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

9 In the Matter of:

Supreme Court No. R-21-

10 **PETITION TO ADD NEW RULE**
11 **22.1 TO THE ARIZONA RULES**
12 **OF FAMILY LAW PROCEDURE**

PETITION

13 Pursuant to Rule 28(a)(1), Arizona Rules of Supreme Court, the State Bar of
14 Arizona (the “State Bar”) hereby requests expedited consideration of the following
15 Petition. The State Bar respectfully requests that the Court consider this Petition at
16 its August 2021 Rules Agenda and proposes the following abbreviated comment
17 period: comments due on or before June 15, 2021; and reply due on or before June
18 29, 2021.

19 Pursuant to Rule 28(a), Ariz. R. Sup. Ct., the State Bar hereby petitions the
20 Court to amend the Rules of Family Law Procedure by adding new Rule 22.1 to
21 address the handling of exhibits.
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3 **BACKGROUND**

4 This petition is a proposal to amend Rule 22 of the *Arizona Rules of Family Law*
5 *Procedure* (ARFLP) to standardize the marking of exhibits for evidentiary hearings
6 and trials.

7 Presently, the ARFLP does not establish a consistent procedure for the numbering
8 or lettering of party exhibits. As a result, the practice for the identification of hearing
9 exhibits varies by county and by judge within the county, and at times, by matter
10 before the same judge. For example, Pinal County uses a system by which one
11 party's exhibits are numbers and the other party's exhibits are letters. In Maricopa
12 County, all parties' exhibits are numbered, and most Minute Entries state that the
13 Petitioner's exhibits will be numbered first, with the Respondent's exhibits
14 following thereafter.
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17 In practice, this leads to confusion and inefficiency for attorneys, pro per litigants,
18 and the court. When the parties are unable to coordinate their exhibit numbers in
19 advance, which happens regularly and particularly in cases where one or both parties
20 are unrepresented by counsel, the Respondent does not know what number to use
21 for their first exhibit because they do not know the last number of Petitioner's
22 exhibits. If Petitioner's exhibits are submitted late, then Respondent's exhibits will
23 be numbered first.
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1 Although many judges try to have their exhibit list distributed in advance of the
2 hearing, the list may be distributed after trial outline and exhibit binder preparation
3 has occurred. The result is often confusion and inefficiency when preparing for trial
4 or providing an exhibit binder to the judge. The tabbed binder provided to the judge
5 and opposing party may not match the official exhibit list. The outline prepared for
6 trial also contains references to exhibits which have a different number on the official
7 exhibit list. Trial time, which is already limited in some counties, is reduced by
8 efforts to locate and reference the correct official exhibit number. This also creates
9 confusion on the record when the binder-tabs and official exhibit numbers are not
10 consistent, especially in preparation for an appeal.
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14 This is a challenge for both attorneys and pro per litigants. Coordination of
15 exhibits are particularly challenging when pro per litigants are ordered not to directly
16 communicate pursuant to a no-contact order. Attorneys may be in a better position
17 to make last-minute changes to the numbering of exhibits with the help of
18 administrative support staff; pro per litigants are generally at a disadvantage in this
19 respect.
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21 Compounding the issue during the current pandemic, most hearings and trials are
22 being held via video conference. Confusion regarding the exhibit numbers is even
23 more difficult to address and clarify by video. In person, documents can be
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1 physically shown to opposing counsel, party, a witness, or the judge to ensure clarity.

2 The same convenience is not afforded during video hearings and/or trials.

3 A uniform system to easily identify exhibits of the respective petitioner or
4 respondent will lead to judicial efficiency and create an effective presentation of
5 evidence and preservation of the record for appeal.
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7 The current Rules do not provide a uniform system; therefore, proposed Rule 22.1
8 seeks to address the issues raised in this Petition.
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10 CONCLUSION

11 The State Bar of Arizona respectfully requests that the proposed new rule set
12 forth in the attached Appendix be approved to provide clarity and a uniform manner
13 of handling evidentiary exhibits.
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15 RESPECTFULLY SUBMITTED this 30th day of April 2021.
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19 Lisa M. Panahi
20 General Counsel

21 Electronic copy filed with the
22 Clerk of the Supreme Court of Arizona
23 this 30th day of April 2021.

24 by: PSeguin
25

Appendix

(Please note: deletions are reflected by ~~striketrough~~ and additions are reflected by underline.)

Rule 22. Conduct of Proceedings

(a - c) [No change in text.]

Rule 22.1 Evidentiary Hearing Exhibits

For all evidentiary hearings, exhibits shall be marked in one of the following ways, which shall be stated in the hearing or trial setting minute entry:

(a) Petitioner's exhibits shall begin with the number 1 and shall continue in consecutive numbers. Respondent's exhibits shall begin with the letter A and shall continue through Z. If more than 26 exhibits are offered, the 27th exhibit shall be AA followed by BB; or

(b) Petitioner's exhibits shall begin with the number 1 and shall continue in consecutive numbers up to 499. Respondent's exhibits shall begin with the number 500 and shall continue in consecutive numbers. If plaintiff's exhibits exceed 499, the parties shall confer with the judicial officer to determine how each party's exhibits shall be numbered.