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## ARIZONA SUPREME COURT

In the Matter of:

Petition to Amend Ariz. R. Crim.  
P. 31.10 and Ariz. R. Civ. App. P. 13

Supreme Court No. R-25-0013

**Comment in Opposition to Petition  
to Amend Ariz. R. Crim. P. 31.10  
and Ariz. R. Civ. App. P. 13**

Pursuant to Rule 28(e) of the Arizona Supreme Court Rules, undersigned counsel submits this comment on behalf of the Arizona Attorney General's Office (AGO) in opposition to the Petition, but generally in support of a change to explicitly allow for visual depictions in appellate briefs. Thus, the AGO proposes different amendments to the rules modeled after the Ninth Circuit's local rules. See Attachment A.

While a rule explicitly permitting visual aids may be helpful, the Petition's proposed amendments are inadequate. If the Court is inclined to approve a rule explicitly permitting and regulating the use of visual aids in appellate briefs, it should adopt the AGO's proposed amendments. The AGO's proposed amendments place guardrails on the use of images in appellate briefs and prevent mischief that might otherwise arise under the Petition's current proposed amendments. In particular, this

comment and its proposed amendments seek to prevent (1) the use of images to circumvent word counts and (2) the inclusion of irrelevant or inflammatory images in appellate briefs.

This comment also proposes expanding the amendments to [Arizona Rules of Criminal Procedure 32.16](#) and [33.16](#), which govern content requirements for appellate briefs in post-conviction relief proceedings, and are not contemplated by the Petition.

**I. Appellate rules of procedure explicitly permitting the use of photographs and other visual aids in appellate briefs would be helpful.**

Some may question whether a rule permitting visual aids is even necessary. The AGO occasionally files briefs containing visual aids and also receives opposing briefs containing the same. Petitioner’s recent experience with Division Two rejecting his brief because it contained photographs appears to be either an anomaly or a new development in Division Two.<sup>1</sup> However, more advocates and even courts are turning to visual aids to get a point across. See, e.g., [Bondi v. VanDerStok, No. 23-852, 2025 WL 906503, at \\*6 \(U.S. Mar. 26, 2025\)](#) (majority opinion using an image of a “ghost gun” kit to reason that “[n]o one would confuse the semiautomatic pistol pictured above with a tool or a toy”); see also [Elizabeth G. Porter, Taking](#)

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<sup>1</sup> To the extent the Court does not adopt a rule change at this time, it might consider taking steps with Division Two to address any issues—to the extent any exist—administratively.

*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.”). Despite the growing prevalence of visual aids in appellate briefs, the practice is essentially unregulated by this Court’s rules.

*VanDerStok* is an effective case study for the use of visual aids in briefing. The opinion itself included three images—two in the majority and one in the dissent. The images used in the opinions came from the briefs filed by the United States or the Respondents. Compare *VanDerStok*, 2025 WL 906503, at \*6, 10, 20, with United States’ Petition for Certiorari, at 26, 31 and Respondents’ Brief in Opposition, at 28. Twenty-nine amicus briefs were filed and seven of those briefs included images or other visual aids. See, e.g., Brief for Amici Rick Vasquez and Center for Human Liberty in Support of Respondents, at 21–27. Some of the images were used to convey large data sets, see Brief of Amici the Local Government Legal Center, et al., at 22, 28 (using bar graphs to show trends in data related to ghost guns), and other images depicted various features of ghost guns, see, e.g., Brief of Amici Gun Violence Prevention Groups, at 13 (including a picture of a ghost gun stamped with a man giving the middle finger and a tag line: “Here’s your serial number”). The prevalence of visual images in the *VanDerStok* briefing and opinion shows a growing acceptance of the practice and recognition that visual images can help explain, demonstrate, or otherwise punctuate a complex thought.

If a party can succinctly communicate a complex concept through a visual aid, this Court should encourage the practice with a rule explicitly permitting it. Take, for example, Justice Kennedy’s majority opinion in *PPL Mont., LLC v. Montana*, 565 U.S. 576 (2012), a water-rights case involving a river system. Rather than include a map of the river system in his opinion, Justice Kennedy “used ‘over 1,500 words and twenty-nine source citations to describe the course of three rivers,’” even though the “State of Montana had provided a ‘detailed map that clearly denoted the course of the three rivers in a single image.’” See *Porter, Taking Images Seriously*, 114 Colum. L. Rev. at 1724 (quoting Stephen R. Miller, *The Visual and the Law of Cities*, 22 Pace L. Rev. 183, 188 (2013)). As this example demonstrates, a well-placed image may result in more succinct, intelligible briefing. However, as explained below, any rule permitting the use of visual images must also include regulations on their use—something the proposed amendment in the Petition lacks.

