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7 **IN THE SUPREME COURT**
8 **STATE OF ARIZONA**

9 In the Matter of:

10 **PETITION TO AMEND RULE**
11 **31.2(a)(2)(A) OF THE ARIZONA**
12 **RULES OF CRIMINAL**
13 **PROCEDURE**

Supreme Court No. R-24-0007

14 **STATE BAR OF ARIZONA**
15 **COMMENT**

16 Pursuant to Rule 28(e) of the Arizona Rules of Supreme Court, the State Bar
17 of Arizona (the “State Bar”) hereby submits the following as its comment to the
18 above-captioned Petition.

19 After review by the State Bar’s Criminal Practice and Procedure Committee,
20 the State Bar supports the Petition with a minor stylistic change proposed for
21 additional clarity. As the Petition shows, the Court of Appeals’ decision in *State v.*
22 *Sanchez*, 537 P.3d 794 (Ariz. App. 2023), has created confusion about Rule 31.2 by
23 requiring defendants to appeal interlocutory orders denying a prejudgment motion
24 for new trial. Because the proposed rule change would correct the issues created by
25 the *Sanchez* decision, the State Bar supports the Petition.

1 In *Sanchez*, 537 P.3d at 797, ¶¶ 10–11, a majority of the Court of Appeals held
2 that a defendant must separately appeal the denial of a prejudgment motion for new
3 trial filed pursuant to Rule 24.1 within 20 days of the order denying the motion;
4 failure to do so divests the Court of Appeals of jurisdiction to consider the denial of
5 the new trial motion. However, as the dissent notes, an order denying a prejudgment
6 motion for new trial “is interlocutory and non-final, and it is interwoven with, and
7 indispensable to, the ultimate judgment of conviction.” *Id.* at 802, ¶ 34.
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10 Further, as both the Petition and Judge Eckerstom’s dissent point out, the
11 ramifications of the majority’s holding are that defendants must appeal the denial of
12 a prejudgment motion for new trial *before* they appeal their judgment and sentence.
13 *See id.* at 802, ¶ 35. This is because prejudgment motions for new trial must be filed
14 within 10 days of the jury’s verdict, Ariz. R. Crim. P. 24.1(b), while sentencing can
15 occur 30 days or more after conviction, *see* Ariz. R. Crim. P. 26.3. This would result
16 in piecemeal appeals and could lead to confusion as to whether trial courts would
17 have jurisdiction to impose sentence while an appeal from the denial of a
18 prejudgment motion for new trial remains pending.¹
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23 ¹ At least two cases involving bifurcated appeals from new trial motions are currently
24 pending in the court of appeals. *See State v. Franklin*, No. 2 CA–CR 2023–0177
25 (Ariz. App. filed July 28, 2023) & No. 2 CA–CR 2023–0238 (Ariz. App. filed Oct.
26, 2023); *State v. Cardenas*, 2 CA–CR 2023–0214 (Ariz. App. filed Sept. 27, 2023)
& *Cardenas v. Holmberg*, 2 CA–SA 2023–0086 (filed Oct. 20, 2023).

