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**IN THE SUPREME COURT
STATE OF ARIZONA**

In the Matter of) Arizona Supreme Court No. R-26-0060
)
PETITION TO AMEND RULE 111) **RESPONSE TO PETITION**
OF THE RULES OF THE)
SUPREME COURT OF ARIZONA)
_____)

The undersigned hereby file this Response to the Petition to Amend Arizona Supreme Court Rule 111 (“Petition”) filed by Arizona Supreme Court Staff Attorney Laura R. Curry. While supporting the change suggested in the Petition, the undersigned request additional changes that would treat all memorandum decisions the same while still affording the Arizona Supreme Court the authority to determine what can be cited as persuasive authority.

Currently, with some exceptions and limitations, an Arizona Court of Appeals memorandum decision may be cited “for persuasive value.” Ariz. R. Sup. Ct. 111(c)(1)(C) (2026). The Petition seeks to add a provision stating that, when the Arizona Supreme Court denies a petition for review of an Arizona Court of Appeals memorandum decision, the Arizona Supreme Court “may order that the [Court of Appeals’ memorandum] decision, or portions of that decision, may not be cited for its persuasive value.” Stated differently, the requested amendment would expressly authorize the Arizona Supreme Court, in its discretion, to affirmatively order that all or a portion of a memorandum decision not be cited for persuasive value when it denies a petition for review of that memorandum decision. The undersigned support that suggested change.

This Response requests further changes to Rule 111 to fix a related anomaly created by the current Rules.

For decades, the Arizona Supreme Court has had the authority to depublish opinions of the Arizona Court of Appeals. *See, e.g.,* Ariz. R. Sup. Ct. 111(g) (2026); Ariz. R. Sup. Ct. 111(g) (2014). Until 2015, a depublished opinion was treated like a memorandum decision: neither were precedent and neither could be cited in any court other than for limited purposes. *See* Ariz. R. Sup. Ct. 111(c) (2014) (allowing memorandum decisions to be cited only for “establishing the defense of res judicata, collateral estoppel, or the law of the case;” for helping the court to decide whether to issue an opinion or to grant a motion for reconsideration or a petition for review).

Since 2015, memorandum decisions issued on or after January 1, 2015, can be cited “for persuasive value” where “no opinion adequately addresses the issue before the court.” Ariz. R. Sup. Ct. 111(c)(1)(C) (2026). The anomalous exception to that ability to cite memorandum decisions for persuasive value is a limitation that such a citation is not “to a depublished opinion or a depublished portion of an opinion.” *Id.* That rule, which was added in 2015, results in the anomaly where a depublished opinion is treated as something less than a memorandum decision.

As an example, under the current Rules, when the Arizona Supreme Court denies a petition for review of a case decided by a memorandum decision, that memorandum decision can be cited “for persuasive value.” Ariz. R. Sup. Ct. 111(c)(1)(C) (2026). By contrast, when the Arizona Supreme Court denies a petition for review of a case decided by an opinion and also depublishes that opinion, under

the current Rules, the former opinion cannot be cited for persuasive value. *Id.* As a result, when the Arizona Supreme Court denies review of an opinion but depublishes it, that former opinion (which has not been vacated) *cannot* be cited for persuasive value; if, instead, the Arizona Supreme Court denies review of a memorandum decision, that memorandum decision *can* be cited for persuasive value.

That result also appears inconsistent with the standards for publishing an opinion in the first place. An opinion is proper only “when a majority of the judges acting determine that” the written decision:

1. Establishes, alters, modifies or clarifies a rule of law, or
 2. Calls attention to a rule of law which appears to have been generally overlooked, or
 3. Criticizes existing law, or
 4. Involves a legal or factual issue of unique interest or substantial public importance, or
- if the disposition of [the] matter is accompanied by a separate concurring or dissenting expression, and the author of such separate expression desires that it be published, then the decision shall be by opinion.

Ariz. R. Sup. Ct. 111(b) (2026). Thus, most times, an opinion would only issue where “no opinion adequately addresses the issue before the court.” Ariz. R. Sup. Ct. 111(c)(1)(C) (2026). That would seem to support the ability to cite a memorandum decision that remains in place as a depublished opinion. Yet such a citation is prohibited by the current Rules and would, in fact, subject the citing individual to sanctions.

To cure this issue, along with enacting the amendment sought in the Petition—which would expressly authorize the Arizona Supreme Court, in its discretion, to order, in a case where review is denied, that all or a portion of a memorandum decision not be cited for persuasive value—the undersigned suggest two additional and related amendments: (1) expressly stating that a depublished opinion is a memorandum decision (with the Court having the authority to direct that all or a portion of that memorandum decision not be cited for persuasive value) and (2) eliminating the directive that a depublished opinion (in whole or in part) automatically cannot be cited for persuasive value. The changes requested in this Response would (1) add a sentence to proposed Rules 111(g)(1) and 111(g)(2) and (2) remove text from Rule 111(c)(1)(C).