**II. Any rule explicitly providing for the use of visual aids in appellate briefs must impose guardrails to prevent abuse.**

Petitioner’s proposed rule does not provide adequate guardrails to prevent litigants from abusing the use of visual aids to exceed the word count. Additionally, the proposed amendment unnecessarily restricts the use of images to those that are “central to the resolution of an issue,” rather than simply “relevant” or “material.” See Pet. at 6 (Appendix A).

Fortunately, the Ninth Circuit already contemplated some of these issues and created a local rule regulating the use of visual depictions in briefs. See [9th Cir. R. 32-1\(f\)](#). The local rule provides:

**Visual Images Used for Demonstrative Purposes:** Visual images, such as photographs, illustrations, tables, and screenshots of text or images, may be reproduced in briefs using any method that results in a good copy of the original. When a visual image is taken from the record, it must be followed by a citation to its location in the excerpts of record. Where words in a visual image are intended to be read by the Court, those words must be legible and must be manually counted and added to the certificate of compliance required under FRAP 32(g) and Circuit Rule 32-1(e). Visual images in briefs must comply with the 1-inch margin requirement of FRAP 32(a)(4). All other font size and formatting rules set forth under FRAP 32 do not apply to visual images that are included in briefs.

*Id.*

In a comment to the local rule, the Circuit Advisory Committee notes that “[d]emonstrative visual images should not be used to replace quotations from the record, but rather only for illustrative purposes.” [9th Cir. R. 32-1\(f\) circuit advisory committee’s note](#). The committee further advises that “screenshots of text should be used sparingly, and screenshots of lengthy excerpts of text are strongly disfavored and may cause a brief to be rejected by the Clerk.” *Id.* Finally, the committee advises that “[p]arties should paraphrase the text from the image in the preceding or subsequent sentence to explain its relevance to the legal issues before the court.” *Id.*

Although the local rule and its accompanying comments are lengthy, their detail adequately safeguards against potential misuse of visual aids in briefs. The

AGO's proposed amendment is substantially similar to the Ninth Circuit's local rule, but also incorporates portions of the comments to the local rule. For example, the AGO's proposed amendment requires parties to explain a visual aid's relevance to an issue before the court. Requiring parties to explain the relevancy of a visual depiction will prevent the use of images to add color to a statement of facts, garner sympathy for a party, or conversely, inflame the reader. And requiring parties to count the words in an image and manually add them to the word count will deter parties from including screenshots of documents like transcripts, indictments, contracts, or jury questions in lieu of quoting from those documents.

**III. The proposed amendment should be a standalone subsection under the rules governing the content of briefs.**

Petitioner's proposed location for this amendment is not the most logical place to put it. The Petition proposes placing the amended rule under subsection (a), which lists the sections a brief should contain "under headings." See [Ariz. R. Crim. P. 31.10\(a\)](#); [ARCAP 13\(a\)](#). But visual depictions would not necessarily be a separate section of a brief requiring their own heading, so placement within the subsection outlining the structure of a brief is not the best location. Instead, this proposed amendment should be added as a separate subsection.

**IV. Other rules of procedure not contemplated by the Petition also require amending to standardize the content requirements of appellate briefs.**

Petitioner proposes amending only [Arizona Rule of Criminal Procedure 31.10](#) and [ARCAP 13](#), but the rules governing appellate post-conviction relief proceedings also need to be amended.<sup>2</sup> See [Ariz. R. Crim. P. 32.16](#) and [33.16](#). Neither [Rule 32.16](#) nor [33.16](#) reference the content requirements in [Rule 31.10](#), and thus, appellate briefs in post-conviction relief proceedings would not be subject to the same content restrictions as those on direct appeal. The AGO proposes amending these rules to reference [Rule 31.10](#)'s content requirements in subsections (e) through the newly proposed subsection (h).

