

Eric M. Fraser (No. 027241)
OSBORN MALEDON, P.A.
2929 N. Central Ave., Ste. 2000
Phoenix, AZ 85012
(602) 640-9000
efraser@omlaw.com

Joshua D. Bendor (No. 031908)
Solicitor General, Arizona Attorney General's Office
2005 N. Central Ave.
Phoenix, AZ 85004
(602) 542-8958
Joshua.Bendor@azag.gov¹

ARIZONA SUPREME COURT

In the Matter of:

Petition to Amend Arizona Rules of Civil
Appellate Procedure 4, 16, and 23;
Arizona Rules of Criminal Procedure
31.6, 31.15, and 31.21; and Arizona
Rules of Juvenile Procedure 609

Supreme Court No. R-25-____

**Petition to Amend Arizona Rules of
Civil Appellate Procedure 4, 16,
and 23; Arizona Rules of Criminal
Procedure 31.6, 31.15, and 31.21;
and Arizona Rules of Juvenile
Procedure 609**

Introduction

Petitioners are appellate attorneys with significant experience practicing before this and other appellate courts. Based on that experience, Petitioners ask this Court to amend the rules specified above to provide for sequential merits briefing instead of simultaneous briefing in cases in which this Court grants review. The proposed amendments, which are contained in Attachment A to this Petition, would

¹ A list of all Petitioners is provided in Attachment C.

also impose a word limit, rather than a page limit, on all supplemental briefing in this Court. No similar rule proposal has been filed in the last five years.

Once this Court grants a petition for review, the various rules governing appellate procedure give the Court discretion to order supplemental briefing and to direct the manner in which that briefing is to be conducted. *See, e.g.,* [ARCAP 23\(k\)](#) (“The Supreme Court may permit the parties to file supplemental briefs, or it may set oral argument, or both.”). Because the rules do not address supplemental brief deadlines or length, the Court sets those by order. If the Court grants review, it typically orders 20-page simultaneous supplemental briefs that are due within 20 days of the order granting review.²

In our adversarial system, sequential briefing provides the Court with better-quality briefing and narrows the scope of the issues and arguments presented to the Court. Arizona stands nearly alone in its simultaneous supplemental briefing practice. Most state supreme courts and the United States Supreme Court require sequential briefing after a petition for review (or its equivalent) is granted. This Court should adopt this rule petition and amend its briefing practice to improve the

² Although experienced practitioners know what to expect with respect to supplemental briefing, inexperienced practitioners do not, which creates a potential access-to-justice issue. At a minimum, this Court should codify the default deadline and length requirements for supplemental briefs in the rules so that every party has equal access to the Court’s standard procedures.

quality of supplemental briefing, in a manner similar to the rules for merits briefing in the United States Supreme Court. The proposed rule change will not substantially lengthen the time it takes to resolve cases pending before this Court.

I. Sequential briefing produces better quality briefs because it allows the parties to focus on the issues presented instead of requiring them to anticipate every potential argument that the other side might raise.

“[T]he crucible of adversarial testing is crucial to sound judicial decisionmaking.” *Sessions v. Dimaya*, 584 U.S. 148, 190 (2018) (Gorsuch, J., concurring in part). Sequential briefing “leads to more responsive briefing than a blind, simultaneous system of cross-motions on the same issues.” *Stand Up for Cal. v. U.S. Dep’t of Interior*, 2:16-CV-02681-AWI-EPG, 2017 WL 10620368, at *2 (E.D. Cal. Mar. 8, 2017) (memorandum dec.); see also *Abdul Mehamed Sied v. Duke*, 17-CV-06785-LB, 2017 WL 6316821, at *3 & n.18 (N.D. Cal. Dec. 11, 2017) (memorandum dec.) (ordering sequential briefing on a complicated jurisdictional issue “so the parties can see and meaningfully respond to each other’s arguments”).

Simultaneous briefing forces the appellee or respondent to anticipate or guess at what the appellant or petitioner’s arguments will be. Parties may focus on different issues, resulting in briefs that either talk past each other or that try to address every conceivable argument the other side could raise. This Court is then left with briefs that fail to dive deeply into the most important issues before the Court. Cf. *Smith v. Murray*, 477 U.S. 527, 536 (1986) (The “process of ‘winnowing

out weaker arguments on appeal and focusing on’ those more likely to prevail, far from being evidence of incompetence, is the hallmark of effective appellate advocacy.”) (quoting *Jones v. Barnes*, 463 U.S. 745, 751 (1983)).

Although an argument’s general contours may be known based on the pleadings below, arguments often get refined as they progress through the appellate process and new case law may affect the relative strength of certain earlier arguments. Also, this Court often reframes the issues on review, adding or removing aspects of the issues that the parties have briefed. Thus, sequential briefing allows both sides to present their best responses to changed arguments or circumstances, resulting in more helpful, targeted briefing to this Court.

Petitioners have also observed that under the current system, parties frequently use their responses to amicus briefs to bootstrap responses to the simultaneous supplemental briefs or waste their time at oral argument clarifying the issues in dispute or correcting errors in the opposing party’s brief. Sequential briefing allows parties to respond to *both* opposing parties and amici without running afoul of the letter or spirit of the scheduling order and focuses the parties’ arguments on the most important and nuanced aspects of the case. Additionally, by naming the supplemental briefs “merits briefs,” the proposed rule changes better delineate the purpose of each stage of briefing—petitions for review should focus primarily on

why this Court should grant review, while supplemental briefing should focus on merits of the issues granted review.

