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**IN THE SUPREME COURT
STATE OF ARIZONA**

In the Matter of,

PETITION TO

ADOPT RULE 13.2, ARIZONA RULES
OF CIVIL APPELLATE PROCEDURE,

ADOPT RULE 31.10(A), ARIZONA
RULES OF CRIMINAL PROCEDURE

AND

ADOPT RULE 607, ARIZONA RULES
OF PROCEDURE FOR THE JUVENILE
COURT

Supreme Court No. R-25-0008

**Comment on Petition to Adopt
Rules Allowing Informal Briefs**

Pursuant to Supreme Court Rule 28(e), the Arizona Attorney General's Office submits this comment on the Petition to Adopt various appellate rules to allow self-represented litigants to file informal appellate briefs. While under-

signed counsel agree and sympathize with the Petitioners’ desire to improve the quality of briefs filed in their courts, it is not readily apparent that the proposed rules will accomplish that task; it appears possible that the result will actually be the opposite. Additionally, the proposed rule is contrary to long-standing precedent that self-represented litigants are held to the same standards as attorneys.

I. The Petition Proposes a Solution That Seems Unlikely to Solve the Problem.

The Petition posits that the current rules on appellate briefs “present a significant challenge to self-represented litigants,” who “do not appear to understand” the meaning of some of the terms in those rules. It adds that “[t]hese difficulties affect both the quality of the briefs and the court’s ability to resolve appeals on their merits.” The problems that courts face in fairly resolving cases involving pro. per. litigants cannot reasonably be denied. Two of the undersigned have previously worked at the Court of Appeals and have faced these issues head-on. And pro. per. litigants’ failures to comply with rules cause problems for more than just the courts, as the Court of Appeals has recently noted: “When a party has failed to adequately argue the matter, this court is unable to ascertain the issues and whether we are ruling on an actual controversy. It leaves any opposing party similarly at a disadvantage in responding to the purported arguments.” *In re Marriage of Norman*, 2025 WL 752030, at *2, ¶ 7 (Ariz. App. Mar. 10, 2025).

Obviously, the courts' and opposing parties' burden will be eased if the quality of pro. per. litigants' briefs improves. Attempting to achieve that goal is therefore a laudable endeavor. And if pro. per. litigants are confused by the language of the current rules, it is worthwhile to provide necessary clarity.

But the Attorney General's Office is concerned that the proposed rules have little chance of advancing those goals and might even make the situation worse. The Petition seeks to replicate the practice of other courts, including the Ninth Circuit Court of Appeals, which have adopted rules allowing informal briefs. Attorneys in this office practice in both the Ninth Circuit and the Arizona appellate courts, often against unrepresented parties. It has not been their experience that the informal briefs that are allowed in the federal court improve the quality of the briefing. To the contrary, the informal briefs filed in the Ninth Circuit are, if anything, worse than the briefs that unrepresented litigants file in the Arizona courts. With the relaxed requirements that come with those informal briefs, the unrepresented federal litigants often file briefs that are difficult to comprehend, do not adequately cite the record, and do not make coherent legal arguments.

The low quality of these informal briefs in the Ninth Circuit likely makes the work of the judges and their staffs more difficult. Not only that, it increases the difficulty for the attorneys—often government attorneys—who represent the institutional opponents of the unrepresented litigants. The courts have an unwritten—

though reasonable—understanding with those institutional attorneys under which the latter accept the task of performing much of the work that the pro. per. litigants are supposed to do, laying the groundwork necessary to allow the courts to decide those cases. These attorneys provide the underlying facts and procedural history, explicating the record on appeal, and citing the appropriate legal authorities—doing much of the work that the appellant likely would have done if represented—to enable the court to properly analyze and decide the appeal. When an unrepresented appellant fails to present the materials that the court rightly expects, those institutional attorneys dutifully fill in the blanks. Those attorneys can and do argue that an appellant’s failure to comply with the rules constitutes a waiver or forfeiture of the appellate arguments. But they seldom rest on that assertion. Instead, knowing the courts’ preference to decide cases on the merits, the attorneys provide the missing materials and argue the case on the merits, helping the court do its job. The Attorney General’s Office thus reasonably anticipates that the proposal to give unrepresented litigants more freedom to provide briefs below the usual standards will add to the strains already placed on the government attorneys (and other institutional attorneys).

