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**IN THE SUPREME COURT
IN AND FOR THE STATE OF ARIZONA**

In the matter of:

Petition to Amend Ariz. R. Crim. P.
11.3(a)(5)(C) of the Arizona Rule

Arizona Supreme Court
No. R-24-0011

**Arizona Attorneys for Criminal
Justice (AACJ) Comment
Supporting an Amendment to Rule
of Criminal Procedure 11.3(a)(5)(C)**

Pursuant to Rule 28(e) of the Arizona Supreme Court Rules, Arizona Attorneys for Criminal Justice (“AACJ”) respectfully submits this comment supporting the proposed amendment to Rule 11.3(a)(5)(C) of the Arizona Rules of Criminal Procedure with the understanding that the proposal is part of a larger plan to offer more in-depth and specialized training to experts who are entrusted with assessing the competence of the accused.

AACJ, the Arizona state affiliate of the National Association of Criminal Defense Lawyers, was founded in 1986 in order to give a voice to the rights of the criminally accused and to those attorneys who defend the accused. AACJ is a

statewide not-for-profit membership organization of criminal defense lawyers, law students, and associated professionals dedicated to protecting the rights of the accused in the courts and in the legislature, promoting excellence in the practice of criminal law through education, training and mutual assistance, and fostering public awareness of citizens' rights, the criminal justice system, and the role of the defense lawyer.

AACJ supports the proposal to amend Rule 11.3(a)(5)(C) because it will provide greater flexibility in meeting the continuing education needs of the forensic mental health examiner community. Properly trained examiners are essential to ensure the right of a criminal defendant to be tried only if competent. Competency to stand trial is “fundamental to an adversary system of justice,” *Drope v. Missouri*, 420 U.S. 162, 172 (1975). The Due Process Clause forbids the trial and conviction of persons incapable of defending themselves because they lack the capacity to understand the nature and object of the proceedings against them, to consult with counsel, and to assist in preparing their defense. *Id.* at 171.

Although prosecutors, defense counsel, and trial judges all share the obligation to ensure that the accused is competent to stand trial, too often courts overly rely “on the testimony of psychiatric experts.” *Medina v. California*, 505 U.S. 437, 465 (Blackmun, J., dissenting). The result is that, despite being a legal issue to be determined by the courts, mental health experts exert a tremendous amount of

influence on competency determinations. *Id.* (citing studies finding that courts agree with experts over 90% of the time); *see also* Patricia A. Zapf et al., *Have the Courts Abdicated Their Responsibility for Determination of Competency to Stand Trial to Clinicians?* 4 J. Forensic Psychol. Prac. 27, 34 (2004) (finding agreement 99.7% of the time).

“Like many psychological inquiries, competency evaluations are ‘in the present state of the mental sciences ... at best a hazardous guess however conscientious.’” *Medina*, 500 U.S. at 465 (internal citation omitted.) Decades of competency evaluations, trainings, and studies have led examiners and scholars alike to conclude that “when it comes to judging ability to stand trial, . . . we seem to be at sea with no compass to guide us.” Grant H. Morris, J.D., LL.M. et. al., *Competency to Stand Trial on Trial*, 4 Hous. J. Health L. & Pol’y 193, 228 (2004) (internal citation omitted). Best practices are needed to ensure that mental health examiners consistently deploy reliable testing procedures. Hon. Justice David Collins, *Re-Evaluating Competence to Stand Trial*, Law & Contemp. Probs., 2019, at 157, 176 (2019).

The Petition recognizes that more specialized and in-depth trainings will be available if the proposed language is adopted. (Petition at 3.) Accordingly, AACJ supports the proposed amendment to Rule 11.3(a)(5)(C) of the Arizona Rules of Criminal Procedure.

Respectfully submitted this 1st day of May, 2024

By: /s/ Kevin D. Heade

Kevin D. Heade

Arizona Attorneys for Criminal Justice