

IN THE ARIZONA SUPREME COURT

In the Matter of:	)	
	)	Supreme Court No. R-26-0005
	)	
PETITION TO AMEND RULES	)	
32.4 AND 33.4 OF THE RULES	)	
OF CRIMINAL PROCEDURE	)	
	)	
_____	)	

**Comment of
Arizona Attorneys for Criminal Justice
in Response to Petition to Amend Rules 32.4 and 33.4 of the
Arizona Rules of Criminal Procedure**

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Arizona Attorneys for Criminal Justice (“AACJ”), the Arizona affiliate of the National Association of Criminal Defense Lawyers, was founded in 1986 to give a voice to the rights of the criminally accused and the attorneys who defend them. AACJ is a statewide not-for-profit membership organization of criminal defense lawyers, law students, and associated professionals. Our organization is dedicated to safeguarding the rights of the accused in the courts and before the legislature; ensuring that criminal defendants, regardless of resources, receive fair treatment and meaningful access to justice; and defending the integrity of the adversarial system.

AACJ also promotes excellence in the practice of criminal law through education, training, and mutual assistance, and works to foster public understanding of citizens’ rights, the criminal justice system, and the essential role defense attorneys play in preserving due process and equal justice under law.

Pursuant to Rule 28, Rules of the Supreme Court, AACJ respectfully submits this Comment in opposition to the Petition to Amend Rules 32.4 and 33.4 of the Rules of Criminal Procedure (the “Rule Petition”), which seeks to impose a seven-page limitation on Notices Requesting Post-Conviction Relief (“PCR Notices”).

AACJ opposes the adoption of this rule amendment, as it will introduce more challenges than it resolves. The proposal does not establish a clear need for such a restriction and leaves uncertainty regarding its enforcement. In practice, the rule

could obstruct access to post-conviction relief, disproportionately impact pro per petitioners, and lead to repeated filings, undermining the goal of judicial economy.

I. Criminal defendants in Arizona have a rule-based and constitutional right to post-conviction relief.

Criminal defendants in Arizona have a state constitutional right to appeal in all cases. Ariz. Const. art. II, § 24. For pleading defendants who waive this right, post-conviction relief is the only vehicle to exercise the defendant's constitutional right to appellate review. Ariz. R. Crim. P. 33.1; *see also State v. Smith*, 184 Ariz. 456, 458 (1996) ("It is through operation of the rules governing post-conviction relief that our constitutional guarantee of appellate review in all cases is effectuated for pleading defendants.") (citations omitted). And for defendants who exercised their constitutional right to trial, and were found guilty, post-conviction relief is the only means of raising ineffective assistance of counsel claims. Ariz. R. Crim. P. 32.1; *State v. Spreitz*, 202 Ariz. 1, 2 ¶ 5 (2002).

A PCR Notice is the initial threshold to exercising this remedy and not just a mere formality. Ariz. R. Crim. P. 33.4. Further, post-conviction relief remains the only remedy for defendants who discover new evidence post-conviction, the only remedy where a change in the law would impact their case, and the only vehicle for untimely arguments demonstrating actual innocence or sentencing issues. Ariz. R. Crim. P. 32.1(b)-(h); Ariz. R. Crim. P. 33.1(b)-(h). Defendants who file these "untimely" and/or "successive" notices of post-conviction relief are not assisted by

counsel because their cases have concluded and their prior counsel's representation has ended. These unrepresented litigants must overcome the burden of demonstrating timeliness and non-preclusion to avoid summary dismissal of their notices and potentially get counsel appointed to assist them. Ariz. R. Crim. P. 32.2, 32.4, 32.5, 33.2, 33.4, 33.5. As explained in more detail below, a seven-page limit is insufficient for defendants to meet these standards, at least as they are currently being interpreted by the superior courts.

