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**IN THE SUPREME COURT
STATE OF ARIZONA**

In the Matter of:

**PETITION TO ABROGATE RULE
28.1(b)(2)(A) OF THE ARIZONA
RULES OF CRIMINAL
PROCEDURE**

Supreme Court No. R-26-0027

**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 State Bar agrees with the contention in the Petition that the current language of Rule 28.1(b)(2)(A), Ariz. R. Crim. P., which fixes the date when a criminal case is final to “one year after exhausting all state court remedies” – is too narrow and is difficult for state court staff to appropriately implement. As the Petition correctly notes, federal law fixes several other dates within which a properly filed federal petition for habeas corpus could be timely filed. 28 U.S.C. §

1 2244(d)(1)(A)-(D). The current version of the rule does not account for these other
2 potential deadlines for filing a federal habeas petition. Additionally, because the
3 calculation of the one-year statute of limitations under federal law can be tolled in
4 certain circumstances which can be legally and factually complex, court and clerk
5 staff are ill-equipped to make a proper determination concerning when this one-year
6 term has run. Finally, the rule as currently written does not account for other state
7 remedies which would permit a defendant to initiate successive petitions for post-
8 conviction relief, which might themselves toll the one-year statutory limitation date
9 further. Indeed, this Court has recently expanded the types of claims which might
10 now be permitted in successive PCR petitions. *See State v. Traverso*, 576 P.3d 97
11 (Ariz. 2025).

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15 For these reasons, a rule which fixes the time within which physical exhibits
16 may be destroyed by the clerk of court to one year after a petitioner's state conviction
17 is final does not appropriately preserve a criminal defendant's right to access to the
18 courts. This Court should rescind the recent rule change and return the rule to the
19 version that existed prior to the enactment of R-25-0044.
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22 CONCLUSION

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24 The State Bar respectfully requests that this Court grant the Petition and/or
25 refer it to the Advisory Committee on Evidence Retention for reformulation of the

1 older version of Rule 28.1(b)(2)(A).

2 RESPECTFULLY SUBMITTED this 1st day of May, 2026.

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4 *Jessica J. Fotinos*

5 _____
6 Jessica J. Fotinos
7 General Counsel

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

12 by: PSequin
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