

**MINUTES**

*Arizona Supreme Court*  
**Tuesday, August 31, 2010**

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**R-08-0022**

**RULE 10.5, ARIZONA RULES OF CRIMINAL PROCEDURE**

(1)

WOULD CREATE A NEW PARAGRAPH "C" WHICH ADDRESSES THE TRANSFER OF CASES ALREADY SET FOR TRIAL DATE DUE TO THE UNAVAILABILITY OF THE TRIAL JUDGE

ORDERED: Petition to Amend Rule 10.5 of the Arizona Rules of Criminal Procedure =REJECTED.

**R-09-0028**

**RULES 11.5 AND 11.6, RULES OF CRIMINAL PROCEDURE**

(2)

These rules were amended on an emergency basis effective September 30, 2009, with a comment period ending May 20, 2010. Upon consideration, IT IS ORDERED adopting the attached rule changes on a permanent basis. WOULD CONFORM THE RULES TO AMENDMENTS TO A.R.S. § 13-4515 FOR CALCULATING MAXIMUM TIME ALLOWED FOR A RESTORATION TO COMPETENCY PROGRAM IN A CRIMINAL CASE

ORDERED: Petition to Amend Rules 11.5 and 11.6, Arizona Rules of Criminal Procedure = ADOPTED as previously modified, on a permanent basis.

[Click here for separate order](#)

**R-09-0029**

**RULES 3.2, 4.2, 7.5, 14.3, 26.10, ARCP et al**

(3)

WOULD PROVIDE PROCEDURES FOR OBTAINING FINGERPRINTS IN CRIMINAL PROCEEDINGS

ORDERED: Petition to Amend Rules 3.2, 4.2, 7.5, 14.3, 26.10, and Form 3(a), Arizona Rules of Criminal Procedure, and for an Amendment to the Arizona Traffic Ticket and Complaint Form, Exhibit A to the Rules of Procedure in Traffic Cases and Boating Cases = ADOPTED on a permanent basis.

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**R-09-0032**  
(4)

**RULE 31.13(f), ARIZONA RULES OF CRIMINAL PROCEDURE**

WOULD ALLOW ADDITIONAL TIME NECESSARY FOR PREPARING BRIEFS IN DIRECT APPEALS IN CAPITAL CASES

ORDERED: Sua Sponte Petition to Amend Rule 31.13(f), Arizona Rules of Criminal Procedure = ADOPTED as modified, effective January 1, 2011.

[Click here for separate order](#)

**R-09-0033**  
(5)

**RULE 6.8(c), ARIZONA RULES OF CRIMINAL PROCEDURE**

WOULD ELIMINATE THE REQUIREMENT THAT APPELLATE COUNSEL REPRESENTING A DEFENDANT IN A CAPITAL DIRECT APPEAL HAVE PRIOR EXPERIENCE AS COUNSEL IN POST-CONVICTION RELIEF PROCEEDINGS

ORDERED: Amended Sua Sponte Petition to Amend Rule 6.8(c), Arizona Rules of Criminal Procedure = ADOPTED as modified, effective January 1, 2011.

[Click here for separate order](#)

**R-09-0036**  
(6)

**RULES 35.1, 35.4, RULES OF CRIMINAL PROCEDURE**

WOULD AMEND RULES TO INCLUDE PROVISION REGARDING ENLARGEMENT OF TIME IN WHICH TO FILE A MOTION, REPOSE, OR REPLY AND TO CLARIFY THE EFFECT OF A PARTY'S FAILURE TO FILE A TIMELY RESPONSE

ORDERED: Petition to Amend Rules 35.1 and 35.4, Arizona Rules of Criminal Procedure = REJECTED.

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**R-09-0037**  
(7)

**RULE 10.2, ARIZONA RULES OF CRIMINAL PROCEDURE**

WOULD ALLOW A PARTY IN A CAPITAL CASE TO FILE A CHANGE OF JUDGE WHEN THE CASE IS ADMINISTRATIVELY REASSIGNED TO A NEW TRIAL JUDGE

ORDERED: Petition to Amend Rule 10.2, Arizona Rules of Criminal Procedure = CONTINUED.