**CONCLUSION**

For these reasons, the AGO generally supports the idea of changing the rules to explicitly allow for visual depictions in appellate briefs. Because the Petition suffers from several flaws, however, the AGO respectfully encourages the Court to adopt the AGO's alternative formulation of the rule change in the Attachment to this comment. To the extent this Court is not inclined to adopt the AGO's proposal, the AGO would encourage the Court to leave the rules as they are for now and allow for

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<sup>2</sup> The AGO considered proposing an amendment to [RPSA 14\(c\)](#), which sets forth the content requirements for appellate special actions, but it appears the AGO's proposed amendments to [ARCAP 13](#) would also apply to appellate special actions. See [RPSA 11\(a\)\(1\)](#) ("To the extent they are consistent with these rules ... [ARCAP] apply to appellate special actions in the Court of Appeals or the Supreme Court.").

additional proposals during the rule change petition process next year. The current Petition simply should not be adopted as is.

Respectfully submitted on April 8, 2025.

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## ATTACHMENT A

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

### ARIZONA RULES OF CRIMINAL PROCEDURE

#### Rule 31.10. Content of Briefs

(a) - (g) [no change]

**(h) Visual Images Used for Demonstrative Purposes.** Visual images, including photographs, illustrations, tables, charts, graphs, and screenshots of text or images, may be reproduced in briefs using any method that results in a good copy of the original. When a visual image is taken from the record, it must be followed by a citation to its location in the record. Where words in a visual image are intended to be read by the Court, those words must be legible and must be manually counted and added to the certificate of compliance required under Rule 31.12(a)(5). Visual images should not be used to replace quotations from the record, and screenshots of lengthy excerpts of text are strongly disfavored. Parties should explain the image's relevance to a legal issue before the court. Visual images in briefs must comply with the margin requirements of Rule 1.6(b)(1)(D).

~~(h)~~ **(i) Briefs in Cases Involving Cross-Appeals.** [no change to text]

~~(i)~~ **(j) Briefs Involving Multiple Appellants or Appellees.** [no change to text]

~~(j)~~ **(k) Briefs of Amicus Curiae.** [no change to text]

~~(k)~~ **(l) Non-Compliance.** [no change to text]

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## **Rule 32.16. Petition and Cross-Petition for Review**

**(a) - (b) [no change]**

**(c) Form and Contents of a Petition or Cross-petition for Review.**

(1) *Form and Length.* [no change to text]

(2) *Contents.* A petition or cross-petition for review must comply with the content requirements of Rule 31.10(e)–(h). Additionally, a ~~A~~-petition or cross-petition for review must contain:

(A) - (D) [no change to text]

(3)-(4) [no change]

**(d) - (n) [no change]**

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## **Rule 33.16. Petition and Cross-Petition for Review**

**(a) - (b) [no change]**

**(c) Form and Contents of a Petition or Cross-petition for Review.**

(1) *Form and Length.* [no change to text]

(2) *Contents.* A petition or cross-petition for review must comply with the content requirements of Rule 31.10(e)–(h). Additionally, a ~~A~~-petition or cross-petition for review must contain:

(A) - (D) [no change to text]

(3) - (4) [no change]

**(d) - (n) [no change]**

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## ARIZONA RULES OF CIVIL APPELLATE PROCEDURE

### Rule 13. Content of Briefs

(a) - (f) [no change]

**(g) Visual Images Used for Demonstrative Purposes.** Visual images, including photographs, illustrations, tables, charts, graphs, and screenshots of text or images, may be reproduced in briefs using any method that results in a good copy of the original. When a visual image is taken from the record, it must be followed by a citation to its location in the record. Where words in a visual image are intended to be read by the Court, those words must be legible and must be manually counted and added to the certificate of compliance required under Rule 14(a)(5). Visual images should not be used to replace quotations from the record, and screenshots of lengthy excerpts of text are strongly disfavored. Parties should explain the image's relevance to a legal issue before the court. Visual images in briefs must comply with the margin requirements of Rule 4(b)(7).

~~(g)~~ **(h) Briefs in Cases Involving Cross-Appeals.** [no change to text]

~~(h)~~ **(i) Briefs Involving Multiple Appellants or Appellees.** [no change to text]

~~(i)~~ **(j) Briefs of Amicus Curiae or Intervenor.** [no change to text]