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

12 In the Matter of:

Supreme Court No. R-15-0005

13 **PETITION TO AMEND RULE 7.5,**
14 **RULES OF CRIMINAL**
15 **PROCEDURE**

16 **COMMENT OF**
17 **THE STATE BAR OF ARIZONA**

18 The Administrative Office of the Courts (“A.O.C.”) has filed a rule change
19 petition that would allow pretrial release officers to report violations of release
20 conditions to the court, without waiting for a verified petition from a prosecutor.
21 This would allow for a warrant or summons being issued to modify and/or revoke
22 the conditions of release. The State Bar of Arizona supports this petition.

23 **I. BACKGROUND OF PETITION**

24 Rule 7, Rules of Criminal Procedure, pertains to the release of individuals
25 charged with a criminal offense. In turn, Rule 7.3 specifically provides for
conditions of such release. Currently, before a court may issue a warrant or
summons for the reported violation of a condition of release, the prosecutor must
first issue a “verified petition ... stating facts or circumstances constituting a
breach of the conditions of release.” Rule 7.5(a). Because one goal of the Arizona

1 Supreme Court’s new strategic agenda will result in some eligible defendants being
2 released to a pretrial services program for supervision or monitoring, an
3 amendment to Rule 7.5 is proposed to provide a mechanism for allowing pretrial
4 services to directly notify and request a warrant or summons from the court for
5 reported violations of conditions of release.

6 **II. DISCUSSION/ANALYSIS**

7 Rule 7 of the Rules of Criminal Procedure contains provisions for the release
8 of persons charged with criminal offenses. Among those provisions are the right to
9 release (Rule 7.2), the conditions of release (Rule 7.3), and the procedure for
10 determining conditions of release (Rule 7.4). Only one rule provides for the
11 review or revocation of conditions of release and requires a “verified petition” by a
12 prosecutor:

13 **Rule 7.5. Review of conditions; revocation of release.**

14 a. **Issuance of warrant or summons.** Upon verified petition by the
15 prosecutor stating facts or circumstances constituting a breach of the
16 conditions of release, the court having jurisdiction over the defendant
17 released may issue a warrant or summons under Rule 3.2, to secure
18 the defendant’s presence in court. A copy of the petition shall be
19 served with the warrant or summons.

20 One of the goals in the Arizona Supreme Court’s new strategic agenda is to
21 “[i]mprove and expand the use of evidence-based practices to determine pre-trial
22 release conditions for low-risk offenders.” *Advancing Justice Together: Courts
23 and Communities, 2014 – 2019, Goal 2.* As a consequence, the implementation of
24 evidence-based practices will result in eligible defendants being released under the
25 supervision or monitoring of felony pretrial services programs, which are a branch
of the county probation departments. Under the current Rule 7.5, if a violation of
conditions of release was suspected, no warrant or summons could be issued until a
prosecutor first filed a verified petition with the court. However, in many

1 instances, due to the delay in getting the information concerning the breach to a
2 prosecutor, or due to a prosecutor's own schedule, it could be days before a
3 prosecutor was able to file a verified petition requesting a warrant or summons.
4 Due to this delay, a very real risk to public safety could occur and the incidence of
5 flight risk could greatly increase.

6 Given the Supreme Court's goal, a mechanism needs to be established for a
7 pretrial services program to directly notify the court of any purported breach of the
8 conditions of release before safety and flight risks increase. The proposed
9 amendment to Rule 7.5 would provide that mechanism by allowing a court to act
10 on information provided directly in a written report from pretrial services. Without
11 the delay necessitated by a verified petition from a prosecutor, a reported violation
12 of release conditions could be immediately addressed by the Court, thereby more
13 efficiently and timely responding to the alleged violation while protecting the
14 public and preventing the risk of flight.

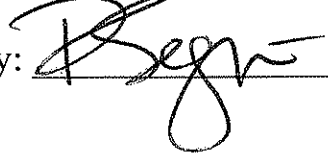
15 III. CONCLUSION

16 The AOC'S proposal in R-15-0005 to amend rule 7.5, Rules of Criminal
17 Procedure should be supported. The AOC's proposal is designed to timely and
18 efficiently address reported violations of conditions of release while increasing the
19 safety to the community and reducing flight risk. The State Bar of Arizona
20 respectfully requests that the Arizona Supreme Court grant the petition. The
21 proposal raised in the petition benefits all stakeholders.

22 RESPECTFULLY SUBMITTED this 5th day of May, 2015.

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25 John Furlong
General Counsel

1 Electronic copy filed with the
2 Clerk of the Arizona Supreme Court
3 this 10th day of May, 2015.

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