A 50-state survey shows that Arizona is one of only four states that use simultaneous briefing after a petition for review (or its equivalent) is granted. *See* Attachment B. Twenty-seven states have sequential briefing, while others have no intermediate court of appeals and thus necessarily have standard sequential briefing for direct appeals. The remaining few states do not have supplemental briefing. Arizona stands in the small minority with its simultaneous briefing practice.

II. The proposed amendments modestly increase the supplemental briefing period, but reduce the overall length of briefing in many cases.

The proposed rule changes set a schedule and length limitations for sequential briefing. The proposed changes will not significantly expand the briefing schedule for most cases and will actually reduce the total length of the parties' briefs in cases involving amicus briefs.

In most cases where this Court grants review, at least one amicus curiae participates. A review of all opinions published by this Court since January 2021³ shows that in roughly 74% of such cases, at least one amicus curiae participated after this Court granted a petition for review:

³ This excludes death penalty direct appeals, certified questions, and election-related cases, which have their own procedures not at issue in this Petition for Rule Change.

| Year | Portion of Cases With at Least One Amicus |
|--------------|---|
| 2021 | 77% (24 out of 31) |
| 2022 | 69% (24 out of 35) |
| 2023 | 72% (21 out of 29) |
| 2024 | 77% (20 out of 26) |
| Total | 74% (89 out of 121) |

A. This Court’s Current Briefing Schedule and Page Limits

When this Court grants review, it typically gives the parties 20 days to file simultaneous supplemental briefs no longer than 20 pages. Amici curiae then have 14 days after the parties’ supplemental briefs to file their amicus briefs, also no longer than 20 pages. The parties then have 20 days to respond to the amicus briefs in 20 pages or less. Thus, in cases where at least one amicus participates, the briefing schedule takes 54 days total, and the parties—not counting the amici—have a total of 40 pages each (assuming at least one amicus on each side). When no amici participate, the briefing takes 20 days.

Additionally, under this Court’s current rules, if supplemental briefs are permitted, “oral argument may not be scheduled less than 30 days . . . after the deadline for filing supplemental briefs.” [ARCAP 23\(k\)\(3\)](#). Thus, in cases in which at least one amicus participates, oral argument will typically not occur for at least 84 days after this Court grants review.

B. The proposed rule will not significantly expand the briefing schedule for most cases and will slightly reduce the total number of pages filed in most cases

Petitioners are cognizant of this Court’s desire to reduce the time it takes to resolve cases before the Court. Although briefing represents only a small portion of the total resolution time for any case, Petitioners strived to minimize increases to the briefing schedule and propose options for compensating for any moderate increases by compressing other aspects of the briefing and oral argument schedule.

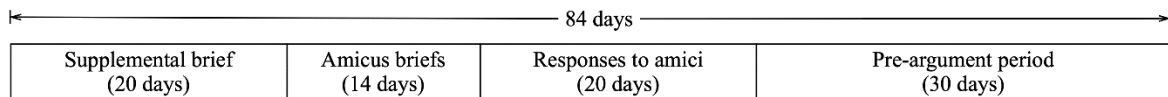
The proposed rule changes would create a default briefing schedule lasting 76 days in all cases, regardless of whether any amicus participate. The proposed rules give parties 28 days for each of the principal merits briefs and 20 days for a reply brief, and set word limits of 7,000 words (28 pages) and 4,000 words (16 pages) respectively for the principal and reply briefs. However, the proposed rules are simply the default; each proposed rule is prefaced with “[u]nless otherwise ordered by the court.” *See* Attachment A, at 16. Thus, this Court retains discretion to expand or contract the briefing schedule if needed.⁴

⁴ Petitioners considered a shorter briefing schedule for juvenile cases, but the Court’s current practice sets the same time and page limits for supplemental briefing in juvenile cases. Given the modest increases to the briefing schedule proposed here, Petitioners concluded that a separate default schedule for juvenile cases was unnecessary and could lead to confusion for inexperienced practitioners.

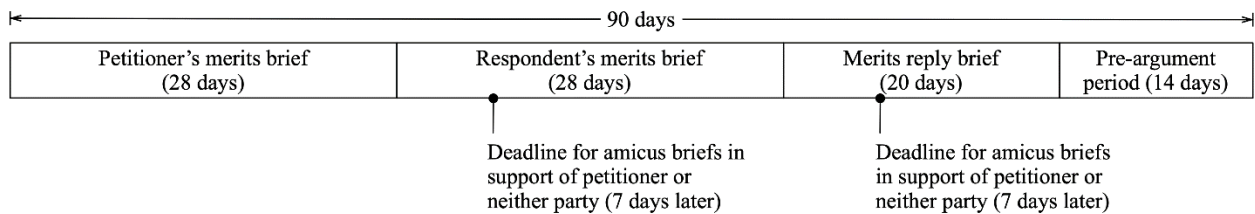
For cases in which at least one amicus curiae participates, the proposed rule changes in this Petition would add only 22 days to the current briefing schedule (76 days instead of 54 days). To offset these extra days, Petitioners propose reducing the mandatory waiting period between briefing and oral argument from 30 days to 14 days. Reducing the waiting period will give the Court greater flexibility in scheduling oral arguments and reduce the impact of the sequential briefing schedule to just 6 additional days.