**R-10-0010**  
(8)

**PROMULGATE RULE 32.10, RULES OF CRIMINAL PROCEDURE**

WOULD REQUIRE PARTIES SEEKING REVIEW OF MENTAL RETARDATION DETERMINATION IN CAPITAL CASES TO FILE SPECIAL ACTION PETITION IN THE COURT OF APPEALS

ORDERED: Sua Sponte Petition to Adopt New Rule 32.10, Arizona Rules of Criminal Procedure, and Renumber Present Rule = ADOPTED as modified, effective January 1, 2011.

[Click here for separate order](#)

**R-10-0012**  
(9)

**RULE 8.2(a)(4), RULES OF CRIMINAL PROCEDURE**

WOULD EXPAND THE SPEEDY TRIAL TIME LIMIT IN CAPITAL CASES FROM 18 MONTHS FROM ARRAIGNMENT TO 24 MONTHS FROM THE FILING OF A NOTICE OF INTENT TO SEEK THE DEATH PENALTY

ORDERED: Petition to Amend Rule 8.2(a)(4), Arizona Rules of Criminal Procedure = ADOPTED, effective January 1, 2011.

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*Arizona Supreme Court*  
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No. 3136

**R-09-0016**  
(10)

**PROMULGATE RULE RE JURY SERVICE BY COURT EMPLOYEES**

WOULD PROHIBIT AN EMPLOYEE OF AN ARIZONA COURT FROM SERVING AS A JUROR IN THAT SAME COURT

ORDERED: Establish a Rule Setting Guidelines for Jury Service by Court Employees = REJECTED.

**R-09-0022**  
(11)

**RULE 412, ARIZONA RULES OF EVIDENCE**

WOULD ADD NEW RULE OF EVIDENCE REGARDING THE FOUNDATION FOR THE ADMISSION OF MEDICAL BILLS AND RECORDS

ORDERED: Rule 28(A) Petition [Rule 412, Arizona Rules of Evidence] = REJECTED.

**R-09-0030**  
(12)

**RULE 6(e), ARIZONA RULES OF CIVIL PROCEDURE**

WOULD CONFORM RULE 6(e), ARIZ. R. CIV. P., TO RULE 6(d), FED. R. CIV. P., WITH RESPECT TO THE CALCULATION OF EXTRA TIME AFTER SERVICE BY MAIL

ORDERED: Petition to Amend Rule 6(e), Arizona Rules of Civil Procedure = ADOPTED as modified, effective January 1, 2011.

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No. 3136

**R-09-0035**  
(13)

**RULES 45 AND 84, ARIZONA RULES OF CIVIL PROCEDURE**

WOULD AMEND RULE 45 (SUBPOENAS) TO CLARIFY AMBIGUITIES AND TO MAKE THE RULE EASIER TO READ AND WOULD AMEND RULE 84 (FORMS) TO ADD A UNIFORM SUBPOENA FORM

ORDERED: Petition to Amend Rules 45 and 84, Arizona Rules of Civil Procedure = ADOPTED as modified, effective January 1, 2011.

[Click here for separate order](#)

**R-09-0040**  
(14)

**RULES 35 AND 37, ARIZONA RULES OF CIVIL PROCEDURE**

WOULD AMEND PROVISIONS GOVERNING PHYSICAL AND MENTAL EXAMINATIONS OF PERSONS DURING DISCOVERY TO REFLECT CURRENT PRACTICE AND CHANGES IN TECHNOLOGY

ORDERED: Petition to Amend Rules 35 and 37, Arizona Rules of Civil Procedure = REJECTED.

**R-10-0001**  
(15)

**RULE 26(b)(5), ARIZONA RULES OF CIVIL PROCEDURE**

WOULD ALIGN RULE 26(b)(5), PERTAINING TO ADDING A NON-PARTY AT FAULT, WITH THE STANDARD SET FORTH IN RULE 15 FOR AMENDING A COMPLAINT TO ADD A NEW PARTY

ORDERED: Petition to Amend Rule 26(b)(5), Arizona Rules of Civil Procedure = ADOPTED as modified, effective January 1, 2011. (Vice Chief Justice Hurwitz voted to reject the petition.)

