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ARIZONA SUPREME COURT

In the Matter of:

Petition to Amend Arizona Rules of
Criminal Procedure 1.9, 15.1, 32.6, and
33.6

Supreme Court No. R-26-0024

**Comment in Opposition to Petition
to Amend Arizona Rules of
Criminal Procedure 1.9, 15.1, 32.6,
and 33.6**

Arizona law generally prohibits ex parte communications. Despite this, litigation over them has intensified in recent years. Defendants, particularly in capital cases, have pushed to make ex parte communications the norm instead of the exception in a host of situations. This chips away at the American adversarial system and Arizona's general prohibition on ex parte communications. For this and other reasons, the Arizona Attorney General's Office opposes the rule change petition ("Petition") that would authorize ex parte discovery.

I. Governing Legal Framework.

A court has no authority to allow unauthorized ex parte communications. *See State v. Apelt*, 176 Ariz. 349, 365 (1993) (agreeing no legal authority allowed ex parte hearing); *cf. Shinn v. Ariz. Bd. of Exec. Clemency*, 254 Ariz. 255, 264, ¶ 34 (2022) (order void when “court exceeded its authority under the rule”). Indeed, the judicial canons prohibit ex parte communications unless a limited exception applies. Ariz. R. Sup. Ct. 81, Ariz. Code Jud. Conduct (“Canon”) 2.9(A).

One exception to the general prohibition on ex parte communications allows a court to “initiate, permit, or consider any ex parte communication when expressly authorized by law to do so.” Canon 2.9(A)(5). Arizona Rule of Criminal Procedure 6.7(b), and Rules 32.5(c) and 33.5(b) by incorporation, specifically authorizes ex parte communications in the pretrial and post-conviction context when a need for confidentiality is shown. However, Rule 6.7(b) allows ex parte communications in a narrow circumstance: when making a “request under this rule.” The “request” that may be made under Rule 6.7 is a request for the appointment of an investigator, expert, or mitigation specialist. *See Ariz. R. Crim. P.* 6.7(a) (allowing court to make such appointments “[o]n application”). No other types of requests are mentioned, including discovery requests.

Arizona’s rules of criminal procedure do not allow ex parte contact in any other circumstance.

II. Arizona Law Does Not Support Ex Parte Discovery.

The Petition attempts to show that ex parte proceedings are broadly allowed for criminal defense and mitigation investigations (and not just for appointments), downplaying the general prohibition on ex parte communications. Petition, at 2–5. To be clear, Arizona law *prohibits* them *unless* a limited exception applies: “A judge shall not initiate, permit, or consider ex parte communications . . . concerning a pending or impending matter, except” when one of six circumstances applies. Canon 2.9(A); *see San Carlos Apache Tribe v. Bolton*, 194 Ariz. 68, 72, ¶ 8 (1999) (ex parte communications are “generally prohibit[ed]”); *McElhanon v. Hing*, 151 Ariz. 403, 409 (1986) (ex parte conference was “improper” or “error”).

None of the six circumstances include filing ex parte motions for discovery as the Petition appears to claim. *See* Petition, at 1 (citing Canon 2.9 with no signal—meaning source purportedly offers direct support—for proposition that defense attorneys may file ex parte motions when investigating their cases).

Instead, ex parte communications are proper only in the following six, limited circumstances: (1) for scheduling, administrative, or emergency purposes on non-substantive matters; (2) for obtaining advice of a disinterested expert; (3) for consulting with other judges or court personnel; (4) for settling matters; (5) “when expressly authorized by law to do so”; and (6) when serving on problem-solving courts. Canon 2.9(A).

The Petition asserts ex parte communications are lawful under the fifth exception—“when expressly authorized by law”—and ER 3.5(b) when a trial court “authorize[s] the ex parte motion and hearing.” Petition, at 3–4. True, lawyers are allowed to communicate ex parte when a court order authorizes it, but trial courts cannot insulate themselves from such impropriety by simply issuing an order. Compare Ariz. R. Sup. Ct. 42, ER 3.5(b) (prohibiting lawyers from communicating ex parte “unless authorized to do so by law *or court order*” (emphasis added)), with Canon 2.9(A)(5) (prohibiting judges from communicating ex parte unless “expressly authorized by law to do so,” but giving no “court order” exception).

