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

9 In the Matter of:

Supreme Court No. R-12-0029

10 PETITION TO PROMULGATE RULE
11 412, ARIZONA RULES OF EVIDENCE

**Comment to Petition to Promulgate
Rule 412, Arizona Rules of Evidence**

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14 Undersigned counsel opposes this Petition to add Rule 412, Arizona Rules of
15 Evidence (hereinafter "Ariz.R.Evid.") for the reasons enumerated in Comments
16 submitted by the Arizona Association of Defense Counsel (AADC) and the Arizona
17 State Bar.

18 This Petition runs contrary to the well-established principles of proof in
19 negligence cases. If adopted, plaintiffs will no longer have the burden of proof to
20 show causation and damages. Rather, the burden will be shifted to defendants to
21 prove those elements (i.e. that the alleged negligence in fact caused the damages set
22 forth in the plaintiff's medical bills). Thus, the proposed Rule 412 will place an
23 undue burden on defendants faced with unreasonable medical treatment and charges.

24 The Petitioner argues that the benefit of Rule 75(e), ARCP, which allows the
25 admission of medical bills into evidence without further proof during Compulsory

1 Arbitration proceedings, should be extended to all civil cases. However, Rule 75(e),
2 ARCP, only calls for the admission of medical bills and records into evidence; not
3 the presumption of their reasonableness. Simply said, the proposed Rule 412 goes
4 much further than our current rules, changes the traditional common law principles of
5 negligence law, and improperly shifts the burden of proof to defendants.

6 Furthermore, the Petitioner cites to concerns regarding expert fees required to
7 lay foundation and show reasonableness of medical treatment and bills in “smaller
8 cases.” However, this concern is illusory as it has already been covered by Rule
9 75(e), ARCP, which would presumably be applicable to the “smaller cases.”

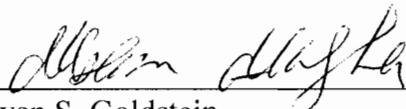
10 Lastly, Arizona has long held a public policy that highly favors arbitration as a
11 method of resolving disputes. Rule 75(e), ARCP, encourages parties with “smaller
12 cases” to submit their case to Compulsory Arbitration in order to avoid unnecessary
13 expert costs. On the other hand, adoption of the proposed Rule 412 would have the
14 unintended consequence of more plaintiffs opting for jury trials as opposed to
15 Compulsory Arbitration.

16 **CONCLUSION**

17 For the reasons set forth above, and the ones raised by others in opposition of
18 the proposed rule, counsel respectfully opposes this Petition and request that it be
19 rejected.

20 RESPECTFULLY SUBMITTED this 2nd day of May, 2013.

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By 
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COPY of the foregoing emailed this
2nd day of May, 2013 to:

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