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8
9 **IN THE SUPREME COURT**

10 **STATE OF ARIZONA**

11 PETITION TO AMEND RULE 50) Supreme Court No. R-_____
12 ARIZONA RULES OF CIVIL)
13 PROCEDURE)
14 _____)

15 The State Bar of Arizona respectfully petitions this Court, pursuant to Rule 28,
16 Rules of the Arizona Supreme Court, to amend Rule 50 of the Arizona Rules of Civil
17 Procedure as is shown in Exhibit A.

18 **I. Proposed Rule 50**

19 Rule 50(a) permits a party, once the opposing party has been fully heard on an
20 issue, to move for judgment as a matter of law “at any time before submission of the
21 case to a jury.” Ariz. R. Civ. P. 50(a). Rule 50(b) permits the post-trial renewal of
22 such a motion “made at the close of all the evidence.” Ariz. R. Civ. P. 50(b).
23 Arizona courts have interpreted Rule 50(b) to require parties to move for judgment as
24 a matter of law at the literal close of all evidence, rather than, for example, when one
25 party rests:

26 The record reflects that the defendants here moved for a directed verdict
at the close of the plaintiffs’ case but did not renew the motion for a
directed verdict after all the parties had rested. The courts of this state
have consistently held that where no motion for a directed verdict is
made prior to submission of the case to the jury, a motion for a
judgment N.O.V. will not lie.

1 *Ash v. Fliieger*, 118 Ariz. 547, 548, 578 P.2d 628, 628 (App. 1978) (citing cases); *see*
2 *also Standard Charter PLC v. Price Waterhouse*, 190 Ariz. 6,27, 945 P.2d 317, 338
3 (App. 1996) (“Our case law treats a motion for directed verdict at the close of all the
4 evidence as a prerequisite to a later motion for JNOV.”). Absent a post-verdict
5 Rule 50 motion, a party may not, of course, challenge the sufficiency of the evidence
6 on appeal. *See, e.g., S. H. Kress & Co. v. Evans*, 70 Ariz. 175, 177, 218 P.2d 486, 487
7 (1950).

8 Prior to 2006, many federal courts had likewise interpreted Rule 50 of the
9 Federal Rules of Civil Procedure to require a motion at the close of all evidence. *See*
10 Fed. R. Civ. P. 50 cmt. to 2006 amendment. Recognizing that this technical
11 requirement of Rule 50’s language had created a trap that did not serve the Rule’s
12 purposes, Federal Rule 50 was amended in 2006 to delete the requirement of a
13 separate motion at the close of all evidence. *Id.* Under the amended Federal Rule 50,
14 *any* Rule 50(a) motion for judgment as a matter of law made during trial may be
15 renewed post-trial. *See id.*

16 The proposed amendment makes this same change to Arizona’s Rule 50. The
17 proposed amendment recognizes that a motion made during trial serves the functional
18 needs of a motion made at the close of all of the evidence. Pursuant to Rule 50, the
19 post-trial motion renews the trial motion and can be supported only by arguments
20 made to support the trial motion. Such a motion, whenever made during trial, gives
21 the opposing party clear notice of the asserted deficiencies in the case and a final
22 opportunity to correct them. Satisfying these functional purposes without requiring a
23 technical renewal at the close of evidence serves Rule 50’s purpose.

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II. Conclusion

The Court should amend Rule 50 as set forth in the proposed rule and adopt the proposed comment, both of which are shown in Exhibit A.

DATED this 6th day of May, 2008.



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Electronic copy filed with the
Clerk of the Supreme Court of Arizona
this 6th day of May, 2008.

by: Kathleen A. Lundgren

EXHIBIT A

PROPOSED AMENDMENT TO RULE 50 AND PROPOSED COMMENT

(proposed additional language shown by underscoring and proposed deletions shown by strike-through)

Rule 50. Judgment as a Matter of Law in Actions Tried by Jury; Alternative Motion for New Trial; Conditional Rulings

(a) Judgment as a Matter of Law.

