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**IN THE SUPREME COURT
STATE OF ARIZONA**

In the matter of:

PETITION TO AMEND RULE 111
OF THE RULES OF THE SUPREME
COURT OF ARIZONA

No. R-25-0060

**COMMENT IN SUPPORT OF
PETITION TO AMEND RULE 111
OF THE RULES OF THE
SUPREME COURT OF ARIZONA**

The Arizona Attorney General's Office supports the petition to amend Rule 111 of the Arizona Rules of the Supreme Court to permit this Court to designate that a memorandum decision cannot be cited for persuasive authority. Although memorandum decisions do not carry the weight of authority that opinions do, memorandum decisions may be—and frequently are—cited for persuasive value. Further, most appeals are decided by memorandum decisions, and few such decisions are reviewed by this Court. Rule 111 already provides this Court the power

to designate that a particular published opinion cannot be cited for persuasive authority once depublished—the rule should fill a currently existing gap and provide the Court the same power in relation to decisions that were never published in the first place.

The vast majority of appeals are resolved by memorandum decisions. In 2025, Division One issued 806 memorandum decisions and only 77 opinions. *Arizona Court of Appeals Division One 2025: The Year in Review* (“*Division One 2025 Review*”) at 16. Although it does not appear Division Two publishes similar statistics, according to a Westlaw search of Division Two cases for the 2025 calendar year, Division Two issued 41 opinions and 422 memorandum decisions. Thus, for both Divisions, over 90 percent of appeals are decided in a memorandum decision.

According to Division One, memorandum decisions and opinions undergo a different drafting process. *Division One 2025 Review* at 9–10. For example, published opinions “contain[] more extensive reasoning and analysis, with care to avoid language or reasoning potentially leading to unintended consequences in future appeals,” and opinion drafts are circulated for comment to all judges in Division One. *Id.* at 10. In contrast, memorandum decisions “generally take less time to issue” and are not subject to review “by judges other than the panel members.” *Id.* at 9.

Meanwhile, memorandum decisions are unlikely to meet this Court’s criteria

for granting review, particularly if the outcome is correct notwithstanding any error in the reasoning of the decision. *See, e.g.,* [Ariz. R. Crim. P. 31.21\(d\)](#) (providing list of potential reasons this Court would grant review); [ARCAP 23\(d\)](#) (same). The court of appeals issues memorandum decisions precisely because the court is not intending to create new law and instead apply settled law to a specific set of facts. *See* [Ariz. R. Sup. Ct. 111\(b\)](#) (setting forth when an appeal should be decided by an opinion). Yet if a memorandum decision contains language with which this Court disagrees or which might be in tension with prior case law, this Court cannot disapprove of it unless it grants review, creating an odd situation where there is more incentive to grant review of certain memorandum decisions than similar opinions (which can be depublished under the current rule).

The Attorney General's Office does not anticipate it will be a common practice for this Court to deem a memorandum decision not citable. For example, in 2025, parties filed 410 petitions for review of Division One appeals. [Division One 2025 Review](#) at 17. This Court granted review in 42 of those cases, and depublished only three opinions. [Division One 2025 Review](#) at 17. But in those rare few appeals, this Court should be able to treat memorandum decisions the same way it treats opinions.

Therefore, the Attorney General's Office agrees that this Court should adopt the proposed amendments to Rule 111(g).

Respectfully submitted this 29th day of April, 2026

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By: /s/ Alice M. Jones

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