II. The Rule Petition does not adequately address the need for the amendment.

A. The Rule Petition lacks critical information.

The Rule Petition raises concerns about lengthy notice filings but does not provide data or otherwise identify the extent to which excessively long PCR Notices impede judicial economy. The Rule Petition also proffers that lengthy PCR Notices “impose unnecessary burdens on clerks, prosecutors, and the court,” but does not explain how. Petition, at 2. Typically, PCR Notices are initially sent to the post-conviction relief management judge and then are sent to assigned defense counsel – or, in the case of untimely or successive PCR Notices, could face summary dismissal if inadequate grounds are provided. Aside from victim notice, Ariz. R. Crim. P. 33.4(b)(5), prosecutors do not get involved unless and until a petition for post-conviction relief is filed. Absent that, a prosecutor would not have a reason to review

a defendant's PCR Notice, so it is unlikely they are affected by the length of PCR Notices.

Further, all drafters of this Comment handle post-conviction relief cases. The drafters submit, and explain more fully below, that lengthy PCR Notices are the exception, not the standard. Most PCR Notices track the superior court's form, resulting in a checked box, and, occasionally, a few sentences to explain the primary concern, or in the case of an untimely or successive notice, to explain why the claim was not brought sooner. The Rule Petition does not provide any data to explain how pervasive the problem is, and whether it conflicts with the drafters' experience. Without additional information, it is difficult to determine how extensive this problem is and what other possible remedies might exist.

B. The Rule Petition omits consequences and other procedural logistics.

Petitions for post-conviction relief that exceed the page limit in Rule 33.7(c) are struck. The Rule Petition, however, does not identify the sanction for violating the proposed page limit for PCR Notices, nor does it identify timelines or deadlines for amended filings, if allowed at all. Moreover, because filing a PCR Notice begins the PCR process, the date of filing the Notice is the basis for whether a claim is timely, and impacts future substantive rights, such as the statute of limitations for filing a federal habeas petition. It is unclear how these time calculations would be affected if this proposed rule were to come into effect. These unknowns will cause

confusion and likely trigger litigation. Further, petitioners whose notices are struck may not know if their filing was rejected due to a procedural technicality or due to a substantive defect.

The Rule Petition assumes that pro per filers have easy and reliable access to mail. But recent changes in the mail policies for the Arizona Department of Corrections, Rehabilitation and Reentry (ADCRR) have created significant difficulties (presently being addressed) with inmates receiving mail, even legal mail. These issues will further complicate the ability of inmates to address procedural defects in filings.

For inmates who do not have counsel (either because their attorneys did not file a PCR Notice on their behalf or because they are filing an untimely or successive notice), they may not understand procedural rejections, which could cause failures to further pursue remedies to which they have a right and which may be meritorious, potentially resulting in a chilling effect on the exercise of fundamental and constitutional rights. It is critical that post-conviction relief remain meaningfully accessible, and the procedural rules governing post-conviction relief should be crafted to preserve rather than restrict access.

III. Petitioners are held to the same procedural standards as attorneys, which poses significant challenges for those with limited resources.

A. Pro per petitioners face unique challenges.

Pro per petitioners are not appointed counsel until after their PCR Notice is filed. Ariz. R. Crim. P. 32.5, 33.5(a); *see also State v. Hamlet*, No. 2 CA-CR 2026-0019-PR, 2026 WL 673856 (App. Div. 2 Mar. 10, 2026) (reversing summary dismissal of post-conviction relief proceeding and remanding for further fact-finding where unclear if incarcerated filer timely filed PCR Notice). This means that they generally have no professional guidance when attempting to initiate a post-conviction relief proceeding. Additionally, pro per petitioners do not have the same access to tools and resources for drafting pleadings that are available outside of prison². There are no state or ADCRR policies mandating consistent availability of materials such as computers or laptops with word processing, so these critical resources are often lacking in Arizona prisons³. The Maricopa County Superior Court supplies a digital Notice Requesting Post-Conviction Relief form⁴, but pro per petitioners may not be able to access it on their own from within prison.

² Tommaso Bardelli, Sindy Lopez, Tammy Ortiz, & Laura Brown, *Limited by Design: The Policy Framework of Legal Access in Prison*, Ithaka S+R 1, 26 (2025).

³ *Id.* at 30.

