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IN THE SUPREME COURT
STATE OF ARIZONA

In the Matter of	)
	) Arizona Supreme Court No. R-11-___
	)
RULE 32.5 AND FORM 25,	)
ARIZONA RULES	)
OF CRIMINAL PROCEDURE	)
	) PETITION TO AMEND RULE 32.5 AND
	) FORM 25, ARIZONA RULES OF
	) CRIMINAL PROCEDURE
	)
	)
_____)	

PETITION TO AMEND RULE 32.5 AND FORM 25, ARIZONA RULES OF CRIMINAL PROCEDURE

Pursuant to Rule 28, Rules of the Supreme Court, Patience T. Huntwork, Staff Attorney, Arizona Supreme Court, petitions the Court to amend Rule 32.5 and Form 25, Arizona Rules of Criminal Procedure, as reflected in the attachment hereto.

I.   INTRODUCTION AND BACKGROUND

The Court has been advised of an inconsistency between Criminal Rule 32.5 (Contents of Petition) and accompanying Form 25 (Petition for Post-Conviction Relief). Because Form 25 includes a notarization section, some Superior Court Clerks of Court have required the return of non-notarized petitions under the provision of Rule 32.5 that "a petition which fails to comply

with this rule shall be returned by the court to the defendant for revision with an order specifying how the petition fails to comply with the rule." However, notarization of post-conviction relief petitions is seemingly not required under Rule 32.5, which governs the contents of such petitions. Although Rule 32.5 once required a defendant to "verify under oath" that he has included within the petition all grounds justifying relief, the rule was amended in 2000 to require a defendant to "certify" that he has done so.

Interpreting the referenced provision in Form 25 as requiring notarization has serious implications for post-conviction relief petitioners. The Arizona Department of Corrections charges inmates one dollar to have such petitions notarized, notwithstanding the fact that an inmate may have no money on account. Arizona Department of Corrections Order 902.06. Given the strict deadlines prescribed by Arizona Rule of Criminal Procedure 32.4, an inability to afford notarization could conceivably preclude a petitioner from seeking relief.

This petition proposes that Form 25 be revised to eliminate any text relating to a notarization requirement. At the same time, it is recommended that Rule 32.5 be modified to make clear that facts within the defendant's personal knowledge are required to be noted separately in an affidavit and "shall be under oath."

CONCLUSION

Petitioner respectfully requests that the Court consider this petition and proposed rule change at its earliest convenience.

DATED this 10th day of January, 2012.

_____
Patience T. Huntwork
Staff Attorney, Arizona Supreme Court

ARIZONA RULES OF CRIMINAL PROCEDURE

Rule 32.5. Contents of petition

The defendant shall include every ground known to him or her for vacating, reducing, correcting or otherwise changing all judgments or sentences imposed upon him or her, and certify that he or she has done so. Facts within the defendant's personal knowledge shall be noted in an affidavit separately from other allegations of fact and shall be under oath. Affidavits, records, or other evidence currently available to the defendant supporting the allegations of the petition shall be attached to it . . . .

Rule 41. Forms

. . .

Form 25. Petition for Post-Conviction Relief

[No change]
. . .

I ~~swear or affirm~~ certify that this petition includes all the claims and grounds for post-conviction relief that are known to me, that I understand that no further petitions concerning this conviction may be filed on any ground of which I am aware but do not raise at this time, and that the information contained in this form and in any attachments is true to the best of my knowledge or belief.

_____   _____

 Date   Defendant

~~State of Arizona   )   Subscribed and sworn to or affirmed before me on:~~
~~   )ss.~~
~~County of   )~~   ~~_____~~

~~My Commission Expires: _____~~   ~~_____~~
~~_____~~
~~_____   Notary Public~~

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[1] Changes or additions in rule text are indicated by underscoring and deletions from text are indicated by ~~strikeouts~~.