The chart below shows the schedule under the current and proposed rules, including the period for each brief, how amicus deadlines are interspersed with the merits briefs, and the required period before the clerk may schedule oral argument:

Current Rules:



Proposed Rules:



As the chart shows, the proposed rules result in only a negligible 6-day increase for the 74% of cases involving at least one amicus brief.

For cases with no amici curiae (roughly 26% of cases), Petitioners recognize these proposed changes expand the briefing time. Instead of 34 days—20 days for

simultaneous supplemental briefs and the 14-day waiting period for any amicus briefs—the sequential briefing would take 76 days. But even this longer briefing period still represents a small portion of the overall time it takes for a case to be resolved after the Court grants review, and the Court will still benefit from higher-quality briefing.

Additionally, the proposed rule also slightly reduces the *amount* of briefing (i.e., the number of words or pages of briefing) in cases in which at least one amicus participates. Unlike the current practice, the proposed rule changes would not allow the parties to file a separate brief to respond to an amicus curiae and would not extend the briefing cycle when an amicus curiae participates. Instead, the amicus briefs would be filed at staggered points during the sequential briefing process and the parties would be required to address the amicus briefs in their sequential briefs. In particular, an amicus curiae supporting the petitioner would file an amicus brief shortly after the petitioner’s merits brief is filed and *before* the respondent’s merits brief is filed. The respondent’s merits brief—not a separate brief—would then address the amicus’s arguments along with the petitioner’s arguments. Similarly, an amicus curiae supporting the respondent would file an amicus brief shortly after the respondent’s merits brief is filed and *before* the petitioner’s merits reply brief is filed. The petitioner’s merits reply brief—not a separate brief—would then address the amicus’s arguments (along with the respondent’s arguments). This is the practice

that the United States Supreme Court and the other federal appellate courts currently use. *See* U.S. Sup. Ct. R. 25.1–3, 37.3; [Fed. R. Civ. App. P. 29\(a\)\(6\)](#). The proposed rules borrow wording from the United States Supreme Court’s Rules and the Federal Rules of Appellate Procedure, as appropriate.

Consequently, for cases involving *amicus curiae*, the total number of briefs that the parties would file would *decrease* under the proposed rules. Instead of the parties filing four briefs (two simultaneous briefs followed by two responses to the *amicus* briefs), they would file only three briefs total. The total length of the briefs that the parties would file would likewise decrease by roughly 8 pages, with only a small increase in the length of time required to complete the briefing. *See infra* Part III (explaining proposed word limits). The rule change would also alleviate the confusion that results when multiple *amicus* briefs are filed on a side, which often leads parties to seek leave to file a consolidated response.

Petitioners recognize that this modest increase to the briefing schedule may affect the Court’s Appellate Time Standards. However, performance measures over the last three fiscal years indicate that the current time standards for “case accepted to disposition” may be too aggressive across the board and may need to be revised themselves. *See* [Appellate Time Standards - Supreme Court](#). The proposed rule changes would affect only a small fraction of the overall time that it takes this Court to resolve a case, and the schedule is still shorter than the 105 days that the United

States Supreme Court typically permits for supplemental briefing once it grants certiorari. *See* U.S. Sup. Ct. R. 25.1–3.

Finally, under the proposed amendments, the Court retains discretion to modify the briefing schedule and brief length in appropriate cases. For example, if an issue raised in a case required a more expeditious resolution, the Court could compress the briefing schedule accordingly.

III. The proposed amendments also replace page limits with word limits to conform to the rest of Arizona’s appellate rules and prevent gamesmanship through unconventional formatting in briefs.

Under the Court’s current practice, supplemental briefs, amicus briefs, and any responses to amicus briefs are typically limited to 20 pages. However, nearly all the rules concerning appellate briefs in both the Court of Appeals and this Court—including petitions for review and responses to them—impose a word limit rather than a page limit. *See, e.g.,* [ARCAP 14](#), [ARCAP 23\(g\)\(2\)](#), [Ariz. R. Crim. P. 31.12](#). That makes sense—ultimately, it is the amount of text that matters. Page limits therefore measure the wrong thing.

In the digital age, more advocates and even courts turn to visual representations to get a point across. *See, e.g.,* [Andy Warhol Foundation for Visual Arts, Inc. v. Goldsmith](#), 598 U.S. 508, 518 (2023) (comparing two images in copyright dispute); *See* Elizabeth G. Porter, [Taking Images Seriously](#), 114 *Colum. L. Rev.* 1687, 1694 (2014) (“Multimedia legal argument may assist courts, litigants,

and scholars to convey complex scientific, technical, or abstract information.”). Under this Court’s current page-limit practice, advocates may choose to omit helpful visual representations because they take up too much space on a page. A word limit would incentivize advocates to include helpful visuals in their briefing, like tables, timelines, or items of evidence relevant to the arguments before the court.

