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**IN THE SUPREME COURT
STATE OF ARIZONA**

In the Matter of

PETITION TO AMEND RULES 32.4
AND 33.4 OF THE RULES OF
CRIMINAL PROCEDURE

Supreme Court No. R-26-0005

**COMMENT IN SUPPORT OF
PETITION**

The Arizona Attorney General's Office, pursuant to Rule 28(e) of the Rules of the Supreme Court of Arizona, submits this comment in support of the petition to amend Arizona Rules of Criminal Procedure 32.4 and 33.4. Arizona's postconviction scheme is structured to require the filing of a notice before the filing of a petition for postconviction relief. *See* Ariz. R. Crim. P. 32.4(a) ("A defendant starts a Rule 32 proceeding by filing a Notice Requesting Post-Conviction Relief."); Ariz. R. Crim. P. 33.4(a). The notice triggers a host of procedures, which includes informing interested parties (Ariz. R. Crim. P. 32.4(b)(4)(A)), informing victims (Ariz. R. Crim. P. 32.4(b)(5)), appointing counsel (Ariz. R. Crim. P. 32.5), and assessing whether claims noticed in a successive petition should be summarily

dismissed, *see* Ariz. R. Crim. P. 32.2(b) (“If the notice does not provide sufficient reasons why the defendant did not raise the claim [based on Rule 32.1(b) through (h)] in a previous notice or petition, or in a timely manner, the court may summarily dismiss the notice.”). *See also* Ariz. R. Crim. P. 32.2(b) (explaining that the postconviction court has the discretion “[a]t any time” to “determine by a preponderance of the evidence that an issue is precluded, even if the State does not raise preclusion.”)

The absence of a strict page limitation in the postconviction notice requirement thwarts the purpose of having a notice requirement at all. As the petition recognizes, Arizona’s postconviction scheme seeks a “balance between meaningful access to the courts and efficient case management.” Petition, at 3. But in this case, the petition would not diminish access to the courts in any way, because postconviction petitioners will have the same opportunity to file a compliant notice to alert the courts that they wish to seek postconviction relief. Indeed, this will inure to the benefit of some postconviction petitioners, because they will be given the opportunity to secure counsel in order to prepare their petition instead of relying on their self-drafted briefing in the first instance. This in turn will likely eliminate the necessity of amendments, which happens often in pro se postconviction proceedings.

Further, and as the petition recognizes at 1–2, the lack of a page limitation on notices of postconviction relief creates a loophole where litigants can far exceed the page limitation for petitions set out in Rule 32.7. To be sure, Rule 32.7(b) requires that the petition itself contain “citations to relevant portions of the record and to relevant legal authorities,” but a notice page limitation will disincentivize petitioners from filing lengthy notices in the hope that they can later argue a claim was properly presented to the postconviction court. This concern becomes especially relevant when artificial intelligence tools are prolific, easy to access, and create an opportunity for self-represented litigants to file expansive legal pleadings that are not always accurate but technically compliant with the postconviction scheme.

The petition to amend Rules 32.4 and 33.4 presents a well founded and simple solution to a widespread administrative problem. The rules governing Arizona’s postconviction scheme should be drafted in a way that allows potentially meritorious claims to move towards adjudication, while also allowing postconviction courts to effectively manage their dockets by summarily dismissing patently spurious notices. In making the change proposed by the petition, this Court will ensure that Arizona’s postconviction scheme operates in the most efficient way possible and will continue to serve as a bulwark in the “unusual situation where justice ran its course and yet went awry.” *State v. Carriger*, 143 Ariz. 142, 146 (1984).

Respectfully submitted,

/s/ Jason D. Lewis

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