

Hon. Jennifer E. Green
Criminal Department Presiding Judge
Superior Court of Arizona, Maricopa County
175 W. Madison Street
Phoenix, AZ 85003
(602) 506-0438

IN THE SUPREME COURT OF THE STATE OF ARIZONA

In the Matter of:	)	Supreme Court No. R-26-0024
	)	
PETITION TO AMEND RULES	)	COMMENT OF THE SUPERIOR
1.9, 15.1, 32.6, AND 33.6 OF THE	)	COURT IN AND FOR MARICOPA
RULES OF CRIMINAL	)	COUNTY ON THE AMENDED
PROCEDURE	)	PETITION TO AMEND THE RULES
	)	OF CRIMINAL PROCEDURE

Maricopa County Superior Court appreciates the opportunity to comment on the Petition to Amend Arizona Rules of Criminal Procedure 1.9, 15.1, 32.6, and 33.6 regarding *ex parte* proceedings in post-conviction relief (“PCR”) matters.

The Petition seeks to create a right to *ex parte* proceedings for discovery-related matters in PCR cases. However, the Arizona Court of Appeals recently addressed this precise issue in *State v. Smith*, holding that “the law does not authorize *ex parte* proceedings for the discovery of third-party records in PCR matters.” *State v. Smith*, 1 CA-SA 25-0281, 2025 WL 3899501, at *5, ¶ 25 (Ariz. Ct. App. Dec. 31, 2025).

The Petition proposes rule changes that would effectively supersede or contradict the holding in *Smith* by expressly authorizing *ex parte* proceedings in circumstances where the Court of Appeals has determined no such authority currently exists under the rules.

Importantly, a Petition for Review to the Arizona Supreme Court was filed in *Smith* on February 11, 2026. Because the Arizona Supreme Court has not yet had the opportunity to review and resolve this issue, the legal landscape remains unsettled. The question of whether, and under what circumstances, *ex parte* proceedings should be permitted in PCR matters is currently before the Court through the normal appellate process.

Under these circumstances, the Superior Court respectfully suggests that it is premature to adopt rule changes addressing this issue. Proceeding with a rule amendment while *Smith* is pending review risks creating inconsistency between court rules and controlling case law, or alternatively, requiring further amendment after the Supreme Court issues its decision.

Allowing the issue to be resolved through the appellate process will provide the Court with the benefit of a fully developed legal analysis and ensure that any subsequent rulemaking is informed by the Supreme Court's guidance on the scope of permissible *ex parte* proceedings in PCR cases.

For these reasons, the Superior Court recommends that the Arizona Supreme Court defer consideration of the Petition until the *Smith* litigation is fully resolved.

RESPECTFULLY SUBMITTED this 24th day of April, 2026.

/s/ Jennifer E. Green

Honorable Jennifer E. Green
Presiding Judge, Criminal Department
Superior Court of Arizona in and for
Maricopa County

Electronic copy filed with
Clerk of the Arizona Supreme Court
this 24th day of April, 2026.