

Casey D. Ball (#034987)
2005 N. Central Ave.
Phoenix, AZ 85004
(602) 542-8137
caseydball@gmail.com

Kelley M. Jancaitis (#025555)
2800 N. Central Ave, Suite 1600
Phoenix, Arizona 85004
(602) 271-7701
kmj@bowwlaw.com

**IN THE SUPREME COURT
STATE OF ARIZONA**

In the Matter of:

Petition to Amend Arizona Rules of Civil Appellate Procedure 4(b)(9), 13(a), and 13(i); Arizona Rules of Criminal Procedure 31.6(d), 31.10(a), and 31.10(j); and Arizona Rules of Juvenile Procedure 607(b)(3) and 609(d)(5).

Supreme Court No. R-__-__

Petition to Amend Arizona Rules of Civil Appellate Procedure 4(b)(9), 13(a), and 13(i); Arizona Rules of Criminal Procedure 31.6(d), 31.10(a), and 31.10(j); and Arizona Rules of Juvenile Procedure 607(b)(3) and 609(d)(5).

Pursuant to [Rule 28, Rules of the Arizona Supreme Court](#), Petitioners ask this Court to amend the rules specified above as proposed in the Attachment to this Petition. The proposed amendments would make the Table of Citations an optional component of all appellate briefs. To Petitioners' knowledge, no similar petition has been filed by anyone within the previous five years.

The Table of Citations is no longer needed to help a reader navigate to a particular cited source because most briefs are filed in electronic format with searchable text. Cumulatively, appellate litigants spend an unjustifiable amount of

time and resources creating Tables of Citations. These proposed amendments would end the wasteful practice.

Background

[ARCAP 13\(a\)\(2\) and \(b\)\(1\)](#) currently requires all opening and answering briefs contain a “table of citations” that “must alphabetically arrange and index the cases, statutes and other authorities cited in the brief, and which must refer to the pages of the brief on which each citation of authority appears.” *See also* [Ariz. R. Crim. P. 31.10\(a\)\(2\)](#) (containing a similar requirement for criminal appeals). Last year, Petitioners published an article in the Arizona Attorney magazine advocating for the elimination of the Table of Citations. *See* [Casey Ball, Kelley Jancaitis & Geoffrey Butzine, *Streamlining Briefs: Should We Eliminate the Table of Authorities?*, Ariz. Att’y, Apr. 2022, at 30–35](#). Positive responses from appellate practitioners and judges led to this Petition.

The Table of Citations is a navigational tool, intended to help the reader locate authorities cited within an appellate brief. In Petitioners’ experience,¹ these tables go largely ignored by courts and litigants. Instead, readers more often use

¹ Both Petitioners served as law clerks to the Honorable (Ret.) Kenton D. Jones on the Arizona Court of Appeals, Division One, and now practice criminal and civil appellate law. Their experience is further informed by discussions with fellow appellate practitioners, court staff, and judges.

features like searchable text and hyperlinks to navigate the brief and locate cited authorities. In addition to their obsolescence, Tables of Citations are finicky and require substantial time (and patience) to build, even with software designed to speed up the process. Cumulatively, Arizona appellate litigants spend thousands of hours every year building the tables. *See id.*, at 31 (using back-of-the-envelope math to estimate cumulative time spent).

The proposed amendments in the Attachment make minor adjustments to ARCAP, the Arizona Rules of Criminal Procedure, and the Arizona Rules of Juvenile Procedure. However, these amendments will also impact several other types of appellate briefs, including (1) appeals from decisions of the presiding disciplinary judge and interim suspensions, (2) accelerated appeals, (3) appeals from Corporation Commission decisions, and (4) appeals from governing bodies of public power entities because the rules of procedure for these appeals all require that the briefs conform with ARCAP 13. *See Ariz. R. Sup. Ct. 59(h) & 61(e)(1); ARCAP 29(c); Ariz. R. Corp. Comm. Apps. 9; Ariz. R. P. App. Pub. Power Entities 9.* And, rather than entirely remove references to the Table of Citations, the proposed amendments merely make the table an optional component. This gives advocates discretion to include a Table of Citations if they believe it worthwhile for a particular brief.

The Table of Citations Should Be an Optional Component of Briefs

I. The Invisible Costs of the Table of Citations

Petitioners have found no data-driven analyses on the average length of time it takes to build a Table of Citations. Anecdotal estimations, however, abound. For example, the company ClearBrief—which sells AI software that formats and edits appellate briefs—claims that its “conversations with hundreds of attorneys, paralegals, and legal assistants across the country, indicate that manually creating a perfectly formatted and accurate Table of Authorities can take anywhere from 3 hours to a full week, depending on how complicated the document is.” *See* Clearbrief, *How to Create a Table of Authorities in One Click in Microsoft Word*, <https://clearbrief.com/blog/authorities> (last accessed Jan. 8, 2023). Considering that this source is selling a tool that builds Tables of Citations, Petitioners take the high end of that range with a grain of salt.