⁴ <https://superiorcourt.maricopa.gov/media/3bpnamwh/crpcr12fz.pdf>.

Notably, under the new rules recently put into effect by the ADCRR, it has become far more difficult for inmates to reach out to attorneys for consultations. Under the old phone policy, inmates could simply use money on their books to contact attorneys or could call collect. The new rules, however, restrict inmates to calling only twenty numbers that are on their approved list. Getting on their approved list requires action by the party to be called—meaning unless attorneys apply to be added to the list of every inmate, the inmate is unable to call. Instead, the inmate must ask their block corrections officer to set up a legal call and must provide the number. Across ADCRR, the responsiveness of these officers to such requests is wildly inconsistent. These communication challenges render inmates more isolated than ever when seeking to file PCR Notices.

B. Pro per petitioners remain subject to the same procedural compliance as attorneys.

Despite the challenges they face, pro per petitioners are still technically bound by the same rules and standards as licensed attorneys. *Flynn v. Campbell*, 243 Ariz. 76, 83 ¶ 24 (2017) (“We hold unrepresented litigants in Arizona to the same standards as attorneys.”) (citation omitted). The proposed rule changes will impose a strict limitation to be complied with by all petitioners, even those filing themselves from within prison.

In *Canion v. Cole*, the Supreme Court of Arizona expressly held that “compliance with Rule 32 is not a mere formality.” 210 Ariz. 598, 600 ¶ 11 (2005).

Accordingly, adding a page limit to the rules will be another obstacle that could bar pro per litigants from post-conviction relief. Petitioners who have their Notice struck will not be appointed counsel and, therefore, would have to navigate the procedural defects on their own. As mentioned above, the Rule Petition does not explain how noncompliant petitioners would be informed, whether the defect will be expressly identified for them, and what their deadline will be to file a compliant PCR Notice. These omissions are material and could effectively foreclose post-conviction relief for numerous defendants.

IV. Seven pages will often be insufficient to meet the requirements of Rules 32.4 and 33.4.

The Arizona Criminal Practice Manual notes that a PCR Notice cannot merely allege an intent to raise a non-precluded issue but also must briefly explain the facts and law that support a claim.⁵ Presently, the Notice Requesting Post-Conviction Release form circulated by the Maricopa County Superior Court is six pages itself.⁶ Portions of the form that require an explanation regarding untimely filings state that a separate addendum can be attached for complete explanations. The proposed rule would restrict petitioners to one page for such addenda. And, as noted above, many pro per petitioners may not have access to this online notice form and must handwrite

⁵ 15 David J. Euchner & Barbara E. Bergman, *Arizona Criminal Practice Manual* § 31:3 (2025)

⁶ <https://superiorcourt.maricopa.gov/media/3bpnamwh/crpcr12fz.pdf>.

the information required. Seven pages is unlikely to afford petitioners adequate space to satisfy these notice requirements.

V. The proposed rule would particularly impede defendants who seek to file untimely or successive petitions and would deprive attorneys of useful information.

As discussed above, defendants who are filing untimely or successive petitions, to avoid summary dismissal, must explain the reasons why the claim was not brought sooner or in a previous PCR proceeding and/or must provide adequate grounds for seeking relief. *See* Ariz. R. Crim. P. 32.2(b); Ariz. R. Crim. P. 32.4(b)(3)(D). Timeliness is no mere formality—a defendant has the burden to demonstrate that a failure to timely file was not their fault, and absent an adequate showing the defendant has no remedy. *State v. Solano*, 257 Ariz. 10, 12, ¶ 7 (App. 2024); Ariz. R. Crim. P. 32.1(f); Ariz. R. Crim. P. 32.4(b)(3)(D). When a defendant raises a claim in a successive PCR Notice, to avoid preclusion they must “explain the reasons for not raising the claim in a previous notice or petition, or for not raising the claim in a timely manner.” Ariz. R. Crim. P. 32.2(b). “If the notice does not provide sufficient reasons why the defendant did not raise the claim in a previous notice or petition, or in a timely manner, the court may summarily dismiss the notice.” *Id.* And, a court can determine that an issue is precluded, and therefore subject to summary dismissal, even if the State does not raise preclusion. *Id.* “Nothing in Rule 32.2(b) suggests that counsel must be appointed for an indigent

