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

11 In the Matter of:

12 **PETITION TO AMEND RULE 17.4,**
13 **RULES OF CRIMINAL**
14 **PROCEDURE**

15 Supreme Court No. R-21-0030

16 **COMMENT OF**
17 **THE ARIZONA PROSECUTING**
18 **ATTORNEYS' ADVISORY**
19 **COUNCIL**

20 The Petition proposes to provide the presiding superior court judge from each
21 county with the authority to set a deadline for plea negotiations. According to the
22 Petition, this would minimize the number of jurors summoned for trials which are
23 resolved by agreement, and would also address pandemic-related logistical and
24 health issues which arise when summoning jurors.

25 The Arizona Prosecuting Attorneys' Advisory Council (APAAC) recognizes
the importance of respecting both jurors and the courts' scarce resources.
Nonetheless, we oppose the Petition for a number of reasons.

Before considering the issue of the timing, we ask this Court to consider the
role of plea-bargaining. Whatever might be the situation in an ideal world, the fact

1 is that the guilty plea and the often concomitant plea bargain are important
2 components of this country's criminal justice system. Properly administered, they
3 can benefit all concerned. *Bordenkircher v. Hayes*, 434 U.S. 357, 361-62 (1978).
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5 Plea bargaining springs from the mutual advantages it brings to both prosecutors and
6 defendants. For the defendant, it can eliminate the exposure to a higher penalty and
7 the burdens of a trial. It can shorten the period of pre-trial incarceration, create
8 certainty as to the outcome of the criminal prosecution and bring quick imposition
9 of release, rehabilitation or incarceration. For the prosecution, it can lead to prompt
10 and early disposition of cases, savings of judicial, prosecutorial and penal resources
11 and early incarceration of those who are a menace to the public, yet sparing those
12 not a public nuisance the corrosive idleness of awaiting trial in jail. *State v. Morse*,
13 127 Ariz. 25, 32 (1980). And as a practical matter, "If every criminal charge were
14 subjected to a full-scale trial, the States and Federal Government would need to
15 multiply by many times the number of judges and court facilities." *Santobello v. New*
16 *York*, 404 U.S. 257, 260 (1971).
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20 Turning to the Petition, the proposed rule change would give presiding
21 superior court judges authority to approve "a county-wide policy that requires the
22 parties to advise the trial judge of a plea agreement sufficiently in advance of trial to
23 avoid assembling a jury panel unnecessarily, except for good cause show." We ask
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1 this Court to consider both the practical and legal issues raised by this proposed
2 amendment.

3 With respect to practicalities, the Petition relies on anecdotal information
4 which fails to establish the scope of the issue. More statistical research is required.
5 How many cases, exactly, are resolved by plea agreement on the eve of trial? In
6 comparison, how many cases are continued for good cause on the eve of trial,
7 regardless of plea bargaining? How many cases will be dismissed or retried as a
8 result of this proposed amendment? Most importantly, will forcing a case to trial or
9 dismissal, or a guilty plea bereft of a bargain, against the wishes of the parties, serve
10 the interests of justice? As a policy matter, do the interests of judicial economy trump
11 the interests of justice?
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15 Moreover, the Petition draws heavily on the challenges of the pandemic to
16 justify a statewide rule change. However, while the circumstances of the pandemic
17 are temporary, a rule change giving judges the authority to set plea negotiation
18 deadlines will permanently impact the parties' rights. Because the Petition gives the
19 presiding superior court judge from each jurisdiction the authority to set an arbitrary
20 plea deadline, it would create a legal system ripe for inconsistent standards regarding
21 when a plea must be entered and what will constitute good cause to override the
22 deadline. Although the Petition asserts a judge-declared plea deadline will assist in
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1 reducing the current case backlog, the likely result will actually be an increase in
2 trials and the need for jurors.

