

1 Honorable Jay Polk
2 Associate Presiding Judge
3 Mental Health and Probate Department
4 Superior Court of Arizona in Maricopa County
5 125 W. Washington Street
6 Phoenix, AZ 85003
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8 ARIZONA SUPREME COURT

9 In the Matter of:

10 PETITION TO AMEND THE
11 ARIZONA RULES OF CIVIL
12 PROCEDURE, TO MODIFY RULES
13 8, 8.1, 11, 16, 26, 26.1-.2, 29, 30, 31,
14 33-37, 45, 45.2; ABROGATE RULE
15 16.3; ADOPT NEW RULES 26.2 and
16 45.2 AND MODIFY RULE 84

} Supreme Court No. R-17-0010

} COMMENT REGARDING
} PETITION TO AMEND ARIZONA
} RULES OF CIVIL PROCEDURE

17 I submit this Comment to Petition No. R-17-0010 as the Associate
18 Presiding Judge of the Probate and Mental Health Department of the Superior
19 Court of Arizona for Maricopa County, as well as a former attorney whose
20 practice was limited to matters involving decedents' estates, trusts,
21 guardianships, and conservatorships ("probate proceedings") and a former
22 member of the 2006-07 Probate Rules Committee.

23 My concern about the proposed amendments to the Arizona Rules of Civil
24 Procedure (the "Civil Rules") is not one about the proposed amendments
25 themselves; instead, my concern is that the Committee on Civil Justice Reform
26 (the "Committee") has not considered how the proposed amendments might
27 impact what I will refer to as "non-traditional" civil cases that are governed by
28 the Civil Rules. For example, discovery in probate proceedings is governed by
the Civil Rules. *See* Ariz. R. Prob. P. 3(A). Similarly, court-ordered mental

1 health treatment cases are governed by the Civil Rules. *See* Ariz. Rev. Stat. §
2 36-539(D). The Civil Rules also apply to actions brought under Chapter 37 of
3 Title 36, Arizona Revised Statutes, to have someone adjudicated to be a sexually
4 violent person. *See* Ariz. Rev. Stat. § 36-3704(B). Because none of these cases
5 involve “damages,” the tiered discovery limits of proposed Civil Rule 26.2
6 might be difficult to apply in such cases.

7 For the foregoing reasons, I respectfully request that the Committee and
8 the Arizona Supreme Court consider exempting such “non-traditional” civil
9 cases from the proposed amendments to the Civil Rules.

10 Respectfully submitted this 19th day of May, 2017.

11
12 /s/ Jay Polk
13 Honorable Jay Polk
14 Associate Presiding Judge
15 Mental Health and Probate Department
Superior Court of Arizona in Maricopa
County

16 Electronic copy filed with
17 the Clerk of the Supreme
18 Court of Arizona this 19th
19 day of May, 2017.
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