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11 **IN THE SUPREME COURT**
12 **STATE OF ARIZONA**
13

14 In the Matter of:

Supreme Court No. R-17-0021

15 **PETITION TO AMEND RULES**
16 **10.2, 15.1, 16.6 OF THE ARIZONA**
17 **RULES OF CRIMINAL**
18 **PROCEDURE**

19 **COMMENT OF**
20 **THE ARIZONA PROSECUTING**
21 **ATTORNEYS' ADVISORY**
22 **COUNCIL**

23 **I. BACKGROUND OF PETITION**

24 Attorneys with the Arizona Attorneys for Criminal Justice have asked the
25 Supreme Court to amend several rules of criminal procedure affecting entitlement to
a change of judge and notice to seek the death penalty. The petition targets what it
calls "strategic dismissals" and would prevent the State from dismissing a
prosecution and later, upon charges being refiled, obtaining a new notice of change
of judge under Rule 10.2 or deadline to file a notice of intent to seek the death penalty
under Rule 15.1(i)(1). The Arizona Prosecuting Attorneys' Advisory Council
("APAAC") has considered the proposed changes in the petition and oppose them.

1 Current case law adequately addresses the concerns raised in the petition and
2 prevents new notice deadlines when there is a showing of “bad faith” or “prejudice
3 to the defendant.” This is the more appropriate approach to answering the concerns
4 raised in the petition, which appear to have arisen in only two cases in Maricopa
5 County, as opposed to changing existing rules of procedure that will affect
6 prosecutors across the state. There are many non-nefarious reasons why a
7 prosecution may be dismissed and later refiled; and there are valid reasons why new
8 deadlines for a change of judge or death penalty notification would remain. The
9 need does not exist to create new criminal rules pertaining to an issue already clearly
10 addressed by the Arizona Supreme Court.
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13 **II. DISCUSSION/ANALYSIS**

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15 This petition seeks to alter existing case law. The petition is a reaction to the
16 Arizona Supreme Court’s recent ruling in *Mesa v. Granville*, 241 Ariz. 201, 386
17 P.3d 387 (2016), in which one of the petitioners herein argued the case for the
18 defense. In *Granville*, the Supreme Court held that “absent bad faith by the state
19 or prejudice to the defendant,” the time limits for filing a notice of intent to seek
20 the death penalty restart when the state files a dismissal under Rule 16.6 and obtains
21 a new indictment. *Mesa v. Granville*, 241 Ariz. at ___ ¶ 22, 386 P.3d at 391. This
22 is consistent with the Court’s previous holding in *Godoy v. Hantman*, 205 Ariz.
23 104, 106, ¶ 8, 67 P.3d 700, 702 (2003) (once indictment is dismissed, State can
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1 initiate new criminal proceedings in a new case and obtain a peremptory right to
2 change the judge within the time limits permitted by Rule 10.2). These cases rely
3 on Supreme Court precedent going back over forty years and stress that once a case
4 is dismissed, a new indictment or complaint gives rise to new time limits:
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6 We have considered the effect of the issuance of a new indictment in
7 other contexts. Arizona courts consistently hold that time limits for
8 purposes of the right to a speedy trial begin to run anew when a grand
9 jury reindicts a defendant following the dismissal of an earlier action
10 against the defendant. *E.g.*, *State v. Rose*, 121 Ariz. 131, 137, 589 P.2d
11 5, 11 (1978); *State v. Johnson*, 113 Ariz. 506, 510, 557 P.2d 1063, 1067
12 (1976); *State v. Avriett*, 25 Ariz. App. 63, 64, 540 P.2d 1282, 1283
13 (1975). We see no reason to treat time limits for filing a notice of
14 change of judge differently.

15 *Godoy v. Hantman*, 205 Ariz. at 106 ¶7, 67 P.3d at 702.

16 Certainly, a prosecutor should not abuse her discretion in dismissing a
17 criminal proceeding, but she should be given wide latitude in exercising control
18 over her own case. And good faith has always been applied to the prosecutor's
19 actions in dismissing a case without prejudice so that he doesn't operate to
20 circumvent rules related to time limits. *State v. Rose*, 121 Ariz. 131, 137, 589 P.2d
21 5, 11 (1978).

22 The fallacy in petitioner's argument here is in *assuming* that the intent of a
23 dismissal is to gain the tactical advantage of a new notice, whether for change of
24 judge or intent to seek the death penalty. There are legitimate and valid reasons
25 why cases are dismissed and later refiled by the prosecutor, and unless there is bad

1 faith shown, those acts are legal and appropriate. Although the defendant had
2 argued in *Granville* that the prosecutor acted in bad faith by dismissing charges and
3 a year later seeking a new indictment, the Court found the record did not reflect
4 bad faith. *Granville*, 241 Ariz. at ___ ¶ 12, 386 P.3d at 389 (new indictment filed
5 only after additional information was learned that “significantly changed”
6 defendant’s role in the murder). Had the rule changes proposed by petitioner been
7 adopted at the time, the state would not have been able to act within its executive
8 power upon learning new information, and the defendant would have been shielded
9 from certain penalties.
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12 In each of the two instances from Maricopa County Superior Court, outlined
13 by the petition as argument in support of the rule changes, the trial courts found the
14 state had acted in bad faith. And in each matter the trial courts dismissed the case.
15 This underscores APAAC’s opposition to a criminal rule change, because current
16 case law adequately addresses what may have occurred in only the handful of cases
17 it did. The petition is a reaction to a perceived problem that is neither widespread
18 in practice nor, as the court found in *Granville*, even existent. There is no need to
19 create new rules of criminal procedure or to change long-established case law to
20 counter an issue the Supreme Court has clearly addressed and ruled upon.
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24 Finally, altering the rules of criminal procedure as suggested in the petition
25 fails to consider the due process rights of crime victims. The Arizona Constitution

1 explicitly preserves and protects a crime victim's rights to justice and due process.
2 Ariz. Const. art. II, § 2.1. Ensuring those rights would certainly include allowing
3 the State to exercise its right to seek a change of judge or file a death penalty
4 notification when the circumstances dictate. Removing the State's ability to file a
5 notice of change of judge or death penalty has the concurrent effect of undermining
6 a victim's constitutional rights to justice and due process.
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9 **III. CONCLUSION**

10 The Arizona Prosecuting Attorneys' Advisory Council urges this Court to
11 deny the changes proposed in R-17-0021. The proposal alters well-established case
12 law and addresses a problem that, if it even exists, has clearly and recently been
13 addressed by the Supreme Court. There is no need to alter the existing criminal
14 rules, and public policy should operate in favor of allowing the executive branch the
15 power to decide how cases should be filed and handled.
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18 RESPECTFULLY SUBMITTED this 24th day of April, 2017.

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21 _____
22 Elizabeth Ortiz, #012838
23 Executive Director
24 Arizona Prosecuting Attorneys'
25 Advisory Council

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Electronic copy filed with the
Clerk of the Arizona Supreme Court
this 24 day of April, 2017.

by: 