Still, U.S. Supreme Court Justice Antonin Scalia and noted legal writing scholar Bryan Garner warn advocates to “[a]llow a full day” to prepare a Table of Citations, and to “[n]ever trust computers to prepare the tables automatically.” Antonin Scalia & Bryan A. Garner, *Making Your Case: The Art of Persuading Judges* 90 (2008). Experienced advocates working for a firm or company willing to pay for assistive software might manage to generate a perfectly formatted and accurate Table of Citations in less than 45 minutes. Meanwhile, a litigant without

access to these programs may spend considerably more time using Word’s built-in citation-marking tool. The tool is not intuitive, and an average-length brief requires anywhere from a couple of hours to a full day to manually mark the citations, depending on the user’s familiarity with the tool. And, many self-represented litigants, particularly inmates, write out their Table of Citations by hand.

Ultimately, there may be no genuinely representative average time for building a Table of Citations because the time it takes to make one depends on a host of factors, including the length of the brief, the number of citations, the expertise of the person building the table, and the availability of assistive software. Regardless of the process used to build a Table of Citations, its quality depends on the drafter’s attention to detail and willingness to spend time checking the accuracy of the tables. Assistive software programs are not perfect; they sometimes miss a citation or attribute an “*Id.*” to the wrong case. A conscientious advocate will expend additional time reviewing and fixing any errors the software makes. But case law shows that not every advocate carefully prepares the Table of Citations.²

² See, e.g., *Nixon v. City and County of Denver*, 784 F.3d 1364 n.1 (10th Cir. 2015) (chastising a party for submitting a brief that failed to “contain an *alphabetized* table of authorities”) (emphasis in original); *In re Hernandez v. Orozco*, 1 CA-CV 19-0526 FC, 2020 WL 5423088, at *3, ¶¶ 6, 10 (Ariz. App. Sept. 10, 2020) (mem. decision) (sanctioning counsel for filing a brief that did not “comply in any meaningful way with the requirements of [ARCAP 13\(a\)](#)”).

Even accounting for time savings from modern technology, the time it takes to compile the Table of Citations, confirm its accuracy, and correct any errors is not insignificant. And all this work must be performed *after* the substantive briefing is complete, meaning parties are often running up against their deadlines by the time they are ready to build the table. This leaves no room for last-minute adjustments, which creates its own challenges in cases where the drafting attorney needs to seek feedback from a supervisor, trial counsel, or a client. And in both criminal and civil litigation, “the time it takes” translates into actual dollars—either billed to a client at hundreds of dollars an hour or in salary paid to State-funded employees. It is the litigants and taxpayers who ultimately bear these costs.

II. Courts’ Infrequent Use of the Table of Citations as a Navigational Tool Renders the Cost Unjustifiable.

Petitioners’ discussions with fellow practitioners and court staff confirm that few people still regularly use the Table of Citations to locate citations within a brief. Arizona courts have moved mostly to electronic briefs, which are “easier to read, use, and search.” [Hon. Philip G. Espinosa, *A Word from the Future: The Virtually Paperless Court of Appeals*, 49 Judges J. 10 \(2010\)](#). “Instead of plowing through page after page . . . and attaching yellow sticky notes, it [is] possible to instantly search for and locate particular subjects, words, phrases, names, or dates.” [Id.](#) Hyperlinks also expedite locating authorities. Both Westlaw and LexisNexis

have software that automatically adds hyperlinks to citations in briefs, and more advocates are using these tools in recent years.

Thus, searchable text and hyperlinks efficiently replace the table's primary function as a navigational tool. And, for those few who do occasionally use the Table of Citations for its intended purpose, the transition to using the search feature to find a citation should be relatively painless. *See id.* (describing the ease at which even judges who "grew up" using printed versions of court documents transitioned to the paperless format).

The only instance in which a Table of Contents may still be useful as a navigational tool is for handwritten briefs. Although "[a]ppellate courts strongly encourage parties to file documents that are typed and prepared on a computer," *see* [ARCAP 4\(b\)\(3\)](#), handwritten briefs are still accepted, *see* [ARCAP 14\(b\)–\(c\)](#). Appellate courts sometimes receive paper briefs, particularly from self-represented inmates. These briefs are scanned on arrival, and a digital, searchable copy is added to the docket. However, Adobe Acrobat's "recognize text" tool fares poorly with handwritten briefs, even where the handwriting is exceptionally neat.