Also noteworthy is the fact that Arizona law — more than federal law — requires unrepresented litigants to follow the same rules that apply to represented parties. Numerous opinions hold that persons conducting litigation without the

services of an attorney are held to the same standard as attorneys. *Flynn v. Campbell*, 243 Ariz. 76, 83, ¶ 24 (2017); *Smith v. Rabb*, 95 Ariz. 49, 53 (1963); *In re Marriage of Williams*, 219 Ariz. 546, 549 ¶ 13 (App. 2008); *Kelly v. NationsBanc Mortg. Corp.*, 199 Ariz. 284, 287, ¶ 16 (App. 2000); *Old Pueblo Plastic Surgery, P.C. v. Fields*, 146 Ariz. 178, 180 (App. 1985); *Copper State Bank v. Saggio*, 139 Ariz. 438, 441 (App. 1983); *Bloch v. Bentfield*, 1 Ariz. App. 412, 417 (1965). A recent memorandum decision expounded on this:

On appeal, Leavitt asks that we dismiss Danko’s appeal because his opening brief is deficient under Arizona Rule of Civil Appellate Procedure (“ARCAP”) 13. In his reply brief, Danko asks for leniency given his status as a non-attorney, self-represented litigant and because he believes his claims should not be dismissed because of “meaningless” rules.

Far from “meaningless,” our supreme court has adopted rules parties must follow to bring or pursue an appeal to achieve a just, orderly, and expeditious disposition thereof. *See* ARCAP 1–31. In furtherance of these goals, we have “a responsibility to see that litigants conform to an acceptable, minimal level of competency and performance and we owe this responsibility to the judiciary, the bar and, more importantly, to all litigants and the people as a whole.” *Ramos v. Nichols*, 252 Ariz. 519, 522 ¶ 8 (App. 2022) (cleaned up) (citation omitted). “An appellant who fails to make a bona fide and reasonably intelligent effort to comply with the rules will waive issues and arguments.” *Id.* (cleaned up) (citation omitted). Further, we hold litigants like Danko who choose to proceed without representation to the same standards as attorneys. *Id.* *Indeed, requiring a reviewing court to expend significant time and effort to make a party’s arguments for them not only wastes finite judicial resources, but is additionally improper because it trespasses dangerously close to the realm of impermissible advocacy. See Ace Auto. Prods., Inc.*

v. Van Duyne, 156 Ariz. 140, 143 (App. 1987) (“It is not incumbent upon the court to develop an argument for a party.”).

Danko v. Leavitt, 2023 WL 5286974, at *1, ¶¶ 7-8 (Ariz. App. Aug. 17, 2023) (memorandum decision) (emphasis added).

Improving the quality of briefs filed by unrepresented litigants would ease the burden on the judges, their staffs, and the attorneys representing the opponents. But there is reason to doubt that the proposed rules will accomplish that, at least as presently formulated. By easing or removing the strictures that at least encourage these litigants to present the things that are necessary for good judicial decision-making, the rules instead seem destined to encourage even more laxness.

Particularly troubling in this respect is language that explicitly gives these litigants an excuse not to provide the necessary things. The proposed informal opening brief for civil appeals contains more than one instance that seems to encourage unrepresented litigants to leave it to their opponents and/or the court to provide those necessary things. For example, in the instruction to provide the facts necessary to decide the case, the informal brief makes record citation optional: “*If possible, refer to documents or transcripts in the record.*” (Informal Opening Brief at 2, 4 [emphasis added].)¹ Similarly, in asking for the law supporting the

¹ This is similar to the Ninth Circuit’s form, which merely asks the unrepresented litigants to state the underlying facts and to describe what happened in the lower court, but does not require—or even ask—they to refer to the record.

litigant’s position, the informal brief makes citation of legal authorities optional: “C. What law supports your position? (*If possible, include laws, cases, or rules that support your argument.*)” (Informal Opening Brief at 5 [emphasis added].)²

The emphasized phrases might be construed as invitations not to provide this critical information. Hence, if this Court should adopt informal briefing for Arizona appellate courts, it should at the very least remove the emphasized language and encourage the pro. per. litigants to provide this vital information.

