

1 Lisa M. Panahi, Bar No. 023421
2 General Counsel
3 State Bar of Arizona
4 4201 N. 24th Street, Suite 100
5 Phoenix, AZ 85016-6288
6 (602) 340-7236

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

9 In the Matter of:

Supreme Court No. R-18-0002

10 **PETITION TO AMEND RULE 28,**
11 **ARIZONA RULE OF THE**
12 **SUPREME COURT**

13 **COMMENT OF THE**
14 **STATE BAR OF ARIZONA**

15 Pursuant to Rule 28(D) of the Arizona Rules of Supreme Court, the State Bar
16 of Arizona (the “State Bar”) hereby submits the following as its Comment to the
17 above-captioned Petition. The State Bar supports in substantial part the Petition of
18 the Arizona Supreme Court Staff Attorneys’ Office to abrogate Supreme Court Rule
19 28, and to enact in its place a substantially modified Rule 28. The State Bar supports
20 updating and modernizing the Rule. But as the State Bar itself becomes more
21 transparent to better serve the public, and now adheres to open meeting procedures,
22 it believes that if the Court amends Rule 28 – a linchpin of the Court’s relationship
23 with the public – it should reaffirm and deepen the transparency of the rulemaking
24 process. To that end, the State Bar suggests simplifying the Rule’s Preamble to help
25 people understand the Rule, retaining the provision of Rule 28 permitting parties to
request public hearings, and reaffirming the Court’s tradition of informal dialogue

1 with the public about rules changes, while addressing and deterring organized
2 lobbying of the Court itself. These proposed changes are set forth in Section I.,
3 *below*. The State Bar also suggests a number of minor functional and stylistic
4 changes, set forth in Section II., *below*.

6 **I. AMENDMENTS TO RULE 28 – THE CENTERPIECE OF THE**
7 **COURT’S RELATIONSHIP WITH THE PUBLIC – SHOULD**
8 **REFLECT THE VITAL IMPORTANCE OF TRANSPARENCY,**
9 **OPENNESS, AND PUBLIC DIALOGUE.**

10 **A. Rule 28’s Emphasis on Public Dialogue Is Consistent With**
11 **Openness in Arizona’s Rules Reform Process, Which Has**
12 **Increased in Recent Years Under This Court’s Leadership.**

13 The State Bar believes strongly in the Rule 28 process, and its benefit to
14 Arizona law by virtue of it fostering a full and open dialogue concerning this Court’s
15 rulemaking function. As in any system of legislation or rulemaking, openness and
16 transparency serve vital legitimating functions. And open dialogue maximizes the
17 ferment over and discussion of proposals to reform, refine, and improve Arizona’s
18 court rules. It allows petitioners to respond to all critiques of their proposals, and
19 can cause comments to accumulate in that most quintessential 21st Century device –
20 a chain of comments in response to a text that provokes thoughts and reactions.

22 Since the Supreme Court promulgated Rule 28, there has been an increased
23 emphasis on openness in processes surrounding court rules and their amendments.
24 This Court exemplified a leaning toward openness and transparency through its
25

1 recent amendment to Supreme Court Rule 32(m), requiring the State Bar to conduct
2 business through open access policies, in response to Petition R-16-0013. Thus,
3 under the Public Meetings Policy, State Bar Boards and Committees now allow the
4 general public an agenda of planned meetings, and the public may attend and be
5 heard by a call to the public. (See Admin. Order No. 2017-34, adopting, effective
6 August 1, 2017, a Public Meetings Policy for the State Bar of Arizona “to promote
7 openness by assuring that members of the State Bar and the public have an
8 opportunity to attend meetings of State Bar boards and committees . . .”). The Board
9 of Governors’ Rules Review Committee meetings on proposed comments on rule
10 petitions are likewise open to the public, both so the public can know in advance
11 what is being debated, and also so it can comment substantively on the proposals.
12

13
14
15 The State Bar’s openness now mirrors this Court’s own openness about its
16 governance and processes as they pertain to rules reform. *See, e.g.*, Ariz. Const. art.
17 6, sec. 2 (Arizona Supreme Court open when transacting business); *see also* Ariz.
18 Const. art. 6, sec. 5 (Supreme Court shall have the “[p]ower to make rules relative
19 to all procedural matters in any court.”). When this Court appointed the Business
20 Courts Advisory Committee in 2012, the Task Force on the Arizona Rules of Civil
21 Procedure in 2014, and the Committee on Civil Justice Reform in 2015, their
22 meetings were all public, their drafts were distributed to the public for consideration,
23 and all of their meeting materials were posted to the public in advance, all to
24
25

