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**IN THE SUPREME COURT
STATE OF ARIZONA**

PETITION TO AMEND RULE
32.16, ARIZONA RULES OF
Criminal PROCEDURE

Supreme Court No. R–

**Petition to Amend Rule 32.16,
Arizona Rules of Criminal Procedure**

Pursuant to Rule 28 of the Rules of the Arizona Supreme Court, the undersigned attorney (Petitioner) respectfully petitions this Court to amend Rule 32.16 of the Arizona Rules of Criminal Procedure (Petition for Review from PCR). The proposed amendment to Arizona Rule of Civil Procedure (“Rule”) 32.16 seeks to address an issue with the Reply Brief word limit in petitions for review of post-conviction relief proceedings (“PCR”) in capital cases. In non-capital petitions, “The petition or cross-petition for review must not exceed 6,000 words if typed or 22 pages if handwritten, exclusive of an appendix and copies of the trial court's rulings. However, a petition for review and a response to a petition for review in a capital case must not exceed 12,000 words if typed or 44 pages if handwritten, exclusive of an appendix and copies of the trial court's rulings.” Rule 32.16(c)(1). However, there is no corresponding word increase for the Reply brief in capital cases. *See* Rule 32.16(f)(3) (“The reply is limited to matters addressed in the

response and may not exceed 3,000 words if typed and 11 pages if handwritten.”). Petitioner believes there should be a corresponding increase in the Reply word count corresponding to the two-fold increase in capital Response briefs.

A redline version of proposed amended Rule 32.16 identifying additions and deletions is attached at Appendix “A,” and a “clean” version of proposed amended Rule 32.16 is attached at Appendix “B.”

I. THE EVOLUTION OF RULE 32.16.

The current Rule 32.16 was adopted after the overhaul of Rule 32 in 2019. *See In Re Rule 32 and 33, Rules of Criminal Procedure*, No. R-19-0012 (Ariz. Aug. 29, 2019). *See also* Administrative Order No. 2018-07 (Ariz. Jan. 24, 2018) (establish Rule 32 Task Force). The Analysis by the Rule 32 Task for noted that “The current rule does not contain a separate provision for the length of a petition or response in a capital case” and proposed allowing capital cases double the limit of non-capital cases. *See* No. R-19-0012, Rule 32TF: Petition Appendix 4, at 15. Reply briefs are not discussed. *Id.*

The previous version of the Rule, adopted in 2017, limited all petitions and responses to 6,000 words and reply briefs to 3,000 words. *See* Ariz. R. Crim P. 32.9(c) (2018); *see also* Ariz. R. Crim P. 32.9(c) (2016) (all petitions and responses limited to 20 pages and reply briefs to 10 pages).

Rule 32.16(j) was also amended in 2023 regarding the transmission of the trial record. *See In Re Rule 32.16(j) and 33.16(j), Rules of Criminal Procedure*, No. 23-0012 (Ariz. Aug. 24, 2023).

II. THE NEED FOR AMENDING RULE 32.16.

Good advocacy requires editing. *State v. Johnson*, 247 Ariz. 166, 212, ¶ 206 (2019). And court-mandated editing of a defendant's appellate briefs does not violate her constitutional rights. *State v. Amaya-Ruiz*, 166 Ariz. 152, 183 (1990); *State v. Bolton*, 182 Ariz. 290, 299 (1995). But “[s]ome cases are more complex than others, and in those cases, flexibility is required.” *Johnson*, 247 Ariz. at 211, ¶ 199. This Court “is acutely aware of the gravity of the decisions we are called upon to make in capital cases.” *State v. Atwood*, 171 Ariz. 576, 659 (1992).

For reasons unknown to Petitioner, when this court expanded the standard limit for words in capital petitions for review from PCR decisions, it did not provide a corresponding increase to the reply brief word count.

