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5 **IN THE SUPREME COURT**
6 **STATE OF ARIZONA**

7 In the Matter of:

Supreme Court No. R-25-0005

8 **PETITION TO AMEND RULES 4,**
9 **16 AND 23 OF THE ARIZONA**
10 **RULES OF CIVIL APPELLATE**
11 **PROCEDURE; RULES 31.6, 31.15**
12 **AND 31.21 OF THE ARIZONA**
13 **RULES OF CRIMINAL**
14 **PROCEDURE; AND RULE 609 OF**
15 **THE ARIZONA RULES OF**
16 **JUVENILE PROCEDURE**

STATE BAR OF ARIZONA
COMMENT

13 Pursuant to Rule 28(e) of the Arizona Rules of Supreme Court, the State Bar
14 of Arizona (the “State Bar”) hereby submits the following as its comment to the
15 above-captioned Petition. The Petition seeks to amend certain portions of the Rules
16 of Civil Appellate Procedure, Arizona Rules of Criminal Procedure, and Arizona
17 Rules of Juvenile Procedure in cases where this Court grants review to provide for
18 sequential merits briefing (including a reply brief), sequential amicus briefing, and
19 word limits in lieu of page limits on such briefing. The State Bar supports these
20 proposed amendments.

1 **I. THE RULES SHOULD BE AMENDED AS THE PETITION**
2 **REQUESTS.**

3 The State Bar agrees with the Petition’s position that, “In our adversarial
4 system, sequential briefing provides the Court with better-quality briefing and
5 narrows the scope of the issues and arguments presented to the Court.” [Pet. at 2]
6 The State Bar favors sequential merits briefing in cases in which the Court has
7 granted review.

8 Sequential briefing will assist the Court, and even the parties, in narrowing or
9 eliminating issues. In practice, briefing submitted before the Court grants review
10 primarily focuses on *why* the Court should grant review, emphasizing the factors
11 listed in ARCAP 23(d)(3) (requiring a petition to state “[t]he reasons the petition
12 should be granted, which may include, among others, that no Arizona decision
13 controls the point of law in question, that a decision of the Supreme Court should be
14 overruled or qualified, that there are conflicting decisions by the Court of Appeals,
15 or that important issues of law have been incorrectly decided.”). The legal arguments
16 introduced in the petition are explained more fully in the supplemental briefing: the
17 petition argues why the Court should hear the matter; and the supplemental briefing
18 advocates the party’s position on the legal issues. In practice, the petition can
19 consume much of its already limited length of only 3,500 words, under ARCAP
20 23(g)(2), leaving few words to devote to more substantive legal analysis reserved
for the supplemental briefing.

1 Although supplemental briefing is intended to provide the court with a deeper
2 analysis, when done simultaneously, it may deprive the Court of a comprehensive
3 briefing on the merits. When submitted simultaneously, briefing must anticipate the
4 other party's or amicus's argument (and cannot cite where those arguments are stated
5 in the supplemental briefing). Such briefing may also cause the petitioner to create
6 a strawman for the respondent's argument and then rebut it. Sequential briefing, on
7 the other hand, allows the Court to see precisely how a respondent answers an issue
8 or argument as set forth by the petitioner. Sequential briefing also provides the court
9 with the petitioner's replies to the assertions made in respondent's answer.

10 Sequential briefing allows the Court to benefit most from our adversarial
11 system by allowing the parties to respond directly to each other's actual—as opposed
12 to each other's assumed—arguments. This benefit is important given the weighty
13 matters the Court chooses to review.

14 The benefits of sequential briefing, however, should be balanced by any
15 additional costs (principally in extra time to complete the briefing process and
16 additional briefing length) imposed by using sequential briefing instead of
17 simultaneous briefing. The State Bar believes that the Petition has carefully
18 considered those additional costs and has provided a reasonable means to mitigate
19 them. As discussed above, for cases in which an amici appears (which, per the
20 Petition, are 74% of all cases), the proposed amendments would add 6 days to the

1 briefing process but also reduce the parties' overall briefing by approximately 2,000
2 words. And, for cases in which an amici does not appear (26% of all cases), the
3 proposed amendments would add 40 days to the briefing process and increase the
4 parties' overall briefing by approximately 4,000 words. The principle means by
5 which the additional time cost is mitigated is by shortening the period between filing
6 the final brief and the earliest day upon which oral argument can be held, from 30
7 days to 14 days. This seems reasonable to the State Bar, but if the Court's experience
8 dictates otherwise and the Court believes that a different number of days should be
9 set as the default, then the periods could be adjusted accordingly. The State Bar
10 believes that the benefits of sequential briefing will exceed whatever additional time
11 costs it entails.

12 **II. THE STATE BAR ALSO BELIEVES THAT BRIEF-SIZE**
13 **LIMITATIONS SHOULD BE IN WORDS, NOT IN PAGES.**
14 **WORD LIMITATIONS ADHERE MORE CLOSELY TO**
15 **CURRENT PRACTICE IN THIS COURT FOR OTHER BRIEFS**
16 **AND OTHER COURTS OF THIS STATE AND PROVIDE MORE**
17 **CLARITY AND UNIFORMITY. CONCLUSION**

18 For the above stated reasons, the State Bar respectfully requests that this Court
19 grant the Petition and amend Arizona Rules of Civil Appellate Procedure 4, 16, and
20 23; Arizona Rules of Criminal Procedure 31.6, 31.15, and 31.21; and Arizona Rules
of Juvenile Procedure 609, as the Petition seeks.

1 RESPECTFULLY SUBMITTED this 1st day of May 2025.

2 *Lisa Panahi*

3 _____
4 Lisa M. Panahi
FOR THE STATE BAR OF ARIZONA

5 Electronic copy filed with the
6 Clerk of the Supreme Court of Arizona
this 1st day of May 2025.

7 by: PSequin