Some might think it unfair to insist that nonlawyer litigants provide these necessary materials, but we believe that this would be a red herring. The rules currently require these materials, and unrepresented litigants often do their best to comply. And even when they fail, the appellate courts by and large excuse their shortcomings by nonetheless deciding cases on the merits. *See, e.g., In re Marriage of Norman*, 2025 WL 752030, at *2, ¶¶ 9-10 (addressing the merits despite the inadequacy of the opening brief); *In re Marriage of Burke*, 2025 WL 1013726, at *1, ¶ 3 (Ariz. App. Apr. 4, 2025) (memorandum decision) (stating that although the pro. per. appellee’s “abbreviated answering brief that failed to address many of [the appellant’s] claims . . . may be viewed as a confession of error on those issues,” the Court would “hesitate to do so where, as here, there was no

² The Ninth Circuit’s form generally asks the unrepresented litigants about the law supporting their position, expressly stating that “[y]ou may refer to cases and statutes, but you are not required to do so.”

error,” and “therefore [would] analyze the case on its merits” [internal quotation marks omitted & citations omitted]); *Farnsworth v. Moore*, 2025 WL 916893, at *2, ¶ 10 (Ariz. App. Mar. 25, 2025) (memorandum decision) (stating that although “Father’s opening brief does not comply with ARCAP 13(a) because it lacks citations to the record and legal authority [and] Father also fails to develop his arguments with law and facts” the court would nevertheless “attempt to discern and address Father’s arguments despite these deficiencies”); *Eglivitch v. Davis*, 2025 WL 1042318, at *2 n.2 (Ariz. App. Apr. 8, 2025) (memorandum decision) (similar); *Tercero v. City of Maricopa*, 2025 WL 551674, at *1, ¶¶ 4-5 (Ariz. App. Feb. 19, 2025) (memorandum decision) (resolving argument on the merits despite finding waiver). *But see Wells Fargo Bank N.A. v. McCune*, 2025 WL 692941, at *2, ¶ 13 (Ariz. App. Mar. 4, 2025) (memorandum decision) (applying waiver as to claims for which the appellants cited neither the record nor legal authorities); *Lucas v. Sherbert*, 2025 WL 916818, at *1 n.1 (Ariz. App. Mar. 26, 2025) (memorandum decision) (refusing to address arguments that the appellant “failed to develop . . . with meaningful argument or relevant legal authority”); *Vigil v. Vigil*, 2025 WL 903808, at *1, ¶ 4 (Ariz. App. Mar. 24, 2025) (memorandum decision) (similar).

There is at least one additional problem with the informal brief form’s suggestion that citing or providing the necessary record is not required. There are

situations in which the failure to provide the necessary record necessarily dooms the appellant's case. *See, e.g., Pauly v. De Long*, 2025 WL 593164, at *1-2, ¶¶ 5-6 (Ariz. App. Feb. 24, 2025) (memorandum decision) (holding that appellant's failure to provide any evidentiary transcript required the court to presume that the evidence supported the superior court's ruling, requiring affirmance); *accord Lucas*, 2025 WL 916818, at *2, ¶ 7. Unrepresented litigants should be encouraged to provide all materials that the court needs in order to perform its function.

II. Conclusion.

Although the Petition identifies a salient need, the Office does not believe that the proposed changes will ameliorate the problem. The rules should balance competing interests: the desire to help pro. per. parties with valid appeals while also addressing the problems and inefficiencies created by vexatious litigants and frivolous appeals.

If the Court adopts the proposal to allow informal briefs, it should nevertheless ensure that the forms not contain language that actually invites pro. per. litigants to omit materials that are useful, indeed necessary, to properly resolve their appeals.

Respectfully submitted this 3th day of April, 2025.

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