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JANET JOHNSON  
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CLERK SUPREME COURT

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IN THE SUPREME COURT OF THE STATE OF ARIZONA

IN RE ARIZONA RULE OF	)	No. R-12-0036
CRIMINAL PROCEDURE,	)	
RULE 7.6	)	REPLY TO THE COMMENT BY
	)	THE STATE BAR OF ARIZONA
	)	TO THE PETITION TO AMEND
	)	ARIZONA RULE OF CRIMINAL
	)	PROCEDURE, RULE 7.6

After undersigned counsel read the seven (7) line Comment of the State Bar, he had two (2) questions; who in the State Bar opposed the Petition, and what did the State Bar mean when it indicated that its opposition was based upon the belief that any modifications "should consider a more comprehensive approach"?

Accordingly, undersigned counsel contacted the author of the Comment, John Furlong, General Counsel and Deputy Executive Director of the State Bar.

Undersigned counsel and Mr. Furlong thereupon exchanged a number of e-mails. Although there was some discussion concerning who opposed the Petition (discussed in more detail, infra) there was never any "enlightenment" shared with undersigned counsel as to what the Bar meant by a "more comprehensive approach" other than the phrase

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in Mr. Furlong's May 8th e-mail to undersigned counsel-  
"perhaps the court will appoint a task force. I do not  
know."

That remark, and indeed the entire Comment begs the  
question, a [comprehensive approach]/task force for what  
reason? In the proposed Petition all the "major issues"  
of which we are aware concerning the revising of current  
Rule 7.6 have been dealt with, and appointing a task  
force, for absolutely no reason, makes no sense to  
undersigned counsel. The problems evidenced in current  
Rule 7.6 as discussed in the Petition do not need to be  
studied to death by some ineffectual task force, the  
problems need to be solved, which can be done quickly and  
easily, by adopting the language as proposed. If the State  
Bar truly wanted to discuss the matter further, 1) why was  
its Comment so terse and so vague, and 2) why didn't it  
request a public hearing pursuant to Arizona Supreme Court  
Rule 28(E)?

Turning next to the question of who opposed the  
Petition Mr. Furlong's e-mail of May 10th to undersigned  
answered that question. The e-mail indicated "The  
majority of prosecutors were opposed, and there were  
several defense counsel who were opposed."

Turning first to the prosecutors' opposition, this

1  
2 is no surprise. Indeed, prosecutorial opposition was  
3 discussed at length in the Petition, as the proposed  
4 revisions would change the status quo of the substantial  
5 revenue stream forfeited appearance bonds generate for  
6 the various Counties in this State.

7 A bit more surprising, but not shocking, is the  
8 opposition by "several defense counsel." Undersigned  
9 counsel cannot tell this Court how many times he has  
10 witnessed a criminal defense attorney whom has appeared in  
11 connection with the potential forfeiture of a bond, and  
12 made matters worse for his client and/or the indemnitors  
13 on the bond. Even though there is a "CR" in the cause  
14 number defense counsel seem to always fail to realize

15 "Although bond forfeiture proceedings  
16 occur within the context of a criminal  
17 case they are civil in nature ... and  
18 the rules of civil procedure apply."

19 State v. Empire American Bail Bonds, 191 Ariz. 218, 220,  
20 953 P.2d 1271, 1273 (C.A. 1, 1998) Accord: State v.  
21 Eazy Bail Bonds, 224 Ariz. 227, 229 P.3d 239 (C.A. 1,  
22 2010).


23 Undersigned counsel has great respect for criminal  
24 defense attorneys, when they confine themselves to the  
25 defense of their accused clients. However, as had been  
26 demonstrated to undersigned counsel time and again, when  
27 they attempt to become "bond forfeiture lawyers," they  
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generally demonstrate not much understanding of the process. The same appears to be the case in connection with the State Bar's Comment. A completely or largely complete exoneration of a bond inures directly to a criminal defendant who has collateralized his bond, or to his family members if they have acted as the indemnitors of the bond. Why would a criminal defense attorney oppose something that would help his client or his family? The answer is, he (or she) wouldn't, if the process were completely understood--which apparently it continues not to be by the defense bar.

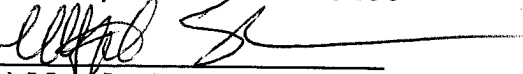
For all of the foregoing reasons it is respectfully requested that this Court disregard the Comment of the State Bar of Arizona to the Petition for Rule Change.

Respectfully submitted this 20th day of May, 2013.

  
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Clifford Sherr  
Attorney/Petitioner

Copy of the foregoing  
mailed this 20th day of May  
2013, to:

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