

1 Honorable Bruce Cohen
2 Family Department Presiding Judge
3 Honorable Jay Polk
4 Probate and Mental Health Department Presiding Judge
5 Superior Court of Arizona, Maricopa County
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7 Phoenix, AZ 85003
8 (602) 372-0686

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10 **IN THE SUPREME COURT OF THE STATE OF ARIZONA**

11 In the Matter of: } Supreme Court No. R-21-0014
12 }
13 PETITION TO AMEND RULE 37(b) } COMMENT REGARDING
14 AND ADD NEW RULE 37.1, } PETITION TO ADD RULE 37.1 OF
15 RULES OF FAMILY LAW } THE RULES OF FAMILY LAW
16 PROCEDURE } PROCEDURE

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18 The Honorable Bruce R. Cohen, Presiding Judge of the Family Department
19 of the Superior Court of Arizona for Maricopa County, and the Honorable Jay M.
20 Polk, Presiding Judge of the Probate and Mental Health Department of the
21 Superior Court of Arizona for Maricopa County, submit this comment in support
22 of the *State Bar of Arizona Petition* (the “Petition”) filed in Supreme Court No. R-
23 21-0014. Judge Cohen, who was a family court practitioner prior to his
24 appointment to the bench, and Judge Polk, who was probate practitioner prior to
25 his appointment to the bench and served on the family court bench for more than
26 five years, both were involved in the drafting of proposed Rule 37.1, Arizona
27 Rules of Family Law Procedure (“Family Law Rule”), and 2021 SB1389, which
28 Governor Ducey signed into law on April 28, 2021.

1 The enactment of SB1389 creates new A.R.S. § 25-1501, which authorizes
2 the superior court, in a proceeding brought under A.R.S. Title 25, to appoint a
3 guardian ad litem for an adult party if the superior court has reasonable cause to
4 believe that the adult party is or may be an incapacitated person as defined in
5 A.R.S. § 14-5101 or is a person in need of protection pursuant to A.R.S. § 14-
6 5401. The guardian ad litem then is responsible for conducting an investigation
7 regarding the need for guardianship, conservatorship, or both, and, if appropriate,
8 initiating and prosecuting proceedings under Chapter 5 of Title 14 for the
9 appointment of a guardian, a conservator, or both. Subsection D of A.R.S. § 25-
10 1501 mandates that the Arizona Supreme Court “shall adopt appropriate rules to
11 govern appointment of a guardian ad litem in proceedings under [Title 25].”
12 Proposed Family Law Rule 37.1 would satisfy that requirement.

13 Because new A.R.S. § 25-1501 uses the phrase *guardian ad litem*, all
14 instances of the phrase *special investigator* in Proposed Family Law Rule 37.1
15 should be changed to “guardian ad litem.” Otherwise, we fully support the
16 Petition and respectfully request this Court to adopt the rule changes proposed
17 therein.

18 Respectfully submitted this 29th day of April, 2021.

19
20 /s/ Bruce R. Cohen
21 Honorable Bruce R. Cohen
22 Presiding Judge
23 Family Department
24 Superior Court of Arizona, Maricopa County
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