The Petition takes issue with the court of appeals’ holding in *State v. Smith*, __ Ariz. __, No. 1 CA-SA 25-0281, 2025 WL 3899501 (Ariz. App. Dec. 31, 2025), that ex parte discovery has not been authorized by law in post-conviction proceedings. Petition, at 2. It suggests this Court has broadly authorized ex parte proceedings related to criminal defense and mitigation investigations, citing *Apelt*; *Morehart v. Barton*, 226 Ariz. 510 (2011); *State v. VanWinkle*, 230 Ariz. 387 (2012); and the language in Arizona Rule of Criminal Procedure 6.8 that defense counsel be “familiar with and guided by” ABA guidelines. *Id.* at 4–5. But none of this authority gives such broad authorization.

In *Apelt*, the trial court found there was no authority for allowing the defendant to ask for an expert ex parte as he had wanted, and, “[t]herefore, it

would violate [the judicial canons], which forbid[] ex parte proceedings except where authorized by law.” 176 Ariz. at 365. This Court later “agree[d] with the trial court” that there was no such authority. *Id.* This means that such ex parte hearings were not allowed. It does not mean that ex parte hearings are allowed but not required as the Petition claims. *See* Petition, at 4; *see also id.* at 3.

Further, *Apelt* did not “recognize[]” that *State v. Fisher*, 152 Ariz. 116 (1986), “allowed” ex parte hearings. *Id.* at 4. This Court merely recognized that *Fisher* “reference[d]” ex parte proceedings when rejecting the argument that *Fisher* accords a right to such a proceeding. *Apelt*, 176 Ariz. at 365; *see Fisher*, 152 Ariz. at 118 (reciting defense counsel’s testimony, before considering an ineffectiveness claim, that he was not aware he could ask for expert funds ex parte but not addressing whether such an ex parte proceeding was authorized by law).

In *Morehart*, this Court decided that victims had no right to attend ex parte hearings on pretrial mitigation discovery. 226 Ariz. at 511, ¶ 1. It explicitly “assume[d],” for purposes of its decision, that what is now Rule 6.7(b) allowed such ex parte proceedings ancillary to an appointment. *Id.* at 513, ¶ 12. But it did not decide that issue or authorize any type of ex parte proceedings.

Similarly, this Court in *VanWinkle* did not authorize ex parte proceedings. It again cited what is now Rule 6.7(b) and said the defendant “could have requested an ex parte hearing” if he was “concerned about disclosing matters of

trial strategy or work product” when deciding whether the trial court erred in denying continuances. 230 Ariz. at 391, ¶ 11. It did not decide, however, whether Rule 6.7(b) authorized ex parte proceedings for continuances, let alone whether the rule authorized ex parte discovery or any other type of ex parte proceeding.

This Court also did not somehow give broad authorization for ex parte proceedings when it required defense counsel to be “familiar with and guided by” certain ABA guidelines. Ariz. R. Crim. P. 6.8(a)(5). The ABA guidelines are “a compendium of effective capital defense representation practices”; they “do not, however, impose independent requirements on courts.” Ariz. R. Crim. P. 6.8 cmt. They “are merely guidelines and not requirements.” *Fitzgerald v. Myers*, 243 Ariz. 84, 90, ¶ 15 (2017) (cleaned up). So even if the guidelines instructed defense counsel to ask for discovery ex parte—which they do not—that does not mean a trial court may allow defense counsel to do so or that the law authorizes it.

III. The Petition’s Allusion to Longstanding Practice Does Not Compel a Rule Change.

The Petition relies on what has purportedly “always been understood,” “longstanding practice,” and “the status quo” as one of its main reasons for allowing ex parte discovery. Petition, at 1–2, 6. But the criminal procedure rules have never allowed ex parte discovery, and no Arizona opinion before *Smith* had ever decided that issue. So any practice that might have developed over time in this regard has been prohibited and unauthorized by law.

And this is not uncommon. It is not unusual for ex parte practices to continue for long periods of time without intervention by a higher court. There are a plethora of examples from Arizona and across the country. *See, e.g., Glenn H. v. Hoskins*, 244 Ariz. 404, 406, 408, ¶¶ 4, 13 (App. 2018) (concluding superior court lacked jurisdiction to hear ex parte requests for healthcare orders via an emergency hotline, a “standard practice”); *In re Peck*, 177 Ariz. 283, 286 (1994) (observing that “other cases suggest, unfortunately, that [the ex parte practice] may occur all too often”); *see also, e.g., United States v. Earley*, 746 F.2d 412, 413 (8th Cir. 1984) (concluding “practice” of receiving ex parte brief outlining expected testimony was improper); *Commonwealth v. Carman*, 455 S.W.3d 916, 919 (Ky. 2015) (condemning ex parte “practice” related to changing of release conditions); *Ex parte Prudential Ins. Co. of Am.*, 721 So. 2d 1135, 1139 (Ala. 1998) (Shores, J., concurring in part) (explaining “practice” of issuing conditional class certification ex parte was improper and had been “spawned” by another case—a case that had not decided whether the practice’s ex parte nature was proper but had only decided not to grant mandamus relief given the certification’s conditional nature); *In re Miller*, 644 So. 2d 75, 78 (Fla. 1994) (explaining “time-honored tradition” of seeking legal advice from county judges was “no longer permitted”).

