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

9 In the Matter of:

Supreme Court No. R-19-0003

10 **PETITION TO AMEND RULE 5.4**  
11 **OF THE ARIZONA RULES OF**  
12 **CIVIL PROCEDURE**

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

14 Pursuant to Rule 28(D) of the Arizona Rules of Supreme Court, the State Bar  
15 of Arizona (the “State Bar”) hereby submits the following as its Comment to the  
16 above-captioned Petition.

17 The State Bar endorses the Petition proposed by the Honorable Sara J. Agne  
18 and the Rule 5.4 Working Group. The Petition seeks to add a new definition and a  
19 new subsection (i) to Rule 5.4 to govern the procedure for placing a case-initiating  
20 document, such as a complaint, under seal.


21 The State Bar proposes one modest revision to the Petition’s proposed  
22 amendments to Rule 5.4. Specifically, instead of having a seven-day time limit for  
23 the submitting party to file a notice, stipulation, or motion for dismissal under Rule  
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1 41 in Proposed Rule 5.4(i)(2)(C), the State Bar recommends that the Rule require  
2 the submitting party to promptly file a notice, stipulation, or motion for dismissal  
3 under Rule 41 if the submitting party no longer wishes to prosecute the action due  
4 to the court's denial of the submitting party's motion or stipulation to file the case-  
5 initiating document under seal.  
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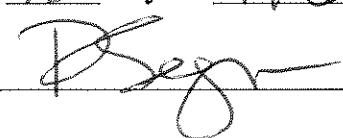
7         The State Bar believes that the change to Rule 5.4(i)(2)(C) is necessary to  
8 avoid a potential inconsistency between proposed Rule 5.4(i)(2)(C) and Rule 41.  
9 Under Rule 41, a plaintiff may voluntarily dismiss an action at any time before an  
10 opposing party serves an answer or motion for summary judgment. See Ariz. R.  
11 Civ. P. 41(a)(1)(A)(i). A plaintiff also may seek an order of dismissal at any time  
12 based on stipulation or motion. See Ariz. R. Civ. P. 41(a)(1)(A)(ii) and (2). Thus,  
13 proposed Rule 5.4(i)(2)(C)'s seven-day time limit to file a notice, stipulation, or  
14 motion under Rule 41 imposes a shorter deadline than Rule 41 permits. However,  
15 the addition of the word "promptly" in the text of Rule 5.4(i)(2)(C), as proposed by  
16 the State Bar, puts the submitting party on notice that it should take prompt action  
17 to dismiss its complaint if the court denies the submitting party's request to seal a  
18 case-initiating document and the submitting party no longer wishes to prosecute its  
19 complaint.  
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1 A blackline of the State Bar's correction to the Petition<sup>1</sup> is reflected in  
2 **Appendix A.** A clean version of the State Bar's correction to the Petition is reflected  
3 in **Appendix B.**  
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5  
6 RESPECTFULLY SUBMITTED this 1<sup>st</sup> day of May, 2019.

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8   
9 Lisa M. Panahi  
10 General Counsel

11  
12 Electronic copy filed with the  
13 Clerk of the Supreme Court of Arizona  
14 this 1<sup>st</sup> day of May, 2019.

15 by:   
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24 <sup>1</sup> Because the State Bar endorses the Petition and only makes the one  
25 small change to Proposed Rule 5.4(i)(2)(C), Appendix A adds blackline changes to  
the Proposed Rule.

## Appendix A

### Showing Correction to Proposed Rule 5.4(i)(2)(C)

(deletion shown by strike-through and addition shown by underlining)

**(b) Definitions.** For this rule's purposes:

- (1) "document" means any filing, exhibit, record, or other documentary material to be filed or lodged with the court;
- (2) "case-initiating document" means the complaint or other document that a party files with the court to commence a civil action;
- (3) "lodged document" means a document that is temporarily deposited with the court but is not filed or made available for public access;
- (4) "public access" means the inspection or copying of a document by a member of the public; and
- (5) "sealed document" means a document filed or lodged with the court for which public access is prohibited by statute, rule, or court order.

...

**(i) Case-Initiating Documents.**

**(1) *Publicly Accessible Version.***

- (A) *Generally.*** Before a party may file a motion or stipulation to file a case-initiating document under seal, the party must first file a publicly accessible version of the document, which will permit the clerk to assign a case number to the civil action.
- (B) *Contents.*** The publicly accessible version of a case-initiating document must be a version of the document the party ultimately wants to file under seal with redactions covering the portions of the document that are subject to the motion or stipulation.
- (C) *No Advance Authorization.*** A court may not grant advance authorization to lodge or file a case-initiating document under seal.

**(2) *Later Motion or Stipulation to File Under Seal.***

- (A) *Generally.*** After filing a publicly accessible version of a case-initiating document, any person may file a motion or join in a stipulation to file a non-public version of the document under seal.
- (B) *Procedure.*** The filing party or stipulating parties must comply with the requirements of (c), (d), and (e) of this rule. The motion or stipulation must be publicly accessible and may not be filed under seal, but the motion

or stipulation may request the court to file under seal all or portions of supporting documents, such as an affidavit or declaration.

- (C) *If Denied.* If the court completely or partially denies a motion or stipulation to file a case-initiating document under seal and the submitting party no longer wishes to prosecute the action due to the complete or partial denial by the court, the submitting party must promptly file a notice of, or stipulation or motion for, dismissal under Rule 41, ~~no later than 7 days after the order's entry.~~ A party also retains the options provided in (f)(1).
- (D) *If Partially Granted.* If the court finds only certain pages or portions of the case-initiating document contain information that merits being placed under seal, the filing party must comply with (c)(3)(B)(i).

**Appendix B**  
**Clean Version of Correction to Proposed Rule 5.4(i)(2)(C)**

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- (b) Definitions.** For this rule’s purposes:
- (1)** “document” means any filing, exhibit, record, or other documentary material to be filed or lodged with the court;
  - (2)** “case-initiating document” means the complaint or other document that a party files with the court to commence a civil action;
  - (3)** “lodged document” means a document that is temporarily deposited with the court but is not filed or made available for public access;
  - (4)** “public access” means the inspection or copying of a document by a member of the public; and
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- (B) *Contents.*** The publicly accessible version of a case-initiating document must be a version of the document the party ultimately wants to file under seal with redactions covering the portions of the document that are subject to the motion or stipulation.
- (C) *No Advance Authorization.*** A court may not grant advance authorization to lodge or file a case-initiating document under seal.

**(2) *Later Motion or Stipulation to File Under Seal.***

- (A) *Generally.*** After filing a publicly accessible version of a case-initiating document, any person may file a motion or join in a stipulation to file a non-public version of the document under seal.
- (B) *Procedure.*** The filing party or stipulating parties must comply with the requirements of (c), (d), and (e) of this rule. The motion or stipulation

must be publicly accessible and may not be filed under seal, but the motion or stipulation may request the court to file under seal all or portions of supporting documents, such as an affidavit or declaration.

- (C) *If Denied.* If the court completely or partially denies a motion or stipulation to file a case-initiating document under seal and the submitting party no longer wishes to prosecute the action due to the complete or partial denial by the court, the submitting party must promptly file a notice of, or stipulation or motion for, dismissal under Rule 41. A party also retains the options provided in (f)(1).
- (D) *If Partially Granted.* If the court finds only certain pages or portions of the case-initiating document contain information that merits being placed under seal, the filing party must comply with (c)(3)(B)(i).