Not only do page limits chill helpful advocacy, they also create perverse incentives to condense text on a page, resulting in dense, difficult-to-read pleadings. Over the years, Petitioners have seen parties employ creative efforts to get around page limits by using excessively long single-spaced footnotes and block quotes. A word limit would remove any incentive to condense as much text as possible on a page, resulting in more reader-friendly briefs. *See AMERICAN BAR ASSOCIATION COUNCIL OF APPELLATE LAWYERS, RECOMMENDATIONS AND OPTIONS FOR APPELLATE COURTS TO IMPROVE THE FUNCTIONALITY AND READABILITY OF E-BRIEFS 24 (2017)* (“Word limits are superior from a readability standpoint in that they allow filers the flexibility to improve the visual appearance of a brief even if it results in a longer overall page length.”).

The proposed rule changes limit merits briefs to 7,000 words, which is roughly equivalent to 28 pages. They limit the petitioner’s reply brief to 4,000 words, which is roughly equivalent to 16 pages. Finally, they limit amicus briefs to 5,000 words, which is roughly equivalent to 20 pages.

The slight increase in the length of the parties' briefs is meant to account for the need to respond to any amicus briefs, but the proposed rules will actually reduce the overall *total* length of briefing submitted to this Court when amicus participate. Under the current practice, if at least one amicus participates per side, the parties may file up to 40 pages of briefing (20 pages for the merits brief, and 20 pages for the response to amicus), a total of 80 pages. Under the proposed rule changes, petitioners may submit up to about 44 pages (28 for the merits brief, 16 for the reply), and respondents may submit up to 28 pages, for a total of 72 pages.

Thus, for most cases in which this Court grants review, the proposed rule changes will not substantially increase either the briefing schedule or the total amount of briefing. And the Court and the parties get the benefit of more responsive briefing that better reflects the adversarial nature of appellate practice.

Conclusion

For these reasons, Petitioners respectfully request that this Court adopt the proposed amendments in Attachment A of the Appendix.

Respectfully submitted on January 9, 2025.

/s/ Eric M. Fraser
Eric M. Fraser (No. 027241)

/s/ Joshua D. Bendor
Joshua D. Bendor (No. 031908)

ATTACHMENT A⁵

ARIZONA RULES OF CIVIL APPELLATE PROCEDURE

Rule 4. Filing Documents with an Appellate Court; Format; Service

(a) [No change]

(b) Document format. Unless an appellate court allows otherwise, every document that a party files with an appellate court, other than a document contained in an appendix or filed as an attachment to a motion, must be prepared as follows:

(1)–(8) [No change]

(9) *Word Limits.* A document must average no more than 280 words per page, including footnotes and quotations. Word limits specified in Rules 14(a), 16(d), 19(d), 22(e), 23(g), 23(l), and 29(c) do not include the cover page, the caption, the table of contents, the table of citations, paragraph numbers appearing at the beginning of each paragraph (if any), the date and signature block, a certificate of service, a certificate of compliance, or any appendix.

(10) [No change]

(c)–(i) [No change]

* * *

Rule 16. Amicus Curiae

(a)–(c) [No change]

(d) ~~Time to File Amicus Briefs in the Supreme Court.~~ A person seeking to file a brief as amicus curiae in the Supreme Court must file the brief as provided by this Rule.

⁵ Additions to the text of a rule are shown by underscoring and deletions of text are shown by ~~strike-through~~.

(1) *Briefs Filed Before a Decision by the Supreme Court to Grant Review.* Unless otherwise ordered by the Supreme Court, a person may file (or, if submitted under Rule 16(b)(2), lodge) an amicus curiae brief in support of a petition for review or a response to a petition for review no later than 21 days after the filing of the response to the petition for review. Amicus curiae briefs filed under this subsection must comply with the form and length requirements of Rule 23(g) exclusive of any appendix.

(2) *Briefs Filed After the Supreme Court Grants Review.* After the Supreme Court has granted review, and unless otherwise ordered, amicus curiae may file (or, if submitted under Rule 16(b)(2), lodge) a brief no later than ~~10~~ 7 days ~~after the date ordered by the Court for the parties to file supplemental briefs in its order granting review.~~ after the principal merits brief of the party being supported is filed. An amicus that does not support either party must file its brief no later than 7 days after the petitioner's principal merits brief is filed. Amicus curiae briefs ~~must not exceed the word limitation imposed for the parties' supplemental briefs~~ filed under this subsection must not exceed 5,000 words.

(e)–(f) [No change]

* * *

Rule 23. Petition for Review

(a)–(j) [No change]

(k) Order Granting Review.

(1) *Notice.* The Supreme Court clerk must promptly notify the parties and the Court of Appeals clerk if the Supreme Court grants a petition or cross-petition for review.

(2) *Issues.* A Supreme Court order granting review must specify the issue or issues that the Supreme Court will review, and whether it will consider issues raised in, but not decided by, the Court of Appeals.

(3) ~~*Supplemental Briefs and Oral Argument.*~~ The Supreme Court may permit the parties to file supplemental briefs, or it may set oral argument, or both. Unless otherwise ordered, oral argument may not be scheduled less than 30 days after entry of a written notice of oral argument or, if supplemental briefs are permitted, less than ~~30~~14 days after the deadline for filing supplemental the petitioner's reply briefs.

(4) ~~*Motion for Supplementation or Oral Argument.*~~ If an order granting review does not provide for supplemental briefs or oral argument, any party may file a motion specifying the reasons that ~~supplementation or oral argument, or both,~~ would be appropriate. A party must file this motion within 15 days after the Supreme Court clerk distributes notice to the parties of the order granting review.