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4 As to the legal issues, first, the proposed amendment in the Petition creates a
5 separation of powers issue. The Arizona State Constitution recognizes that “the
6 powers of the government of the State of Arizona shall be divided into three separate
7 departments...[and] such departments shall be separate and distinct and no one of
8 such departments shall exercise the powers properly belonging to the others.” Ariz.
9 Const. Art. 3. “The Arizona Constitution, like its federal counterpart, charges the
10 executive branch with the duty to ensure that the “laws be faithfully executed.”
11 Compare Ariz. Const. art. 5, § 4 with U.S. Const. art. II, § 3. The executive is thus
12 afforded ‘broad discretion’ in enforcing the law. *Wayte v. United States*, 470 U.S.
13 598, 607 (2005). The point is that the Judiciary is constrained to tell the Executive
14 how and when to settle cases in the best interest of the Executive’s client, the State.
15 This is true despite of the Judiciary’s ability to adopt rules for the administration of
16 cases. Ariz. Const. Art.. 6, §5(5). Occasions for constitutional confrontation between
17 the two branches should be avoided whenever possible. The cases that parties bring
18 to the bench are still managed by the interests of the litigants. In trial scenarios cases
19 can settle while a jury is deliberating, and they do so on the principle that it is the
20 litigants who are negotiating and bargaining for the results; they have decided to
21 remove the case from the hands of the jury.
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1 In Arizona, the duty and discretion to conduct prosecutions for public
2 offenses rests with the county attorney. A.R.S. §11-532. The superior courts of
3 Arizona may not restrain a public official such as the county attorney from
4 discharging the duties imposed upon them by law. *State ex rel. Berger v. Myers*, 108
5 Ariz. 248, 250 (1972). The prosecutor has discretion in deciding which offenses to
6 prosecute, and must weigh the evidence, the law and the facts, and the chances of
7 successful termination of the prosecution. The prosecutor has discretion to have the
8 court dismiss prosecution of one offense upon the entry of a guilty plea to another.
9 *State v. Stewart*, 103 Ariz. 457, 458 (1968).

12 The courts have no power to interfere with the discretion of
13 prosecutors unless they are acting illegally or in excess of their powers. *State v.*
14 *Murphy*, 113 Ariz. 416, 418 (1976) (where the prosecutor promised to recommend
15 a life sentence in exchange for the defendant's guilty plea to first-degree murder, the
16 court had no authority to direct the prosecutor to put on aggravation evidence and
17 then impose a death sentence.) In *Murphy*, this Court noted that the record showed
18 a number of valid reasons for the prosecutor to extend the plea bargain in question,
19 including questions about the admissibility of statements, whether certain acts
20 constituted aggravating circumstances, and whether a new statute would be held
21 constitutional. "Apparently the prosecutor sought to resolve these doubts by
22 securing the certainty of a conviction with a life sentence." *Id.*, 418.