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**R-10-0002**  
(16)

## **RULE 4.1, ARIZONA RULES OF CIVIL PROCEDURE**

WOULD AMEND RULE 4.1, ARIZ. R. CIV. P., TO PERMIT SERVICE ON THE REGISTERED VEHICLE OWNER BY FIRST-CLASS MAIL OF COMPLAINTS RELATING TO CIVIL TRAFFIC VIOLATIONS CAPTURED BY A PHOTO ENFORCEMENT SYSTEM

ORDERED: Petition to Amend Arizona Rule of Civil Procedure 4.1 = REJECTED.

**R-08-0016**  
(17)

## **RULE 35(b), RULES OF THE SUPREME COURT**

AMEND RULE 35(b) TO INCLUDE INDIAN LAW AS ONE OF THE SUBJECT AREAS WHICH MAY BE TESTED ON THE ARIZONA BAR EXAMINATION

ORDERED: Petition to Amend Rule 35(b) Arizona Rules of the Supreme Court = CONTINUED.

**R-09-0038**  
(18)

## **RULE 38(d), RULES OF THE SUPREME COURT**

WOULD REORGANIZE AND CLARIFY PROVISIONS RELATING TO LIMITED PRACTICE OF LAW BY CLINICAL LAW PROFESSORS AND QUALIFIED LAW STUDENTS

ORDERED: Petition to Amend Rule 38(d) of the Rules of the Supreme Court of Arizona = CONTINUED.

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**R-09-0039**  
(19)

**RULES 42 and 43, RULES OF THE SUPREME COURT**

WOULD CLARIFY PROVISIONS PREVIOUSLY ADOPTED ON AN EMERGENCY BASIS RELATING TO ACCEPTANCE OF CREDIT CARD PAYMENT OF ADVANCE FEES AND COSTS

ORDERED: Petition to Amend Supreme Court Rules 42 and 43 = ADOPTED as modified, effective January 1, 2011.

[Click here for separate order](#)

**R-09-0041**  
(20)

**RULE 1, APPELLATE and TRIAL COURT APPOINTMENTS**

WOULD UPDATE RULE TO REFLECT CHANGES MADE TO ATTORNEYS' AND JUDGES' CODES OF CONDUCT AND TO THE STATE BAR'S DIVERSITY POLICY

ORDERED: Petition to Amend Rule 1, Uniform Rules of Procedure for Commissions on Appellate and Trial Court Appointments, and the Application for Nomination to Judicial Office = REJECTED.

**R-10-0011**  
(21)

**PROMULGATE AZ RULES SUP. CT. REDIST COMM**

WOULD ESTABLISH PROCEDURES FOR NOMINATING MEMBERS OF THE INDEPENDENT REDISTRICTING COMMISSION, INCLUDING A FULL OPPORTUNITY FOR PUBLIC PARTICIPATION IN THE PROCESS

ORDERED: Petition to Adopt New Rule of the Supreme Court, Procedures for Nominations for the Independent Redistricting Commission = ADOPTED as modified, subject to public hearing, effective January 1, 2011.

[Click here for separate order](#)

[Click here for amended order](#)

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**R-10-0016**  
(22)

**RULE 45, RULES OF THE SUPREME COURT**

WOULD REPEAL MANDATORY CONTINUING LEGAL EDUCATION OR, ALTERNATIVELY, EXEMPT LAWYERS FROM COMPLYING WITH MCLE REQUIREMENTS FOR TEN YEARS FROM THE DATE OF ADMISSION TO THE BAR OR UNTIL LAW SCHOOL DEBT IS PAID, WHICHEVER IS EARLIER

ORDERED: Petition to Repeal or Amend Rule 45 of the Rules of the Supreme Court = REJECTED.

