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**IN THE SUPREME COURT
STATE OF ARIZONA**

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

**STATE BAR OF ARIZONA
COMMENT**

Pursuant to Rule 28(e) of the Arizona Rules of Supreme Court, the State Bar of Arizona (the “State Bar”) hereby submits the following as its comment to the above-captioned Petition.

The Petition proposes changes to multiple rules of criminal procedure to explicitly allow for ex-parte discovery motions filed by defendants in criminal cases. For the reasons set forth below, the State Bar opposes the Petition, which was submitted in light of the holding in *State v. Smith*, -- Ariz. --, 1 CA-SA 25-0281, 2025 WL 3899501, 585 P.3d 808 (Ariz. Ct. App., Dec. 31, 2025).

The proposed rule changes are premature and do not adequately address the issues raised in the Petition. A Petition for Review in *Smith* was filed with the

1 Arizona Supreme Court on February 11, 2026, placing before the Court the question
2 of whether, and under what circumstances, ex-parte proceedings, including
3 discovery motions, should be permitted in PCR matters. Because that issue is
4 currently under consideration through the appellate process, the proposed
5 amendments risk being rendered moot or requiring revision depending on the
6 Court's decision. Accordingly, the amendments should not be adopted at this time.
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9 More importantly, some of the issues raised in the Petition would not be
10 solved or appropriately remedied by the proposed amendments, therefore only
11 partially addressing Petitioner's concerns. Additionally, the proposed rules provide
12 no clear mechanism or procedure that would be used by a party to demonstrate that
13 an ex parte proceeding is necessary. Ultimately, should a rule change be necessary
14 after *Smith* is reviewed, it should create a clear procedure and address all the actual
15 implications of that opinion, which these proposed amendments do not.
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17 CONCLUSION

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19 This Petition is premature and proposes changes that raise more issues than
20 they address. The State Bar respectfully requests that the Petition be denied.
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22 RESPECTFULLY SUBMITTED this 1st day of May, 2026.

23 *Jessica J. Fotinos*

24 _____
25 Jessica J. Fotinos
General Counsel

Electronic copy filed with the
Clerk of the Supreme Court of Arizona
this 1st day of May, 2026.

by: PSequin