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9 (STATE BAR NUMBER 015741)

ARIZONA SUPREME COURT

10 In the Matter of:

R-24-0010

11 PETITION TO AMEND ARIZONA
12 RULE OF CRIMINAL
PROCEDURE 10.2

MARICOPA COUNTY ATTORNEY'S
COMMENT IN OPPOSITION

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14 This Petition seeks to deprive the prosecution of its existing procedural right to
15 request a peremptory change of judge under Arizona Rule of Criminal Procedure ("Rule")
16 10.2 where it has refiled previously dismissed charges involving the "same subject matter,"
17 a term the Petition leaves undefined. The Petition's proposed amendment, however,
18 would not disturb the defendant's right to a Rule 10.2(a) change of judge in those same
19 circumstances.
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22 The Petition asserts the proposed amendment is needed because the current Rule
23 10.2 "tolerates" the prosecution's "abuse" of its right to a peremptory change of judge.
24 Not so. Rule 10.2(b) prohibits parties from seeking a peremptory change of judge for an
25 "improper purpose" as enumerated in Rule 10.2(b)(2). Further, the requesting party must
26 avow "as an officer of the court" that a Rule 10.2 request has been made "in good faith"
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1 and not for an improper purpose. And “if a party or a judge has reason to believe that the
2 rule is being abused, the remedy is to report the abuse to the State Bar.” *Gilbert Prosecutor’s*
3 *Office v. Foster*, 245 Ariz. 15, 18-19, ¶ 14 (App. 2018). Misuse of Rule 10.2 may result in
4 “discipline for violating the lawyer’s professional responsibilities.” *Id.* at 18, ¶ 11 (quotation
5 omitted). Accordingly, the current Rule 10.2 already addresses the concerns raised by the
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8 Petition.

9 Nonetheless, the Petition maintains that the potential imposition of professional
10 discipline is a deficient cure for Rule 10.2 violations. In support, the Petition suggests
11 “attorneys and judges typically will not file a bar charge for misuse of Rule 10.2. Even if
12 someone did file a bar charge, this practice does not readily fall within any of the prohibited
13 purposes in Rule 10.2(b)(2), and thus it is doubtful that the State Bar would be able to find
14 misconduct.” The Petition’s contention not only indulges in speculation on those points
15 but is also predicated upon the unwarranted notion that opposing counsel and judges
16 would simply choose to ignore professional misconduct that they had observed.
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19 Additionally, the Petition cites a single case—*State v. Morf* in Pima County Superior
20 Court—to support its claim that prosecutors abuse Rule 10.2. But there is no indication
21 in the Petition that an allegation of any such abuse was ever made in *Morf*, much less one
22 supported by the record. And the Petition is silent on whether any party sought
23 professional discipline against the *Morf* prosecutor; consequently, the Petition does not
24 explain why seeking professional discipline was or would have been insufficient. In sum,
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1 the Petition's proposed amendment amounts to no more than a solution in search of a
2 problem.

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4 Respectfully submitted this 24 day of April, 2024.

5 RACHEL H. MITCHELL
6 MARICOPA COUNTY ATTORNEY

7 BY 
8 BLAINE GADOW
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