**R-10-0018**  
(23)

**RULE 91(e), RULES OF THE SUPREME COURT**

WOULD REQUIRE SUPERIOR COURT CLERKS TO REPORT TO THE COMMISSION ON JUDICIAL CONDUCT JUDGES' VIOLATIONS OF CONSTITUTIONAL 60-DAY REQUIREMENT FOR DECIDING MATTERS IN SUPERIOR COURT

ORDERED: Petition to Amend Rule 91(e) or Otherwise Adopt a New Rule for the AOC in the Rules of the Supreme Court of Arizona = REJECTED.

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**R-10-0019**  
(24)

**RULES 34-37, RULES OF THE SUPREME COURT**

WOULD REFLECT THAT ADMISSION TO THE BAR MAY BE EITHER BY EXAMINATION OR ON MOTION; WOULD ALLOW THE COMMITTEE ON EXAMINATIONS TO USE ANY TESTING PRODUCT DEVELOPED BY THE NATIONAL CONFERENCE OF BAR EXAMINERS; WOULD CLARIFY THAT APPLICANTS FOR ADMISSION ON MOTION ARE NOT ELIGIBLE FOR CONDITIONAL ADMISSION; AND WOULD INCORPORATE AND CLARIFY TIME LIMITATIONS FOR ADMISSION ON MOTION AND ADMISSION BY EXAMINATION

ORDERED: Petition to Amend Rules 34-37 of the Rules of the Supreme Court of Arizona = ADOPTED as modified, effective January 1, 2011.

FURTHER ORDERED: Proposed Rules 36(e)(7) and 36(f)(7) = CONTINUED.

[Click here for separate order](#)

**R-10-0023**  
(25)

**RULE 42, RULES OF THE SUPREME COURT**

WOULD AMEND THE RULES OF PROFESSIONAL CONDUCT TO PERMIT A LAWYER REFERRAL SERVICE TO CHARGE A PERCENTAGE OF LEGAL FEES EARNED BY PARTICIPATING LAWYERS

ORDERED: Motion to Amend Supreme Court Rule 42 on an Emergency Basis = ADOPTED as modified, on a permanent basis.

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No. 3136

**R-09-0020**  
(26)

**RULE 107, RULES OF PROCEDURE FOR JUVENILE COURT**

WOULD AMEND RULE 107, ARIZ. R.P. JUV. CT., TO CONFORM TO RECENT CHANGES TO THE CIVIL AND CRIMINAL PROCEDURAL RULES ESTABLISHING WORD LIMITS FOR PETITIONS FOR REVIEW AND REQUIRING A CERTIFICATE OF COMPLIANCE WITH THOSE LIMITS

ORDERED: Petition to Amend Rule 107, Arizona Rules of Procedure for the Juvenile Court = ADOPTED, effective January 1, 2011.

[Click here for separate order](#)

**R-09-0026**  
(27)

**RULE 6, RULES OF PROTECTIVE ORDER PROCEDURE**

WOULD AMEND RULE 6(C) TO CONFORM WITH AMENDMENT TO A.R.S. 13-3601(A)

ORDERED: Petition to Amend Rule 6 of the Arizona Rules of Protective Order Procedure = ADOPTED on a permanent basis.

[Click here for separate order](#)

**R-09-0027**  
(28)

**RULES 41, 47, 47.1, et al, RULES OF JUVENILE COURT**

WOULD CONFORM THE RULES TO STATUTORY CHANGES EFFECTIVE SEPTEMBER 30, 2009

ORDERED: Petition to Amend Rule 41, Rule 47, Rule 47.1, Rule 50, Rule 52, Rule 58, and Rule 68 = ADOPTED on a permanent basis.

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**R-09-0042**  
(29)

**RULES 5.1, 47, 67(b), 69, 74 & 78, FAMILY LAW PROC**

WOULD, AMONG OTHER THINGS, PROVIDE PROCEDURE FOR CONSOLIDATION OF DEPENDENCY AND CUSTODY PROCEEDINGS; MAKE NON-PARENT CUSTODY CASES SUSCEPTIBLE TO TEMPORARY ORDERS; PRECLUDE COUNSEL FROM ATTENDING PARENTING COORDINATOR MEETINGS; AND MAKE OFFERS OF JUDGMENT

ORDERED: Petition to Amend Rules 5.1, 47, 67(b), 69, 74 and 78 Arizona Rules of Family Law Procedure = ADOPTED as modified, effective January 1, 2011.

