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**IN THE SUPREME COURT
 STATE OF ARIZONA**

In the Matter of)	
)	Arizona Supreme Court No. R-_____
)	
PETITION TO AMEND RULE 28,)	
RULES OF THE SUPREME COURT)	
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PETITION TO AMEND THE RULES OF THE SUPREME COURT

Pursuant to Rule 28, Rules of the Supreme Court, Arizona Supreme Court Staff Attorneys' Office petitions the Court to adopt amendments to and restyling of Rule 28, Rules of the Supreme Court, as proposed in the attachment.

I. INTRODUCTION AND BACKGROUND

The Arizona Supreme Court added Rule 28 in 1988, formalizing the process for making changes to court rules. The Court has since adopted a series of amendments, the most recent of which went into effect January 1, 2015.

The Staff Attorneys' Office and Clerk's Office rule processes have evolved along with technological changes and practices in case filing. References in Rule 28 to other rules and to

the Court Rules Forum website have become inaccurate. The ways that members of the public now interact with the Court Rules Forum require better communication of how the entire rulemaking process works. In sum, our office concluded that Rule 28 needed updating, restyling, and reorganization, and therefore we submit this petition.

II. SUMMARY OF THE PROPOSED AMENDMENT TO RULE 28

The proposed amendment is a complete revision of the rule. We intend the amendment to inform the public simply and directly of how a person can file a rule petition, a comment to a petition, and a reply. Changes include:

- Restyling text to conform to the restyling regime used in other updated court rules.
- Prioritizing electronic filing as the primary means of filing, emphasizing use of the Court Rules Forum: The current rule places paper filing ahead of electronic filing of rule petitions and comments, but now people predominantly file electronically. The amendments list electronic filing first to emphasize the Court's preference that filing generally be electronic.
- Retaining paper filing with the Clerk's Office to make participation in the rules process possible for those who do not have internet access.
- Using the correct URL (internet address) for the Court Rules Forum for electronic filing.
- Revising some dates in the set annual rules cycle for
 - posting to the Court Rules Forum by eliminating the January 20 date certain for the order opening for comments.
 - filing comments and replies: The date for filing a rule petition remains January 10. The amendment would move the deadline for submitting comments from May 20 to May 1, and the deadline for filing replies to the comments from June

30 to June 1. This schedule allows the Court sufficient time during the summer months to analyze the petitions and comments while affording the public more than three months to comment on the petitions submitted by January 10.

- Court consideration of the petitions under current Rule 28(F) is fixed in September, but the Court has scheduled its Annual Rules Agenda in August for several years. Proposed Rule 28(F) provides for the Annual Rules Agenda to occur in “August or September of each year” to allow for scheduling flexibility. That rule also recognizes that the Court may continue its consideration of a petition to a later date.
- The amended rules would still allow for the practice of setting different dates for comments and replies in the order that opens the petition for comments.
- Providing for notice to petitioners and other members of the public: Current Rule 28(C) includes a list of organizations and people to whom the clerk must give notice of the petition and comment period; the amended Rule 28(D) would update the list to account for organizations that did not exist earlier or had not been notified of rule petitions, that no longer exist, or that have changed names.
- Eliminating the provision for public hearing: To our knowledge, the Court has held only one public hearing since the rule was first adopted, long before the Court Rules Forum made commenting on rules easier and more convenient for members of the public. Should the Court require a public hearing, it could order one under its inherent powers to administer the judicial branch.
- Deleting references to floppy disks, Code-Co, and Rule 124, Rules of the Supreme Court, none of which exist any longer.

ATTACHMENT¹

ARIZONA RULE OF THE SUPREME COURT 28

Rule 28. Procedures for Adoption, Amendment or ~~Repeal~~Abrogation of Court Rules

Preamble

It is the policy of the Arizona Supreme Court to establish an effective process for the adoption, amendment, and ~~repeal~~abrogation of rules of procedure for the courts of this state ~~which that~~ will provide for public notice and opportunity for comment from the members of the legal profession and the public on proposals to adopt, amend, or ~~repeal~~abrogate rules, utilizing available technology. To carry out this policy, the court has established appropriate procedures, an interactive court rules website, and an annual rule-making cycle to implement its constitutional authority under [Article 6, Section 5 of the Arizona Constitution](#), as ~~hereinafter~~set forth in this rule.

(A) – (G)

[Abrogated]

(A) Filing a Rule Petition.

(1) Who May File. Any person (referred to in this rule as a “petitioner”) may petition the Arizona Supreme Court to adopt, amend, or abrogate a court rule.