defendant before a trial court conducts the preliminary review mandated by that rule.” *State v. Ainsworth*, 250 Ariz. 457, 459, ¶ 11 (App. 2021) (quoting *State v. Harden*, 228 Ariz. 131, 133 ¶ 11 (App. 2011)). And in practice, courts generally determine preclusion and timeliness issues—often resulting in the dismissal of a PCR proceeding—based solely on a PCR Notice filed by a pro se, incarcerated individual, without appointing counsel or even requiring any filing in response from the State.

A. In counsels’ experience, PCR Notices frequently exceed seven pages when preclusion and/or timeliness is an issue.

Meeting the standards of Rule 32 and Rule 33’s preclusion and timeliness standards can require substantial explanation. Drawing on examples of recent cases involving undersigned counsels, the Rule Petition is incorrect in its characterization of the PCR Notice as serving only a “limited, threshold function” and not being treated “as a merits-based pleading,” *see* Petition at 1–2, at least in the case of untimely or successive PCR Notices. In one case, a pro se litigant filed an eight-page PCR Notice, initiating a fourth PCR proceeding, that included the standard form (at the time 5 pages long) plus three handwritten pages explaining the nature of his claims and why they should be considered timely and not precluded, citing recent Arizona Supreme Court case law as well as the relevant provisions of Rule 32 and the U.S. and Arizona constitutions. The superior court summarily dismissed his PCR

proceeding without allowing him to file a petition, finding the claims precluded and untimely based solely on the PCR Notice.

Another PCR Notice required approximately ten pages just to explain the ineffectiveness of appellate counsel in failing to address a waiver issue. In another case, prior to the appointment of counsel, the defendant filed his fourth notice of petition for post-conviction relief and had to state a claim of newly discovered evidence that would not be summarily dismissed. For still another untimely petition—for which relief was ultimately granted involving an innocent veteran—the defendant had to provide information from an investigation report to provide grounds showing ineffective assistance of his first PCR counsel.

B. Lengthy PCR Notices serve a secondary function of providing insight into the claims and helping counsel build rapport.

As defense counsel, the undersigned can appreciate the challenges involved in separating the wheat from the chaff when it comes to reviewing lengthy pro per filings, including PCR Notices. However, even when notices are lengthy, the extraneous matter can be useful for defense counsel. Defendants can be guarded. However, in their written filings defendants are often unfiltered, expressing their thoughts in detail. This is especially true of defendants who suffer from mental health issues, and review of what most would consider to be excessive ramblings can and sometimes does form the basis for claims related to mental health issues, such as

ineffective assistance of counsel for failing to seek evaluations pursuant to Ariz. R. Crim. P. 11.

More often, the arguments detailed in pro per filings can be of immense assistance for defense counsel in building trust with defendants, understanding what they are seeking to accomplish and/or argue, and in overcoming communication challenges. The very defendants who often file the lengthiest notices are often defendants who have had issues dealing with counsel in the past and who may have had numerous attorneys appointed and withdrawn. The contents of a lengthy PCR Notice can often provide counsel with the ability to have an informed initial conversation with the client.

In sum, a strict and rather short page limit will substantially impede the ability of defendants to litigate significant claims particularly where those claims involve untimely or successive petitions. It will further reduce the sharing of information between attorney and defendant, impeding defense counsel's ability to effectively represent their clients. And it risks summary dismissal of meritorious claims.

VI. Conclusion

AACJ opposes the adoption of the proposed amendment to Rules 32.4 and 33.4. The proposed seven-page limit on PCR Notices will present more challenges for courts and practitioners, and disproportionately disadvantage pro per petitioners, obstructing their ability to exercise their constitutional right to post-conviction relief.

Respectfully submitted, this 23rd day of April, 2026,

By /s/
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Arizona Attorneys for Criminal Justice