

Elizabeth Burton Ortiz
ARIZONA PROSECUTING ATTORNEYS'
ADVISORY COUNCIL
3838 N. Central Avenue, Suite 850
Phoenix, Arizona 85012
Tel. (602) 542-7222
Fax (602) 274-4215
(State Bar No. 012838)

Rachel H. Mitchell
MARICOPA COUNTY ATTORNEY
(Firm State Bar No. 0032000)

BLAINE GADOW
CHIEF DEPUTY
225 West Madison Street
Phoenix, Arizona 85003
Tel. (602) 506-3800
(STATE BAR NUMBER 015741)

IN THE SUPREME COURT OF THE STATE OF ARIZONA

In the Matter of:

**PETITION TO AMEND
RULE 17.4 AND RULE 38
OF THE ARIZONA RULES
OF CRIMINAL PROCEDURE**

In Re: R-24-0025

**ARIZONA PROSECUTING
ATTORNEYS' ADVISORY
COUNCIL'S & MARICOPA
COUNTY ATTORNEY'S OFFICE
COMMENT IN OPPOSITION**

The Arizona Prosecuting Attorneys' Advisory Council ("APAAC") and the
Maricopa County Attorney's Office ("MCAO") herein respectfully submit the

following comment opposing Petition R-24-0025, which seeks to amend Rule 14.4 and 17.2 of the Arizona Rules of Criminal Procedure to require courts to provide additional collateral-consequence advisements to defendants at arraignments and change-of-plea hearings.

The proposed amendment to Arizona Rule of Criminal Procedure (“Rule”) 14.4 would direct arraignment courts to advise defendants that “[c]onviction of a crime may have collateral consequences, including but not limited to immigration consequences” and that “[c]onviction of a felony offense will result in certain civil rights being suspended.” Additionally, the proposed amendment to Rule 17.2 would broaden the potential-collateral-consequence advisement given at a change-of-plea hearing by requiring courts to (1) inform defendants that a guilty plea to a felony offense will generally affect their civil rights and (2) specifically state, “If you are convicted of a felony offense, certain civil rights will be suspended. These rights include the right to . . . [v]ote . . . [s]erve as a juror . . . [h]old public office . . . [and p]ossess a firearm.” Furthermore, the proposed amendment to Rule 17.2 would order courts to “advise that a plea may have other collateral consequences, depending on the nature of the case.” The reasons offered to support the proposed amendments include enhancing criminal defendants’ awareness of collateral consequences both at the beginning of the

case and before a change of plea, expressly notifying defendants that a conviction will deprive them of fundamental civil rights and encouraging discussion between defendants and their attorneys regarding collateral consequences unique to an individual defendant.

Although the proposed amendments may be well-intended, they raise more questions than they answer. On the one hand, a general warning that a conviction may result in possible yet unidentified collateral consequences is too vague to be useful. On the other hand, the enumeration of certain rights in the proposed amendment to Rule 17.2—specifically, voting, serving on a jury, holding public office, and possessing a firearm—implicates the interpretative canon of *expressio unius est exclusio alterius*; thus, the explicit inclusion of those limited rights may implicitly entitle defendants to contest a guilty plea’s validity if an unenumerated right has been affected. *See City of Surprise v. Ariz. Corp. Comm’n*, 246 Ariz. 206, 211, ¶ 13 (2019) (noting the *expressio unius est exclusio alterius* canon means “the expression of one item implies the exclusion of others”).

Additionally, the proposed amendment to Rule 17.2 would impose upon defense attorneys a new burden to inform defendants of a guilty plea’s potential but unknown collateral consequences, which not only involves conjecture but may be outside a criminal defense attorney’s area of expertise. Indeed, except

with certain rights like immigration, criminal defense attorneys need not inform defendants of specific collateral consequences. *See, e.g., State v. Poblete*, 227 Ariz. 537, 540, ¶ 10 (App. 2011) (“Before *Padilla*, the law in Arizona provided that an attorney’s failure to advise a defendant of the immigration consequences of his or her plea was not ineffective assistance of counsel because such advice related to a ‘collateral’ matter.”). Encouraging criminal defense attorneys to discuss theoretical collateral consequences with defendants would invite error to the extent that it leads to the provision of incorrect legal advice. This could, in turn, be used to establish novel ineffective-assistance of counsel claims in Rule 33 post-conviction-relief proceedings.

Accordingly, for the reasons stated above, APAAC and MCAO respectfully request that the Petition be denied in its entirety.

Respectfully submitted this _____ day of April, 2024,

RACHEL H. MITCHELL
MARICOPA COUNTY ATTORNEY

BY _____
BLAINE GADOW
CHIEF DEPUTY