In their article, Petitioners suggested that the Court's rules could easily be amended to require a Table of Citations for only handwritten briefs. *See* [Ball, Jancaitis & Butzine, *Streamlining Briefs*, at 34](#). But on further reflection, they do not recommend this approach because the litigants to whom it would apply are

those least likely to correctly follow the formatting rules. *See, e.g., Lvov v. Goltsman*, 1 CA-CV 13- 0345, 2014 WL 458147, at *1, ¶ 6 & n.2 (Ariz. App. Feb. 4, 2014) (mem. decision) (observing significant procedural deficiencies in both self-represented litigants’ briefs, including the absence of a Table of Citations).

Moreover, because the task of creating a Table of Citations is perhaps the most onerous for those who write their briefs by hand, requiring the Table of Citations for only handwritten briefs would run counter to this Court’s longstanding efforts to improve access to the courts. *See Administrative Order No. 2014–83* (highlighting efforts to simplify court rules and procedures and establishing a task force to identify “possible changes in court rules or practices to reduce barriers to access”); *see also ARCAP 1(c)* (“These Rules should be used and interpreted by the courts and the parties to achieve the just, speedy, and inexpensive resolution of appeals.”); *Ariz. R. Crim. P. 1.2* (“Courts, parties, and crime victims should construe these rules to secure simplicity in procedure, fairness in administration, [and] the elimination of unnecessary delay and expense[.]”); *Ariz. R. Juv. P. 101(b)* (“Parties should use these rules, and courts should construe and enforce them, in a manner that ensures a simple and fair resolution of juvenile proceedings [and] reduces unnecessary delay and expense[.]”). Simply put, the minimal navigational benefits of a Table of Citations for handwritten briefs do not outweigh the burden of writing them out by hand.

III. Non-Navigational Uses Likewise Do Not Justify the Continued Requirement for Tables of Citations.

Although few people use the Table of Citations as a navigational tool, some have found non-navigational uses, including: (1) to get a “feel” for the case before reading the brief; (2) to check whether a draft decision addresses the main authorities cited by parties; (3) to prepare for conferences or oral argument; and (4) as an aide for finding the correct citation when the citation in the body of the brief is incomplete or inaccurate. *See* [Ball, Jancaitis & Butzine, *Streamlining Briefs*, at 33–34](#). None of these uses justify the continued requirement that briefs contain a Table of Citations.

First, readers can “get a feel” for the case by reading the introduction, summary of the argument, and the table of contents. Separately, while first impressions are inevitable when reading any brief, “feeling out” the argument serves little purpose for the end result. Appellate courts base their decisions on the law and facts of the case, not initial impressions. The substance of the arguments should be far more persuasive than a mere list of authorities.

Second, while the Table of Citations may make the brief more formal and emphasize the need to support arguments with legal authorities, other procedural rules and formatting requirements compensate for the loss of the Table of Citations. *See, e.g.*, [ARCAP 13\(a\)\(7\)\(A\)](#) (requiring appellate argument contain the litigant’s “contentions concerning each issue presented for review, with supporting

reasons for each contention, and with citations of legal authorities”). Moreover, formatting rules are meant to “promote succinct, orderly briefs that judges can readily follow.” Judith D. Fischer, *Pleasing the Court: Writing Ethical and Effective Briefs*, 51 (2d ed. 2011). That purpose is not served if the Table of Citations is being used merely to test an advocate’s ability to follow directions. Other aspects of the brief can provide that signal while also improving readability.

Third, while some use the Table of Citations to gather sources to download or refer to at oral argument, it is not a necessary tool to complete either task. More practitioners are hyperlinking their briefs so courts can easily access the cited material as they read the brief. And relatively few cases have oral argument, further diminishing the value of the Table of Citations for this particular purpose.

Finally, the use of the Table of Citations as a “backup” for locating correct citations when they are missing in the body of the brief is unlikely to occur with sufficient frequency to justify the time and resources spent creating the tables. From a logical standpoint, if a litigant has not spent the time ensuring their citations in the body of the brief are accurate, it is unlikely they will have a reliable Table of Citations, or in some cases, any table at all. See [State v. Haggard, 2 CA-CR 2010-0307-PR, 2011 WL 315537, at *2, ¶ 8 \(Ariz. App. Feb. 1, 2011\)](#) (mem. decision) (attempting to identify cases vaguely referred to in a pro-per brief and noting that no Table of Citations had been provided).

