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ARIZONA SUPREME COURT

In the Matter of:

Petition to Amend Ariz. R. Crim.
P. 32.16(a)(1)–(2), (c)(1), (f)(1)(A),
(f)(2), and (f)(3)

Supreme Court No. R-25-0014

**Comment in Support of Petition to
Amend RULES OF CRIMINAL
PROCEDURE 32.16(a)(1),
CRIMINAL PROCEDURE
32.16(a)(1), (a)(2), (c)(1), (f)(1)(A),
(f)(2), and (f)(3)**

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 support of the petition. The petition effectively addresses the length disparity in replies to capital petitions and cross-petitions for review while also reorganizing the rule to promote internal consistency.

As Rule 32.16 currently recognizes, capital petitions and cross-petitions for review often present a greater amount and complexity of issues for review to the Arizona Supreme Court. This is currently reflected in the rule's allotment for a doubled word count in the petition or cross-petition along with any corresponding responses. The rule does not, however, currently allow for replies of the same length. Considering the number of issues raised in a capital petition or cross-petition

for review, Rule 32.16's failure to address a proportional word limit for replies is an oversight that should be addressed.

First, it may be helpful to understand why capital petitions and cross-petitions for review have higher word counts. The breadth of capital petitions and cross-petitions for review makes sense, not only because capital cases have higher stakes, but because they naturally contain more issues. As this Court is likely aware, state postconviction petitioners are required to present their federal claims to the state's highest court to preserve them for federal review. Because capital prosecutions and postconviction proceedings can so often be far ranging, capital postconviction petitioners often present myriad federal claims in state collateral review. So, unless a capital postconviction petitioner raises the denial of a federal claim in his petition for review, review of the claim in federal habeas proceedings may be lost. This Court is likely also aware that capital petitions for review often greatly exceed the existing 12,000-word limit, but the propriety of that limit is another matter.

It is likely that this Court has, as a matter of course, granted reasonable requests to exceed the current 3,000-word limit. But expanding the word limit to 6,000 words will likely alleviate the administrative task of considering many of these requests, and it would certainly prove less burdensome to litigants who are always obligated to make a good faith effort at compliance. Expanding the limit would also

allow the parties to present more helpful briefing to this Court, as it can be exceedingly difficult to draft a reply to a set of arguments in a quarter of the space.

As to the petition's amendment to Rule 32.16's time provisions, the AGO always makes great efforts to comply with the current deadlines. But due to heavy workloads and conflicting deadlines, it is often impracticable or impossible to do so. While the AGO might still have to request extensions under the proposed deadlines in some circumstances, there is a much greater likelihood of compliance with the amendments. This would reduce the administrative burden on this Court to consider extension requests and would hopefully speed the briefing and disposition of capital petitions and cross-petitions for review.

Conclusion

For these reasons, the AGO supports the petition and urges this Court to adopt it.

Respectfully submitted on April 22, 2025.

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