(I) Briefs on the Merits.

Unless otherwise ordered by the court, the parties may file merits briefs as follows:

(1) *Petitioner's Merits Brief.* Within 28 days after the clerk distributes the order granting review, a petitioner may file a brief addressing the merits of the issue or issues the Supreme Court will review.

(2) *Respondent's Merits Brief.* Within 28 days after service of the petitioner's merits brief, a respondent may file a merits brief addressing the merits of the issue or issues the Supreme Court will review, including any response to any arguments made by an amicus curiae.

(3) *Petitioner's Merits Reply Brief.* Within 20 days after service of the respondent's merits brief, a petitioner may file a merits reply brief, including any response to any arguments made by an amicus curiae.

(4) *Length of Merits Briefs.* The principal merits briefs must not exceed 7,000 words. A merits reply brief must not exceed 4,000 words.

(5) *Cross-Petitions.* If cross-petitions have been granted review, the Clerk may designate one or more of the parties to file an initial brief and reply brief as provided in paragraphs 1 and 3 of this subsection.

~~(h)~~ **(m) Availability of the Remaining Record.** The Court of Appeals clerk must make the remaining record available to the Supreme Court clerk upon notification that the Supreme Court has granted a petition or cross-petition for review.

~~(m)~~ **(n) Disposition.** If the Supreme Court grants review, it may decide the appeal in any manner specified in Rule 28(a). Additionally, the Supreme Court may do the following:

(1)–(3) [No change]

* * *

ARIZONA RULES OF CRIMINAL PROCEDURE

Rule 31.6. Filing Documents with an Appellate Court; Document Format; Service and Proof of Service; Motions

(a)–(c) [No change]

(d) Word Limits. Word limits specified in Rules 31.12(a), 31.14(a), 31.15(d), 31.18(d), 31.20(e), ~~and~~ 31.21(g), and 31.21(k) include footnotes and quotations, but do not include the cover page, the caption, the table of contents, the table of citations, paragraph numbers appearing at the beginning of each paragraph (if any), the date and signature block, a certificate of service, a certificate of compliance, or any appendix.

(e) [No change]

* * *

Rule 31.15. Amicus Curiae

(a)–(c) [No change]

(d) Time to File Amicus Curiae Briefs in the Supreme Court. An applicant seeking to file a brief as amicus curiae in the Supreme Court must file the brief as provided in this rule.

(1) *Briefs Filed Before a Decision by the Supreme Court to Grant Review.* Unless the Supreme Court orders otherwise, applicants must file (or, if by motion, lodge) amicus curiae briefs in support of a petition for review or a response to a petition for review no later than 21 days after the filing of the response or, if none is filed, the deadline for filing the response to the petition for review. Amicus curiae briefs filed under this subsection must comply with the form and length requirements of Rule 31.21(g), exclusive of any appendix.

(2) *Briefs Filed After the Supreme Court Grants Review.* After the Supreme Court grants review, and unless the Court orders otherwise, amicus curiae must file (or, if by motion, lodge) a brief no later than ~~10~~ 7 days ~~after the date ordered by the Court for the parties to file supplemental briefs.~~ after the principal merits brief of the party being supported is filed. An amicus that does not support either party must file its brief no later than 7 days after the petitioner's principal merits brief is filed. Amicus curiae briefs ~~must not exceed the word or page limitation imposed for the parties' supplemental briefs.~~ filed under this subsection must not exceed 5,000 words.

(e) [No change]

* * *

Rule 31.21. Petition for Review

(a)–(i) [No change]

(j) Order Granting Review.

(1) *Notice.* The Supreme Court clerk must promptly notify the parties and the Court of Appeals clerk if the Supreme Court grants a petition or cross-petition for review.

(2) *Issues.* A Supreme Court order granting review must specify the issue or issues the Supreme Court will review, and whether it will consider issues raised in, but not decided by, the Court of Appeals.

(3) *~~Supplemental Briefs and Oral Argument.~~* The Supreme Court may ~~permit the parties to file supplemental briefs, or it may set oral argument, or both.~~ Unless otherwise ordered, oral argument may not be scheduled less than ~~30~~

~~days after entry of a written notice of oral argument or, if supplemental briefs are permitted, less than 30~~14 days after the deadline for filing supplemental the petitioner's reply briefs.

(4) *Motion for ~~Supplementation or Oral Argument~~*. If an order granting review does not provide for ~~supplemental briefs or oral argument~~, any party may file a motion specifying the reasons that ~~supplementation or oral argument, or both~~, would be appropriate. A party must file this motion no later than 15 days after the Supreme Court clerk sends notice to the parties of the order granting review.

(k) Briefs on the Merits.

Unless otherwise ordered by the court, the parties may file merits briefs as follows:

(1) *Petitioner's Merits Brief*. Within 28 days after the clerk distributes the order granting review, a petitioner may file a brief addressing the merits of the issue or issues the Supreme Court will review.

(2) *Respondent's Merits Brief*. Within 28 days after service of the petitioner's merits brief, a respondent may file a merits brief addressing the merits of the issue or issues the Supreme Court will review, including any response to any arguments made by an amicus curiae.

(3) *Petitioner's Merits Reply Brief*. Within 20 days after service of the respondent's merits brief, a petitioner may file a merits reply brief, including any response to any arguments made by an amicus curiae.