Indeed, ex parte communications are a common reason for disciplinary actions. *See* John M. Burkoff et al., *Criminal Defense Ethics* § 8:3 (2d ed. 2025)

(“[I]mproper ex parte communications with judges, oral or written, is a relatively common ground for the imposition of disciplinary sanctions.”); Hon. G. Michael Witte, *A Double-Barrel Mistake: Ex Parte Communication*, Res Gestae, at 28 (September 2020) (“*Ex parte* communication is one of those repetitive sources of misconduct year-in and year-out.”); Steven Lubet, *Ex Parte Communications: An Issue in Judicial Conduct*, 74 Judicature 96, 97 (1990) (“Notwithstanding the obvious need for judges to avoid ex parte discussions, it often seems that this rule is honored in the breach.”); Phoebe Carter, *Disciplinary action against judge for engaging in ex parte communication with attorney, party, or witness*, 82 A.L.R. 4th 567 (1990) (“Judges have been found to have engaged in improper conduct in a number of criminal cases by reason of ex parte communications with attorneys.”).

One prime example that is relevant to the Petition here is found in *Commonwealth v. Cambron*, 546 S.W.3d 556 (Ky. App. 2018). There, a trial court had a “practice” or “custom” of issuing the defense ex parte discovery orders for the production of third-party records without notice to the prosecution. *Id.* at 558–59, 567. The defense had characterized this practice as “common” in the county and state, although it could not substantiate the claim at oral argument. *Id.* at 559, 561. The prosecution eventually learned of the practice and appealed. *Id.* at 559–60. The appellate court reversed because the practice was not authorized by law, including by any court rule, statute, or constitutional provision. *Id.* at

562–63, 567–68. It also rejected the defense’s argument and the trial court’s reasoning that protecting strategy justified the practice. *Id.* at 561, 563–65, 568.

As this and numerous examples confirm, ex parte practices are notorious for breaching ethical rules and other law and are not a reliable indicator of whether the practice is appropriate or desirable.

IV. *Smith* Has Not Ended Ex Parte Proceedings, Including Ex Parte Warrants, Which Are Expressly Authorized By Law.

The Petition takes issue with *Smith*’s narrow holding as to post-conviction proceedings, claiming it may be applied to “any ex parte hearing that is not ‘expressly’ authorized by law” and “ends ex parte proceedings in pretrial litigation and post-conviction litigation.” Petition, at 3. *Smith* did apply the general rule that ex parte proceedings are prohibited unless unauthorized by law when it held that ex parte discovery has not been authorized by law and is therefore prohibited. But that does not change the fact that *Smith*’s holding applies only to ex parte discovery in the post-conviction context and not to other ex parte practices or to other contexts. Litigants cannot change that fact.

It would also be proper for litigants to claim that other ex parte practices are prohibited when those practices are not expressly authorized by law or by another exception in Canon 2.9(A). After all, that is the law.

Further, *Smith* did not upend this law or disallow ex parte proceedings in pretrial and post-conviction proceedings. Ex parte proceedings are still allowed

when one of the six exceptions in Canon 2.9(A) applies. In fact, Smith was right to reinstate the primacy of that black letter law in post-conviction proceedings and bring consistency to the law.

The Petition is incorrect to claim that ex parte arrest and search warrants are not expressly authorized by law. Petition, at 3, 7–8. Although the statutes allowing ex parte warrants do not use the words “ex parte,” such magic words are not required if the law outlines ex parte procedures. *See San Carlos Apache Tribe*, 194 Ariz. at 72, ¶¶ 9–11 (concluding ex parte communications between judge and DWR were authorized by statute, which instructed the judge to “request technical assistance from the director” and not others and which did not use the words “ex parte”). The warrant statutes do just that. *See* A.R.S. §§ 13–3914, –3915 (giving procedure where magistrate issues search warrant upon oath or affidavit without input of accused); A.R.S. § 13–3897(A) (giving procedure where magistrate issues arrest warrant upon affidavit without input from accused). Further, Arizona’s search warrant statutes provide a specific mechanism for litigants to contest the propriety of the warrant. *See* A.R.S. § 13–3922. This shows that the warrant scheme contemplates issuance ex parte while later allowing one with a property interest to contest the grounds for issuance in an adversarial proceeding.

