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

10 PETITION TO AMEND UNIFORM  
11 RULES OF PROCEDURE FOR THE  
12 COMMISSIONS ON APPELLATE  
13 AND TRIAL COURT APPOINTMENTS

Supreme Court No. R-12-0035

**Comment of the State Bar of Arizona  
in Opposition to Amend Uniform  
Rules of Procedure for the  
Commissions on Appellate and Trial  
Court Appointments**

14 The State Bar of Arizona opposes the proposal to require that judicial  
15 applicants take a “competitive examination,” either as a substitute for or addition to  
16 the lengthy and transparent screening and selection process already detailed in Rule  
17 8, Uniform Rules of Procedure for Commissions on Appellate and Trial Court  
18 Appointments.

19 The rule-change petition proposes replacing the process with a “competitive  
20 examination,” the results of which “shall be considered by the Commission together  
21 with all other qualifications possessed by the applicant.” Existing Rule 8, however,  
22 details how qualified applicants are selected for commission interviews, including  
23 allowing input from a variety of interested parties as well as a public hearing, public  
24 discussion by the commissioners, and a public vote on which applicants will be  
25 selected for an interview. This rule-change proposal apparently envisions no public  
proceeding.

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1 Even if the proposal is simply to add a “competitive examination” to the  
2 current process – and not supplant the existing process – adding such a requirement is  
3 meaningless and would not provide an objective measure of judicial quality or  
4 potential.

5 Besides the opaque nature of the proposed process, the idea that a test would  
6 reveal applicants who have the qualities required for judicial excellence is far-  
7 fetched. Test results may be an objective measure of something, but not the qualities  
8 of an excellent judge, who has been described as one who:

9 “adheres to high standards of integrity, honesty, and fairness. An  
10 excellent judge also possesses a good judicial temperament,  
11 hallmarked by civility, courtesy, dignity, patience, tact,  
12 understanding, compassion, and a personality free from arrogance,  
13 bias, and prejudice. In addition, an excellent judge is a skilled  
14 communicator who not only can clearly convey thoughts and ideas,  
15 but who also possesses the ability to listen. An excellent judge has  
broad world-life experiences, a strong foundation of legal  
knowledge, and a varied background of legal experience. Finally, an  
excellent judge is accountable, decisive, and can effectively manage  
a caseload and a courtroom.”

16 *See* “What’s the Measure of Judicial Excellence?,” the Subcommittee on the Criteria  
17 for an Excellent Judge, Illinois State Bar Association, Bench and Bar Section  
18 Council, October 2002. The appointments commissions already seek these qualities  
19 through an exhaustive process that does not involve an examination.

20 In addition, a claimed justification for an examination requirement – that  
21 “judges will not have to spend as much time researching areas of the laws or the rules  
22 that they may be unfamiliar with” – is simply speculation. Even judges intimately  
23 familiar with a particular practice area need to research the law. A “competitive  
24 examination” also could not possibly test judicial applicants on every possible type of  
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1 legal matter on which they may rule.

2 The petition also proposes that the “competitive examination” “could be either  
3 the Arizona State Bar Examination or an equivalent bar examination.” Judicial  
4 applicants to whom this “competitive examination” requirement would apply already  
5 would have taken the Arizona bar examination or, if admitted on motion, an  
6 equivalent bar examination. Adding a “competitive examination” requirement thus is  
7 at best duplicative.

8 Even if the proposal to add a “competitive examination” had substantive  
9 merit, it raises a host of procedural questions. How often could an applicant take the  
10 test? How recently would an applicant have had to take the test? Who will pay for the  
11 testing process? And does any test exist that provides an objective measure of some  
12 of the qualities sought in an excellent judge?

13 The proposal should be rejected.

14 RESPECTFULLY SUBMITTED this 29<sup>th</sup> day of April  
15 2013.

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By: Kathleen A. Lundgren