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8 **IN THE SUPREME COURT**  
9 **STATE OF ARIZONA**

10 PETITION TO AMEND RULE 32.2(b),  
11 ARIZONA RULES OF CRIMINAL  
12 PROCEDURE

Supreme Court No. \_\_\_\_\_

**Petition to Amend Rule 32.2(b),  
Ariz. R. Crim. P.**

13 Pursuant to Rule 28 of the Rules of the Arizona Supreme Court, the State Bar  
14 of Arizona hereby petitions the Court to amend Rule 32.2(b) of the Arizona Rules  
15 of Criminal Procedure.

16 **I. INTRODUCTION AND BACKGROUND**

17 Rule 32.2(a) sets forth the terms under which certain claims are precluded  
18 from being raised in post-conviction proceedings.

19 Rule 32.2(b) expressly delineates the exceptions to subsection (a) but omits  
20 circumstances where it is claimed that the superior court lacks subject matter  
21 jurisdiction over the proceedings.

22 Subject matter jurisdiction is never waived. *State v. Silva*, 222 Ariz. 457, ¶ 9,  
23 216 P.3d 1203 (App. 2009); *Thomas v. Thomas*, 220 Ariz. 290, ¶ 6, 205 P.3d 1137  
24 (App. 2009). However, criminal defendants who fail to raise a claim of lack of  
25 personal jurisdiction at the trial court level forfeit the right to seek relief on that  
26 basis for all but fundamental prejudicial error. *State v. Henderson*, 210 Ariz. 561,

1 ¶¶ 19-20, 115 P.3d 601 (2005); *State v. Marks*, 186 Ariz. 139, 141, 920 P.2d 19  
2 (App.1996) (“Personal jurisdiction may be waived . . . .”)

3 As written, Rule 32.2(b) has the practical effect of precluding PCR claims  
4 surrounding personal and subject matter jurisdiction. Because subject matter  
5 jurisdiction is never waived, the proposed amendment to the rule cures any express  
6 or implied waiver of subject matter jurisdiction.

## 7 II. THE REQUESTED CHANGE

### 8 Rule 32.2 Preclusion of remedy

9 a. [No change in text]

10 b. **Exceptions.** Rule 32.2(a) shall not apply to claims for relief  
11 based on Rules 32.1**(b) involving subject matter jurisdiction**, (d),  
12 **subject matter jurisdiction**, (d), (e), (f), (g) and (h) is to be raised in  
13 a successive or untimely post conviction relief proceeding, the notice  
14 of post conviction relief must set forth the substance of the specific  
15 exception and the reasons for not raising the claim in the previous  
16 petition or in a timely manner. If the specific exception and  
17 meritorious reasons do not appear substantiating the claim and  
18 indicating why the claim was not stated in the previous petition or in a  
19 timely manner, the notice shall be summarily dismissed.

18 c. [No change in text]

19 COMMENT

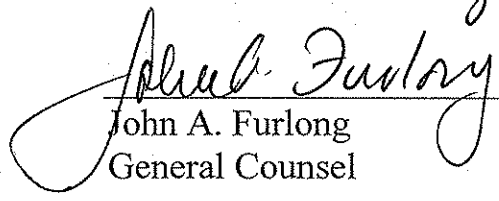
20 [No change in text]

## 21 CONCLUSION

22 The State Bar of Arizona respectfully requests that the Court amend  
23 Rule 32.2(b) of the Arizona Rules of Criminal Procedure as proposed herein.  
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RESPECTFULLY SUBMITTED this 8<sup>th</sup> day of January, 2013.

  
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John A. Furlong  
General Counsel

Electronic copy filed with the Clerk  
of the Supreme Court of Arizona this  
8<sup>th</sup> day of January, 2013.

By: Kathleen A. Lundgren