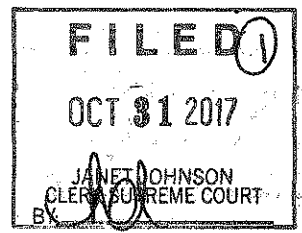


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CLERK SUPREME COURT

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Presiding Disciplinary Judge  
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R- 17 - 0052

IN THE SUPREME COURT

STATE OF ARIZONA

PETITION TO AMEND RULES 47, 48	)	
AND 58, RULES OF THE ARIZONA	)	Supreme Court No. R-__ -__
SUPREME COURT	)	
	)	Request for Expedited
	)	Adoption
	)	

Pursuant to Rule 51(c)(7) of the Rules of the Arizona Supreme Court, William J. O'Neil, Presiding Disciplinary Judge, respectfully petitions this Court to amend Rules 47, 48, and 58 of the Rules of the Arizona Supreme Court. The proposed changes will improve on amendments to these Supreme Court Rules made by R-17-0010.

**I. Background of the Proposed Amendments.** The Supreme Court's Committee on Civil Justice Reform ("the Committee") filed rule petition number R-17-0010 in January 2017. That petition proposed to amend, abrogate, or newly adopt about twenty Rules of Civil Procedure, resulting in a cascade of renumbered civil rules and subparts. Because of this extensive renumbering of the civil rules, the

Committee proposed in an Appendix D of its Reply conforming changes to other sets of rules, among them Supreme Court Rules 47, 48, and 58. These three rules are included in Part V of the Supreme Court Rules, which is titled “Regulation of the Practice of Law.” Rules 47 and 48 are in Section E of Part V; Section E concerns “general provisions” for attorney “discipline and disability administration.” Rule 58 is in Section H of Part V and concerns disciplinary “proceedings.”

The Court adopted R-17-0010 by an Order entered on August 31, 2017. Petitioner now proposes further improvements to the conforming changes concerning Rules 47, 48, and 58 made by R-17-0010, as further explained below.

**II. Proposed Change to Supreme Court Rule 47.** Rule 47 is titled, “General Procedural Matters.” It includes Section (a) (“Pleadings”) and Section (i) (“Subpoenas; Form”). R-17-0010 included conforming amendments for these two sections. But R-17-0010 did not include an amendment to Section (c) (“Service”) that Petitioner now requests.

R-17-0010 amended Civil Rule 45(d)(3) to require notice to other parties before service of a subpoena. This Civil Rule, as amended by R-17-0010, includes the following sentence:

If the subpoena commands the production of documents, electronically stored information, or tangible things, or the inspection of premises before trial, a notice and a copy of the subpoena must be served on each party at least 2 days before it is served on the person to whom it is directed.

Petitioner believes this “notice” provision is progressive and beneficial to both Petitioner and litigants. Petitioner now proposes to include the sentence in Supreme Court Rule 47(c)(2) (“Service of Subpoena”), as shown in the Appendix to this petition.

**III. Proposed Changes to Supreme Court Rule 48.** Rule 48 is titled, “Rules of Construction.” Rule 48(b) is titled, “Rules of Civil Procedure.” R-17-0010 made one conforming amendment to Section (b), but Petitioner now proposes additional amendments. Rule 48(b), as amended by R-17-0010, now states,

**(b) Rules of Civil Procedure.** Only the following Arizona Rules of Civil Procedure are applicable to discipline and disability proceedings before the presiding disciplinary judge or the hearing panel, as specifically set forth in these rules: Rules 4, 4.1, 4.2, 5, 5.1(e), 5.2(b), 5.3, 6(a), 6(c), 7.1(a), 7.1(b), 8(c)-(f), 10(b)-(c), 11(a)-(d), 12(b), 12(c), 12(d), 12(e), 12(f), 16(a), 16(g)(2)(A-E) and (J), 16(i), 26(a)-(f), 29-36, 38.1(b), 42(a), 43-45, 56, 60(b)-(d), 80(a), 80(c), and 80(d).

Petitioner proposes modifying this list of rules as follows:

- (1) Adding Rule 7.1(h), which concerns a good faith consultation certificate;
- (2) Removing an unnecessary reference to Rule 11(d) (“assisting filing by self-represented person”);
- (3) Adding Rules 16(f)(2)(A-F), (H-I), and (K), which detail requirements for a pretrial statement;
- (4) Deleting Rules 16(g)(2)(A-E) and (J), which were inadvertently included instead of the correct references shown in (3) above;

- (5) Adding Rules 16(g), 16(h), and 16(j), which are provisions, respectively, regarding pretrial orders, sanctions, and the imposition of reasonable time limits for trial proceedings;
- (6) Revising the applicable provisions of Rule 26 (“general provisions regarding discovery”) to refer to “Rule 26(a), (b)(1-4), (d), (f), (g), (h), and (i);”
- (7) Deleting Rule 45 (“subpoena”), because Supreme Court Rule 47 has its own provisions concerning subpoenas in disciplinary proceedings.