(4) *Length of Merits Briefs*. The principal merits briefs must not exceed 7,000 words. A merits reply brief must not exceed 4,000 words.

(5) *Cross-Petitions*. If cross-petitions have been granted review, the Clerk may designate one or more of the parties to file an initial brief and reply brief as provided in paragraphs 1 and 3 of this subsection.

(k) (l) Availability of the Record. The Court of Appeals clerk must make the remaining record available to the Supreme Court clerk upon notification that the Supreme Court has granted a petition or cross-petition for review. After a

petition for review is filed, the Court of Appeals clerk must make available portions of the record requested by the Supreme Court or its staff attorneys.

(H) (m) Disposition. If the Supreme Court grants review, it may decide the appeal in any manner specified in Rule 31.19(c) or (d). Additionally, the Supreme Court may do the following:

(1)–(3) [No change]

* * *

ARIZONA RULES OF JUVENILE PROCEDURE

Rule 609. Petition for Review

(a)–(h) [No change].

(i) Order Granting Review. If the Supreme Court grants review, it must promptly notify the parties and the Court of Appeals clerk and specify the issue or issues to be reviewed. The Supreme Court may ~~require the parties to file additional briefs, order set oral argument, or do both.~~ If the order granting review does not provide for supplementation of briefs or for oral argument, e Either party, no later than 15 days after the Supreme Court clerk sends notice of the court’s order, may request the court to do so by filing a motion that specifies the reasons. Unless otherwise ordered, oral argument may not be scheduled less than 14 days after the deadline for filing the petitioner’s reply brief.

(j) Briefs on the Merits.

Unless otherwise ordered by the court, the parties may file merits briefs as follows:

(1) *Petitioner’s Merits Brief.* Within 28 days after the clerk distributes the order granting review, a petitioner may file a brief addressing the merits of the issue or issues the Supreme Court will review.

(2) *Respondent’s Merits Brief.* Within 28 days after service of the petitioner’s merits brief, a respondent may file a merits brief addressing the

merits of the issue or issues the Supreme Court will review, including any response to any arguments made by an amicus curiae.

(3) *Petitioner's Merits Reply Brief.* Within 20 days after service of the respondent's merits brief, a petitioner may file a merits reply brief, including any response to any arguments made by an amicus curiae.

(4) *Length of Merits Briefs.* The principal merits briefs must not exceed 7,000 words. A merits reply brief must not exceed 4,000 words.

(5) *Cross-Petitions.* If cross-petitions have been granted review, the Clerk may designate one or more of the parties to file an initial brief and reply brief as provided in paragraphs 1 and 3 of this subsection.

~~(j)~~ **(k) Availability of the Record.** Upon notification by the Supreme Court clerk that a petition or cross-petition for review has been granted, the Court of Appeals clerk must make the remaining record available to the Supreme Court clerk and the Supreme Court's staff attorneys.

~~(k)~~ **(l) Order Denying Review.** If the Supreme Court denies review, its order must specify those justices, if any, who voted to grant review. The Supreme Court must notify the Court of Appeals and the parties when all petitions and cross-petitions for review have been decided and must return any original paper copies of the briefs to the Court of Appeals clerk. Unless the Supreme Court permits otherwise, a party may not file a motion for reconsideration of an order denying a petition or cross-petition for review.

~~(l)~~ **(m) Dispositions.** If the Supreme Court grants review, it may decide the appeal in any manner specified in ARCAP 28(a). The Supreme Court may also do the following:

(1)–(3) [No change]

~~(m)~~ **(n) Motions to Extend Time.** The Supreme Court may grant or deny motions to extend the time to file a petition for review. Such motions must be filed with the Supreme Court Clerk.

ATTACHMENT B

States with Sequential Merits Briefing

| State | Merits Briefing Schedule | Citation |
|-------------|---|--|
| Alabama | Sequential by rule | AL ST RAP Rule 39(g); AL ST RAP Rule 29(d) (amicus) |
| Alaska | Sequential by practice (intermediate appellate court hears only criminal cases) | Alaska R. App. P. 403(f)(2); Alaska R. App. P. 212; example scheduling order |
| Arkansas | Sequential by rule | Ark. Sup. Ct. R. 2-4(g) |
| California | Sequential by rule | Cal. R. Ct. 8.520(a) |
| Colorado | Sequential by rule | C.A.R. 57; C.A.R. 31; |
| Connecticut | Sequential by rule | Conn. Practice Book Sec. 84-9; 84-11 |
| Florida | Sequential by rule | Fla. R. App. P. 9.120(g) |
| Georgia | Sequential by rule | GA R S CT Rule 45; GA R S CT Rule 10 |
| Illinois | Sequential by rule | IL R S CT Rule 315(h) |
| Kentucky | Sequential by rule | Ky. R. App. P. 44(J)(1) |
| Louisiana | Sequential by rule | La. Sup. Ct. R. 10(8)(a); La. Sup. Ct. R. 7(8)(a) |
| Maryland | Sequential by practice | Md. Rule 8-303(g)(1); example scheduling order |
| Michigan | Sequential by rule | Mich. Ct. R. 7.312(E) |
| Minnesota | Sequential by rule | Minn. R. Civ. App. P. 131.01; Minn. R. Crim. P. 29.04(8) |
| Missouri | Sequential by rule | Mo. Sup. Ct. R. 83.08(c) |
| Nebraska | Sequential by rule | NE R CT § 2-102(H) |
| New Mexico | Sequential by rule | NMRA 12-502(K) |
| New York | Sequential by rule | N.Y. Ct. R. 500.12 (McKinney) |