The changes requested in this Response would add a sentence at the end of proposed Rules 111(g)(1) and 111(g)(2) in ALL CAPS and highlighted as follows:

(g) **Depublication. Court-Ordered Citation Limitations.**

(1) Depublication. Notwithstanding Rule 111(b), the Supreme Court may order that an opinion certified for publication by the Court of Appeals either not be published in its entirety or that a specified portion of the opinion not be published. **AN OPINION OR SPECIFIC PORTION OF AN OPINION THAT IS DEPUBLISHED IS TREATED AS A MEMORANDUM DECISION.**

(2) Memorandum Decisions. Notwithstanding Rule 111(c)(1)(C), if the Supreme Court denies a petition for review of a Court of Appeals memorandum decision, it may order that the decision, or portions of that decision, may not be cited for its persuasive value. **THE SUPREME COURT MAY ALSO ORDER THAT AN OPINION**

DEPUBLISHED UNDER RULE 111(G)(1), OR PORTIONS OF A DEPUBLISHED OPINION, MAY NOT BE CITED FOR ITS PERSUASIVE VALUE.

The changes requested in this Response would also modify Rule 111(c)(1)(C) as follows:

(c) Dispositions as Precedent.

(1) Memorandum decisions of Arizona state courts are not precedential and, UNLESS OTHERWISE ORDERED BY THE SUPREME COURT UNDER RULE 111(G), such a decision may be cited only:

(A) to establish claim preclusion, issue preclusion, or law of the case;

(B) to assist the appellate court in deciding whether to issue a published opinion, grant a motion for reconsideration, or grant a petition for review; or

(C) for persuasive value, but only if it was issued on or after January 1, 2015; AND no opinion adequately addresses the issue before the court; ~~and the citation is not to a depublished opinion or a depublished portion of an opinion.~~

CONCLUSION

The undersigned support the change requested in the Petition and, given that requested change, respectfully request further changes to Rule 111 to fix this related anomaly created by the current Rules as set forth above. Collectively, these requested changes would (1) treat a depublished opinion like a memorandum decision (which was the case before the 2015 changes allowing the citation of memorandum decisions for persuasive value) and (2) expressly authorize the

Arizona Supreme Court, in its discretion, to affirmatively order that all or a portion of a memorandum decision (including a depublished opinion) not be cited for persuasive value.

DATED this 28th day of April 2026.

/S/
Samuel A. Thumma

/S/
Cynthia J. Bailey

/S/
Andrew J. Becke

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Michael J. Brown

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Michael S. Catlett

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/S/
Angela K. Paton

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Jennifer M. Perkins

/S/
Sean E. Brearcliffe

/S/
Jeffrey L. Sklar

APPENDIX¹

Changes to Arizona Supreme Court Rule 111 requested in this Response:

(c) Dispositions as Precedent.

(1) Memorandum decisions of Arizona state courts are not precedential and, **UNLESS OTHERWISE ORDERED BY THE SUPREME COURT UNDER RULE 111(G)**, such a decision may be cited only:

(A) to establish claim preclusion, issue preclusion, or law of the case;

(B) to assist the appellate court in deciding whether to issue a published opinion, grant a motion for reconsideration, or grant a petition for review; or

(C) for persuasive value, but only if it was issued on or after January 1, 2015; **AND** no opinion adequately addresses the issue before the court; ~~and the citation is not to a depublished opinion or a depublished portion of an opinion.~~

....

(g) **Depublication. Court-Ordered Citation Limitations.**

(1) Depublication. Notwithstanding Rule 111(b), the Supreme Court may order that an opinion certified for publication by the Court of Appeals either not be published in its entirety or that a specified portion of the opinion not be published. **AN OPINION OR SPECIFIC PORTION OF AN OPINION THAT IS DEPUBLISHED IS TREATED AS A MEMORANDUM DECISION.**

(2) Memorandum Decisions. Notwithstanding Rule 111(c)(1)(C), if the Supreme Court denies a petition for review of a Court of Appeals memorandum decision, it may order that the decision, or portions of that decision, may not be cited for its persuasive value. **THE**

¹ Requested changes are in ALL CAPS and highlighted, while requested deletions are shown by strikeouts.

SUPREME COURT MAY ALSO ORDER THAT AN OPINION
DEPUBLISHED UNDER RULE 111(G)(1), OR PORTIONS OF A
DEPUBLISHED OPINION, MAY NOT BE CITED FOR ITS
PERSUASIVE VALUE.