A revised Rule 48(b) is shown in the Appendix.

**IV. Proposed Changes to Supreme Court Rule 58.** R-17-0010 made minor conforming changes to Rule 58 (“formal proceedings”). Petitioner proposes two additional changes to Rule 58(f) (“discovery”), subpart 1 (“time limits”).

First, Petitioner proposes that all initial discovery requests must be made within 30 days of the date an initial answer is filed; the current rule allows 40 days to make the requests. This change would align the time period of Rule 58 with analogous time periods under the revised Civil Rules.

Second, Petitioner proposes the deletion of a reference in Rule 58(f)(1) to Civil Rule 45 (“subpoena”). As noted above, Supreme Court Rule 47 contains its own provisions for a subpoena in a disciplinary proceeding, and the reference to Civil Rule 45 is superfluous.

**V. Preliminary Comments.** Before filing this petition, Petitioner requested comments from the State Bar's Disciplinary Counsel, and from a member of the disciplinary defense bar. The Petitioner was assisted in the drafting of this petition by Mark Meltzer with the A.O.C. who supported the Committee. This petition and the proposed amendments reflect input provided by these attorneys.

**VI. Request for Expedited Adoption.** The Court's Order in R-17-0010 made the applicable rule changes effective on July 1, 2018. Under Supreme Court Rule 28(F), the amendments proposed in this petition would not become effective until January 1, 2019. Petitioner requests that these proposed amendments be adopted on an expedited basis, i.e., that they become effective on July 1, 2018, concurrently with the changes in R-17-0010.

RESPECTFULLY SUBMITTED this 31<sup>st</sup> day of October 2017

By 

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## Appendix

Additions are shown by underline; deletions are shown by ~~strikethrough~~.

### **Rule 47. General Procedural Matters**

(a) [No change]

(b) [No change]

(c) **Service.** Service of the complaint, pleadings and subpoenas shall be effectuated as provided in the ~~rules of civil procedure~~ Rules of Civil Procedure, except as otherwise provided herein. Personal service of complaints and subpoenas may be made by staff examiners employed by the ~~state bar~~ State Bar.

1. [No change]

2. *Service of Subpoena.* Subpoenas shall be personally served on the parties and the person under subpoena. In the case of a respondent under subpoena, if personal service proves impracticable, service may be accomplished in such manner as the presiding disciplinary judge, upon motion and without notice, may direct, including by certified mail/delivery restricted to addressee in addition to regular first class mail, sent to the last address provided by respondent to the ~~state bar's~~ State Bar's membership records department pursuant to Rule 32(c)(3). Whenever the presiding disciplinary judge allows an alternate form of service pursuant to this paragraph, reasonable efforts shall be undertaken by the party making service to assure that the respondent receives actual notice. If the subpoena commands the production of documents, electronically stored information, or tangible things, or the inspection of premises before trial, a notice and a copy of the subpoena must be served on each party at least 2 days before it is served on the person to whom it is directed.

(d) through (g) [No change]

### **Rule 48. Rules of Construction**

(a) [No change]

**(b) Rules of Civil Procedure.** Only the following Arizona Rules of Civil Procedure are applicable to discipline and disability proceedings before the presiding disciplinary judge or the hearing panel, as specifically set forth in these rules: Rules 4, 4.1, 4.2, 5, 5.1(e), 5.2(b), 5.3, 6(a), 6(c), 7.1(a), 7.1(b), 7.1(h), 8(c)-(f), 10(b)-(c), 11(a)-(c), 12(b), 12(c), 12(d), 12(e), 12(f), 16(a), ~~16(g)(2)(A-E) and (J), 16(f)(2)(A-F), (H-I), and (K), 16(g), 16(h), 16(j), 26(a)-(f), 26(a), (b)(1-4), (d), (f), (g), (h), and (i), 29-36, 38.1(b), 42(a), 43-45~~44, 56, 60(b)-(d), 80(a), 80(c), and 80(d).

(c) through (m) [No change]

### **Rule 58. Formal Proceedings**

(a) through (e) [No change]

(f) Discovery.

1. *Time limits.* Unless extended by agreement of the parties or otherwise ordered at the case management conference, all initial discovery requests must be made within ~~forty (40)~~ thirty (30) days of the date an initial answer is filed, except that additional discovery requests may be filed within thirty (30) days of the date an answer is filed to an amended complaint. Discovery requests based upon an amended complaint shall be limited to new allegations. Discovery shall be governed by Rules 26(a) through (f), Rules 29 through 36, ~~and Rule 45,~~ Ariz. R. Civ. P., to the extent not inconsistent with these rules.

2. and 3. [No change]

(g) through (k) [No change]