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**IN THE SUPREME COURT
STATE OF ARIZONA**

PETITION TO AMEND RULE 9,
ARIZONA RULES OF CIVIL
APPELLATE PROCEDURE

Supreme Court No. R-12-_____

**Petition to Amend Rule 9, Arizona
Rules of Civil Appellate Procedure**

The State Bar of Arizona, pursuant to Arizona Supreme Court Rule 28, respectfully petitions this Court to amend Rule 9 of the Arizona Rules of Civil Appellate Procedure (“ARCAP”) to include a subsection covering the procedure for suspending an appeal and temporarily revesting jurisdiction in the superior court.

I. Background and Summary of Proposed Changes

The Federal Rules of Civil and Appellate Procedure include rules governing the procedure to revest jurisdiction in the trial court for relief when the district court lacks jurisdiction due to a pending appeal. *See* Fed. R. Civ. P. 62.1 and Fed. R. App. P. 12.1. Arizona has a similar procedure for revesting jurisdiction in the trial court while an appeal is pending, but that procedure is presently set forth only in the case law. *See, e.g., In re Condry’s Estate*, 117 Ariz. 566, 568, 574 P.2d 54, 56 (App. 1977). The petition proposes to revise ARCAP 9 to include a provision (ARCAP 9.1) that codifies Arizona’s existing procedure to stay an appeal and revest jurisdiction in the superior court for hearing on an issue while an appeal is pending.

1 **A. Arizona’s Existing Procedure**

2 The filing of a notice of appeal generally divests the superior court of
3 jurisdiction over an action. *See Rodriquez v. Williams*, 104 Ariz. 280, 281-82, 451
4 P.2d 609, 610-11 (1969). Occasionally, however, allowing the superior court to
5 resolve an issue over which it otherwise lacks jurisdiction due to an appeal furthers
6 judicial economy and justice. For example, a ruling on a motion pursuant to Rule 60,
7 Ariz. R. Civ. P., may moot an appeal. However, because a Rule 60 motion does not
8 toll the appeal time, a party may be required to file a notice of appeal before the
9 superior court is able to rule on such a motion. *See Budreau v. Budreau*, 134 Ariz.
10 539, 541, 658 P.2d 192, 194 (App. 1982) (“When appellee filed his notice of
11 appeal . . . , this divested the trial court of jurisdiction to consider the Rule 60(c)
12 motion.”). In such circumstances, a party may request the court of appeals to stay the
13 appeal and revest jurisdiction in the superior court so that the lower court may resolve
14 the pending motion. *Id.* (“Appellee’s remedy while his appeal would be pending
15 would be to apply to this court for suspension of the appeal and revestment of
16 jurisdiction in the trial court for the specific purpose of hearing and determining the
17 Rule 60(c) motion.”).

18 The court of appeals also routinely stays appeals and reverts jurisdiction in the
19 superior court so that it may sign a final order or take other ministerial steps that
20 should have been completed before the appeal was taken. *See, e.g., Eaton Fruit Co. v.*
21 *California Spray-Chemical Corp.*, 102 Ariz. 129, 130, 426 P.2d 397, 398 (1967)
22 (suspending the appeal “pending application by appellant in the superior court for a
23 formal written order denying its motion for a new trial.”).

24 **B. Comparison to Federal Rule**

25 The Federal Rules of Civil and Appellate Procedure include provisions
26 governing the procedure to allow a district court to decide a motion over which it
27 otherwise lacks jurisdiction during an appeal. Pursuant to Federal Rule of Civil
28 Procedure 62.1, a party may file a motion in district court and ask the district court to

1 “state either that it would grant the motion if the court of appeals remands for that
2 purpose or that the motion raises a substantial issue.” Fed. R. Civ. P. 62.1. Pursuant
3 to Rule 12.1, Federal Rules of Appellate Procedure, the movant must then notify the
4 circuit clerk if the district court states that it would grant the motion or that the motion
5 raises a substantial issue. *See* Fed. R. App. P. 12.1 and Fed. R. Civ. P. 62.1(b). “The
6 district court may decide the motion if the court of appeals remands for that purpose.”
7 Fed. R. Civ. P. 62.1(c).