1 encourage public participation in the dialogue and proposals. Indeed, non-member
2 court professionals and lawyers took part in these discussions, just as the open
3 meeting laws contemplate. *See, e.g.*, Ariz. Rev. Stat. Title 38, Chapter 3.
4

5 **B. The Proposed Amendments Present Opportunities To Reaffirm**
6 **and Extend This Court’s Policy of Openness and Transparency in**
7 **Rules Reform.**

8 The proposed revision of Rule 28 should be improved to underscore the
9 Court’s policy of openness to the public and transparency in several ways.
10

11 **1. The Court Should Simplify the Language in the Preamble to**
12 **Further Rule 28’s Purpose of Fostering an Open,**
13 **Transparent Dialogue on Proposals Before the Court.**
14 ***(See Proposed Revised Preamble in Appendix A)***

15 The Court’s emphasis on making rules comprehensible in its recent revisions
16 of rule-sets guides the State Bar’s comment in this regard. As the increase in pro se
17 litigation underscores, the rules of this Court are more often read by persons not
18 educated in law. Rule 28 is their gateway to commenting to the Court on important
19 proposals that may come before it. Should they be allowed a change of judge in
20 eviction actions? Should their business receive less discovery going forward in a
21 case with little at issue? Should process servers be able to serve gated communities’
22 gate agents, thus subjecting HOA inhabitants to suit more readily? These are just a
23 few questions that have recently come before this Court that might concern different
24
25

1 segments of the general public. Rule 28 should welcome everyone into the rules
2 process in the clearest language, to further its mission of telling anyone who might
3 be interested how to comment to this Court on issues important to them. The State
4 Bar attaches a proposed further revision to the Preamble aimed at providing that
5 welcome.
6

7
8 **2. This Court Should Require That Written Comments on Rule**
9 **Petitions Directed to it Outside of the Rules Forum Be Posted**
10 **on the Court Rules Forum.**

11 *(See Proposed Rule 28(E)(5) in Attached Appendix A)*

12 This Court should modify Rule 28(E) to require publication on the Court
13 Rules Forum of written comments directed to it about rule petitions outside of the
14 Forum, both to deter members of the bar or public from doing so, and to put any
15 such writings directed toward the Court into the open public debate this Court fosters
16 and maintains on the Court Rules Forum. The State Bar is aware that members of
17 the Bar or public may attempt to provide written comments or other materials about
18 petitions directly to the Court and outside the Court Rules Forum. This practice is
19 not consistent with the open public dialogue this Court has established by enacting
20 Rule 28, creating a Court Rules Forum, adhering to open meetings laws, and causing
21 the bar to do the same.
22

23 This Court's review of the Petition provides a timely opportunity to deter that
24 practice. The State Bar believes that this Court's policies of openness and
25

1 transparency should lead this Court to treat any written submittals to it concerning
2 rule petitions as written comments that should be posted on the Court Rules Forum,
3 identifying the comment's proponent and the date of its submittal. This would have
4 two salutary effects: (1) allowing the public to respond to a comment in the "thread"
5 concerning a pending rule change proposal, as is the conversational logic of 21st
6 Century, message-board driven communications; and (2) deterring persons from
7 creating and transmitting such things to the Court outside the Court Rules Forum. If
8 these submittals are inevitably reduced to public communications, there will be less
9 incentive for persons to seek to approach the Court outside the public process that
10 the Court's own Preamble to Rule 28 indicates is the way rule reform discussions
11 are to occur.
12
13
14

15 **3. Rule 28 Should Maintain the Option for Public Hearings on**
16 **Rule Petitions, and Should Reaffirm That Discussing Rule**
17 **Petitions in Public Is Consistent With Rule 28. (See Proposed**
18 **Rule 28(F)(1) and (2) in Attached Appendix A)**

19 The Petition suggests abrogating the provision of current Rule 28(E)
20 permitting anyone to request public hearing on a rule petition. The arguments
21 supporting the abrogation are that the Court seldom uses the public hearing process
22 and that it is believed that the Court does not presently have great interest in using
23 it.
24
25

1 Respectfully, the State Bar disagrees with the abrogation the public hearing
2 provision, for the following reasons: First, though seldom used, the provision is
3 consistent with this Court’s policy of open dialogue with the bar and public about
4 rules. To delete it outright, as opposed to seldom using it, sends a message of less
5 openness that the State Bar believes is not consistent with the trend toward greater
6 openness. Second, the Court may change its mind as its membership changes and
7 becomes more open to such hearings. There is no reason to predetermine that issue
8 for future Courts, which are under no compunction to hold any public hearing they
9 do not want to hold. Third, just last year the Civil Practice and Procedure Committee
10 of the State Bar discussed that complex matters like the Petition of the Committee
11 on Civil Justice Reform could benefit from argument or public hearing. The depth
12 of this Court’s consideration of its proposals tends to underscore the idea that
13 occasionally, argument on particular proposals or an exchange about the policy bases
14 underlying them, could aid the Court. The State Bar thus suggests retaining the
15 public hearing requirement, which in its draft is housed in Rule 28(F)(2).