To be sure, Supreme Court, Arizona, and other case law confirms that ex parte warrants are expressly authorized by law. *See Franks v. Delaware*, 438 U.S.

154, 169 (1978) (observing that “[t]he pre-search proceeding is necessarily *ex parte*”); *United States v. U.S. Dist. Ct.*, 407 U.S. 297, 321 (1972) (“[A] warrant application . . . is an *ex parte* request before a magistrate or judge.”); *Glenn H.*, 244 Ariz. at 408, ¶ 12 (recognizing the “legislature has authorized” *ex parte* warrants in § 13–3914 and § 13–3915); *Adelson v. State*, 412 So. 3d 880, 882 (Fla. Dist. App. 2025) (“[E]*x parte* judicial review of warrant applications is constitutionally authorized.”); *United States v. Abuhamra*, 389 F.3d 309, 323 (2d Cir. 2004) (explaining that “the criminal law” allows *ex parte* arrest and search warrants).

V. The Rule Change Would Not Bring “Balance” to Discovery.

The Petition’s claim that the rule change would bring balance to the parties’ discovery abilities has no merit. Petition, at 8–9. For one, search warrants will be in the record and can be challenged, whereas defense’s *ex parte* orders cannot be challenged by the State. And further, criminal defendants are free to pursue other investigative tools besides invoking the trial court’s assistance under the criminal discovery rules. They could, for example, seek records from public entities under Arizona’s public records framework. *See* A.R.S. §§ 39–121 to -171. But invoking the trial court’s assistance through *ex parte* communications does nothing to balance the equities. To the contrary, it skews the adversarial process to one side and allows one party to the proceedings to subvert the allowable methods of discovery. *See, e.g., Cambron*, 546 S.W.3d at 560–61.

The Petition relies on *Brady v. Maryland*, 373 U.S. 83 (1963), to argue that criminal defendants have no duty to disclose inculpatory information in their possession to the State. Petition, at 9. But the Petition’s invocation of *Brady* contradicts its assertion that discovery is imbalanced in criminal proceedings. This is because criminal defendants, under *Brady* and its progeny, have a due process right to materially exculpatory information in the State’s possession. Considering that there is no general constitutional right to discovery in criminal proceedings, *Weatherford v. Bursey*, 429 U.S. 545, 559 (1977), criminal defendants already have an advantage when it comes to the balance of discovery. And just as the defendant in *Cambron* failed to do, the Petition has also failed to show any constitutional entitlement to “the trial court’s secret assistance to help [defendants] collect materials [they] want[] to prepare [their] defense.” 546 S.W.3d. at 563.

VI. Confidentiality Concerns Do Not Require a Rule Change.

The Petition raises generalized concerns about confidentiality, namely that “criminal defendants’ need for a thorough investigation outweighs the prosecution’s interest in knowing what the defense is investigating.” Petition, at 4. Further, the Petition leans on the ABA guidelines to argue that defense attorneys are required to aggressively investigate while maintaining the “privileged nature of all information discovered until it is ready to be disclosed.” *Id.* at 5. The Petition’s purported justifications for expansive ex parte authority are not persuasive.

A. Generalized speculation about confidentiality is insufficient.

As a basic principle, the Petition is not wrong that confidentiality concerns counsel against the disclosure of certain material to the State. *See Morehart*, 226 Ariz. at 513, ¶ 11 (recognizing concerns that defense counsel might have to disclose work product or privileged “material”). But this is not the actual issue that the State objected to in *Smith*. There, the State objected to generalized claims about the need for confidentiality that failed to identify the nature of the records sought and from whom discovery was being sought. This, in the State’s view, was insufficient to apprise interested parties of whether their rights were being implicated and whether they should thus contest the request. The objection in *Smith* was therefore not premised on the State wanting to obtain whatever the defense was seeking.

