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

9
10 In the Matter of:

Supreme Court No. R-23-0004

11 **PETITION TO AMEND RULE 702**
12 **OF THE ARIZONA RULES OF**
13 **EVIDENCE**

COMMENT

14 Pursuant to Rule 28(e) of the Arizona Rules of Supreme Court, the State
15 Bar of Arizona (the “State Bar”) hereby submits the following as its comment to
16 the above-captioned Petition.
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18 Rule 702 of Arizona Rules of Evidence governs the admission of opinion
19 testimony by experts. Although Arizona previously employed the standard
20 espoused in *Frye v. United States*, 293 F. 1013 (D.C. Cir.1923), effective January
21 1, 2012, Arizona adopted the standard utilized in the federal system as espoused
22 in *Daubert v. Merrell Dow Pharm., Inc.*, 509 U.S. 579 (1993) and its progenies.
23 The Prefatory Comment to the 2012 Amendments to the Arizona Rules of
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1 Evidence indicated that with respect to Rule 702—which parallels *Daubert’s*
2 provisions—Arizona’s version was amended to “‘conform’ to the federal rule[]”,
3 “and these changes may alter the way in which evidence is admitted” in judicial
4 proceedings.
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6 In this vein, the Petition seeks to amend Rule 702 to conform to the
7 anticipated 2023 amendments to the Federal Rules of Evidence. Specifically, it
8 seeks to make clear that in its role of “gatekeeper” concerning admissible expert
9 opinion evidence at trial, the court must first find *by a preponderance of the proof*
10 that the expert has relied on sufficient facts or data; has employed a reliable
11 methodology; and has applied that methodology reliably. Second, it seeks to
12 prevent experts from overstating the certainty of their opinions beyond what can
13 reliably be supported by the science or methodology underlying the expert’s
14 opinion.
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17 Because the proposed amendment to evidentiary Rule 702 furthers the
18 truth-seeking process by precluding unreliable and/or overstated expert opinion
19 testimony; because trial courts require further guidance concerning the standard
20 which must be met before admitting expert opinion testimony; and because
21 Arizona should, when it makes sense, continue to harmonize its evidentiary rules
22 with those applicable in federal cases in order to maintain uniformity; the State
23 Bar supports the Petition.
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1 **CONCLUSION**

2 The State Bar of Arizona respectfully requests that the Court grant the
3 Petition.
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5 RESPECTFULLY SUBMITTED this 1st day of May, 2023.
6

7 */s/ Lisa M. Panahi*

8 _____
9 Lisa M. Panahi
10 General Counsel

11 Electronic copy filed with the
12 Clerk of the Supreme Court of Arizona
13 this 1st day of May, 2023.

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by: PSeguin