1 Such considerations, as well as others, can and do come into play on the eve
2 of trial – after the expiration of the sort of judicially-imposed deadline for plea
3 bargaining proposed in the Petition. A critical witness may become unavailable, new
4 evidence or case law may cast doubt on the outcome of the trial. The prosecutor
5 cannot be forced to put on a trial in lieu of entering into a plea agreement that
6 guarantees a conviction – an exercise of prosecutorial discretion that serves the
7 interests of public safety, guarantees a victim’s right to justice, including restitution,
8 and is to the defendant’s benefit as well.
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11 In *Hare v. Superior Court*, 133 Ariz. 540 (1982), this Court reviewed a local
12 rule setting a plea deadline prior to the trial setting. The defendant and the State came
13 to an agreement in their case after the deadline expired, and the presiding judge
14 refused to allow entry of the plea, maintaining the case status for trial instead. On
15 special action review, this Court rescinded the deadline rule because it was not
16 adopted with prior review or approval of this Court. But, that is not to say that prior
17 review or approval of this Court would have resulted in the local rule being affirmed.
18 In *Hare*, this Court noted that the guideline in question was “an improper intrusion
19 upon the prosecutorial function in our criminal justice system. “We previously have
20 alluded to the broad discretion which our legal system vests in prosecuting attorneys,
21 particularly in the exercise of plea bargaining negotiations.” *Id.* at 543, citing *State*
22 *v. Morse*, 127 Ariz. 25, 617 P.2d 1141 (1980).
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1 Second, the rule change would interfere with the rights of defendants and
2 thereby risks the finality of any conviction resulting from a forced trial. Although
3 defendants have no right to plea bargain, they surely have the right to due process, a
4 fair trial, and the effective assistance of counsel. If a key defense witness becomes
5 unavailable or the defendant has a change of heart in light of new information, the
6 defense attorney who is forced to trial will have challenging decisions to make. Any
7 resulting conviction will rightly be challenged not only on due process grounds, but
8 likely also ineffective assistance of counsel.
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11 In *Missouri v. Frye*, 566 U.S. 134 (2012), the Supreme Court noted the reality
12 that plea bargains have become so central to the administration of the criminal justice
13 system that defense counsel have responsibilities in the plea bargain process,
14 responsibilities that must be met to render the adequate assistance of counsel that the
15 Sixth Amendment requires in the criminal process at critical stages:
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17 Because ours “is for the most part a system of pleas, not a system of
18 trials” (citation omitted), it is insufficient simply to point to the guarantee
19 of a fair trial as a backstop that inoculates any errors in the pretrial process.
20 “To a large extent ... horse trading [between prosecutor and defense
21 counsel] determines who goes to jail and for how long. That is what plea
22 bargaining is. It is not some adjunct to the criminal justice system; it is the
23 criminal justice system.” Scott & Stuntz, *Plea Bargaining as Contract*, 101
24 *Yale L. J.* 1909, 1912 (1992). See also Barkow, *Separation of Powers and
25 the Criminal Law*, 58 *Stan. L.Rev.* 989, 1034 (2006) (“[Defendants] who
do take their case to trial and lose receive longer sentences than even
Congress or the prosecutor might think appropriate, because the longer
sentences exist on the books largely for bargaining purposes. This often
results in individuals who accept a plea bargain receiving shorter

1 sentences than other individuals who are less morally culpable but take a
2 chance and go to trial” (footnote omitted)). In today's criminal justice
3 system, therefore, the negotiation of a plea bargain, rather than the
unfolding of a trial, is almost always the critical point for a defendant.

4 *Id.* at 143-44

5 The Court further explained that the prevalence of plea bargaining is not to
6 criticize it; the potential to conserve valuable prosecutorial resources and for
7 defendants to admit their crimes and receive more favorable terms at sentencing
8 means that a plea agreement can benefit both parties. But for before these benefits
9 can be realized, criminal defendants require effective counsel during plea
10 negotiations. Anything less might deny a defendant effective representation by
11 counsel at the only stage when legal aid and advice would help him. *Frye*, 566 U.S.
12 at 144.

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15 The proposed rule change in the Petition imposing a judicial plea deadline will
16 impose hardships on defense counsel by making it more difficult to negotiate a
17 favorable plea agreement at the optimal time to do so: when the prosecution has lost
18 its advantage on the eve of trial, or when a defense suddenly is weakened. Defense
19 counsel may also be unable to present an adequate defense at trial in the face of last-
20 minute developments making a previously rejected plea agreement a better option.