16 The State Bar also believes the reality that some may wish to lobby the Court
17 concerning rule petitions makes it desirable to amend Rule 28 to advise those who
18 would approach the Court that it may memorialize oral comments directed to it on
19 the Court Rules Forum, or may invite commenters to use the Court Rules Forum.
20 For that reason, the State Bar proposes a Rule 28(F)(1), Oral Comments, that sets

1 forth that the Court will receive comments in public meetings and otherwise, but that
2 it may ask commenters to put them on the Court Rules Forum, and that it could even
3 choose to do so itself. The State Bar believes this in no way impairs the Court's
4 laudable tradition of conferring with members of the bar or public at public
5 appearances, CLEs, and other fora. The State Bar does believe that its proposed
6 Rule 28(F)(1) would, however, deter unbidden private approaches to the Court for
7 purposes of debating a rule petition outside this Court's mandated public process.
8
9 The State Bar respectfully suggests that fostering that openness while deterring such
10 private approaches would make a good Rule 28 even better.
11

12 Additionally, as a potential alternative, two members of the State Bar's Civil
13 Practice and Procedure Committee suggested the inclusion in this comment of
14 potential additional language that would more starkly preclude lobbying. That
15 suggestion is to include at the end of draft Rule 28(F)(1) a further sentence
16 providing: "Other than at the request of the Court, after a rule petition is filed, the
17 Court Rules Forum shall be the sole and exclusive means for comment to the Court
18 concerning any given petition."
19
20

21
22 **II. THE STATE BAR PROPOSES OTHER MINOR MODIFICATIONS**
23 **TO THE PETITION'S PROPOSED RULE 28.**

24 **A. The State Bar Suggests Telling Commenters Expressly That**
25 **ARCAP 4 Controls Their Filings, and That Comments Cannot**
Exceed 20 Pages.

1 **(See Proposed Rule 28(E)(4) in Attached Appendix A)**

2 The State Bar proposes making Rule 28 slightly clearer, especially to novice
3 users, by making the guidance to commenters as clear as possible in certain
4 important particulars. The Petition ultimately instructs commenters to keep their
5 comments to 20 pages, and to file them substantially in the form of appellate filings.
6 But it does this by indirection in proposed Rule 28(E)(3), telling commenters that
7 their comments are to “conform[] with Rule 28(A)(4)(b) and (5).” While that
8 formulation saves a bit of length, it also forces commenters to refer back to Rule
9 28(A), which governs petitions, and then to refer to the ARCAP for formatting, and
10 to Rule 28(A)(4)(b) for the 20-page limit.

11 The State Bar suggests that setting out these requirements specifically in Rule
12 28(E) is a better idea, because novice commenters will not have to refer back to
13 another rule, which in turn refers them to another rule. For that reason, the State
14 Bar’s proposed amendment contains a Rule 28(E)(4), What to File, that is parallel
15 in structure and content to Rule 28(A)(4)’s direction to petitioners.

16 **B. The State Bar Proposes Allowing Out-of-Time Replies to Out-of-**
17 **Time Comments That Are Posted to the Court Rules Forum.**
18 **(See Proposed Amended Rule 28(E)(6) in Attached Appendix A)**

19 While the State Bar is not approving of the practice of posting comments to
20 the Court Rules Forum after the Court’s deadline for comments, late comments do
21
22
23
24
25

1 get posted. And the State Bar has also proposed in this comment a mechanism for
2 the further posting of late comments, as when the Court redirects someone
3 importuning it after the deadline with substantive comments on petitions, which also
4 happens. Because the Court Rules Forum provides what should be the primary locus
5 of debate around rules reform, if the Court either permits or causes the posting of
6 late comments, there should be a mechanism allowing for replies to them. The State
7 Bar therefore proposes granting petitioners fourteen days to reply to late-posted
8 comments. *See* Proposed Amended Rule 28(E)(6).
9
10