[Click here for separate order](#)

**R-09-0043**  
(30)

**RULE 48, RULES OF JUVENILE PROCEDURE**

WOULD CONFORM RULE 48(C) TO PREVIOUS AMENDMENTS TO RULE 41 CONCERNING OPEN COURT PROCEEDINGS AND NOTICE REQUIREMENTS

ORDERED: Petition to Amend Rule 48 = ADOPTED as modified, effective September 2, 2010.

FURTHER ORDERED: Request for Additional Technical and Conforming Amendments to Rules 41, 52 and 54 = ADOPTED, effective September 2, 2010.

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No. 3136

**R-09-0045**  
(31)

**RULE 6(E)(4)(e)(2), RULES OF PROTECTIVE ORDER PROC**

WOULD REPEAL AS UNCONSTITUTIONAL PROVISION AUTHORIZING JUDICIAL OFFICER TO PROHIBIT DEFENDANT FROM POSSESSING, PURCHASING, OR RECEIVING FIREARMS AND AMMUNITION FOR THE DURATION OF AN INJUNCTION AGAINST HARASSMENT

ORDERED: Petition to Repeal Rule 6(E)(4)(e)(2) of the Arizona Rules of Protective Order Procedure, Supreme Court No. R-06-0032 = REJECTED.

**R-10-0013**  
(32)

**RULE 1(D)(4), RULES OF PROTECTIVE ORDER PROCEDURE**

WOULD PERMIT COURT TO DIRECT A DEFENDANT TO REMAIN IN THE COURTROOM FOR A PERIOD OF TIME AFTER THE PLAINTIFF IS EXCUSED ONLY IN CASES IN WHICH AN ORDER OF PROTECTION OR AN INJUNCTION AGAINST HARASSMENT REMAINS IN FORCE

ORDERED: Petition to Amend Rule 1(D)(4) in the Arizona Rules of Protective Order Procedure, Supreme Court No. R-06-0032 = REJECTED.

**R-10-0014**  
(33)

**RULE 1(B)(1)(d), RULES OF PROTECTIVE ORDER PROC**

WOULD REPLACE THE TERM "VICTIM" IN THE RULES WITH "PLAINTIFF" OR, IN APPROPRIATE SITUATIONS, "ALLEGED VICTIM"

ORDERED: Petition to Repeal Rule 1(B)(1)(d) and Amend Nine Subsequent Rules that use the Term "Victim" in the Arizona Rules of Protective Order Procedure, Supreme Court No. R-06-0032 = REJECTED.

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**R-10-0020**  
(34)

**RULES 2, 6, 7, 9, 10, 17, 33, 35, 36, 38, PROBATE**

WOULD CONFORM PROBATE RULES TO RECENT STATUTORY CHANGES; ENSURE THE PROBATE RULES COMMITTEE'S ORIGINAL INTENT IS MET; AND ADDRESS ISSUES THAT HAVE ARISEN IN THE IMPLEMENTATION OF THE RULES

ORDERED: Amended Petition to Amend Rules 2, 6, 7, 9, 10, 17, 33, 35, 36 and 38, Arizona Rules of Probate Procedure = ADOPTED as modified, effective January 1, 2011.

[Click here for separate order](#)

**R-10-0003**  
(35)

**RULE 13.1(c), RULES OF CRIMINAL PROC**

WOULD CHANGE THE REFERENCE TO RULE 16.6(b) (RELATING TO MOTIONS TO DISMISS BASED ON INSUFFICIENCY OF THE INDICTMENT, INFORMATION, OR COMPLAINT) TO 16.1(b) (RELATING TO THE TIMING OF PRETRIAL MOTIONS GENERALLY)

ORDERED: Sua Sponte Petition to Amend Rule 13.1(c), Arizona Rules of Criminal Procedure = ADOPTED, effective January 1, 2011.