8 In contrast to the multi-step process set forth in the federal rules, the procedure
9 adopted by Arizona’s appellate courts merely requires a party to show good cause for
10 the court of appeals to revest jurisdiction in the superior court. *See In re Condry’s*
11 *Estate, supra*, 117 Ariz. at 568, 574 P.2d at 56 (“The discretion of the appellate court
12 in this regard may be invoked by the filing of a motion showing good cause requesting
13 that the appeal be suspended and that jurisdiction be revested in the trial court for a
14 limited period for the specific purpose of hearing and determining the matters
15 specified.”). Upon an adequate showing, the court of appeals typically reverts
16 jurisdiction in the superior court and specifies that jurisdiction will revest in the court
17 of appeals after the superior court acts or by a specified deadline, whichever first
18 occurs. In practice, Arizona’s procedure is simpler and takes less time than the multi-
19 step federal practice.

20 C. Proposed Rule ARCAP 9.1

21 The State Bar believes that Arizona should adopt a rule governing the process
22 for suspending an appeal and revesting jurisdiction in the superior court. Such a rule
23 would help parties in litigation who are unfamiliar with Arizona’s case-law-based
24 procedure. Rather than adopt the related federal rules, however, the State Bar
25 proposes codifying the existing Arizona practice into a rule. The federal rules
26 needlessly complicate the procedure by requiring an initial determination by the trial
27 court. In practice, this multi-step procedure causes unnecessary delay and imposes
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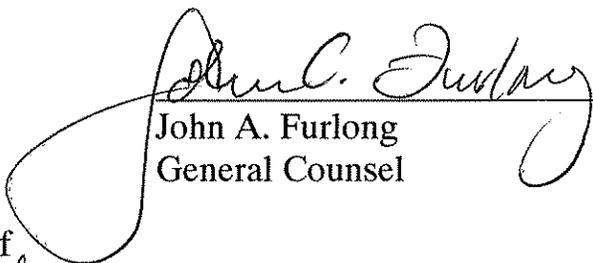
1 additional work on the trial court. In contrast, Arizona's existing practice works well,
2 moves cases along, and is the procedure familiar to Arizona courts and practitioners.

3 In preparing this proposed rule, the State Bar, through its Civil Practice
4 Committee and Appellate Practice Section, consulted with the Court of Appeals and
5 received positive feedback and suggestions which ultimately culminated in the
6 proposed rule.

7 **II. CONCLUSION**

8 The State Bar respectfully submits that the Court should adopt proposed
9 Arizona Rule of Civil Appellate Procedure 9.1.

10 DATED this 2nd day of April, 2012.

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13 
14 John A. Furlong
15 General Counsel

16 Electronic copy filed with the Clerk of
17 the Supreme Court of Arizona this 3rd
18 day of April, 2012.

19 By: Kathleen A. Lundgren
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APPENDIX A

Proposed Draft Rule 9.1, Arizona Rules of Civil Appellate Procedure

The appellate court may, upon its own initiative or upon stipulation or motion for good cause shown, suspend the appeal and revest jurisdiction in the superior court for the purpose of allowing it to consider and determine specified matters. The appellate court's order may include other terms and conditions, such as a date certain for automatic reinstatement of the appeal. The filing of a stipulation or motion under this rule does not extend any deadline in the appellate court or superior court.

Proposed Comment

The rule codifies the existing practice for revesting jurisdiction in the superior court to decide matters over which it would otherwise lack jurisdiction. *See, e.g., In re Condry's Estate*, 117 Ariz. 566, 568, 574 P.2d 54, 56 (App. 1977).