(2) When to File. If a petition is filed no later than January 10, the Court will consider the petition at its annual rules conference the following August or September.

(3) How to File. A petitioner may file a petition electronically or on paper.

(a) Electronic Filing.

(i) Required Registration on the Court Rules Forum. To file a rule petition electronically, a petitioner must register on the Court Rules Forum website, <https://www.azcourts.gov/Rules-Forum>.

(ii) Filing on the Court Rules Forum. A petitioner must file the petition and attachments to the petition, if any, on the Court Rules Forum in *both* PDF and Microsoft Word formats. If the filing does not include both formats, the Court Rules Forum moderator may reject the petition. The PDF version of the electronically filed petition is considered the court’s official record of the petition.

¹ Changes or additions in rule text are indicated by underscoring and deletions from text are indicated by ~~strikeouts~~.

(iii) Effect of Electronic Filing. An electronically filed petition constitutes the filing of the original document under the rules governing practice and procedure in Arizona state courts. By filing a petition electronically, the petitioner consents to receiving electronic delivery of documents from the Court and from others who submit public comments concerning the petition.

(iv) Official Record. The PDF version of the electronically filed petition is considered the court's official record of the petition.

(b) Paper Filing. A petitioner may file a paper petition and attachments, if any, with the Clerk of the Supreme Court ("the Clerk"). The paper petition must consist of an original and one copy, plus an electronic copy of the petition and supporting documentation in Microsoft Word format on a CD or other compatible electronic medium. Court staff must post an electronic version of the filing on the Court Rules Forum.

(4) What to File.

(a) Contents. A rule petition:

(i) must provide reasons why the Court should adopt, amend, or abrogate a rule or rules;

(ii) must include a draft of any proposed new or amended rules;

(iii) must, if the petitioner proposes to amend a rule, show the ways in which the proposed amended rule would differ from the existing rule by underlining the text to be added and striking through the text to be deleted;

(iv) must disclose whether the same or a similar rule change has been proposed within the previous 5 years; and

(v) may be accompanied by supporting documentation.

(b) Length. The petition and supporting documentation may not exceed 20 pages, unless the court orders otherwise. The text of a proposed new or amended rule does not count toward the 20-page limit.

(5) Form of the Petition. The form of the petition and supporting documentation must substantially conform, as far as practicable, to the requirements of Rules 4(a) and (b) of the Arizona Rules of Civil Appellate Procedure.

(6) Court Review of the Petition. The Court will review the petition and any supporting documentation initially to determine whether to open the petition for public comment as provided in Rule 28(C), to refer it to an appropriate committee for further study and report, or to reject it for lack of need or merit.

(7) Notice to the Petitioner.

(a) Denial. If the Court denies the petition for lack of need or merit, the Clerk must promptly notify the petitioner of the Court's decision.

(b) Referral. If the Court refers the petition to a committee, commission, or task force, the Clerk must notify the petitioner of the referral, including the name and address of the committee, commission, or task force chairperson(s). The Petitioner may submit a written comment, either on paper or electronically, to the committee, commission, or task force and appear before it to discuss the petition's substance and any related issues.

(c) Method. The Clerk must send notices electronically or by mail.

(B) Rule Changes Proposed by the Supreme Court. The Court may, on its own, propose the adoption, amendment, or abrogation of a court rule. The Court must file the proposed rule change, together with any supporting documentation, on the Court Rules Forum as provided in Rule 28(A)(3)(a). Once the Court Rules Forum moderator approves the rule, the Clerk must then open the matter for comment in the manner provided in Rule 28(C).

(C) Opening the Rule Petition for Public Comment. Whenever the Court or these rules require a rule petition to be opened for public comment, court staff must prepare a request for public comment stating that the Court invites written comment on the petition's merits and indicating the manner and deadline for filing such comments. Comments may be filed electronically on the Court Rules Forum, <https://www.azcourts.gov/Rules-Forum> or on paper with the Clerk, as provided in Rule 28(E).