| | | |
|----------------|--------------------|--|
| North Carolina | Sequential by rule | N.C. R. App. P. 15(g)(2) |
| Ohio | Sequential by rule | Ohio S. Ct. Prac. R. 7.08(B); 16.02–03 |
| Oregon | Sequential by rule | ORAP 9.17 |
| Pennsylvania | Sequential by rule | Pa.R.A.P. 2185(a) |
| South Carolina | Sequential by rule | SCACR 242(i) |
| Tennessee | Sequential by rule | Tenn. R. App. P. 11(f) |
| Texas | Sequential by rule | Tex. R. App. P. 55.7 |
| Utah | Sequential by rule | Utah R. App. P. 26; 51(b)(4) |
| Virginia | Sequential by rule | Va. Sup. Ct. R. 5:26(c) |

States with Simultaneous Merits Briefing

| | | |
|-------------|--|--------------------------------------|
| Arizona | Simultaneous by practice | Example scheduling order (at page 7) |
| Kansas | Simultaneous by rule (but also sequential—each party can file a simultaneous opening, answering, and reply supplemental brief) | Kan. Sup. Ct. R. 8.03(i)(3) |
| Mississippi | Simultaneous by rule | M.R.A.P. 17(h) |
| Washington | Simultaneous by rule | Wash. R. App. P. 13.7(d) |

States with No Intermediate Appellate Court; Other Miscellaneous Practices

| | | |
|----------|---|---------------------------|
| Delaware | Sequential by rule, but no intermediate appellate court | DE R S CT Rule 15 |
| Hawaii | No supplemental briefing by practice, if supplemental briefing ordered, court sets schedule | Haw. R. App. P. 40.1(i) |
| Idaho | No additional briefing unless ordered | ID R A Rule 118(c)(2) |
| Indiana | No additional briefing | Ind. R. App. P. 57 |
| Iowa | Supplemental briefs only if ordered by court, no designation for scheduling in rule, and unable to verify standard practice | Iowa R. Civ. P. 6.1103(6) |

| | | |
|---------------|---|--|
| Maine | Sequential, but no intermediate appellate court | Me. R. App. P. 7(b)(1) |
| Massachusetts | Parties must ask for supplemental briefing, no designation for scheduling in the rule, unable to verify standard practice | Mass. R. App. P. 27.1 |
| Montana | Sequential, but no intermediate appellate court | M. R. App. P. 13(1) |
| Nevada | No supplemental briefing unless ordered (deflective intermediate appellate court system, meaning cases are first appealed to the supreme court and then some are transferred to the court of appeals) | Nev. St. RAP 40B(h) |
| New Hampshire | Unspecified in rule, no intermediate appellate court | NH R S CT Rule 12-B |
| New Jersey | Unspecified in rule, no supplemental briefing unless ordered, unable to verify standard practice | N.J. R.A.R 2:12-11 |
| North Dakota | Sequential, but no intermediate appellate court. | N.D. R. App. P. 31(a) |
| Oklahoma | No additional briefing without good cause | Okla. Sup. Ct. R. 1.180 |
| Rhode Island | Sequential, but no intermediate appellate court | RI R S CT ART I RAP Rule 16 |
| South Dakota | Sequential, but no intermediate appellate court | S.D. Codified Laws § 15-26A-75 |
| Vermont | Sequential, but no intermediate appellate court | Vt. R. App. 31 |
| West Virginia | No supplemental briefing unless ordered, scheduling not laid out in rule, unable to verify standard practice | W. Va. R. App. P. 10 |
| Wyoming | Sequential, but no intermediate appellate court | Wyo. R. App. P. 7.06 |
| Wisconsin | Sequential by rule, but only if additional briefing is ordered | Wis. Stat. Ann. § 809.19 (West); 809.62(6); 809.63 |

ATTACHMENT C

Nicholas D. Acedo
Struck Love Bojanowski & Acedo, PLC
3100 W. Ray Road, Suite 300
Chandler, AZ 85226
nacedo@strucklove.com

Cameron C. Artigue
Gammage & Burnham
40 N. Central Avenue, 20th Floor
Phoenix, AZ 85004
CArtigue@gblaw.com

Casey D. Ball
Arizona Attorney General's Office
2005 N. Central Avenue
Phoenix, AZ 85004
Casey.Ball@azag.gov

Timothy J. Berg
Fennemore
2394 E. Camelback Road, Suite 600
Phoenix, AZ 85016
tberg@fennemorelaw.com

Kathleen E. Brody
MITCHELL | STEIN | CAREY |
CHAPMAN, PC
2600 North Central Avenue, Suite 1000
Phoenix, AZ 85004
Kathy@mscclaw.com

Bennett Evan Cooper
Dickinson Wright PLLC
1850 N. Central Avenue, Suite 1400
Phoenix, AZ 85004
BCooper@dickinson-wright.com

Justin Ackerman
Jones, Skelton & Hochuli, P.L.C.
40 N. Central Avenue, Suite 2700
Phoenix, AZ 85004
JAckerman@JSHFIRM.COM