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23 Third, in criminal trials the courts must consider that there is a third person in
24 the room with constitutional rights: the victim who, upon consultation, may agree
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1 with or even insist upon, the State’s decision to extend a plea bargain on the eve of
2 trial. The Arizona Constitution guarantees crime victims the right to be treated with
3 fairness, respect, and dignity throughout the criminal justice process, Ariz. Const.
4 art. 2, § 2.1(A)(1), and “to have all rules governing criminal procedure . . . protect
5 victims' rights and to have these rules be subject to amendment or repeal by the
6 legislature to ensure the protection of these rights.” Ariz. Const. art. 2, § 2.1(A)(11).
7 The Victim’s Bill of Rights secures crime victims’ rights to justice and due process
8 throughout criminal proceedings. Ariz. Const. art. 2, § 2.1(A); A.R.S. §§ 13-4401 to
9 -4442; Rule 39, Ariz. R. Crim. P. Neither the legislature nor court rules can eliminate
10 or reduce rights guaranteed by the VBR. *State v. Lee*, 226 Ariz. 234, 237, ¶¶ 8, 9
11 (App. 2011). Courts do not have authority to make ad hoc exceptions to the VBR.
12 *State ex rel. Smith v. Reeves*, 226 Ariz. 419, 422, ¶ 13 (App. 2011).

16 Faced with a looming trial date, a victim may become unable or unwilling to
17 testify – particularly a fragile victim such as child. A defendant often becomes
18 amenable to a plea bargain on the eve of trial, and the certainty of conviction
19 provides the victim with closure, restitution. A rule that randomly cuts off the option
20 of plea bargaining leaves the prosecutor with the unsavory prospect of forcing a
21 victim to testify against their wishes, and/or putting on a trial that will surely end in
22 acquittal. Or, the prosecutor may be forced to seek dismissal without prejudice in
23 order to begin anew, when the case might have been resolved. That too, involves a
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1 massive waste of resources, in addition to prolonging the trauma of the victim. The
2 waste of resources caused by a last-minute plea bargain does not justify trampling
3 the discretion of the prosecutor and the rights of victims.
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5 Fourth, the rule change could also create speedy trial issues. After all, what is
6 the difference between a trial being averted by plea agreement and a trial being
7 continued for any number of very good reasons? Will the proposed rule reach to
8 continuances, too? The same pressing reasons for this proposed rule change will also
9 be in play for continuances. Will Rule 8.5 now need to be modified, for all the same
10 reasons? How will that effect speedy trial rights?
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12 Finally, and most importantly, the proposed rule change not only infringes on
13 the rights of the parties but violates the very purpose and spirit of Rule 17.4, as
14 promulgated and interpreted by this Court. The Petition cites *State v. Darelli*, 205
15 Ariz. 458 (App. 2003) in a very cursory manner for the proposition that all the issues
16 raised and discussed at length in that case can simply be cured by a rule change
17 authorizing a plea bargaining deadline. It is not so simple. *Darelli* held that the trial
18 judge erred when he unilaterally announced a self-imposed procedural rule which
19 effectively precluded the parties from presenting a plea agreement to him that was
20 entitled to individualized consideration on the merits. The Petition focuses on
21 “unilateral” and “self-imposed,” and ignores the heart of Rule 17.4 – “individualized
22 consideration on the merits.”
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1 In *Espinoza v. Martin*, 182 Ariz. 145 (1995), this Court held that a policy
2 adopted by several superior court judges of summarily rejecting all plea agreements
3 containing stipulated sentences violated Rule 17.4:
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5 While courts are free, pursuant to rule 17.4(d), to reject plea agreements
6 with stipulated sentences after giving them individualized consideration,
7 groups of judges may not implement policies to automatically reject all
8 such plea agreements without considering whether a stipulated sentence
9 is appropriate in light of the circumstances of the case.

10 *Id.*, at 147. Thus, in order to ensure that agreements negotiated pursuant
11 to rule 17.4(a) have some meaningful effect, this Court interpreted 17.4 as
12 guaranteeing the parties the right to (1) present their negotiated agreement to a judge,
13 (2) have the judge consider the merits of that agreement in light of the circumstances
14 of the case, and (3) have the judge exercise his or her discretion with regard to the
15 agreement. This Court explained that Rule 17.4, “taken as a whole, contemplates the
16 exercise of judicial discretion when determining whether to accept or reject each
17 particular plea agreement. In exercising that discretion, the trial court must review
18 the plea agreement to see if the ends of justice and the protection of the public are
19 being served by such agreement.” *Id.*

