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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

Joint Comment by the Directors of the
Maricopa County Indigent Defense
Agencies

The Maricopa County indigent representation offices (IR) collectively handle most cases filed in Maricopa County in which there has been a finding of indigency. The Office of Public Defense Services (OPDS) provides administrative and financial oversight to the staffed offices and the Office of Contract Counsel (OCC). The staffed offices are comprised of the Office of the Public Defender (OPD), the Office of the Legal Advocate

(OLA), the Office of the Legal Defender (OLD), and the Office of the Public Advocate (OPA). We jointly submit this comment in support of the proposal to amend Rule 31.10 of the Arizona Rules of Criminal Procedure and Rule 13 of the Arizona Rules of Civil Appellate Procedure.

I. Introduction

We write in strong support of the petition to amend Arizona Rules of Criminal Procedure 31.10 and Civil Appellate Procedure 13. This amendment would explicitly authorize the optional use of photographs, charts, graphs, and other visual aids in appellate briefs. Adopting this change would modernize Arizona’s appellate practice and promote clearer, more effective advocacy. As detailed below, both recent jurisprudence and cognitive research demonstrate that well-chosen visual aids enhance clarity, support legal argumentation, and ultimately aid judges in understanding and deciding cases.

II. Visual aids improve understanding – *Bondi v. VanDerStok* example

The value of visual aids in appellate analysis is evidenced by the U.S. Supreme Court’s recent decision in *Bondi v. VanDerStok*, 604 U.S. ---, No. 23-852, 2025 WL 906503 (U.S. Mar. 26, 2025). In that case – concerning the definition of regulated “firearms” under federal law – the majority opinion by Justice Gorsuch included photographs within the text of the opinion to illustrate critical facts. *Id.* at *6, *10. For example, the opinion presented two images side by side: one showing an easily assembled pistol kit and the second showing the fully assembled firearm that the kit produces. *Id.* at *6. These visuals made the comparison unmistakably clear – the kit contained all components of a gun, merely lacking a few minutes of assembly. Later in the opinion,

Justice Gorsuch included another pair of photographs: one of a fully finished handgun frame and another of an unfinished frame sold by Polymer80. *Id.* at *10. The only differences – a few small plastic tabs on the unfinished frame – were circled in red in the image for emphasis. *Id.* By inviting the reader to “just look... at the second photo” to grasp the point, the Court used visual evidence to drive home its reasoning that the unfinished frame was still essentially a “frame” under the law. *Id.* This powerful use of images helped the Justices (and readers of the opinion) literally *see* the minimal distinction between a so-called “ghost gun” kit and a fully operable weapon.

The *VanDerStok* decision exemplifies how visual aids can sharpen legal analysis. The photographs in the opinion clarified technical distinctions far more efficiently than text alone could. The fact that the nation’s highest court relied on images in its reasoning (taken from the parties’ briefs) underscores that visual tools can materially assist judges’ understanding of complex facts. If the U.S. Supreme Court finds value in visual aids to elucidate key points, appellate advocates in Arizona should likewise be empowered to include pertinent visuals in their briefs to illuminate the record and arguments for our courts.

III. The cognitive and persuasive benefits of visual aids

Modern research and expert commentary strongly support the cognitive and persuasive advantages of integrating visual aids with text. These benefits include:

Enhanced Comprehension and Memory: Studies in cognitive science have long documented the “picture-superiority effect,” which is the tendency for people to remember

information better when presented with images rather than just words.¹ In essence, humans process and store images through dual channels (both visual and verbal), whereas text alone engages only a single channel. As a result, a well-crafted chart or photograph in a brief can make a point more memorable. In the context of appellate advocacy, this means a judge is more likely to grasp and retain a complex factual or statistical point if it is supported by a clear visual illustration, rather than by text description alone. Improving judges' recall of key details through visuals ultimately aids decision-making, as the court can more easily remember the nuanced facts or comparisons during deliberations.

Greater Persuasive Impact: Visual aids can convey an argument's force in a succinct and compelling way, often far better than paragraphs of prose. As one appellate practitioner observed, "Sometimes a picture truly is better than 1,000 words," and a chart of critical facts or a timeline "can speak volumes" in a brief.² The Honorable Richard A. Posner likewise urged lawyers to use visuals, remarking that some attorneys mistakenly behave as if "a word is worth a thousand pictures" when in reality "the reverse... is true. Seeing a case makes it come alive to judges."³ In one case, Judge Posner recalled, the lawyers described trademarked products in text but provided no images; during oral

¹ Allan Paivio and Kalman Csapo, *Picture superiority in free recall: Imagery or dual coding?* Cognitive Psychology, Vol. 5, Issue 2, 176–206 (1973) [https://doi.org/10.1016/0010-0285\(73\)90032-7](https://doi.org/10.1016/0010-0285(73)90032-7).