Reply briefs are, of course, optional under the Rules. *See* Ariz. R. Crim. P. 32.16(f)(3). But “from the perspective of good advocacy, there is nothing optional about a reply brief.” Adam W. Hofmann, *The Battle Is Joined Writing Reply Briefs Artfully*, 62 No. 3 DRI For Def. 62 (March 2020). Indeed, the State Bar's magazine advised appellate advocates; “Don't underestimate the importance of the Reply Brief” stating:

The Reply Brief has the obvious strategic advantage of being the last word the parties will say on the issues. It also may be the first thing the appellate judge reads because it often is the appellant's best presentation of its argument, complete with the appellant's rebuttal to the appellee's arguments raised in the Answering Brief.

Patrick Irvine & Aaron Martin, *10 Tips for Effective Appellate Advocacy*, ARIZ. ATT'Y, Vol. 52, No. 11, at 12, 16 (July/August 2016). *See also* Steven D. Stark, *Writing to Win*, 190 (Three Rivers Press 2012) (some judges have noted they read the reply briefs first); *Haynes Mech. Sys., Inc. v. Bluon Energy, LLC*, 18-CV-03004-KLM, 2022 WL 18456050, at *3 (D. Colo. June 24, 2022) (noting “the often critical importance of reply briefs in narrowing the issues”).

This Court should adopt the proposed rule to resolve an apparent oversight from the prior amendment to the Rules and increase the word limit for reply briefs in capital PCR petitions for review from 3,000 words to 6,000 words.

CONCLUSION

For the foregoing reasons, Petitioner respectfully asks this Court to amend Rule 32.16 as set forth in the Appendices.

Respectfully submitted,

/s/ _____

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APPENDIX A

(Please note: deletions are reflected by strikethrough and additions are reflected by underline and bold.)

Rule 32.16. Petition and Cross-Petition for Review

(a)–(e) [No Change]

(f) Response to a Petition or Cross-Petition for Review; Reply.

(1) Time and Place for Filing a Response; Extensions of Time.

(A) No later than 30 days after a petition or cross-petition is served, a party opposing the petition or cross-petition may file a response in the appellate court. Rule 31.3(d) governs computation of the deadline for filing the response.

(B) A party may file a motion with the appellate court for an extension of the time to file a response or reply in accordance with Rule 31.3(e).

(2) Form and Length of Response. The response must not exceed 6,000 words if typed and 22 pages if handwritten, exclusive of an appendix, and must comply with the form requirements in subpart (c)(1). An appendix to a response must comply with the form and substantive requirements in section (d).

(3) Reply. No later than 10 days after a response is served, a party may file a reply. The reply is limited to matters addressed in the response and may not exceed 3,000 words if typed and 11 pages if handwritten. **However, a reply in a capital case must not exceed 6,000 words if typed or 22 pages if handwritten.** It also must comply with the requirements in subpart (c)(1) and may not include an appendix.

APPENDIX B

Rule 32.16. Petition and Cross-Petition for Review

(a)–(e) [No Change]

(f) Response to a Petition or Cross-Petition for Review; Reply.

(1) Time and Place for Filing a Response; Extensions of Time.

(A) No later than 30 days after a petition or cross-petition is served, a party opposing the petition or cross-petition may file a response in the appellate court. Rule 31.3(d) governs computation of the deadline for filing the response.

(B) A party may file a motion with the appellate court for an extension of the time to file a response or reply in accordance with Rule 31.3(e).

(2) Form and Length of Response. The response must not exceed 6,000 words if typed and 22 pages if handwritten, exclusive of an appendix, and must comply with the form requirements in subpart (c)(1). An appendix to a response must comply with the form and substantive requirements in section (d).

(3) Reply. No later than 10 days after a response is served, a party may file a reply. The reply is limited to matters addressed in the response and may not exceed 3,000 words if typed and 11 pages if handwritten. However, a reply in a capital case must not exceed 6,000 words if typed or 22 pages if handwritten. It also must comply with the requirements in subpart (c)(1) and may not include an appendix.