[Click here for separate order](#)

**R-10-0004**  
(36)

**RULE 31.12, RULES OF CRIMINAL PROC et al**

WOULD REQUIRE PARAGRAPH NUMBERS IN PAPER-FILED DOCUMENTS, AS REQUIRED BY RULE 124(f), RULES OF THE SUPREME COURT, FOR ELECTRONICALLY-FILED DOCUMENTS

ORDERED: Sua Sponte Petition to Amend Rule 31.12, Arizona Rules of Criminal Procedure, and Rule 6(c), Rules of Civil Appellate Procedure = CONTINUED.

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No. 3136

**R-10-0005**  
(37)

**RULE 31.15(b), RULES OF CRIMINAL PROC**

WOULD CONFORM THE RULE TO A.R.S. Sec. 13-4039, AS AMENDED IN 1995

ORDERED: Sua Sponte Petition to Amend Rule 31.15(b), Arizona Rules of Criminal Procedure = ADOPTED, effective January 1, 2011.

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**R-10-0006**  
(38)

**RULE 7(e), RULES OF PROC FOR SPECIAL ACTIONS**

WOULD CONFORM THE SPECIAL ACTION RULES TO THE CRIMINAL AND CIVIL APPELLATE RULES, SETTING A PAGE LIMITATION FOR HAND-WRITTEN DOCUMENTS AND REQUIRING A CERTIFICATION THAT SAID DOCUMENTS DO NOT EXCEED THE SPECIFIED PAGE LIMIT

ORDERED: Sua Sponte Petition to Amend Rule 7(e), Rules of Procedure for Special Action = ADOPTED as modified, effective January 1, 2011.

[Click here for separate order](#)

**R-10-0007**  
(39)

**RULE 8(b), SPECIAL ACTIONS PROC**

WOULD ELIMINATE THE PROVISION AUTHORIZING A PETITION FOR SPECIAL ACTION TO BE FILED IN THE SUPREME COURT TO CHALLENGE THE GRANT OR DENIAL OF SPECIAL ACTION RELIEF BY THE COURT OF APPEALS WHEN EXCEPTIONAL CIRCUMSTANCES EXIST; WOULD FURTHER PROVIDE THAT A PARTY MAY REQUEST AN ORDER EXPEDITING A PETITION FOR REVIEW OR MAY FILE A MOTION FOR STAY

ORDERED: Sua Sponte Petition to Amend Rule 8(b), Rules of Procedure for Special Actions = ADOPTED as modified, effective January 1, 2011.

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**R-10-0008**  
(40)

**RULE 111(g), RULES OF THE SUPREME COURT**

WOULD GIVE THE SUPREME COURT THE OPTION OF DEPUBLISHING EITHER A PORTION OF A COURT OF APPEALS' OPINION OR THE ENTIRE OPINION

ORDERED: Sua Sponte Petition to Amend Rule 111(g), Rules of the Supreme Court = ADOPTED as modified, effective January 1, 2011.

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**R-10-0009**  
(41)

**RULE 1/PC FORM 1, RULES OF SUPREME COURT**

WOULD CLARIFY THAT THERE IS NO FEE FOR FILING A WRIT FOR HABEAS CORPUS

ORDERED: Sua Sponte Petition to Amend Rule 1 and Post Conviction Form No. 1, Rules of the Supreme Court = ADOPTED, effective January 1, 2011.

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**R-09-0044**  
(42)

## **RULES 46-74, RULES OF THE SUPREME COURT**

WOULD AMEND THE RULES GOVERNING ATTORNEY DISCIPLINE AND DISABILITY ADMINISTRATION TO INCLUDE THE BEST PRACTICES OF THE COLORADO ATTORNEY DISCIPLINE SYSTEM

ORDERED: Sua Sponte Motion to Amend Rules 70 and 71, Rules of the Supreme Court = ADOPTED as modified, effective January 1, 2011.

[Click here for separate order](#)



**The foregoing action was taken by the Arizona Supreme Court on Tuesday, August 31, 2010.**

\_\_\_\_\_ **Date:** \_\_\_\_\_  
**Rebecca White Berch, Chief Justice**