11
12 **C. Given the Narrower Time For Comment, the State Bar Proposes**
13 **That Comments Must Be Posted “Promptly.” (*See* Proposed**
14 **Amended Rule 28(E)(3)(b) in Attached Appendix A)**

15 The State Bar also suggests the addition of “promptly” to the sentence in Rule
16 28(E)(3)(b) requiring Court staff to post an electronic version of any paper comment
17 filing on the Court Rules Forum, for two reasons. First, with the shorter comment
18 period, it is important to let all members of the public or Bar who review the Court
19 Rules Forum see the comments in something approximating real time, to promote
20 the best public dialogue. Second, the only way a petitioner will have notice of paper
21 comments is via electronic notification of the posting in the Rules Forum. Thus, the
22 addition of “promptly” would make sure petitioners had enough time to reply to any
23 paper comments.
24
25

1 **III. THE STATE BAR AGREES WITH THE MODERNIZING AND**
2 **TIMING CHANGES THE PETITION PROPOSES.**

3 **A. The State Bar Agrees with the Petition's Modernization of the Rule**
4 **in Both Organizational and Stylistic Matters.**

5 The State Bar agrees with the laudable modernization of Rule 28 effected by
6 the Petition's changes to the rule's organization and style. In particular, the State
7 Bar agrees with its adoption of headings like those in this Court's recent restyling of
8 other rule-sets, its emphasis on electronic filing as primary and paper filing as
9 secondary, its deletion of references to obsolete technology, and its updating of the
10 list of those who are to receive notice of petitions and of the comment period.
11

12
13 **B. The State Bar Agrees With the Changes in Timing the Petition**
14 **Proposes.**

15 The Petition proposes mildly truncating the period of time for public comment
16 on rule petitions, advancing the deadline for comments from May 20 to May 1, and
17 the deadline for replies from June 30 to June 1. The State Bar agrees that the period
18 of time afforded for comments is ample, and that ending the comment period by June
19 1 accords with the work cycle surrounding the rule petition process. The State Bar
20 also agrees with the Petition's amendment to more accurately reflect that this Court's
21 rules agenda has been conducted in late August and also early September, and not
22 only in September, as the current rule provides. Finally, the State Bar agrees with
23 the Petition's proposal to eliminate the date certain for the posting of comments, as
24
25

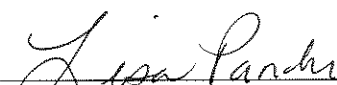
1 that logically resides within the sound discretion and technical capabilities of those
2 maintaining the Court Rules Forum.

3
4 **CONCLUSION**

5 The State Bar of Arizona respectfully requests that the Court adopt the
6 petitioner's proposed rule amendments, as modified by the State Bar's proposals for
7 further revision. Rule 28 is the tool that enables the public to communicate with the
8 public and members of the State Bar. The State Bar's mission, in turn, is to serve
9 and protect the public. And the State Bar itself is the core user of Rule 28, time and
10 again working diligently through individual members, groups, and committees to
11 provide this Court with suggestions for rule revision through the Rule 28 process.
12

13
14 For all of these reasons, it is particularly appropriate to give weight to the State
15 Bar's recommendations, especially at a time when the Supreme Court Staff
16 Attorneys, who are very close to the Court and its administration of the rules revision
17 process, are proposing an abrogation and re-enactment of a substantially modified
18 Rule 28.
19

20 RESPECTFULLY SUBMITTED this 21st day of May, 2018.
21

22 
23 _____
24 Lisa M. Panahi
25 General Counsel

1 Electronic copy filed with the
2 Clerk of the Supreme Court of Arizona
3 this 2~~4~~ day of May, 2018.

4 by: D. Segre

5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

ARIZONA RULE OF THE SUPREME COURT 28

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

Preamble

~~The purpose of this Rule is to create a transparent and open process for the proposal, consideration of, public debate upon, and adoption or denial by this Court of proposals to reform court rules. It is the policy of the Arizona Supreme Court to establish an effective process for the adoption, amendment, and abrogation of rules of procedure for the courts of this state 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 abrogate rules, utilizing available technology. To carry out this policy, the court has established appropriate procedures, and~~ This Rule explains how to file rule petitions and comments on them on the Court's own interactive court rules website.; ~~and~~ ~~an~~ It also explains how these petitions and comments fit into this Court's annual rule-making cycle. This public process helps the Court ~~carry out~~ make court rules, which is a role assigned to this Court to implement constitutional authority under by Article 6, Section 5 of the Arizona Constitution, ~~as 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.

