

1 Lisa M. Panahi, Bar No. 023421
2 General Counsel
3 State Bar of Arizona
4 4201 N. 24th Street, Suite 100
5 Phoenix, AZ 85016-6288
6 (602) 340-7236

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

9
10 In the Matter of:

Supreme Court No. R-17-0009

11 **PETITION FOR NECESSARY**
12 **TECHNICAL AMENDMENTS TO**
13 **THE ARIZONA RULES OF CIVIL**
14 **PROCEDURE**

COMMENT OF
THE STATE BAR OF ARIZONA

15 The State Bar of Arizona (“State Bar”) writes in support of the Petition to amend
16 the Arizona Rules of Civil Procedure to reflect various technical amendments that have
17 emerged following the comprehensive revisions to the Civil Rules that went into effect
18 on January 1, 2017. Consistent with the purpose and spirit of the Petition, the State Bar
19 also proposes three additional minor technical changes.
20
21

22 The Court’s Task Force on the Arizona Rules of Civil Procedure proposed, and
23 the Court adopted, sweeping substantive and stylistic changes to our Civil Rules. But,
24 as happens with any substantial exercise in rulemaking, certain technical, grammatical,
25 and stylistic issues emerged with the revised Rules once published. Petition No. R-17-
26 0009 is an attempt to address many of these minor issues and inconsistencies. The State
27
28

1 Bar agrees with the proposed amendments and believes they further the Task Force's
2 goal of simplifying and clarifying the Civil Rules, and recommends adopting the
3 proposed changes specified in the Petition.

4
5 There is only one change that the State Bar proposes to the amendments put forth
6 by the Petition. As to Rule 6(d), after consultation with the Arizona Association of
7 Superior Court Clerks, "Minute Entry" should not be deleted from the title of the Rule.
8
9 Other than this small revision, the State Bar endorses in full the amendments proposed
10 in the Petition.

11 **Additional Technical Changes Proposed by the State Bar**

12
13 Besides agreeing with the proposed changes in the Petition, and in studying the
14 issues raised by the Petition, the State Bar discovered three other technical amendments
15 that it believes the Court should also adopt. These additional amendments are:

- 16
17 • Amending the title and text of Rule 12(a) to reflect that the deadline is for "filing
18 and serving" an Answer, not just for serving it.
- 19
20 • Amending Rule 54(g)(2) to eliminate a logical inconsistency that arose when
21 claims for attorney's fees were not exempted from the revised language of the
22 rule.¹ As claims for attorney's fees are generally adjudicated after the merits of
23 the cause, it is logically consistent to specify their exemption as below:
24

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26
27 ¹ The State Bar thanks the Honorable Michael O. Miller, of the Arizona Court of
28 Appeals, Division 2, for submission of this change.

1 ///

2 **(g) Attorney’s Fees.**

3 ...

4
5 **(2) Time for Filing Motion—Rule 54(c) Judgments.** If a
6 decision adjudicates all claims and liabilities of all of the parties,
7 except a claim for attorney’s fees, and judgment is to be entered under
8 Rule 54(c), any motion for attorney’s fees must be filed within 20 days
9 after the decision is filed, or by such other date as the court may order.

- 10
11 • Changing “state” to “states” in Rule 55(a)(2)(C) and (D), as follows, to
12 grammatically conform:

13
14 **(2) Application for Default.** A party seeking entry of default must
15 file a written application that:

16 ...

17 **(C)** provides a current mailing address for the party claimed to be
18 in default or, if none is known, so states;

19 **(D)** identifies any attorney known to represent the party claimed to
20 be in default in the action in which default is sought or in a
21 related matter, or states that no such attorney is known;

22 These changes will further clarify and simplify the Rules, consistent with the spirit
23 and purpose of the Petition.

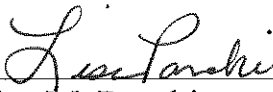
24 A redline of the proposed additional edits is enclosed with this Comment at
25 Appendix A.

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CONCLUSION


For the foregoing reasons, the State Bar respectfully asks the Court to approve the changes proposed in the Petition to Amend the Arizona Rules of Civil Procedure to Adopt Certain Necessary Technical Amendments, Petition No. R-17-0009, with the additional amendments noted by this Comment.

RESPECTFULLY SUBMITTED this 22nd day of May, 2017.



Lisa M. Panahi
General Counsel

Electronic copy filed with the Clerk of the Arizona Supreme Court this 22nd day of May, 2017.

by:  _____

APPENDIX A

Rule 6. Computing and Extending Time

...

(d) Minute Entries, Orders, and Other Court-Generated Documents. Notices, minute entries, orders, and other court-generated documents are entered on the date they are filed by the clerk. Unless the court orders otherwise, if an order or other court-generated document states that an act may or must be done within a specified time after the ~~order~~ document is entered, the date the ~~order~~ document is filed is “the day of the act, event or default” under Rule 6(a)(1).

Rule 12. Defenses and Objections: When and How Presented; Motion for Judgment on the Pleadings; Joining Motions; Waiving Defenses; Pretrial Hearing

(a) Time to File and Serve a Responsive Pleading.

(1) *Generally.* Unless another time is specified by rule or statute, the time for filing and serving a responsive pleading is as follows:

(A) A defendant or third-party defendant must file and serve an answer or other responsive pleading:

(i) within 20 days after being served with the summons and complaint, except as otherwise provided in Rules 4.2(d)(3) and (m); or

(ii) if it has timely waived service under Rule 4(f), within 60 days after the request for a waiver was sent, or within 90 days after it was sent to the defendant or third-party defendant outside any judicial district of the United States.

(B) A party must file and serve an answer or other pleading responsive to a counterclaim or crossclaim within 20 days after being served with the pleading that states the counterclaim or crossclaim.

(C) A party must file and serve a reply to an answer within 20 days after being served with an order to reply, unless the order specifies a different time.

(2) *Effect of a Motion.* Unless the court sets a different time, filing and serving a motion under this rule alters these periods as follows:

(A) if the court denies the motion or postpones its disposition until trial, the responsive pleading must be filed and served within 10 days after notice of the court's action; or

(B)if the court grants a motion for a more definite statement, the responsive pleading must be filed and served within 10 days after the more definite statement is served.

...

Rule 54. Judgment; Costs; Attorney's Fees; Form of Proposed Judgments

...

(g) Attorney's Fees.

...

(2) *Time for Filing Motion—Rule 54(c) Judgments.* If a decision adjudicates all claims and liabilities of all of the parties, except a claim for attorney's fees, and judgment is to be entered under Rule 54(c), any motion for attorney's fees must be filed within 20 days after the decision is filed, or by such other date as the court may order.

Rule 55. Default; Default Judgment

(a) Entering a Default.

...

(2) *Application for Default.* A party seeking entry of default must file a written application that:

...

(C) provides a current mailing address for the party claimed to be in default or, if none is known, so states;

(D) identifies any attorney known to represent the party claimed to be in default in the action in which default is sought or in a related matter, or states that no such attorney is known;

...

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