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**IN THE SUPREME COURT
STATE OF ARIZONA**

In the Matter of:

**PETITION FOR NECESSARY
TECHNICAL AMENDMENTS
TO THE ARIZONA RULES OF
CIVIL PROCEDURE**

Supreme Court No. R-17-0009

**Petitioners' Reply to Comment of
the State Bar of Arizona**

Pursuant to Rule 28(D)(2), Rules of the Arizona Supreme Court, Petitioners reply in support of their Petition to amend the Arizona Rules of Civil Procedure. Initially, Petitioners proposed roughly eleven technical amendments to eight of the Arizona Rules of Civil Procedure. Subsequently, the State Bar of Arizona ("State Bar") submitted a comment addressing the proposed amendments. After carefully

reviewing the Comment of the State Bar (“Comment”), Petitioners accept and support all proposed technical amendments contained therein.

I. SUMMARY AND RATIONALE OF THE PETITION

The current Arizona Rules of Civil Procedure, which took effect on January 1, 2017, underwent significant restructuring at the hands of this Court’s Task Force on the Arizona Rules of Civil Procedure (“Task Force”). During its efforts, the Task Force recognized that certain technical amendments would later be required to tie up loose ends or fix cross-references inadvertently left unaddressed when the entirety of the civil rules were restyled.

As a result, the Petition proposed technical amendments to the Arizona Rules of Civil Procedure in order to enhance the clarity and accessibility of those rules. The proposed amendments were initially identified by Petitioner Shirley J. McAuliffe as she revised and updated the civil practice guide.¹ After conferring with the Civil Practice and Procedure Committee of the State Bar of Arizona (“Committee”), Petitioners and Committee agreed to submit only those amendments

¹ The Arizona Civil Rules Handbook.

that were technical in nature (saving substantive amendments for future petitions).

In order to ensure the Task Force’s herculean restyling and rule change effort did not become a Sisyphean endeavor, Petitioners proposed the following technical amendments:

- Amending Rules 4(f)(1) and (2) to delete erroneous references to “this rule” when referring to parties subject to service, as none are actually subject to service under Rule 4—parties are subject to service only under Rules 4.1 and 4.2, for which references are retained.
- Amending Rule 4.2(b) to correct an errant cross-reference: The rule currently refers to “4.1(d) through (i)” when the cross-reference should be to “Rule 4.1(d) through (j).”
- Deleting the “or” following clause (B) of Rule 4.2(i)(2) to be more faithful to both meaning and flow of that rule in the structuring of its list of options for accomplishing service on an individual in a foreign country when there is no internationally agreed means, or if an international agreement allows but does not specify other means.

- Retitling Rule 6(d) “Orders and Other Court-Generated Documents” (instead of “Minute Entries and Other Court-Generated Documents”) for clarity. To slightly restyle the rule, also for clarity, Petitioners propose that reference to “an order” become “an order or other court-generated document” and that subsequent references refer collectively then to court-generated documents.
- Amending Rule 7.1(f)(3), which addresses objections to admission of evidence on written motions, to shorten, for clarity, and to work a bit better with Rule 56(c)(4), which provides the slightly separate procedure for raising objections to the admissibility of evidence offered in support of, or in opposition to, motions for summary judgment.
- Aligning discovery obligations under Rule 26(e), which addresses supplementing and correcting of discovery responses, with corresponding disclosure obligations under Rule 26.1(d)(2): Specifically, Petitioners propose amending Rule 26(e) to provide the procedure for supplementing or correcting a discovery response when a party knows or reasonably should know

additional or corrective information is relevant to a hearing or deposition scheduled to occur in less than 30 days. The procedure, which matches that already provided in Rule 26.1(d)(2) of the disclosure rules, is that “the party must supplement or correct the discovery response reasonably in advance of the hearing or deposition.”

- Adding the missing word “verified” before “request” in Rule 54(f)(2): Both Rules 54(f)(1) and 54(f)(2) refer to verified requests so the word should appear in both places.
- Adding Rule 54(f)(3) to better structure Rule 54(f): Rule 54(f)(1) refers to requests for costs when attorney’s fees are also requested and Rule 54(f)(2) refers to requests for costs when attorney’s fees are not requested, but only Rule 54(f)(2)(D) currently explains the procedure for responses in opposition to (and replies in support of) requests for costs—when the procedure applies to both situations. Turning Rule 54(f)(2)(D) into Rule 54(f)(3) better structures the rule to make that clear.

- Changing Rule 54(i)(1) to add the words “taxable costs, and” before “attorneys’ fees” and omit the words “and expenses,” so that it is clear that the expenses referred to are actually taxable costs.
- Revising the second paragraph of the comment to Rule 56 to omit the word “current,” for clarity and to correct erroneous subsection references.
- Retitling Rule 75(b) to refer to a “Joint Prehearing Statement,” instead of just a “Prehearing Statement” so the joint nature of that document is clear.

II. REPLY TO COMMENT OF THE STATE BAR

The State Bar agreed with the Petitioners’ proposed amendments, and recommended adoption. The State Bar proposed only one additional change to the amendments put forth by the Petitioners, which they identified after consulting with the Arizona Association of Superior Courts. As it pertains to Rule 6(d), the State Bar requested that “Minute Entries” not be deleted from the title of the Rule. Based on the State Bar’s expertise and discussion with the Arizona Association of Superior Courts, Petitioners endorse the recommended modification to their original proposal.

In addition, following its study of the issues raised by the Petition, the State Bar proposed three technical amendments that it believes the Court should also adopt. These additional amendments are:

- Amending the title and text of Rule 12(a) to reflect that the deadline is for “filing and serving” an Answer, not just serving it.
- Amending Rule 54(g)(2) to eliminate a logical inconsistency that arose when claims for attorney’s fees were not exempted from the revised language of the rule.² As claims for attorney’s fees are generally adjudicated after the merits of the cause, it is logically consistent to specify their exemption as included in Appendix A.
- Changing “state” to “states” in Rules 55(a)(2)(C) and (D) in order to grammatically conform.

The State Bar posits that these changes will further clarify and simplify the Rules. As noted by the State Bar, such changes are in keeping with the spirit and purpose of the Petition. The Petitioners agree. As such, the Petitioners wholeheartedly support and endorse the recommended technical changes.

² Petitioners would also like to thank the Honorable Michael O. Miller, of the Arizona Court of Appeals, Division 2, for submission of this change.

III. CONCLUSION

Both Petitioners and the State Bar agree that substantive amendments to the Arizona Rules of Civil Procedure should not be addressed today. Rather, the parties seek to polish the Task Force's finely crafted structure by proposing minor technical amendments.

For the foregoing reasons, and given the consensus on this issue, the Petitioners respectfully request that the Court adopt the rule amendments as supplemented in Appendix A.

RESPECTFULLY SUBMITTED this 22nd day of June, 2017.

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