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

9 In the Matter of:

Supreme Court No. R-17-0006

10 **PETITION TO AMEND RULES 16,**  
11 **16.1, 26.2, 38 AND 38.1 OF THE**  
12 **ARIZONA RULES OF CIVIL**  
13 **PROCEDURE**

**REPLY OF THE**  
**STATE BAR OF ARIZONA**

14 Pursuant to Rule 28, Ariz. R. Sup. Ct., the State Bar of Arizona (“State Bar”)  
15 submits this reply in support of its Petition, asking the Court to amend Rules 16,  
16 16.1, 26.2, 38 and 38.1, Ariz. R. Civ. P. In particular, the State Bar replies to the  
17 Comment filed by Mutual Insurance Company of Arizona (“MICA”).

18 MICA argues that the complexity of medical malpractice cases justifies  
19 maintaining special rules governing them. While special, uniquely tailored rules  
20 could be conceived of for all variety of complex cases, the State Bar believes civil  
21 practitioners and their clients are best served by uniform rules which apply to all  
22 cases whenever possible. Medical malpractice cases are not so complex that they  
23 cannot be efficiently and effectively governed by the same rules which apply to all  
24 other cases.  
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1           **2.    MANDATORY COURT ORDERS FOR MEDICAL RECORDS**  
2           **AUTHROIZATIONS**

3           MICA expressed concern that abrogating Rule 16(e)(1) would restore a  
4 court’s discretion to decide whether parties should be permitted to independently  
5 obtain medical records required to be exchanged under Rule 26.2. Rule 16(e)(1)  
6 requires a court to order a plaintiff to provide an authorization which would allow  
7 the parties to independently obtain only those medical records which are required to  
8 be produced by a defendant pursuant to Rule 26.2(a)(2) or a court order.  
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10           Nothing in the proposed rule revision prevents a court from ordering  
11 production of an authorization when one is not voluntarily provided. Courts need not  
12 be forced to do so by rule only for limited circumstances.  
13

14           **3.    MANDATORY PRE-TRIAL CONFERENCES**

15           MICA wants to retain mandatory comprehensive pretrial conferences. Under  
16 the current rules, however, such conferences rarely occur unless the parties disagree  
17 about something to be included in the scheduling order. Under the proposed  
18 consolidation of Rule 16, any party in any type of case can still request a conference  
19 if necessary. Additionally there is no indication that a court would refuse to honor  
20 requests for such conferences in medical malpractice cases.  
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1 **4. MANDATORY SETTLEMENT CONFERENCES**

2 MICA asserts that mandatory settlement conferences under Rule 16(b)(1)(A)  
3 help its lawyers maintain client control and decrease the number of medical  
4 malpractice trials. While a separate rule mandating settlement conferences in  
5 medical malpractice cases might have been useful in the days before the advent of  
6 alternative dispute resolution, settlement conferences now happen by court order  
7 before trial in virtually every case. The elimination of mandatory settlement  
8 conferences in medical malpractice cases is not going to change the current culture  
9 and practice of courts requiring settlement conferences before trial. Accordingly, it  
10 is not going to increase the number of medical malpractice cases going to trial.  
11 Therefore, a special rule for medical malpractice cases requiring what is already  
12 routine is unnecessary.

16 **5. BURDEN SHIFTING FOR STAGGERED EXPERT DISLCOSURE**

17 MICA's Comment asserts that eliminating language in current Rule 16(e)(2),  
18 requiring simultaneous disclosure of experts "[u]nless good cause is shown," and  
19 incorporating the language into proposed Rule 26.2 requiring simultaneous expert  
20 disclosure "unless the parties agree or the court orders otherwise for good cause,"  
21 shifts the burden to the defendant. The State Bar does not believe the proposed  
22 change creates a substantial effect to expert disclosure in medical malpractice cases.  
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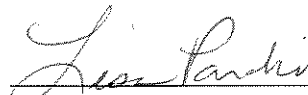
1 **6. PRESUMPTION OF JURY TRIAL**

2 MICA advocates keeping the recently enacted jury trial presumption. This  
3 presumption only exists because it was necessary to correct an administrative error  
4 in a previous rule change related to jury trials. That error actually occurred because  
5 separate sets of rules governed medical malpractice and all other cases, highlighting  
6 one of the primary advantages of consolidation and uniformity. While the current  
7 rule correctly recognizes jury trials are routinely requested in medical malpractice  
8 cases, there is no good justification for maintaining a separate rule.  
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10


11 **CONCLUSION**

12 For all the reasons stated herein and the Petition, the State Bar respectfully  
13 requests the Court grant the State Bar's Petition.  
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15 RESPECTFULLY SUBMITTED this 30<sup>th</sup> day of June, 2017.  
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19 \_\_\_\_\_  
20 Lisa M. Panahi  
21 General Counsel

22 Electronic copy filed with the  
23 Clerk of the Arizona Supreme Court  
24 this 30<sup>th</sup> day of June, 2017.

25 by:  \_\_\_\_\_