

Thomas C. Horne
Attorney General
Firm State Bar No. 14000
Robert L. Ellman (State Bar No. 014410)
Solicitor General
Paula S. Bickett (State Bar No. 006821)
Chief Counsel, Civil Appeals
1275 W. Washington
Phoenix, AZ 85007
Phone: (602) 542-3333

ARIZONA SUPREME COURT

In the Matter of:

Supreme Court No. R-14-0017

PETITION TO AMEND THE
ARIZONA RULES OF CIVIL
APPELLATE PROCEDURE

**ATTORNEY GENERAL’S COMMENT
SUPPORTING THE PROPOSED
AMENDMENTS TO ARIZONA RULES
OF CIVIL APPELLATE PROCEDURE
AND WITHDRAWAL OF ATTORNEY
GENERAL’S MOTION TO
RECONSIDER THIS COURT’S
DECISION TO ALLOW LATE FILING**

Under Arizona Supreme Court Rule 28(d), the Attorney General submits the following comment supporting the revised proposed amendments to the Arizona Rules of Civil Appellate Procedure attached to the Amended Petition filed on May 20, 2014. The revised proposed amendments include stylistic amendments to make the appellate rules more comprehensible and user-friendly and substantive amendments to reflect changes in the appellate courts and practice. The Petitioner notes that the new proposed amended rules “substantially improve the March 21 version.” Amended Petition at 12. The Attorney General agrees that the proposed

amended rules are more comprehensible and user-friendly and that the new proposed amended rules substantially improve the March 21 version.

Although the Attorney General supports the Amended Petition as a whole, he particularly supports the following substantive changes.

Rule 13(a)(7)(B): Requirement Concerning Standard of Review. The March 21 version of Rule 13(a)(7)(B) had deleted the requirement that the standard of appellate review be supported by citation of appropriate legal authority. The new proposed amendment leaves that requirement in the rule. This requirement not only provides the appellate court and other parties with appropriate authority, it also requires the brief writer to verify that he or she has accurately identified the appropriate standard and will use that standard in making his or her argument.

Rule 16: Amicus Curiae. The new proposed Rule 16(a) deletes the statement in the March 21 version that an “amicus curiae’s brief should not advocate a particular party’s case.” The Attorney General files amicus curiae briefs that support a party’s position because the State has an interest that is similar to the party’s interest and therefore has an interest in letting the appellate court know that its ruling will affect the State. When the Attorney General’s Office (or any other entity) files an amicus brief that advocates a certain interpretation of the law, its position will often naturally favor one side over the other, and it would be less helpful to the court if the rule prohibited the brief from demonstrating how that

argument would apply in the case at hand. The language of the March 21 version would have invited an argument that the State acted inappropriately in supporting a particular party's position.

Rule 21: Attorney's Fees and Costs. The new proposed Rule 21(a) deletes the provision allowing a party to claim attorneys' fees by motion instead of in the brief. The Attorney General agrees that it is more efficient to require parties to raise their request for attorneys' fees in the briefs.

Rule 23: Petition for Review. The new proposed Rule 23(k) includes a provision stating that when the Supreme Court grants review, its order must specify the issues on which it grants review and whether the Supreme Court "will consider issues raised in, but not decided by, the Court of Appeals." The Attorney General supports this provision because it gives appellate practitioners necessary input with regard to relevant supplemental briefing and preparation for oral argument.

The Attorney General also supports the inclusion of the language in new proposed Rule 23(k)(3) that provides that the Supreme Court may not schedule oral argument less than 30 days after the deadline for filing supplemental briefs. Indeed, scheduling the oral argument at least 60 days after the deadline for filing supplemental briefs or requiring the Court to give the parties more than 20 days within which to file the supplemental briefs would be even better. When the Supreme Court grants review, it typically gives the parties 20 days within which to

file supplemental briefs—this is an extremely short time period especially given that it is simultaneous briefing and thus the last opportunity for the parties to address the Court before oral argument. If a party needs to request an extension for filing its supplemental brief, there is not much flexibility when the oral argument is scheduled so close to the extended deadline for filing the brief, especially if amici curiae also wish to file a brief before oral argument.

For these reasons, the Arizona Attorney General supports Petition No. R-14-0017.

WITHDRAWAL OF MOTION TO RECONSIDER

After Petitioner filed the March 21 version of the proposed amendments to ARCAP, the Attorney General filed his Motion to Reconsider This Court's Decision to Allow Late Filing, Truncate Comment Period, and Consider the Petition in the 2014 Cycle on April 17, 2014. After filing the Motion, the Attorney General met with Petitioner and provided informal comments and input with regard to the proposed rules. The Attorney General therefore withdraws his Motion to Reconsider.

Respectfully submitted this 13th day of June, 2014.

Thomas C. Horne
Attorney General

s/Paula S Bickett
Robert L. Ellman
Solicitor General
(State Bar Number 014410)
Paula S. Bickett
Chief Counsel, Civil Appeals
(State Bar Number 006821)
Firm Bar No. 14000
1275 W. Washington
Phoenix, Arizona 85007
Telephone: (602) 542-3333

Copy of the foregoing comment has
been electronically filed this
13th day of June, 2014 with:

Clerk of the Court
Arizona Supreme Court
1501 W. Washington
Phoenix, AZ 85007

Copy of the foregoing emailed
this 13th day of June, 2014to:

David K. Byers, Administrative Director
Administrative Office of the Courts
1501 W. Washington St., Ste. 411
Phoenix, Arizona 85007
Petitioner

/s Elizabeth Gordon
#464566