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

9 In the Matter of:

Supreme Court No. R-23-0031

10 **PETITION TO AMEND RULE 38.2**
11 **OF THE RULES OF CRIMINAL**
12 **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 The proposed amendment to Rule 38.2 of the Arizona Rules of Criminal
18 Procedure outlined in the Petition is designed to authorize courts to grant requests
19 by the State to reinstate deferred prosecution agreements after prosecution has
20 resumed following a criminal defendant’s failure to complete the terms of an initial
21 deferred prosecution agreement.
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1 The Criminal Practice and Procedure Committee voted¹ to support the Petition
2 with one caveat—that the proposed amendment be edited to clarify that courts have
3 the authority to grant a motion filed by the State to reinstate a deferred prosecution
4 agreement once prosecution resumes.
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6 Petitioner asserts that Rule 38.2(b) should be amended to permit “the court to
7 suspend proceedings and provide the defendant with additional opportunities to
8 participate in the deferred prosecution program.” Petition at 3. But the language
9 proposed by Petitioner only provides that “the State may allow a defendant
10 additional opportunities to participate in a deferred prosecution program as provided
11 by Rule 38.1(a).” *Id.* This proposed language does not explicitly authorize a court to
12 grant such a motion. Nor does it establish whether a court is obligated to grant the
13 State’s motion or whether a court has the discretion to deny it.
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16 Currently, Rule 38.1(c) of the Arizona Rules of Criminal Procedure requires
17 courts to grant a deferred prosecution agreement motion filed by the State so long as
18 the court is satisfied that certain conditions are met. However, unlike Rule 38.1(c)
19 the proposed amendment to Rule 38.2(b) does not address the role of the court in
20 ruling upon successive deferred prosecution agreement motions filed by the State.
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25 ¹ The vote tally was 15 in favor and 1 opposed with 1 abstention.

1 This comment offers no position as to what the scope of the court's discretion
2 should be under the proposed amendment. But the proposed amendment should be
3 edited to clarify whether courts have discretion to reject such requests to avoid
4 ambiguity and ensure that the rule is consistently applied.
5

6 CONCLUSION

7 Courts should be authorized to grant motions filed by the State seeking to
8 reinstate deferred prosecution agreements. Currently, the Arizona Rules of Criminal
9 Procedure do not explicitly authorize the reinstatement of deferred prosecution
10 agreements. The Petition aims to permit it. However, Petitioner's proposed
11 amendment to Rule 38.2(b) does not address the role of the court in ruling upon a
12 motion filed by the State to reinstate a deferred prosecution agreement.
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15 Accordingly, the State Bar of Arizona respectfully submits this comment in
16 support of the Petition to Amend Rule 38.2 of the Arizona Rules of Criminal
17 Procedure provided that the amended rule be edited to reflect the authority of courts
18 to grant such motions.
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20 RESPECTFULLY SUBMITTED this 1st day of May, 2023.
21

22 /s/ Lisa M. Panahi

23 Lisa M. Panahi
24 General Counsel
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1 Electronic copy filed with the
2 Clerk of the Supreme Court of Arizona
3 this 1st day of May, 2023.

4 By: PSeguin

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