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6 **IN THE SUPREME COURT OF THE STATE OF ARIZONA**

7 In the Matter of

In Re: R-24-0006

8 ARIZONA SUPREME COURT
RULE 81 (ARIZONA CODE OF
9 JUDICIAL CONDUCT)

**ARIZONA PROSECUTING
ATTORNEYS' ADVISORY
COUNCIL COMMENT IN
OPPOSITION**

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12 The Arizona Prosecuting Attorneys' Advisory Council ("APAAC")

13 respectfully submits the following comment opposing Petition R-24-0006, which
14 proposes to amend Arizona Code of Judicial Conduct Rule 2.6 by adding a comment
15 with examples of permissible judicial actions that purportedly will ensure self-
16 represented litigants' right to be heard. APAAC objects to the Petition on the basis
17 that the amendment is both unnecessary and potentially contrary to Arizona law.

18 Under the Petition, judges may take the following steps in assisting self-
19 represented litigants: "liberally construing pleadings; providing brief information
20 about the proceeding and evidentiary and foundational requirements; modifying the

1 traditional order of taking evidence; attempting to make legal concepts
2 understandable; explaining the basis for a ruling; and making referrals to any
3 resources available to assist the litigant in preparation of the case.” (Pet. at 3;
4 Attachment.)

5 Although the Petition claims there is a significant need for this change, it also
6 admits: “many Arizona judges are already treating self-represented litigants” in this
7 manner. (Pet. at 8.) The qualifying statement added to the Petition by the Arizona
8 Judicial Council that the expanded steps were “aspirational goals,” and that, “a judge
9 would not be subject to discipline for failing to take these steps” further undercuts
10 the claim that there is significant need for the amendment. (Pet. at 9.)

11 Additionally, provisions in the Petition are potentially contrary to Arizona
12 law. For example, the Petition permits trial courts to liberally construe pleadings,
13 while Arizona law requires all litigants to make specific, developed legal arguments,
14 with citations to the record and legal authorities, to assert their respective legal
15 positions and preserve any error for appeal. *See* Ariz. R. Crim. P. 1.9(a) (“Motions,
16 Oral Argument, and Proposed Orders. Content. A motion must include a
17 memorandum that states facts, arguments, and authorities pertinent to the motion.”);
18 Ariz. R. Civ. P. 5.2 (same); Ariz. R. Crim. P. 31.10 (criminal appellate argument);
19 Ariz. R. Civ. App. P. 13(a)(7)(A) (civil appellate argument); *Ritchie v. Krasner*, 221
20 Ariz. 288, ¶ 62 (App. 2009) (failure to provide citations to authorities, statutes, and

1 parts of the record relied on “can constitute abandonment and waiver” of claim);
2 *J.W. v. Dep’t of Child Safety*, 252 Ariz. 184, ¶ 11 (App. 2021) (“Arguments that are
3 unsupported by legal authority and adequate citation to the record are waived.”);
4 *Stafford v. Burns*, 241 Ariz. 474, ¶ 34 (App. 2017) (concluding that appellant’s
5 failure to meaningfully develop argument constituted waiver).

6 Further, flexibility to the “traditional order of taking evidence” sought by the
7 Petition has potential impact to a party’s burden of proof in both civil and criminal
8 cases. (Pet. at 3; Attachment.) Altering the order of taking evidence could directly
9 cause a self-represented litigant to forfeit fundamental criminal defenses (like the
10 State’s failure to meet its burden of proof), or cause confusion about the burden of
11 proving affirmative defenses with evidence, A.R.S. § 13-205(A) (“Except as
12 otherwise provided by law, a defendant shall prove any affirmative defense raised
13 by a preponderance of the evidence.”).

14 Finally, the Petition does not reconcile the potentially conflicting proposition
15 that judges must ethically treat self-represented litigants differently than represented
16 parties (Pet. at 4), with Arizona law that has long required courts to hold all persons
17 representing themselves to the same standard as a licensed attorney. *Bloch v.*
18 *Bentfield*, 1 Ariz.App. 412, 417 (1965) (“When one undertakes to represent himself
19 that person is ‘entitled to no more consideration than if he had been represented by
20 counsel.’ He is ‘held to the same notice of statutes of local rules as would be

