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

9 In the Matter of:

Supreme Court No. R-23-0013

10 **PETITION TO AMEND RULE 9.1**
11 **OF THE ARIZONA RULES OF**
12 **CRIMINAL PROCEDURE**

COMMENT

13 Pursuant to Rule 28(e) of the Arizona Rules of Supreme Court, the State Bar
14 of Arizona (the “State Bar”) hereby submits the following as its comment to the
15 above-captioned Petition.
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17 After review by the State Bar’s Criminal Practice and Procedure Committee,
18 the State Bar does not support the Petition as written. The Petition seeks to modify
19 Rule 9.1 of the Arizona Rules of Criminal Procedure by not allowing for trials *in*
20 *absentia* under any circumstances. The State Bar believes the better approach would
21 be to modify the current rule to allow for trials *in absentia* by having the trial court
22 balance the prosecution’s bases for requesting a trial *in absentia* with the record
23 concerning the defendant’s notice and the circumstances surrounding the
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1 defendant's absence.

2 One reason the State Bar does not support the Petition as written is because it
3 fails to recognize the concerns of a victim's right to a speedy trial, which is addressed
4 by Arizona law. The inability to conduct a trial *in absentia* under any circumstance
5 can cause lengthy delays in the resolution of some cases. When a defendant and
6 victim's constitutional rights conflict, it requires a balancing of those rights by the
7 court. *State ex rel. Romley v. Superior Court*, 172 Ariz. 232, 836 P.2d 335 (App.
8 1992). There could be other valid prosecutorial concerns regarding the need for a
9 trial *in absentia* in individual cases that cannot be addressed under the changes
10 proposed in the Petition.
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14 Conversely, there are concerns arising from trials *in absentia*. When the
15 defendant is not present in the courtroom during trial, it raises issues concerning the
16 fairness of the proceeding and of the truth-seeking aspect of trials. When a defendant
17 is not present during a trial, it could pose the risk of a jury inference that the
18 defendant may be guilty simply because he/she is not present, without further
19 explanation of the reasons for the defendant's absence. Further, when a defendant
20 is not present for trial, it creates issues with respect to identification of the defendant,
21 including in-person identification by the witness and matching of photos and/or
22 fingerprints. Furthermore, trials *in absentia* could pose the risk of creating a burden
23 on judicial resources if there is later a challenge to the trial being conducted in
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1 test, balancing the prosecution's bases for requesting a trial *in absentia* with the
2 record concerning the defendant's notice and the circumstances surrounding the
3 defendant's absence.
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6 RESPECTFULLY SUBMITTED this 1st day of May, 2023.
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8 /s/ Lisa M. Panahi

9 Lisa M. Panahi
10 General Counsel
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12 Electronic copy filed with the
13 Clerk of the Supreme Court of Arizona
14 this 1st day of May, 2023.

15 by: PSeguin
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