(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~~ *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. [Note: This paragraph was changed to full text from left-justified, as it was posted on Court Rules Forum attached to Petition R-18-0002]

(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 eCourt 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. Written comments may be filed electronically on the Court Rules Forum, <https://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) Written Comments on Rule Petitions ~~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 ~~must~~ may file any 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 promptly post an electronic version of the filing on the Court Rules Forum.

(4) *What to File.* Comments in attached documents under Rule 28(E)(3)(a)(ii) and comments filed in paper may not exceed 20 pages, unless the Court orders otherwise. The form of such comments must substantially conform, as far as practicable, to the requirements of Rules 4(a) and (b) of the Arizona Rules of Civil Appellate Procedure.

(5) *Other Written Comments on Petitions Received by the Clerk or the Court.* Any other writing received by the Clerk or the Court from an identified source that comments on a rule petition will be filed electronically in the Court Rules Forum, indicating the date on which it was received and the identity of the source from whom or which it was received.

(46) *Replies 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. If a comment is posted to the Court Rules Forum after June 1, the petitioner may file a reply within 14 days of its posting.

(F) Oral Comments and Public Hearings on Rule Petitions.

(1) **Oral Comments.** The Court recognizes that there is benefit in interested members of the bar or public commenting to the Court at public meetings or otherwise about proposed rule reforms. The Court may memorialize oral comments it thus receives on the Court Rules Forum in its sole discretion. The Court may also request that members of the bar or public summarize or repeat their oral comments in the Court Rules Forum, to preserve the open and public nature of the debate over rule petitions.

(2) **Request for Public Hearing.** At any time before the expiration of the time allowed for comment on a petition for rule change, the Court, on its own motion or at the request of the petitioner or any interested person or organization, may order that a public hearing be held on the petition, or any portion of it. The Court shall determine the method and manner of holding any such hearing. The hearing may be conducted before the Court en banc, or before one or more members of the Court assigned to conduct the hearing, before a master appointed to conduct the hearing, or before a committee designated by the Court.

(FG) 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.

(GH) 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).

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

* * * * *

Comment

[No change in text]

Comment to 2005 Amendment

[Abrogated]

ARIZONA RULE OF THE SUPREME COURT 28

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

Preamble

The purpose of this Rule is to create a transparent and open process for the proposal, consideration of, public debate upon, and adoption or denial by this Court of proposals to reform court rules. This Rule explains how to file rule petitions and comments on them on the Court's own interactive court rules website. It also explains how these petitions and comments fit into this Court's annual rule-making cycle. This public process helps the Court make court rules, which is a role assigned to this Court by Article 6, Section 5 of the Arizona Constitution.

(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.

(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. €Written comments may be filed electronically on the Court Rules Forum, <https://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) Written Comments on Rule Petitions.

(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 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 must file any 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 promptly post an electronic version of the filing on the Court Rules Forum.

(4) *What to File.* Comments in attached documents under Rule 28(E)(3)(ii) and comments filed in paper may not exceed 20 pages, unless the Court orders otherwise. The form of such comments must substantially conform, as far as practicable, to the requirements of Rules 4(a) and (b) of the Arizona Rules of Civil Appellate Procedure.

(5) *Other Written Comments on Petitions Received by the Clerk or the Court.* Any other writing received by the Clerk or the Court from an identified source that comments on a rule petition will be filed electronically in the Court Rules Forum, indicating the date on which it was received and the identity of the source from whom or which it was received.

(6) *Replies 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. If a comment is posted to the Court Rules Forum after June 1, the petitioner may file a reply within 14 days of its posting.

(F) Oral Comments and Public Hearings on Rule Petitions.

(1) **Oral Comments.** The Supreme Court recognizes that there is benefit in interested members of the bar or public commenting to the Court at public meetings or otherwise about proposed rule reforms. The Court may memorialize oral comments it thus receives in the Court Rules Forum in its sole discretion. The Court may also request that members of the bar or public summarize or repeat their oral comments in the Court Rules Forum, to preserve the open and public nature of the debate over rule petitions.

(2) **Request for Public Hearing.** At any time prior to the expiration of the time allowed for comment on a petition for rule change, the Court, on its own motion or at the request of the petitioner or any interested person or organization, may order that a public hearing be held on the petition, or any portion of it. The Court shall determine the method and manner of holding any such hearing. The hearing may be conducted before the Court en banc, or before one or more members of the Court assigned to conduct the hearing, before a master appointed to conduct the hearing, or before a committee designated by the Court.

(G) 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.

(H) 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).

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

* * * * *

Comment

[No change in text]