(1) If during a trial by jury a party has been fully heard on an issue and there is no legally sufficient evidentiary basis for a reasonable jury to find for that party on that issue, the court may determine the issue against the party and may grant a motion for judgment as a matter of law against that party with respect to a claim or defense that cannot under the controlling law be maintained or defeated without a favorable finding on that issue.

(2) Motions for judgment as a matter of law may be made at any time before submission of the case to the jury. Such a motion shall specify the judgment sought and the law and the facts on which the moving party is entitled to the judgment.

(b) Renewal of Motion for Judgment After Trial; Alternative Motion for New Trial.

Whenever a motion for a judgment as a matter of law made pursuant to Rule 50(a) ~~at the close of all the evidence~~ is denied or for any reason is not granted, the court is deemed to have submitted the action to the jury subject to a later determination of the legal questions raised by the motion. Such a motion may be renewed by service and filing not later than 15 days after the entry of judgment. A motion for a new trial under Rule 59 may be joined with a renewal of the motion for judgment as a matter of law, or a new trial may be requested in the alternative. If a verdict was returned, the court may, in disposing of the renewed motion, allow the judgment to stand or may reopen the judgment and either order a new trial or direct the entry of judgment as a matter of law. If no verdict was returned, the court may, in disposing of the renewed motion, direct the entry of judgment as a matter of law or may order a new trial.

(c) Same: Conditional Rulings on Grant of Motion for Judgment as a Matter of Law.

(1) If the renewed motion for judgment as a matter of law is granted, the court shall also rule on the motion for new trial, if any, by determining whether it should be granted if the judgment is thereafter vacated or reversed, and shall specify the grounds for granting or denying the motion for the new trial. If the motion for new trial is thus conditionally granted, the order thereon does not affect the finality of the judgment. In case the motion for new trial has been conditionally granted and the judgment is reversed on appeal, the new trial shall proceed unless the appellate court has otherwise ordered. In case the motion for new trial has been conditionally denied, the appellee on appeal may assert error in that denial; and if the judgment is reversed on appeal, subsequent proceedings shall be in accordance with the order of the appellate court.

(2) The party against whom judgment as a matter of law has been rendered may serve a motion for a new trial pursuant to Rule 59 not later than 15 days after entry of the judgment.

(d) Same: Denial of Motion for Judgment as a Matter of Law. If the motion for judgment as a matter of law is denied, the party who prevailed on that motion may, as appellee, assert grounds entitling the party to a new trial in the event the appellate court concludes that the trial court erred in denying the motion for judgment. If the appellate court reverses the judgment, nothing in this rule precludes it from determining that the appellee is entitled to a new trial, or from directing the trial court to determine whether a new trial shall be granted.

STATE BAR COMMITTEE NOTES
April 25, 2008 Amendment

This amendment eliminates the need to make a motion for judgment as a matter of law at the close of all the evidence as a prerequisite to renewing a motion made earlier during trial, as the former rule had been interpreted by cases such as *Ash v. Flieger*, 118 Ariz. 547, 578 P.2d 628 (App. 1978). The amendment thus eliminates a requirement that does not further the rule's purposes and also effects conformity with federal practice.

Because a Rule 50(b) motion is only a renewal of the preverdict motion, it can be granted only on grounds advanced in the preverdict motion. The earlier motion informs the opposing party of the challenge and affords a clear opportunity to provide additional evidence in response. The earlier motion also provides the court the opportunity to simplify the trial in appropriate cases by resolving some issues, or even all issues, without submission to the jury. The trial court in ruling on the motion must afford the party opposing a Rule 50(a) motion the opportunity to present evidence on the issue or issues raised, and consider all evidence presented in ruling on a renewed motion, including any evidence received after the Rule 50(a) motion was made. The amendment is not intended to discourage the useful practice followed by many judges whereby they expressly invite motions at the close of all the evidence.