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## ARIZONA SUPREME COURT

In the Matter of:

Petition to Amend Ariz. R. Crim.  
P. 31.2(a)(2)(A)

Supreme Court No. R-24-0007

Joint Comment by the Directors  
of the Maricopa County Indigent  
Defense Agencies

The Maricopa County indigent representation offices (IR) collectively handle most cases filed in Maricopa County in which there has been a finding of indigency. The Office of Public Defense Services (OPDS) provides administrative and financial oversight to the staffed offices and the Office of Contract Counsel (OCC). The staffed offices are comprised of the Office of the Public Defender (OPD), the Office of the Legal Advocate (OLA), the Office of the Legal Defender (OLD), and the Office of the Public Advocate (OPA). We jointly submit this comment in support of the proposal to amend Rule 31.2. But we believe the proposed amendment would better fit in subsection 31.2(c)(1).

Maricopa County is one of the largest and fastest-growing counties in the United States.<sup>1</sup> Nearly 29,000 felony criminal cases were filed in Maricopa County Superior Court last fiscal year.<sup>2</sup> A significant number of those defendants cannot afford counsel, either at trial or on appeal. Collectively, IR represents thousands of clients per year. And when

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<sup>1</sup> *Maricopa County Quick Facts*, MARICOPA COUNTY, <https://www.maricopa.gov/3598/County-Quick-Facts> (last accessed March 14, 2024).

<sup>2</sup> *Statistics: Felony Filings by Fiscal Year*, ARIZ. SUP. CT., <https://www.azcourts.gov/statistics/Interactive-Data-Dashboards/Felony-Filings> (last accessed March 14, 2024).

these cases proceed to appeal, the majority are handled by the indigent representation system.

We support Petition R-24-0007 because a person's constitutionally protected right to appeal should be protected from needless hurdles. Hurdles like the procedural hurdle Division 2 created when it issued *State v. Sanchez*, \_\_ Ariz. \_\_, 537 P.3d 794 (App. 2023). This proposal is an easy solution to the problem *Sanchez* created.

**1. The proposed rule change is a common-sense fix to ensure defendants are afforded their right to appeal.**

This proposal stems from Division 2's decision in *State v. Sanchez*, \_\_ Ariz. \_\_, 537 P.3d 794 (App. 2023). In *Sanchez*, two members of a panel on Division 2 decided that defendants needed to specifically include any ruling on a motion for new trial in their notices of appeal. 537 P.3d 794, ¶ 9. Fortunately, this Court vacated *Sanchez* by Decision Order on March 5, 2024.

Nonetheless, the proposed change would still be a positive step to ensure problems like *Sanchez* are avoided in the future.

As a starting point, before *Sanchez*, our appellate courts regularly addressed motions for new trial in the course of appeals of convictions

and sentences. This was true in both divisions. *See, e.g., State v. Nowak*, 2021 WL 5028362 (Div. 2 2021, Memo.); *State v. Voge*, 2021 WL 1549769 (Div. 1 2021, Memo.); *State v. Ortiz*, 2021 WL 1235056 (Div. 2 2021, Memo.); *State v. Bolivar*, 250 Ariz. 213 (Div. 2 2020); *State v. Beatte*, 2020 WL 5950895 (Div. 1 2020, Memo.).

*Sanchez* changed this. 537 P.3d 794, ¶ 9.

But nobody wanted the change. Both the defendant and the state “agree[d] that neither a separate notice of appeal—nor a specification of the denied motion for new trial in the notice of appeal of the judgment and sentence—is required to perfect an appeal of a denied motion for new trial.” *Id.*

And Judge Eckerstrom’s dissent thoughtfully explained why the two judges on the majority had reached the wrong conclusion. *Id.* at ¶¶ 33-52 (Eckerstrom, J., dissenting).

This comment will not get into the weeds of the legal dispute. The petition and Judge Eckerstrom’s dissent explain why the *Sanchez* majority was wrong. And this Court has already vacated *Sanchez*. The legal discussion need not be repeated.

But the impact of *Sanchez* was real and should be avoided in the future.

*Sanchez* created a much more onerous litigation process. The IR Offices saw several cases in which the trial court denied a motion for new trial and the defense attorney filed a standard notice of appeal—a notice that was sufficient before *Sanchez*. In those cases, the parties and courts had to take on far more work:

1. The appellate attorney had to amend the notice of appeal, which was filed in the superior court.
2. The superior court then had to process the notice of appeal and send it to the court of appeals.
3. The court of appeals created a new case number.
4. The appellate attorney would then move to consolidate the two appeals.
5. And the court of appeals had to process the motion—generally granting the motion.

This is the process several cases had to go through as a result of *Sanchez*. See, e.g., *State v. Griffin*, 1 CA-CR 22-0380 consolidated with 1 CA-CR 23-0083; *State v. Nash*, 1 CA-CR 23-0188 consolidated with 1 CA-CR 23-0422; *State v. Trinidad*, 1 CA-CR 22-0538 consolidated with 1 CA-CR 23-0228.

Five new steps, all to get back to where we were before *Sanchez*. Under Rule 31.4, consolidation was generally required. “Unless good cause exists not to do so, an appellate court *must* consolidate an appeal from a judgment or sentence with an appeal from a final decision on a Rule 24 motion ... if the motion ... was filed ... before a notice of appeal is filed; or ... while an appeal is pending and the motion ... was decided while the appeal is stayed.” Ariz. R. Crim. P. 31.4(b) (emphasis added).

While this Court vacated *Sanchez*, it did so in a Decision Order.

The proposal is thus a common-sense way to ensure we do not end up with another *Sanchez* in five or ten years.

## **2. The proposed rule change would fit better in Rule 31.2(c)(1).**

While IR supports the proposed rule change, they note that it makes more sense in Rule 31.2(c)(1). The proposal currently places the addition in Rule 31.2(a)(2), which deals with the time for filing a notice of appeal or cross-appeal. The proposal, however, has nothing to do with the time for filing. The proposal deals with content. Content is covered in subsection (c).

Subsection (c)(1) provides:

*The Appeal's Subject.* A notice of appeal or cross-appeal must identify the order, judgment, or sentence that is being appealed.

Ariz. R. Crim. P. 31.2(c)(1). The Petition's proposed language can be added to the end of this section:

*The Appeal's Subject.* A notice of appeal or cross-appeal must identify the order, judgment, or sentence that is being appealed. **A notice filed pursuant to this provision includes all appealable rulings in the case prior to the imposition of sentence.**

Placed here, the modification makes sense. It deals with content and is placed in the subsection that discusses content. And it clarifies that the notice includes appealable rulings prior to the order, judgment, or sentence being appealed.

### **Conclusion**

For the reasons stated in the petition and above, the directors of the defense agencies of Maricopa County support the petition to amend Criminal Rule 31.2 but believe the amendment would be better placed in subsection (c)(1).

Respectfully submitted this 29<sup>th</sup> day of April, 2024.

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