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**IN THE SUPREME COURT**

**STATE OF ARIZONA**

PETITION TO AMEND RULE 1, ) Supreme Court No. R-09-00\_\_\_\_\_  
UNIFORM RULES OF PROCEDURE )  
FOR COMMISSIONS ON APPELLATE )  
AND TRIAL COURT APPOINTMENTS, )  
AND THE APPLICATION FOR )  
NOMINATION TO JUDICIAL OFFICE )

The State Bar of Arizona respectfully petitions this Court, pursuant to Rule 28, Rules of the Arizona Supreme Court, to amend Rule 1 of the Uniform Rules of Procedure for Commissions on Appellate and Trial Court Appointments and the Application for Nomination to Judicial Office, as are shown in Appendix "A."

**I. Proposed Rule 1**

Rule 1 of the Uniform Rules of Procedure for Commissions on Appellate and Trial Court Appointments describes the purpose of the judicial nominating process, including the need for the Commission on Appellate Court Appointments and the Commissions on Trial Court Appointments to consider the diversity of the state's population, in keeping with Article VI, Section 36 of the Arizona Constitution. 17B A.R.S. App. And Tr.Ct.Appointments Comm.Unif. Rules of Proc., R. 1. Rule 1 delineates the diversity factors of ethnicity, race, and gender; but fails to prohibit discrimination on other diversity factors that have been protected by the State Bar of

1 Arizona. *Id.* Specifically, Rule 1 is out-of-date with changes made between 2002 and  
2 2004 to the codes of conduct applicable to attorneys and judges and to the State Bar’s  
3 Diversity Policy. Ariz. R. Sup. Ct. 42, ER 8.4(d) cmt. n. 3 (discrimination based on  
4 “race, sex, religion, national origin, disability, age, sexual orientation, gender identity  
5 or socioeconomic status” may constitute a violation of Ethical Rule 8.4.); Ariz. R.  
6 Sup. Ct. 81, Canon 3(B)(5) (judges must act impartially with respect to “race, sex,  
7 religion, national origin, disability, age, sexual orientation or socioeconomic status.”);  
8 *id.*, Canon 4(A) cmt. (judges may not make “[e]xpressions of bias or prejudice . . . on  
9 the basis of . . . race, sex, religion, national origin, disability, age, sexual orientation or  
10 socioeconomic status.”); State Bar of Arizona Diversity Policy, *found at*  
11 *myazbar.org/SecComm/DiversityPolicy2004.pdf* (“The State Bar of Arizona is  
12 committed to . . . assuring the rights of all members within the organization without  
13 discrimination based on race, ethnicity, religion, disability, gender, sexual orientation,  
14 gender identity and expression or geography . . .”).

15           The State Bar believes that diversity, as mandated by Article VI, Section 36 of  
16 the Arizona Constitution, can only be accomplished when discrimination against all  
17 diversity factors is prohibited in the judicial selection process. The proposed  
18 amendment makes a similar change to Rule 1 of the Uniform Rules of Procedure for  
19 Commissions on Appellate and Trial Court Appointments as has earlier been made to  
20 the codes of conduct and the State Bar’s Diversity Policy, bringing the judicial  
21 selection process in line with the conduct expected of attorneys and judges and  
22 enhancing the overall diversity and prestige of the Arizona courts.

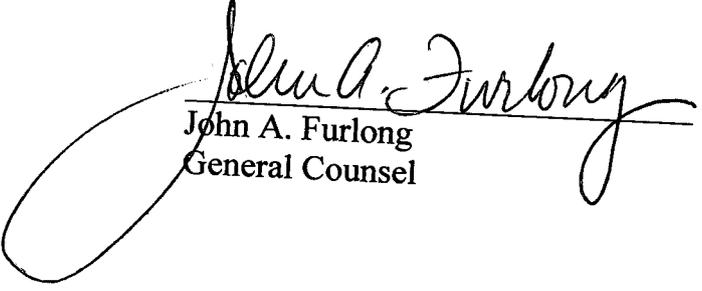
1 **II. Proposed Amendment to the Application for Nomination to Judicial**  
2 **Office**