Paul V. Avelar
Institute for Justice
3200 N. Central Avenue, Suite 2160
Phoenix, AZ 85012
pavelar@ij.org

Daniel C. Barr
Arizona Attorney General's Office
2005 N. Central Avenue
Phoenix, AZ 85004
Daniel.Barr@azag.gov

Keith Berkshire
Berkshire Law Office
1225 W. Washington St., Suite 307
Tempe, AZ 85288
Keith@BerkshireLawOffice.com

Vail C. Cloar
Dickinson Wright PLLC
1850 N. Central Avenue, Suite 1400
Phoenix, AZ 85004
VCloar@dickinson-wright.com

Jacob Cote
Mohave County Attorney's Office
315 N. 4th Street
Kingman, AZ 86401
cotej@mohave.gov

Alexandra Crandall
Dickinson Wright PLLC
1850 N. Central Avenue, Suite 1400
Phoenix, AZ 85004
ACrandall@dickinson-wright.com

Hayleigh S. Crawford
Arizona Attorney General's Office
2005 N. Central Avenue
Phoenix, AZ 85004
Hayleigh.Crawford@azag.gov

Drew Ensign
Holtzman Vogel
2555 E. Camelback Road, Suite 700
Phoenix, AZ 85016
densign@HoltzmanVogel.com

Andrew Fox
Coppersmith Brockelman PLC
2800 N. Central Avenue, Suite 1900
Phoenix, AZ 85004
afox@cblawyers.com

Amanda E. Heitz
2929 N. Central Avenue, Suite 1900
Phoenix, AZ 85012
Amanda.Heitz@bowmanandbrooke.com

Kelley M. Jancaitis
Broening Oberg Woods & Wilson, P.C.
2800 N. Central, Suite 1600
Phoenix, AZ 85004
kmj@bowlaw.com

Brett W. Johnson
Snell & Wilmer
One E. Washington Street, Suite 2700
Phoenix, AZ 85004
bwjohnson@swlaw.com

Rusty Crandell
Arizona State Senate
1700 W. Washington Street, Suite S
Phoenix, AZ 85007
rcrandell@azleg.gov

Alexis Danneman
Perkins Coie
2525 E. Camelback Road Suite 500
Phoenix, AZ 85016
ADanneman@perkinscoie.com

Jill L. Evans
2700 S. Woodlands Village Blvd.
Suite 300-165
Flagstaff, AZ 86001
jillevansatty1993@gmail.com

Eileen Gilbride
Jones, Skelton & Hochuli, P.L.C.
40 N. Central Avenue, Suite 2700
Phoenix, AZ 85004
EGilBride@jshfirm.com

Thomas L. Hudson
Osborn Maledon, P.A.
2929 N. Central Avenue, Suite 2000
Phoenix, AZ 85012
thudson@omlaw.com

Diane Johnsen
Perkins Coie
2525 E. Camelback Road Suite 500
Phoenix, AZ 85016
djohnsen@perkinscoie.com

Alice M. Jones
Arizona Attorney General's Office
2005 N. Central Avenue
Phoenix, AZ 85004
Alice.Jones@azag.gov

Jason Lewis
Arizona Attorney General's Office
2005 N. Central Avenue
Phoenix, AZ 85004
Jason.Lewis@azag.gov

Janelle A. McEachern
P.O. Box 1974
Chandler, AZ 85244-1974
admin@jmceachern.com

Mary R. O'Grady
Osborn Maledon, P.A.
2929 N. Central Avenue, Suite 2000
Phoenix, AZ 85012
mogrady@omlaw.com

Joseph N. Roth
Osborn Maledon, P.A.
2929 N. Central Avenue, Suite 2000
Phoenix, AZ 85012
jroth@omlaw.com

Matt Stanford
Bryan Cave Leighton Paisner LLP
Two N. Central Avenue, Suite 2100
Phoenix, AZ 85004
matt.stanford@bclplaw.com

Emily Ward
Fennemore
2394 E. Camelback Road, Suite 600
Phoenix, AZ 85016
EWard@fennemorelaw.com

Austin Yost
Coppersmith Brockelman PLC
2800 N. Central Avenue, Suite 1900
Phoenix, AZ 85004
ayost@cblawyers.com

Ashley M. Mahoney
Nossaman LLP
Two N. Central Avenue, Suite 1715
Phoenix, AZ 85004
amahoney@nossaman.com

Joel Nomkin
Perkins Coie
2525 E. Camelback Road Suite 500
Phoenix, AZ 85016
jnomkin@perkinscoie.com

Tracy A. Olson
Snell & Wilmer
One E. Washington Street, Suite 2700
Phoenix, AZ 85004
tolson@swlaw.com

Beau Roysden
Fusion Law, PLLC
7600 N. 15th Street, Suite 150
Phoenix, AZ 85020
beau@fusion.law

Kathleen P. Sweeney
Arizona Attorney General's Office
2005 N. Central Avenue
Phoenix, AZ 85004
Kathleen.Sweeney@azag.gov

Linley Wilson
Arizona House of Representatives
1700 W. Washington Street, Suite H
Phoenix, AZ 85007
LWilson@azleg.gov

Taylor C. Young
Taylor Young Appeals, pllc
3722 E. Fairmount Avenue
Phoenix, AZ 85018
taylor@tayloryounglaw.com