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**IN THE SUPREME COURT STATE OF ARIZONA**

In the Matter of PETITION	)	
TO AMEND RULE 5(c),	)	Supreme Court No. R-_____
ARIZONA RULES OF	)	
CIVIL APPELLATE	)	Petition to Amend Rule 5(c), Arizona Rules
PROCEDURE	)	of Civil Appellate Procedure

**I. SUMMARY OF PROPOSED CHANGES**

We propose that Rule 5(c) of the Arizona Rules of Civil Appellate Procedure (“ARCAP 5(c)”) be amended to follow the same method for the calculation of extra time after service by mail as set forth in Rule 6(e) of the Arizona Rules of Civil Procedure (“ARCP 6(e)”), as amended effective 1/1/11.

Pursuant to ARCAP 5(c), when service is by mail, five days are added directly to the prescribed period of time. The rule provides:

Whenever a party is required or permitted to do an act within a prescribed period after the filing of a paper and the service thereof by another party, and the paper is served by mail, 5 days shall be added to the prescribed period. (Emphasis added.)

Effective 1/1/11, ARCP 6(e) provides that 5 calendar days are added to account for service by mail, electronic or other means after the prescribed period would otherwise expire under ARCP 6(a). Effective 1/1/11, ARCP 6(e) states:

Whenever a party has the right or is required to do some act or take some proceedings within a prescribed period after the service of a notice or other paper upon the party and the notice or paper is served by a method authorized by Rule 5(c)(2)(C) or (D), five calendar days are added after the prescribed period would otherwise expire under Rule 6(a). This rule has no application to the distribution of notice of entry of judgment required by Rule 58(e). (Emphasis added.)

We further note that ARCAP 5(a) provides that in computing any period of time, ARCP 6(e) shall apply. ARCAP 5(a) provides:

In computing any period of time prescribed by these rules, or by an order of court, or by any applicable statute, the provisions of Ariz. Rules Civ. Proc. 6(a) and (e), or Ariz. Rules Fam. L. Proc. 4(A) and (D), shall apply. (Emphasis added.)

ARCP 6(e) was amended effective 1/1/11 "to remove any doubt as to the method for extending time to respond after service by mail or other means, including electronic means, if consented to in writing by the recipient or ordered by the court." See ARCP 6, Comment to the 2011 Amendment, paragraph 1. However, despite the change to ARCP 6(e), ARCAP 5(c) was not amended.

## II. TEXT OF PROPOSED CHANGE TO ARCAP 5(c)

Whenever a party is ~~required or permitted to do an act~~ has the right or is required to do some act or take some proceedings within a prescribed period after ~~the filing of a paper and the service thereof of a notice or other paper upon the party~~ by another party, and the notice or paper is served by mail, 5 calendar days shall be added to ~~after the prescribed period would otherwise expire under Ariz. Rules Civ. Proc. 6(a).~~

DATED this 3rd day of January, 2011.

  
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Christina C.W. Comer, on behalf of  
CompuLaw LLC