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21 Importantly, this Court reflected on its holding in *Hare v. Superior Court*, 133
22 Ariz. 540 (1982), noting:
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24 This court struck down a guideline in part *because it conflicted*
25 *with rule 17.4*. In holding that guideline B exceeded the limits imposed on
the superior court by rule 17.4(a), we reasoned that rule 17.4 “recognizes

1 not only the right to engage in plea negotiation and agreement, but
2 provides for the procedure by which the judge rejects or accepts a plea
3 agreement. Rules 17.4(d) & (e) allow the judge to exercise his discretion
4 when a plea agreement is presented for approval. Under Guideline B, the
5 court is prohibited from exercising that discretion....” *Hare*, 133 Ariz. at
6 542. In *Hare*, guideline B prevented the trial court from considering plea
7 agreements after a certain date. In this case, quadrant B policy prevented
8 the trial court from considering plea agreements with stipulated sentences.
9 The end result is the same. The quadrant B policy, like guideline B in
10 *Hare*, violates rule 17.4 *because it precludes a judge from exercising his
11 discretion over plea agreements in a predetermined set of circumstances.*

12 *Espinoza*, 182 Ariz. at 147-148 (emphasis added). This Court thus emphasized the
13 purpose of Rule 17.4, rather than suggesting that an amendment such as the one
14 proposed in the Petition would cure any error.

15 Turning to *Darelli*, the court of appeals noted, first, that the parties' right to
16 negotiate a plea is expressly provided for in Rule 17.4(a):

17 The parties *may* negotiate concerning, and reach an agreement on, any
18 aspect of the case. If negotiations are successful, the plea agreement is
19 reduced to writing. Rule 17.4(b). The court determines whether it is
20 knowingly and intelligently made. Ariz. R.Crim. P. 17.2, 17.3 and 17.4(c).
21 Then, the court determines whether to “accept or reject the tendered
22 negotiated plea.” Rule 17.4(d). Our supreme court has spoken on what
23 type of consideration a trial judge must give in determining how to accept
24 or reject a plea under Rule 17.4(d).

25 *Darelli*, 205 Ariz. at 461, ¶ 11.

Next, the court of appeals noted this Court’s decision in *Espinoza*:

The *Espinoza* court interpreted Rule 17.4 as “**guaranteeing the parties the right to present their negotiated agreement to a judge, to have the judge consider the merits of that agreement in light of the circumstances of the case, and to have the judge exercise his or her**

1 **discretion with regard to the agreement.”** *Id.* at 147. Ultimately, in
2 ruling that **“groups of judges may not implement policies to**
3 **automatically reject all such plea agreements[,]”** the *Espinoza* court
4 held **462** that individual trial judges are required to give “individualized
5 consideration” to plea agreements before accepting or rejecting them. *Id.*
6 at 148. The court articulated that in making its determination, the trial
7 court must **“review the plea agreement to see if the ends of justice and**
8 **the protection of the public are being served by such agreement.”** *Id.*
9 at 147.

10 *Darelli*, 205 Ariz. at 461-462, ¶ 12 (emphasis in original).

11 The court of appeals then noted this Court’s decision in *Hare*, striking down
12 a local court policy which requiring that no plea agreements be accepted after the
13 first trial date. The court of appeals noted that as in *Espinoza*, the *Hare* court
14 invalidated the policy “because it prohibited trial judges from exercising their
15 discretion as defined by Rule 17.4.” *Darelli*, 205 Ariz. at 462, ¶ 13. The court of
16 appeals further noted that this Court “recognized that the policy adopted by the Pima
17 County Superior Court was an ‘improper intrusion upon the prosecutorial function
18 in our criminal justice system [and that] our legal system vests [broad discretion]
19 in prosecuting attorneys, particularly in the exercise of plea negotiations.’” *Id.*

20 The court of appeals concluded: “Thus, at least three lessons from *Espinoza*,
21 *Hare* and the criminal rules are applicable and guide us here: (1) there is a right to
22 negotiate a plea, if the parties so choose, and (2) a trial judge may not add procedural
23 hurdles to the exercise of that right that (3) serve as a basis for the trial judge to
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1 forego exercising individualized consideration on the merits of the negotiated plea
2 in determining whether to accept or reject it.” *Darelli*, 205 Ariz. at 462, ¶14.