² *Brief Writing in an Age of Virtual Oral Appellate Arguments*, Carlton Fields, May 4, 2020, [https://doi.org/10.1016/0010-0285\(73\)90032-7](https://doi.org/10.1016/0010-0285(73)90032-7).

³ Hon. Richard A. Posner, "Effective Appellate Brief Writing," TYL (Sept. 27, 2016), available at https://www.americanbar.org/groups/young_lawyers/resources/tyl/professional-development/effective-appellate-brief-writing/.

argument, the judges had to physically examine photographs of the items, which instantly made the outcome clear.⁴ This anecdote underlines that visual evidence can be persuasive and sometimes decisive. By allowing Arizona attorneys to include photographs or diagrams of key evidence (e.g., a confusing roadway layout, a comparison of products, a crucial document excerpt), the Court will enable more persuasive briefing that zeroes in on the heart of the matter.

Improved Reader Engagement and Clarity: Appellate judges face voluminous records and dense briefs. Visual aids can alleviate the cognitive strain by breaking up text and drawing focus to the most salient points. A graph, for instance, can distill pages of financial data into an at-a-glance illustration of a trend; a timeline can neatly organize a convoluted sequence of events; a map can pinpoint locations relevant to a jurisdiction or venue dispute. Such devices make the brief more engaging to read and enhance clarity by organizing information in a readily understandable form. By explicitly permitting visual aids, the Court will encourage briefs that are clearer and more direct in communicating critical information, thereby saving judicial time and reducing the risk of confusion.

IV. Aligning with modern appellate practice

The proposed amendment will bring Arizona’s rules in line with modern appellate practice and the growing recognition that visual advocacy is a legitimate and valuable tool. Notably, the [Federal Rules of Appellate Procedure](#) already allow visuals in briefs: Rule 32(a)(1)(C) provides that “photographs, illustrations, and tables may be reproduced” in a

⁴ *Id.*

brief as long as they are clear copies. Many jurisdictions have moved in the same direction. For example, Massachusetts explicitly permits images (photos, diagrams, charts, etc.) in appellate briefs, with reasonable safeguards such as requiring appropriate citations and excluding gruesome or indecent images. [Mass. R. App. P. 20\(a\)\(1\)\(B\)\(i\)–\(iii\)](#). Likewise, as of 2024, the Iowa Supreme Court’s rules allow charts, diagrams, graphs, and photographs in briefs (excluding depictions of people without leave of court and protecting confidential information). [Iowa R. App. P. 6.903\(b\)](#). These jurisdictions have recognized that visual aids, when used judiciously, can assist appellate review.

Notably, the petition’s proposal is limited and optional – it merely authorizes the use of visual aids; it does not require any brief to include them. The amendment would simply remove any ambiguity or hesitation that attorneys may have about including a photograph or chart to support their argument. In the absence of an explicit rule, lawyers might fear that an embedded image could violate formatting rules or be stricken. Making the allowance explicit will give counsel the confidence to incorporate visuals when appropriate, to the benefit of the court’s understanding. Attorneys will still exercise judgment in deciding when a visual would genuinely aid the brief. And of course, all existing rules of professionalism and relevance still govern; any visual aid must be pertinent to the issues and properly sourced or cited (just as quotations or record references are).

Furthermore, in today’s digital era, virtually all appellate briefs are filed electronically in PDF format with searchable text. Incorporating images or diagrams in such PDFs poses no practical difficulty – modern word-processing and PDF software make

it straightforward to insert high-quality visuals. Judges now commonly read briefs on computer screens or tablets where color images and graphics render clearly. In a paper filing world, visuals might have raised printing or legibility concerns; those concerns carry little weight in 2025. Embracing this amendment thus reflects the realities of current technology and reading habits. It will put Arizona at the forefront of appellate innovation, alongside those courts that have already welcomed visual advocacy as part of effective brief writing. As Professor Michael D. Murray observed in a 2024 study, the legal brief of the near future “will, and should, become a visual presentation” supported by research in cognitive science and data visualization – all to better serve the goal of fully informing and persuading the court.⁵ Adopting this proposal signals the Court’s commitment to clearer communication and understanding in the appellate process.

V. Conclusion

For the foregoing reasons, we strongly support the proposed amendments to Ariz. R. Crim. P. 31.10 and Ariz. R. Civ. App. P. 13 to expressly permit the use of photographs, charts, graphs, and other visual aids in appellate briefs. Allowing visual tools in briefs will enhance clarity and foster more effective advocacy without compromising the rigor of appellate review. Judges will benefit from briefs that distill and illuminate the key facts or legal concepts through well-crafted visuals, making the judicial task more efficient and informed. This is a common-sense, modern improvement to our appellate practice.

⁵ Michael D. Murray, *Visual Rhetoric and Visual Narrativity in Five Sections of a Brief*, (June 8, 2024) https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2460357

Respectfully submitted this day of April 30, 2025.

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