Conclusion

While this petition may seem nitpicky at first glance, the cumulative costs of creating Tables of Citations represent an unjustifiable waste of resources. Clients in civil cases and taxpayers in criminal and juvenile cases are footing the bill for thousands of hours spent each year building tables that are largely unnecessary and ignored. Petitioners respectfully request that this Court end the wasteful practice and streamline the brief-writing process by amending the various rules outlined in the Appendix to make the Table of Citations an optional component of appellate briefs.

Respectfully submitted on January 10, 2023.

/s
Casey D. Ball (#034987)

/s
Kelley M. Jancaitis (#025555)

ATTACHMENT³

ARIZONA RULES OF CIVIL APPELLATE PROCEDURE

Rule 4. Filing Documents with an Appellate Court; Format; Service

(a) [No change]

(b) Document Format. Unless an appellate court allows otherwise, every document that a party files with an appellate court, other than a document contained in an appendix or filed as an attachment to a motion, must be prepared as follows:

(1)–(8) [No change]

(9) *Word Limits.* A document must average no more than 280 words per page, including footnotes and quotations. Word limits specified in [Rules 14\(a\), 19\(d\), 22\(e\), 23\(g\), and 29\(c\)](#) do not include the cover page, the caption, the table of contents, the table of citations (if any), paragraph numbers appearing at the beginning of each paragraph (if any), the date and signature block, a certificate of service, a certificate of compliance, or any appendix.

(10) [No change]

(c)–(i) [No change]

* * *

³ Additions to the text of a rule are shown by underscoring and deletions of text are shown by ~~strike-through~~.

Rule 13. Content of Briefs

(a) Appellant’s Opening Brief. An appellant’s opening brief must set forth under the following headings and in the following order all of the items listed below, except for items (2), (3), and (10), which are optional.

(1)–(10) [No change]

(b)–(h) [No change]

(i) Briefs of Amicus Curiae or Intervenor. An intervenor is a person not a party to a judgment that the appellate court allows to participate as a party in an appeal on motion under [Rule 24 of the Arizona Rules of Civil Procedure](#). An intervenor is subject to any requirements that the court may set. A brief of amicus curiae or an intervenor must comply with [Rules 13\(a\)\(1\), ~~\(2\)~~, \(7\), \(8\), \(9\) and \(10\)](#). A brief of amicus curiae must also comply with the requirements of Rule 16.

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ARIZONA RULES OF CRIMINAL PROCEDURE

Rule 31.6. Filing Documents with an Appellate Court; Document Format; Service and Proof of Service; Motions

(a)–(c) [No change]

(d) Word Limits. Word limits specified in [Rules 31.12\(a\)](#), [31.14\(a\)](#), [31.18\(d\)](#), [31.20\(e\)](#), and [31.21\(g\)](#) include footnotes and quotations, but do not include the cover page, the caption, the table of contents, the table of citations (if any), paragraph numbers appearing at the beginning of each paragraph (if any), the date and signature block, a certificate of service, a certificate of compliance, or any appendix.

(e) [No change]

* * *

Rule 31.10. Content of Briefs

(a) Appellant’s Opening Brief. An appellant’s opening brief must set forth under headings and in the following suggested order the items listed below, except for items (2), (4), and (9), which are optional:

(1)–(9) [No change]

(c)–(i) [No change]

(j) Briefs of Amicus Curiae. A brief of amicus curiae must comply with Rule 31.10(a)(1), ~~(2)~~, (3), (7), (8), and (9), and Rule 31.15.

(k) [No change]

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ARIZONA RULES OF JUVENILE PROCEDURE

Rule 607. Briefing in the Court of Appeals; Transfer to the Supreme Court

(a) [No change]

(b) **Length and Content of Briefs.** [ARCAP 13](#) (“Content of Briefs”), 13.1 (“Appendix”), and 14 (“Length and Form of Briefs”) apply in appeals from the juvenile court, except:

(1)–(2) [No change]

(3) *Exclusions from Word or Page Limits.* The word and page limits specified in this rule do not include the table of contents, table of citations (if any), certificate of service, certificate of compliance, and any appendix.

(4)–(5) [No change]

(c)–(g) [No change]

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Rule 609. Petition for Review

(a)–(c) [No change].

(d) **Form and Length of the Petition or Cross-Petition.**

(1)–(4) [No change]

(5) *Exclusion from Word or Page Limit.* The word and page limits specified in this rule do not include the table of contents, table of citations (if any), certificate of service, certificate of compliance, and any appendix.

(6)–(7) [No change]

(e)–(m) [No change]