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4 Turning to the case before it, the *Darelli* court found that the trial court abused
5 its discretion by announcing – based solely on the fact that a jury panel was
6 assembled and waiting – that it would only accept a plea agreement in which
7 appellant could plead guilty to the indictment or the State could dismiss the case.
8 “By making this announcement, the trial judge inappropriately read a “plea cut-off
9 date” into Rule 17.4(a) that foreclosed plea negotiations.” *Darelli*, 205 Ariz. at 462,
10 ¶15. The court noted that given the last minute timing of the negotiations, and the
11 fact that “60 or 70” jurors were waiting outside his courtroom, the trial judge was
12 understandably concerned about the impact plea negotiations would have on those
13 who were empaneled. “However, the self-imposed procedural rule he implemented
14 to address this concern runs directly counter to Rule 17.4, *Espinoza*, and *Hare*.” *Id.*,
15 ¶ 16.

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19 The Petition now before this Court focuses on “self-imposed” and ignores the
20 requirement under Rule 17.4 that a judge exercise “individualized consideration on
21 the merits of a negotiated plea in determining whether to accept or reject it.”

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23 The *Darelli* court underscored this Court’s interpretation of Rule 17.4 as
24 “guaranteeing” the parties the right to have a trial judge consider any plea agreement
25 on the merits; once a plea agreement is made, the trial judge must give it

1 “individualized consideration.” The court noted that “stepping into plea negotiations
2 and effectively precluding any plea agreement from being reached – for procedural
3 reasons that have nothing to do with ‘individualized consideration’ – has the same
4 effect as rejecting a plea agreement itself for procedural reasons not related to the
5 merits of the agreement.” *Darelli*, 205 Ariz. at 462, ¶ 17. Moreover, the court noted
6 that the decision to terminate plea bargaining lies with the prosecutor's office, not
7 the trial judge, and found that the trial judge erred “when he unilaterally announced
8 a self-imposed procedural rule which effectively precluded the parties from
9 presenting a plea agreement to him that was entitled to individualized consideration
10 on the merits.” *Id.*, at 462-63, ¶ 18.

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14 Again, the Petition now before this Court focuses on “self-imposed procedural
15 rule” and ignores “which effectively precluded the parties from presenting a plea
16 agreement to him that was entitled to individualized consideration on the merits.”

