motions may be permissible, as reflected in the underlying Arizona case law. Accordingly, the proposed language is omitted, with no intended substantive change.

(f) **Rule 62(a):** The Task Force made a small correction to Rule 62(a) to add the word “in” between “including” and “an action” so the clause in the middle of the sentence says: “including *in* an action for an injunction or receivership.” (Emphasis added.)

(g) **Rule 84, Forms 4 and 6:** A number of typographical errors in the current forms were corrected, as are shown in Appendix A.

(h) **Rule 84, Form 9:** The Task Force revised the standard form subpoena to incorporate the changes discussed above in Rule 45(c)(2)(B).

Conclusion

The Task Force respectfully asks the Court to: (a) abrogate the existing Arizona Rules of Civil Procedure and accompanying comments, effective January 1, 2017; (b) adopt the proposed amended and restyled Arizona Rules of Civil Procedure shown in Appendix B, along with the comments accompanying the rules, effective January 1, 2017; (c) promulgate and publish the disposition table shown in Appendix D with the proposed amended and restyled rules; and (d) adopt the proposed conforming amendments to other rules shown in Appendix E, effective January 1, 2017.

RESPECTFULLY SUBMITTED this 8th day of July, 2016.

By _____ /s/ _____
William G. Klain, Co-Chair
Task Force on the Arizona Rules
of Civil Procedure, Petitioner
1501 W. Washington St., Ste. 410
Phoenix, AZ 85007

By _____ /s/ _____
David B. Rosenbaum, Co-Chair
Task Force on the Arizona Rules
of Civil Procedure, Petitioner
1501 W. Washington St., Ste. 410
Phoenix, AZ 85007