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7 **IN THE SUPREME COURT**
8 **STATE OF ARIZONA**

9 In the Matter of:

Supreme Court No. R-25-0035

10 **PETITION TO AMEND RULE**
11 **39(b)(12) OF THE RULES OF**
12 **CRIMINAL PROCEDURE**

REPLY

13 The State Bar of Arizona (“State Bar”) hereby replies to the comments filed
14 in response to its Petition to Amend Rule 39(b)(12) of the Arizona Rules of Criminal
15 Procedure. The criticisms offered misunderstand both the purpose and the effect of the
16 proposed changes. The Petition is a modest procedural proposal designed to enhance
17 fairness, transparency, and efficiency in victim interview request process without
18 undermining any party’s rights or imposing inappropriate burdens. The State Bar
19 therefore requests that this Court adopt the proposed amendments without further
20 modification.
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22 **1. The Petition Does Not Presume Prosecutorial Misconduct or Neglect**

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24 Contrary to the comments submitted by APAAC and MCAO, the Petition does
25 not presume that prosecutors are failing to discharge their duty to convey defense

1 interview requests to victims. Rather, the Petition merely responds to the concerns
2 raised by then-Chief Justice Brutinel in the Court’s August 31, 2023 referral letter,
3 which invited consideration of whether a more structured interview request process
4 might better serve all participants in criminal cases. The proposed amendment provides
5 a mechanism that ensures requests are made and resolved through a process familiar
6 to courts and parties—filed pleadings—thus reducing ambiguity and possible disputes
7 about timing, content, or delivery of requests.
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10 **2. The Amendment Promotes Fairness and Efficiency by Providing Structure**
11 **and Clarity, Not Undue Work**

12 The proposed change enhances procedural clarity and fairness by channeling
13 victim interview requests through the filing of pleadings with the court. The filings do
14 not require legal argument or court rulings and instead require minimal information in
15 what will likely be form pleadings. Thus, contrary to the comments submitted by
16 APAAC and MCAO, the filings will not create a burdensome workload. And, to the
17 extent the filings are more burdensome than the current procedure, it is justified
18 because it provides a transparent, court-supervised framework that benefits all
19 stakeholders: victims, prosecutors, defense counsel, and the courts. A filing-based
20 procedure ensures that disputes about notice, timing, or scope of interview requests are
21 resolved through consistent judicial process, not ad hoc communication and litigation.
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1 **3. The Amendment Does Not Require Defense Counsel to Convey**
2 **Correspondence to Victims**

3 MCAO’s objection that the proposed amendment improperly requires
4 prosecutors to convey defense counsel communications to victims misconstrues the
5 proposal’s text and function. The Petition does not ask prosecutors to send victims
6 correspondence. Rather, it requires that victim interview requests be filed with the
7 court. A filed pleading requesting an interview is not “correspondence.” Moreover,
8 victims already have a right under Arizona law to receive notice of all pleadings filed
9 in a case. The proposed rule change merely ensures that the request for an interview is
10 included among such pleadings so that victims receive formal notice through existing
11 mechanisms—not informal or unsolicited communication. And procedures are
12 included in the proposed amendments to challenge any offending content in the filed
13 interview request.
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17 **4. The Petition Does Not Address First Amendment Issues Raised in Separate**
18 **Litigation**

19 ACLU’s criticisms that link this proposal to pending First Amendment litigation
20 misconstrue its intent and scope. The Petition does not seek to resolve or influence any
21 constitutional questions raised in the AACJ lawsuit.¹ It does not regulate the content
22 of communications or limit defense counsel’s ability to speak. It simply proposes a fair
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25 ¹ The AACJ lawsuit notably did not challenge Rule 39.

1 and consistent process for making requests to interview victims—one that respects
2 victims’ rights while preserving the defense’s ability to seek access to information.
3 Moreover, the Court, in its August 31, 2023 referral letter, has already indicated that it
4 disagrees with ACLU’s original proposal and claim that interview requests through the
5 prosecutor’s office offend the First Amendment.
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7 **5. Differential Treatment of Prosecutors and Victim Counsel Is Warranted**

8 The Maricopa Public Defenders’ argument that Victim Counsel should be treated
9 the same as prosecutors is unwarranted for the reasons set forth in the Petition.
10 Prosecutors and Victim Counsel differ in that the prosecutor is not representing the
11 victim. This difference, and the resulting differing ethical obligations, renders it
12 unnecessary for Victim Counsel to be subject to identical filing obligations.
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15 **6. Making Filed Interview Requests Permissive Rather Than Mandatory Is** 16 **Premature and Otherwise Defeats the Purpose of the Amendments.**

17 The Maricopa Public Defenders’ further argument that filed interview requests
18 should be permissive rather than mandatory, because interview requests may one day
19 be deemed unconstitutional, should be rejected as speculative and premature. If
20 interview requests are deemed unconstitutional, rules requiring them would not be
21 enforceable, and, in any event, they could be amended in response. Further, making it
22 permissive to file interview requests at this time would defeat the purpose of
23 amendments—to ensure transparency and timeliness in all cases, not just those where
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1 defense counsel chooses to file a request.

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3 RESPECTFULLY SUBMITTED this 30th day of May
4 2025.

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6 Lisa M. Panahi
7 FOR THE STATE BAR OF ARIZONA

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9 Electronic copy filed with the
10 Clerk of the Supreme Court of Arizona
11 this 30th day of May 2025.

12 by: PSequin
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