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18 Finally, the *Darelli* court addressed public policy. The court opined there is
19 no need to delay a trial to complete plea negotiations and that a trial judge can, and
20 often should, mandate that the trial proceed as scheduled. The court suggested that
21 plea negotiations may take place before or after the selection of the jury, and indeed
22 before or after daily trial proceedings. But: “What the trial judge cannot do is reject
23 a plea agreement (or terminate plea negotiations) due to a self-imposed procedural
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1 rule that gives no ‘individualized consideration’ to the merits of the plea agreement
2 (or a prospective plea agreement being negotiated).” *Darelli*, 205 Ariz. at 463, ¶ 19.
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4 This is a far cry from the plea deadline now proposed in the Petition, which
5 would enable trial courts to effectively terminate plea negotiations based upon a
6 proposed procedural rule that gives no individualized consideration to the merits of
7 any prospective plea agreement. *Darelli* plainly does not authorize this proposed
8 amendment.
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10 The *Darelli* court further noted that the issue of the wisdom, or not, in
11 adopting a plea cut-off in either a county attorney's office, or the judicial branch as
12 a whole, was not before it; the prosecutor was not seeking to enforce a plea cut-off,
13 and neither had this Court adopted a rule which allows individual trial judges (or the
14 superior court as a whole) to reject plea agreements without considering the merits
15 of those agreements. The court recognized that in *Hare*, this Court held (1) since it
16 had not approved the guidelines in question, they did not become effective; and, (2)
17 since the trial judge's determination to reject consideration of pleas depending upon
18 the time the agreement was received rested purely on procedural grounds, and *not*
19 *on the merits of the plea being suggested or proposed*, it violated this Court’s rule-
20 making authority. *Darelli*, 205 Ariz. at 463, ¶ 20. In other words, it was not only a
21 matter of guidelines that were not approved by this Court, but also the violation of
22 the guidelines already in place in Rule 17.4, as interpreted by this Court.
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1 The *Darelli* court concluded that whether such policy reasons are the
2 appropriate basis for a rule change is a matter for this Court to consider pursuant to
3 its rule-making authority, and that absent a rule from this Court to act contrary to the
4 holdings of both *Espinoza* and *Hare*, trial judges in Arizona are *required* to give
5 “individualized consideration” to plea agreements presented to them. If they do not,
6 they err. “Likewise, by implementing a policy that terminates good faith plea
7 negotiations, because a trial judge will not consider a particular anticipated plea on
8 the merits, the rule of “individualized consideration” in *Espinoza* and *Hare* is
9 violated.” *Darelli*, 205 Ariz. at 464, ¶¶ 22.

12 For all these reasons, the Petition has incorrectly cited *Darelli* and *Hare* for
13 as authority for the proposition that the *only* problem with the policies before those
14 courts was the lack of a rule promulgated by this Court: “This problem could be
15 avoided if criminal trial courts had the legal authority to set reasonable plea
16 deadlines. In Arizona, however, an individual trial judge does not currently have
17 such authority.” Petition, pp. 4-5. The Petition focuses on “the proposed amendment
18 to Rule 17.4 would give the presiding superior court judge authority to establish a
19 plea deadline policy for the county that is functionally and rationally related to the
20 timing of juror summoning and screening.” *Id.* at p. 5. It neither addresses nor puts
21 any weight whatsoever on the Arizona case law that emphasizes that “trial judges in
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1 Arizona are *required* to give ‘individualized consideration’ to plea agreements
2 presented to them. If they do not, they err.” *Darelli*, 205 Ariz. at 464, ¶ 22.

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4 We recognize that it is this Court’s prerogative to implement amendments to
5 court rules as required to address evolving situations. However, on the issue of court-
6 imposed plea deadlines, this Court has not done so since *Hare* (1982), *Espinoza*
7 (1995), and *Darelli* (2003) were decided. The Petition now asks this Court to address
8 this issue based on the temporal, practical problems raised by an ever-evolving
9 pandemic. In *Hedlund v. Sheldon*, 173 Ariz. 143, 144-45 10 (1992), this Court stated,

11 In matters relating to the interpretation and application of court rules and
12 procedures, this court must pay constant attention to developments in
13 court procedures and changing circumstances in order to fulfill our
14 constitutional role. In furtherance of this responsibility, we will reevaluate
15 prior decisions regarding court procedures, where principles of stare
16 decisis might counsel otherwise in substantive matters involving common
17 law decision-making or statutory or constitutional interpretation. Our
recent decisions and rules have been informed by a recognition that the
judicial process benefits from according flexibility and discretion to
judges in their efforts to manage a large and complex caseload.

18 On behalf of the prosecutors of Arizona, we ask this Court to, by all means,
19 accord flexibility and discretion to judges in their efforts to manage a large and
20 complex caseload, which is indeed further exacerbated by a pandemic that has added
21 even more complexity for judges and court staff, prosecutors, defendants and their
22 counsel, and victims. But plea bargains on the eve or in the midst of trial have always
23 been inconvenient. They have always resulted in a waste of court resources,
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