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

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PETITION TO AMEND RULE 32.5,
ARIZONA RULES OF CRIMINAL
PROCEDURE

Supreme Court No. R-13- _____

**Petition to Amend Rule 32.5, Ariz.
R. Crim. P.**

The State Bar of Arizona, pursuant to Arizona Supreme Court Rule 28, respectfully petitions the Court to amend Rule 32.5 of the Arizona Rules of Criminal Procedure.

I. INTRODUCTION AND BACKGROUND

The petitioner believes that the Court is aware of the problems regarding the following language in Rule 32.5 of the Arizona Rules of Criminal Procedure:

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.

II. THE REQUESTED CHANGE

Petitioner requests that the words "appearing *pro se*" be inserted between the word "defendant" and the word "shall" so that the rule would read as follows:

The defendant, appearing *pro se*, shall include every ground known to him or her for vacating, reducing, correcting or otherwise changing all

1 judgments or sentences imposed upon his or her, and certify that he or
2 she has done so.

3 **III. THE REASONS WHY THIS CHANGE SHOULD BE MADE**

4 If counsel, as opposed to a *pro se* defendant, must certify that he has included
5 in the petition “every ground known” to him or her “for vacating, reducing,
6 correcting or otherwise changing all judgments or sentences,” then said counsel
7 must include all of these known grounds in the petition. By the current rule, there
8 is no allowance for counsel to winnow the grounds he raises in accordance with
9 effective appellate representation.

10 Raising such claims also violates ER 1.2. Under that Ethical Rule, “a lawyer
11 shall abide by a client’s decisions concerning the objectives of representation”

12 Rule 32.5, as written, is also overbroad. If a client’s legal goal is a reduced
13 sentence, Rule 32.5 would nevertheless require counsel to pursue claims he has
14 identified relating to the conviction’s validity, contrary to his client’s legal goal.

15 Requiring a represented defendant to personally certify that all claims have
16 been raised creates additional problems, such as counsel’s refusal to raise a claim
17 because it is frivolous and doing so would violate ER 3.1. Where the client
18 nevertheless believes the claim has merit, the client will be unable to certify that all
19 known claims have been raised.

20 Finally, where a defendant is represented by counsel and relies on counsel’s
21 expertise to identify claims for relief, requiring the defendant to personally certify
22 that all known claims for relief have been raised in the petition prepared by counsel
23 makes no sense whatsoever.

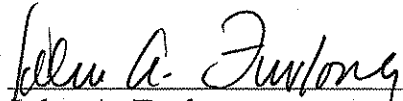
24 The State Bar of Arizona Criminal Practice and Procedure Defense
25 Subcommittee unanimously supports this change.
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IV. CONCLUSION

Petitioner respectfully requests that the Court consider this petition proposing a change to Rule 32.5, Ariz. R. Crim. P., at its earliest convenience.

DATED this 8th day of January, 2013.



John A. Furlong
General Counsel

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

By: Kathleen A. Lundgren

APPENDIX A

APPENDIX A¹

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. . . .

Proposed Revised Rule 32.5.

The defendant, appearing *pro se*, 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. . . .

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