3 Rule 7(a) of the Uniform Rules of Procedure for Commissions on Appellate  
4 and Trial Court Appointments requires all judicial applicants to fill out an  
5 “Application for Nomination to Judicial Office.” 17B A.R.S. App. and  
6 Tr.Ct.Appointments Comm.Unif. Rules of Proc., R. 7(a). Rule 7(d) specifies that,  
7 [e]xcept as provided in subsection (2),” candidate and third-party information related  
8 to the application is presumed to be available to the public. *Id.* §7(d). Subsection  
9 7(d)(2) specifies that certain information will remain confidential, and will be  
10 shredded after six months, including information provided “in response to questions  
11 contained in Section II of the application form.” *Id.* §7(d)(2). Thus, Section II of any  
12 Application for Nomination to Judicial Office collects personal information that will  
13 not be released to the public. The State Bar proposes adding an optional item to the  
14 approved application form for Section II, Personal Information, allowing candidates  
15 to indicate any other factors that may be relevant to diversity should they choose to do  
16 so. Thus, applicants who wish non-obvious diversity factors to be considered may  
17 have them considered in confidence, while applicants who do not wish non-obvious  
18 diversity factors to be considered need not supply the information. The proposed  
19 amendment will improve the ability of Commissioners to evaluate diverse applicants  
20 by allowing a candidate to confidentially identify personal, as opposed to public,  
21 factors supporting the application, should the applicant wish to do so.  
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1 **III. Conclusion**

2 The Court should amend Rule 1 of the Uniform Rules of Procedure for  
3 Commissions on Appellate and Trial Court Appointments, and the Application for  
4 Nomination to Judicial Office, as shown in Appendix "A."

5 DATED this 18th day of December, 2009.

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8 John A. Furlong  
9 General Counsel

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11 Electronic copy filed with the  
12 Clerk of the Supreme Court of Arizona  
13 this 18th day of December, 2009.

14 by: 

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# **APPENDIX “A”**

## **PROPOSED AMENDMENT TO RULE 1**

*(proposed additional language shown by underscoring and proposed deletions shown by strike-through)*

### **Rule 1. Purpose**

Article VI, Section 36 of the Arizona Constitution provides that when making recommendations for judicial office, the Commission on Appellate Court Appointments "shall consider the diversity of the state's population, however, the primary consideration shall be merit." Similarly, Article VI, Section 41 of the Arizona Constitution provides that the Commissions on Trial Court Appointments "shall consider the diversity of the county's population and the geographical distribution of the residences of the judges throughout the county, however, the primary consideration shall be merit." The goal, therefore, of the judicial nominating process is to select judges who have outstanding professional competence and reputation and who are also sensitive to the needs of and held in high esteem by the communities they serve and who reflect, to the extent possible, the ethnic, racial and gender diversity of those communities. The judicial nominating process shall not discriminate on the basis of religion, national origin, disability, age, sexual orientation, ~~and gender identity or expression, or socioeconomic status.~~ -Competence and diversity among our judges will enhance fairness and public confidence in judicial proceedings.

#### Comment

The judicial nominating process shall not discriminate on the basis of age, except as required by other law. *See, e.g.,* Ariz. Const. art. 6, § 37, which requires a nominee to be "under sixty-five years of age at the time his [or her] name is submitted to the governor," and Ariz. Const. art. 6, § 20, which in most instances requires judges to retire upon reaching the age of seventy.

## **PROPOSED AMENDMENT TO THE APPLICATION FOR NOMINATION TO JUDICIAL OFFICE**

*(proposed additional language shown below to be added in entirety)*

### **Proposed New Item under Section II (Confidential Information) Personal Information**

- X. Other factors relevant to diversity (See Rule 1, Rules of Procedure for the Commissions on Appellate and Trial Court Appointments):