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**IN THE SUPREME COURT
STATE OF ARIZONA**

In the Matter of:

Supreme Court No. R-26-0005

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

COMMENT

Pursuant to Rule 28(e), Rules of the Arizona Supreme Court, the Arizona State University Post-Conviction Clinic respectfully submits this comment in opposition to the above-captioned petition seeking to amend Rules 32.4 and 33.4 to impose a seven-page limit on notices of post-conviction relief.

The ASU Post-Conviction Clinic is a pro bono legal aid clinic that has been housed in the Sandra Day O'Connor College of Law for the past 17 years. The Post-Conviction Clinic is primarily staffed by Rule 39-certified law students and their supervising attorneys. The Post-Conviction Clinic investigates claims of wrongful conviction and manifest injustice from prisoners convicted of crimes in Arizona. The Clinic regularly represents clients who are in various stages of post-conviction proceedings and regularly encounters procedural barriers that can preclude meritorious claims.

1 Under Rule 32.2, a petitioner filing a successive or untimely notice may raise
2 only limited claims. The rule requires the notice itself to “set forth the substance of
3 the specific exception and the reasons for not raising the claim in the previous
4 petition or in a timely manner,” and provides that if those reasons do not appear, “the
5 notice shall be summarily dismissed.” Courts may enforce preclusion *sua sponte*,
6 without giving the defendant an opportunity to respond, and failure to plead the
7 applicable exception often forecloses review.

8 Rule 32.4 reinforces that the notice must do more than initiate the proceeding.
9 Form 24(b) reflects this requirement. It directs defendants filing untimely notices to
10 explain why the delay was not their fault, permits additional pages, and already spans
11 four pages. It also requires petitioners to certify that all known claims have been
12 raised.

13 The form alone is often insufficient. Courts have recognized that additional
14 factual detail may be required. See *State v. Jacobs*, 1 CA-CR 23-0167 PRPC, 2023
15 WL 6223066 (App. Sept. 26, 2023). The Arizona Supreme Court acknowledged this
16 in Administrative Order No. 2023-140, which amended Form 24(b) to provide space
17 for successive petitioners to explain why claims were not raised earlier. Some
18 versions of the form explicitly invite attachments. The rule and form thus assume
19 that proper notice, especially in untimely or successive cases, may require factual
20 explanation beyond the form itself.

21 The proposed amendment would impose a strict seven-page limit. While page
22 limits can promote brevity, a rigid cap is incompatible with the function of the notice
23 in Rule 32 and 33 proceedings. Because the notice is the only required pleading
24 before the petition, it often must explain procedural history, establish an applicable
25 exception, and show why the claim is not precluded. In many cases, this requires
describing newly discovered evidence, changes in the law, or prior counsel’s failure

1 to raise claims. These are matters that cannot always be compressed into seven
2 pages.

3 Preclusion operates as a complete bar. If a notice fails to adequately plead an
4 exception, the court must dismiss it. The consequence of an over-short notice is
5 therefore severe: a petitioner may lose any opportunity for review not because the
6 claim lacks merit, but because the explanation was too short and now the window
7 for a timely claim has passed. This risk will fall most heavily on self-represented and
8 indigent petitioners, who already struggle to navigate these rules and rely on forms
9 that contemplate additional pages. A strict page limit would force them to omit
10 claims or abbreviate explanations at the cost of forfeiting relief.

11 The petition offers little evidence that current notices are so lengthy as to
12 justify a uniform limit. It does not identify cases in which notice length has
13 meaningfully burdened courts. Existing rules already allow courts to address abusive
14 or prolix filings. A fixed page cap is therefore unlikely to improve efficiency and
15 may instead generate additional litigation over compliance, extensions, and
16 timeliness.

17 Recent case law underscores how easily petitioners can default at the notice
18 stage. In *Jacobs*, the petitioner failed to explain why he did not raise an actual-
19 innocence claim earlier, and the court dismissed the notice despite his use of the
20 standard form. 2023 WL 6223066, at *2. In *State v. Petty*, 225 Ariz. 369, 371 ¶ 4
21 (App. 2010), a successive notice was dismissed because the required explanation
22 was not apparent, leading to additional litigation before relief was ultimately
23 allowed. In *State v. Harden*, the court affirmed dismissal of an untimely notice where
24 the petitioner failed to articulate sufficient reasons for delay. 228 Ariz. 131 (App.
25 2011). These cases show that the notice already functions as a meaningful

1 gatekeeping mechanism requiring factual detail. A strict page limit would only
2 heighten the risk of dismissal on technical grounds.

3 **CONCLUSION**

4 For these reasons, the Arizona State University Post-Conviction Clinic
5 respectfully requests that the Court **deny** the petition and decline to adopt a seven-
6 page limit on notices of post-conviction relief.

7
8 Dated: May 1, 2026

POST-CONVICTION LEGAL CLINIC

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