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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-24-0016

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

The Arizona Prosecuting Attorneys' Advisory Council (APAAC) herein respectfully submits its comments in opposition to rule change petition R-24-0016, which proposes to materially alter Rule 17.4 and Rule 38 of the Arizona Rules of Criminal Procedure.

A.R.S. Sec. 11-532 vests the powers and duties of the public prosecutor in the elected County Attorney. It also provides that the County Attorney "shall ... conduct all prosecutions for public offenses". The power to charge offenses and offer plea agreements are core prosecution functions inherent

in the responsibility limited to the elected executive branch. Placing an intervening private plea negotiation into the current process dilutes the prosecution function, ignores the public nature of the proceedings, and allows for the opportunity for the defendant to coerce and intimidate the victim directly and indirectly. Many victims are already beleaguered with physical abuse from the defendant and would be further traumatized by this face-to-face process. The present public process provides the insulating layer of the public prosecutor to shield the victim from these real abuses.

The fallacious premise of a restorative justice process is that the harm is a private harm that can be remedied in private negotiations. The County Attorney's duties are vested in a public officer because he must promote public safety for every citizen of the county, consider a defendant's prior criminal history and his other pending offenses with other victims, and consider the future dangerousness of this individual to the victim and to all county residents before making a plea offer. The current system promotes the democratic process by providing for the vetting of the effectiveness of the County Attorney's plea agreements through regular public elections.

Placing the amendment in the plea agreement stage of the criminal proceedings exposes a victim to an offender whose guilt has not been

established. At this stage, there are likely factual disputes, the offender may not be sorry or even believe they should be held accountable for anything. At this stage, an offender has had the benefit of legal advice, the victim has had none. The process inserted at this stage could be a re-traumatizing event for the victim.

A prosecutor's overarching responsibility is to enforce the law and serve the public, not any private individual. It is concerning that, at least when the public's interests are not perfectly aligned with those of the victim, allowing a case to go to a restorative justice process gives priority to the victim's interests over those of the public. Restorative justice processes also take place behind closed doors to allow the participants a safe, private space to work through the issues. The process is secretive and difficult to assess by either the prosecutor or the public.

Accordingly, for the reasons stated above, APAAC respectfully requests that the petition be denied in its entirety.

Respectfully submitted this 1st day of May, 2024.

/s/ Elizabeth Burton Ortiz
Elizabeth Burton Ortiz