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ARIZONA SUPREME COURT

In the Matter of:

Petition to Amend Arizona Rules of Civil Appellate Procedure 4, 16, and 23; Arizona Rules of Criminal Procedure 31.6, 31.15, and 31.21; and Arizona Rules of Juvenile Procedure 609

Supreme Court No. R-25-0005

COMMENT IN SUPPORT OF:

Petition to Amend Arizona Rules of Civil Appellate Procedure 4, 16, and 23; Arizona Rules of Criminal Procedure 31.6, 31.15, and 31.21; and Arizona Rules of Juvenile Procedure 609

Undersigned is a family law attorney but also has a significant appellate practice in his firm having more published family law cases than any other Arizona attorney. The reason for this comment is to support the requested rule changes in support of sequential supplemental briefing. While I cannot expand on the eloquently written Rule change Petition by Mr. Frasier and Mr. Bendor, I wanted to provide some personal experience with the current system as both the Appellant and Appellee.

At present, I have been counsel on five cases that have been argued at the Arizona Supreme Court. On almost all of these cases, the lack of sequential briefing has resulted in an issue that was addressed by one side and not the other, in some fashion. This resulted in a less than completely briefed case, and in one of the counsel citing to other non-briefed cases during oral argument. During the supplemental briefing period, as an attorney, you are somewhat guessing what the other lawyer will argue, and assume that it will be similar to the Petition for Review, or the Court of Appeals arguments, but this is far from the case in many actual situations.

My personal belief is that practicing at the Court of Appeals is different than at the Arizona Supreme Court, as is the brief writing. As shown in the Opinions of the AZSC, it is more common to see citations to other state's law, and legal treatises than at the Court of Appeals. This results in additional cases or materials cited at the AZSC versus the Court of Appeals, and without supplemental briefing, that creates a difficulty in responding to such citations. Many arguments transform during the course of the appellate process and are refined through the process. Supplemental briefing helps in this regard, and results in a better presented case. The minor additional time that is added through supplemental briefing is well worth it, given the benefits.

I strongly support the Petition and proposed language.

Dated May 1, 2025.

/s/ Keith Berkshire
Keith Berkshire (024107)