(D) Distribution of Petitions and Requests for Comments. The Clerk must promptly send electronic copies of a petition, any attachments, and the request for public comment to the following:

Governor, State of Arizona
Speaker, Arizona House of Representatives
President, Arizona State Senate
Attorney General of Arizona
Director of the Arizona Legislative Council
Dean, Arizona State University Law School
Dean, University of Arizona Law School
Dean, Arizona Summit Law School
Administrative Director of the Courts
Clerk, Court of Appeals, Division One
Clerk, Court of Appeals, Division Two
Each Superior Court Presiding Judge
Each Chief Judge of the Court of Appeals
Executive Director of the State Bar of Arizona
General Counsel of the State Bar of Arizona
President of the Justice of the Peace Association
President of the Municipal Judges Association

President of the Arizona Attorneys for Criminal Justice
Executive Director of the Arizona Prosecuting Attorneys Advisory Council
Executive Director of the Victim's Services Division, Office of the Attorney General of Arizona
Chairperson of the Arizona Coalition for Victim Services
Executive Director of the Arizona Association of Chiefs of Police
President of the Law Enforcement Legal Advisors Association
Presidents or Executive Directors of all Local and County Bar Associations
President of the Superior Court Clerk's' Association
Executive Director of the Arizona Association for Justice/Arizona Trial Lawyers Association
Executive Director of the Phoenix Association of Defense Counsel
President of the Tucson Defense Bar Association
Editor, Arizona Attorney (State Bar)
Editor, Maricopa Lawyer
Editor, The Writ (Pima Bar Association)
County Law Libraries
Any additional person or organization the Court designates
Members of the news media, upon request

The Court Rules Forum moderator must also post the petition, any attachments, and the Court's request for public comment on the Court Rules Forum website.

(E) Comments on Proposed Rule Changes.

(1) Who May File. Any person may file a comment to a rule petition.

(2) When to File. If a comment is filed no later than May 1, unless the order opening the rule for public comment specifies a different deadline, the Court will consider the comment along with the petition at its annual rules conference the following August or September.

(3) How to File. A person may file a comment that conforms with Rule 28(A)(4)(b) and (5) electronically or on paper.

(a) Electronic Filing.

(i) Required Registration on the Court Rules Forum. To file a comment electronically, a person must register on the Court Rules Forum website, <https://www.azcourts.gov/Rules-Forum>. Any person filing a comment electronically is deemed to have consented to receive court-generated documents electronically.

(ii) Comments in Attached Documents. A person may submit a comment on the Rules Forum, on the designated webpage for the applicable rule petition, by attaching a separate document containing the person's comment and supporting documents, if any, as attachments in both PDF and Microsoft Word format on the Court Rules Forum. If the filing does not include both formats, the Court Rules Forum moderator may reject the comment and any supporting documents. The PDF

version of an electronically filed comment and any supporting documents will be considered the official record.

(iii) Comments Directly on the Rules Forum. Alternatively, a person may submit a comment by typing the comment directly into the appropriate box on that rule petition's page of the Court Rules Forum.

(b) Paper Filing. A person may file a paper comment with the Clerk. The paper comment must consist of an original and one copy, plus an electronic copy of the comment in Microsoft Word format on a CD or other compatible electronic medium. Court staff must post an electronic version of the filing on the Court Rules Forum.

(4) Reply to Comments. The petitioner may file a reply to any comment electronically or on paper as provided in Rule 28(A)(3) but must do so no later than June 1 or, if the public comment period expires on a date other than May 1, 30 days after the public comment period expires.

(F) Court Consideration of the Petition; Effective Date of Rules; Notice.

(1) Annual Rules Agenda. In August or September of each year, after the public comment period expires, the Court will consider each timely filed rule petition by adopting, amending, or abrogating the rule(s) it concerns, or by denying the petition. The Court also may continue its consideration of a petition to a later date.

(2) Effective Date of Amendments. Unless the Court's order provides otherwise:

(a) all new rules and amendments that the Court adopts at its annual rules agenda will become effective January 1 of the following year; and

(b) any abrogated rules will become ineffective on January 1 of the following year.

(3) Notice. The Clerk must notify the petitioner, those persons and organizations listed in Rule 28(D), and all persons who submitted comments on the Rules Forum, of the action taken by the Court on that petition. The Clerk must send the notice electronically or by mail.

(G) Expedited Consideration and Emergency Adoption of Rule.

(1) Request for Expedited Consideration. If a rule petition presents an urgent matter or compelling circumstances that require the Court's consideration of the petition before the Court's annual rules agenda, the petitioner must include with the petition a request to consider the petition on an expedited basis, stating the reasons that justify such treatment.

(2) Emergency Action. If the Court decides that immediate action on a petition is necessary, the Court may adopt, amend, or abrogate a rule on an emergency basis. Any rule change resulting from action taken by the Court under this provision must be opened for public comment in the manner provided in Rule 28(C), and any person may comment as provided in Rule 28(E).

(H) Suspension of This Rule. For good cause, the Court may suspend a provision of this rule as provided in Rule 26.

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Comment

[No change in text]

Comment to 2005 Amendment

[Abrogated]