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(STATE BAR NUMBER 011474)

6 IN THE SUPREME COURT OF THE STATE OF ARIZONA

7 IN THE MATTER OF:

R-11-0016

8 PETITION TO AMEND RULE 32.2(a) AND  
9 (b), ARIZONA RULES OF CRIMINAL  
PROCEDURE

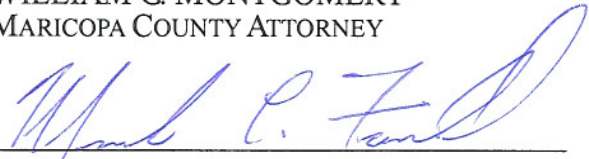
MARICOPA COUNTY ATTORNEY'S  
COMMENT TO PETITION TO AMEND  
RULE 32.2 (a) AND (b), ARIZONA RULES  
OF CRIMINAL PROCEDURE

10 The Maricopa County Attorney respectfully petitions this Court to reject the proposed  
11 amendment to Rule 32.2(a) and (b), Arizona Rules of Criminal Procedure.

12 Respectfully submitted this 18<sup>th</sup> day of May, 2012.

13 WILLIAM G. MONTGOMERY  
14 MARICOPA COUNTY ATTORNEY

15 BY:

  
16 Mark C. Faull  
17 Chief Deputy  
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1 **I. Background.**

2 Rule 32.2(a) is a rule of preclusion that is “designed to limit review and prevent endless or  
3 nearly endless reviews of the same case in the same trial court.” *Stewart v. Smith*, 202 Ariz. 446,  
4 450, ¶ 10, 46 P.3d 1067, 1071 (2002.) Pursuant to Rule 32.2(b), the rules of preclusion under Rule  
5 32.2(a) apply only to three types of claims; namely, constitutional claims arising under Rule  
6 32.1(a), jurisdictional claims arising under Rule 32.1(b), and sentencing claims arising under Rule  
7 32.1(c). Claims arising under Rule 32.1(d), (e), (f), (g), and (h) are exceptions to the rules of  
8 preclusion. Thus, under Rule 32.2(a)(3), a defendant is precluded from relief on constitutional  
9 claims, jurisdictional claims, and sentencing claims that he or she failed to raise at trial, on appeal,  
or in any previous collateral proceeding.

10 **II. Proposed Amendment.**

11 Petitioner seeks to amend Rule 32.2(a) and (b) so that jurisdictional claims arising under  
12 Rule 32.1(b) are not subject to preclusion under Rule 32.2(a).

13 **III. Argument Against Amendment.**

14 The claims for post-conviction relief enumerated in Rule 32.1 fall into two basic categories:  
15 “backward-looking” claims and “forward-looking” claims. Constitutional claims, jurisdictional  
16 claims, and sentencing claims are “backward-looking” claims because those types of claims are  
17 grounded on historical facts and circumstances. For example, determining whether or not a court  
18 had jurisdiction to render judgment or impose sentence depends on the facts and circumstances as  
19 they existed at the time judgment was rendered or sentence imposed. On the other hand, claims  
20 alleging newly discovered evidence, significant change in law, or actual innocence are “forward-  
21 looking claims” claims because those types of claims depend on future developments. For

1 example, a defendant should not be expected to anticipate significant future changes of the law  
2 when he files his first post-conviction proceeding or direct appeal.

3 Rule 32.2(b) excepts “forward-looking” claims from the rules of preclusion precisely  
4 because those claims are dependent on the development of some future occurrence. Conversely,  
5 Rule 32.2(b) precludes relief on “backward-looking” claims because such claims are grounded on  
6 static historical events and, thus, could easily have been raised in a more timely manner in an earlier  
7 post-conviction proceeding.

8 There is no good reason to amend Rule 32.2(a) and (b) so that “backward-looking”  
9 jurisdictional claims are excepted from the rules of preclusion. A court’s jurisdiction is not subject  
10 to the evolution of future events. Thus, a defendant will have knowledge of this potential ground  
11 for relief based on the existing record at the time he files his first post-conviction proceeding or  
12 direct appeal.

13 Rule 32.5 requires that a defendant include every known ground for relief in one  
14 consolidated petition. By requiring that all post-conviction claims be raised promptly, Rule 32.2(a)  
15 serves important principles of finality: “[i]n all cases, civil or criminal, there must be an end to  
16 litigation.” State v. Carriger, 143 Ariz. 142, 145, 692 P.2d 991, 994 (1984) Rule 32.2(a)’s rules of  
17 preclusion serve other important societal interests by allowing any relief to be issued at a time when  
18 the interests of justice, from the perspectives of the defendant, the State, and the victim, can be best  
19 served. State v. Shrum, 220 Ariz. 115, 118, 203 P.3d 1175, 1178 (2009).

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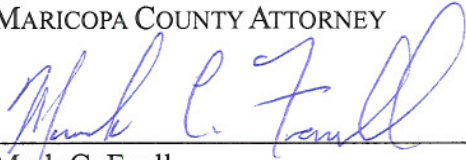
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**IV. Conclusion.**

For the foregoing reasons, the Maricopa County Attorney respectfully petitions this Court to reject the proposed amendment to Rule 32.2(a), Arizona Rules of Criminal Procedure

Respectfully submitted this 18<sup>th</sup> of May, 2012.

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