

1 **WILLIAM G. MONTGOMERY**  
2 **MARICOPA COUNTY ATTORNEY**  
3 **(FIRM STATE BAR NO. 00032000)**

4 **MARK FAULL**  
5 **CHIEF DEPUTY**  
6 **301 WEST JEFFERSON STREET, SUITE 800**  
7 **PHOENIX, ARIZONA 85003**  
8 **TELEPHONE: (602) 506-3800**  
9 **(STATE BAR NUMBER 011474)**

10 **IN THE SUPREME COURT OF STATE OF ARIZONA**

11 **PETITION TO MODIFY RULE**  
12 **5.1(a), ARIZONA RULES OF CIVIL**  
13 **PROCEDURE**

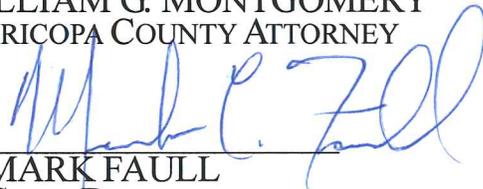
R-16-\_\_\_\_\_

MARICOPA COUNTY ATTORNEY'S  
PETITION TO MODIFY RULE 5.1(a),  
ARIZONA RULES OF CIVIL  
PROCEDURE

14  
15  
16 The Maricopa County Attorney, pursuant to Arizona Supreme Court Rule 28,  
17 hereby petitions this Court to modify Rule 5.1(a) of the Arizona Rules of Civil  
18 Procedure to allow a governmental law office or a public or private law firm that has  
19 appeared as counsel of record to substitute or associate an attorney who is a member  
20 of, associated with, or otherwise employed by that office or firm, by timely filing a  
21 notice of substitution or association with the court.  
22

23  
24 Respectfully submitted this 8 day of January, 2016.

25 **WILLIAM G. MONTGOMERY**  
26 **MARICOPA COUNTY ATTORNEY**

27 By   
28 **MARK FAULL**  
**CHIEF DEPUTY**

1 **INTRODUCTION AND DISCUSSION**

2 Rule 5.1(a)(2), ARCP, establishes the procedure for withdrawal and  
3 substitution as attorney of record. Withdrawal and substitution can be accomplished  
4 only by formal written order. The order must be supported by a written application  
5 setting forth the reasons for it and the name, residence, and telephone number of the  
6 client. If the application bears the written approval of the client, it can be presented *ex*  
7 *parte*. If not, it must be made by motion. There are no exceptions except as provided  
8 by local rule in domestic relations cases. While this procedure is justified when  
9 representation is moved from one firm or office to another, it is unnecessarily  
10 cumbersome if a matter is simply being reassigned from one attorney to another  
11 within the same firm or office. Amendment of Rule 5.1(a)(2), Ariz.R.Civ.P., to  
12 provide that a governmental law office or a private or public law firm that has  
13 appeared as counsel of record may substitute or associate an attorney who is  
14 employed by the office or firm on a case by filing a notice of substitution with the  
15 court would serve two interests. First, it would reduce the administrative burden that  
16 the current rule imposes on an office or firm that wishes to reassign a matter within  
17 the firm. The current rule requires the office or firm to prepare a motion and proposed  
18 order, secure the approval of the client, and file the motion and lodge the order.  
19 Under the proposed amendment the office or firm would have only to prepare and  
20 serve a notice of substitution or association. Second, it would conserve judicial  
21 resources by eliminating the requirement of an order any time one attorney in an  
22  
23  
24  
25  
26  
27  
28

1 office is substituted for another when a case is reassigned within an office or firm.  
2 Under the proposed amendment the court would not be involved at all.

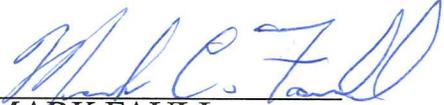
3  
4 This procedure is in use in the U.S. District Court as LRCiv 83.3(b)(4).

5 **CONCLUSION**

6 The proposed amendment will eliminate motions and orders that serve  
7 no real purpose while maintaining a clear and timely record of the identity of the  
8 attorney or attorneys responsible for the matter. It will be particularly valuable when,  
9 as is occasioned by an attorney joining or leaving an office, a large number of cases  
10 must be reassigned at one time.  
11

12  
13 Respectfully submitted this 8<sup>th</sup> day of January, 2016.

14 WILLIAM G. MONTGOMERY  
15 MARICOPA COUNTY ATTORNEY

16 By   
17 MARK FAULL  
18 CHIEF DEPUTY

1            **MODIFIED RULE 5.1, ARIZONA RULES OF CIVIL PROCEDURE**

2  
3            **Rule 5.1. Duties of Counsel**

4            **(a) Attorney of Record: Withdrawal and Substitution of Counsel.**

5            (1) *Attorney of Record: Duties of Counsel.* [No Change].

6            (2) *Withdrawal and Substitution (A) – (C).* [No Change].

7            (D) NOTWITHSTANDING THE PROVISIONS OF PARAGRAPH (A)(2)  
8            OF THIS RULE, A GOVERNMENTAL LAW OFFICE OR A PUBLIC  
9            OR PRIVATE LAW FIRM THAT HAS APPEARED AS COUNSEL OF  
10           RECORD MAY SUBSTITUTE OR ASSOCIATE AN ATTORNEY WHO  
11           IS A MEMBER OF, ASSOCIATED WITH, OR OTHERWISE  
12           EMPLOYED BY THAT OFFICE OR FIRM, BY TIMELY FILING A  
13           NOTICE OF SUBSTITUTION OR ASSOCIATION WITH THE COURT.  
14           THE NOTICE SHALL STATE THE NAMES OF THE ATTORNEYS  
15           WHO ARE THE SUBJECTS OF THE SUBSTITUTION OR  
16           ASSOCIATION AND THE CURRENT ADDRESS AND E-MAIL  
17           ADDRESS OF THE ATTORNEY SUBSTITUTING OR ASSOCIATING.

18  
19  
20  
21           **(b) Responsibility to Court.** [No Change].

22           **(c) Limited Appearance.** [No Change].

23           **(d) Notice of Settlement.** [No Change].