The Petition cites *Morehart* for the proposition that the defense’s need for a thorough investigation outweighs the State’s interest in knowing what is being investigated. Petition, at 4. But *Morehart* did not say this. And no other case or legal authority stands for the proposition that the need for a thorough investigation somehow authorizes ex parte communications. Of course, all parties have an interest in protecting work product and attorney client confidentiality. But that cannot be used as a sword to cut out the other side when voluntarily seeking court intervention. Indeed, criminal proceedings are not “a poker game in which players

enjoy an absolute right always to conceal their cards until played.” *Williams v. Florida*, 399 U.S. 78, 82 (1970); *see Apelt*, 176 Ariz. at 365 (ex parte hearing not required to allow defendant to avoid “tipping his hand”).

Further, the issue instead seems to stem from a misunderstanding of what is work product. The defense, in many cases, takes the position that merely identifying the target of a records request gives up work product. But these protections come into play when handing over material to the State that contains the mental impressions or theories of defense counsel, not when filing a motion and making arguments on why a court should intervene and order discovery. *See In re City of Lubbock*, 666 S.W.3d 546, 565–66 (Tex. Crim. App. 2023).

Morehart of course recognized the general principles on work product, attorney client confidentiality, and a state’s obligation to provide the basic tools for an adequate defense. For example, a defendant may claim that “disclosure would interfere with the defendant’s rights to receive effective assistance of counsel and to obtain the ‘basic tools’ for an adequate defense.” *Morehart*, 226 Ariz. at 515, ¶ 21. And if the defendant somehow made that showing, then the defendant’s federal constitutional rights would trump Arizona rules. But a defendant always has the opportunity to raise such arguments to the trial court as to any issue and under the case’s circumstances. And the possibility that this might happen does not mean Arizona needs to authorize ex parte discovery instead of leaving that to a

specific circumstance as it arises. It makes little sense to drastically change the presumptively open discovery process on the off chance this might happen.

B. The ABA guidelines do not compel a rule change.

The ABA guidelines are just that: guidelines. They contain no specific mandate, and carry no force of law. They instead embody best practices, compiled by an advisory organization of experts, that Arizona law references as a rubric for what effective advocacy *can* look like. *See supra* p. 6.

Moreover, the guidelines themselves do not advise competent counsel to conduct the investigation through ex parte means. They mention nothing about ex parte discovery. At most, they advise counsel to make ex parte requests for mitigation funding and expert and other services. 2008 ABA Supplementary Guideline 4.1(A); 2003 ABA Guideline 10.4 cmt. & n.175–76. This aligns with Rule 6.7, and if the ABA guidelines are somehow a benchmark for Arizona’s rules, then Arizona has met the standard. So even if the guidelines compelled defense counsel to take any action, which they do not, they do not compel the Petition’s proposal because they do not call for defense counsel to seek ex parte discovery.

VII. The Proposed Rule Change Undermines Core Concepts of Open Proceedings and the Adversarial Nature of Our Justice System.

The Petition surmises that the trial court, in acting as a “gatekeeper,” and defense counsel acting in accordance with ER 3.3(d), will “ensure that the opportunity for ex parte proceedings will not be abused.” Petition, at 6. No one

doubts as a general matter that courts and attorneys can be entrusted to fulfill those obligations. But the question is not whether these proceedings will proceed in a fundamentally fair way. The question is whether the proceedings themselves, based on their nature, are fundamentally fair. The answer is an emphatic “no.”

Ex parte proceedings are strongly disfavored in Arizona because they undermine fundamental principles of the adversarial justice system and threaten the integrity of judicial proceedings. These one-sided proceedings also create inherent risks to fairness, transparency, and the appearance of judicial impartiality that are essential to public confidence in the legal system.

A. Inherent Harm and Appearance of Impropriety.

As the court of appeals stated in *Smith*, ex parte proceedings are “inherently harmful.” 2025 WL 3899501, at *2, ¶ 10. They “cast doubt upon the adversary system and give the appearance of favoritism.” *San Carlos Apache Tribe*, 194 Ariz. at 72, ¶ 8 (cleaned up). They also “deprive the absent party of the right to respond and be heard,” “suggest bias or partiality on the part of the judge,” “can be misleading,” “expose the judge to one-sided argumentation,” and, “[a]t worst,” are “an invitation to improper influence if not outright corruption.” *Id.* (cleaned up); *see McElhanon*, 151 Ariz. at 409 (“[N]o matter how pure the motive any ex parte contact may allow the judge to be improperly influenced or inaccurately informed.”). These principles reflect the fundamental concern that when a judge

receives information from only one party, the decision-making process becomes compromised. They also reflect the fact that a lack of transparency conflicts with the requirement that justice be administered openly and fairly.

B. Constitutional Requirements for Open Proceedings.

Arizona's constitutional framework mandates transparency in judicial proceedings. "Justice in all cases shall be administered openly[.]" Ariz. Const. art. II, § 11; *see Ridenour v. Schwartz*, 179 Ariz. 1, 3 (1994) ("It is . . . undisputed that the public has a constitutional and common law right of access to observe court proceedings."). This open administration clause reflects the principle that public scrutiny serves as a safeguard against arbitrary decision-making and helps ensure accountability in the judicial system. Ex parte proceedings, by their nature, operate contrary to this constitutional mandate by excluding parties and the public from critical stages of litigation. By proposing expansive authority for criminal defendants to conduct ex parte discovery, the Petition curtails the public's right to observe criminal proceedings and therefore runs afoul of the Arizona Constitution.

C. Violation of Due Process and the Adversarial System.

The adversarial nature of the American justice system depends on each party having notice and an opportunity to be heard. In fact, the touchstone of due process involves "notice and an opportunity to be heard." *Flores v. Cooper Tire and Rubber Co.*, 218 Ariz. 52, 60, ¶ 42 (App. 2008). When proceedings occur ex

parte, one party is deprived of the fundamental right to present arguments, challenge evidence, and respond to claims made against them. “The participation in the actual decision making process by only one party to a controversy is inimical to the notions of fairness which underlie the due process of law.” *Western Gillette, Inc. v. Ariz. Corp. Comm’n*, 121 Ariz. 541, 542 (App. 1979). This violation strikes at the heart of procedural fairness because it prevents the adversarial testing of facts and legal arguments that is essential to reaching just outcomes.

D. Judicial Ethics and Professional Standards.

Canon 2.9(A) strictly regulates ex parte communications but does allow them when they are expressly authorized by law. Canon 2.6(A), however, requires judges to “accord to every person who has a legal interest in a proceeding, or that person’s lawyer, the right to be heard according to law.” These judicial canons recognize that maintaining the integrity of the judicial process requires transparency and equal access to the decision-maker. And when considered together, they suggest that trial courts should carefully scrutinize requests for ex parte contact, even where such contact is expressly authorized by law. It makes sense, then, that the criminal rules provide express authorization in such a narrow context. Because with broader grants of authority, ex parte contact will become the norm, and a judicial officer’s ability to ensure access and the right to be heard

will be diminished. This is exactly what the Petition seeks, and it is incongruent with the judiciary's obligations under the judicial canons.

E. Victims' Rights.

Under the Victims' Bill of Rights, victims have a right "[t]o be present at and, upon request, to be informed of all criminal proceedings where the defendant has the right to be present." Ariz. Const. art. II, § 2.1(A)(3). Victims also have the right "[t]o be heard at any proceeding involving a post-arrest release decision, a negotiated plea, and sentencing." *Id.* § 2.1(A)(4). However, when proceedings occur *ex parte*, victims are denied their fundamental constitutional right to presence and participation, and right to be heard, that Arizona voters specifically enshrined in the Victims' Bill of Rights.

Such rights must be enforced except in a very limited circumstance. *See, e.g., Morehart*, 226 Ariz. at 516, ¶ 23 (trial courts must consider victims' rights when *ex parte* proceeding held under what is now Rule 6.7(b) and must enforce them unless that would deprive the defendant of a fair trial). But when courts conduct proceedings *ex parte* without including victims, victims will be deprived of their constitutional right to meaningfully participate in proceedings that could directly affect their interests. *See State ex rel. Hance v. Ariz. Bd. of Pardons and Parole*, 178 Ariz. 591, 597 (App. 1993) (victims informed of their rights "may

choose to exercise these rights” but uninformed victims cannot do so). Indeed, the proposed rule change has no exception related to victims. *See* Petition, at 10–11.

The Petition’s proposed rule change fundamentally undermines victims’ rights by excluding victims from critical stages of the criminal justice process.

VIII. This Court Should Deny the Petition.

The Petition purports to codify standard practice, but it instead promotes a one-sided process antithetical to American jurisprudence. It would allow criminal defendants to coopt the power of the judiciary and has the potential to exclude victims from proceedings where their rights are being implicated. It also elevates strategic expediency over the core values of our adversarial system. In short, the solution advanced by the Petition is not compelled by either Arizona or federal law. And because the Petition does not advance a solution to some pernicious legal infirmity wrought by the current rules, this Court should decline to adopt it.

RESPECTFULLY SUBMITTED this 1st day of May, 2026.

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