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

9 In the Matter of:

Supreme Court No. R-19-0013

10 **PETITION TO MODIFY RULES**  
11 **5.4, 7.2, and 7.4 OF THE ARIZONA**  
12 **RULES OF CRIMINAL**  
13 **PROCEDURE**

**COMMENT OF THE**  
**STATE BAR OF ARIZONA**

14 Pursuant to Rule 28(D) of the Arizona Rules of Supreme Court, the State Bar  
15 of Arizona (the “State Bar”) hereby submits the following as its Comment to the  
16 above-captioned Petition.  
17

18 **I. BACKGROUND OF PETITION**

19 Petitioner has proposed a modification to the above-referenced Rules of  
20 Criminal Procedure. The Petition states that the recent changes to the Rules of  
21 Criminal Procedure have impeded the efficiency of the bail eligibility and  
22 preliminary hearing process. (Petition at 2). The stated goal of the Petition is to  
23 make the bail eligibility and preliminary hearing process more efficient. (Petition  
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25

1 at 2).

## 2 **II. DISCUSSION and ANALYSIS**

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4 The analysis and details for this Comment are substantially the product of the  
5 State Bar’s Criminal Practice and Procedure Committee, composed of a balance of  
6 prosecution and defense practitioners, and judicial members.

7 The State Bar supports the concept of efficiency and judicial economy in  
8 criminal proceedings, but there are various concerns with amending the Criminal  
9 Rules as proposed. Each is discussed below.

### 10 **A. Proposed Change to Rule 7.2(b)(4)(B)**

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12 This subsection of the rule promulgates the time deadlines for a bail  
13 eligibility hearing to take place. Arizona revised statute §13-3961(E) addresses  
14 time limitations imposed on continuances requested by either party. As currently  
15 written, the rule provides that if no motion to continue is made pursuant to the terms  
16 of §13-3961(E), then the hearing must be held as soon as practicable, but not later  
17 than 7 days after the initial appearance unless the defendant moves for a  
18 continuance. The petition seeks to augment the limitations by adding, “or the Court  
19 finds that extraordinary circumstances exist.” (Petition at 10).

20  
21 This proposed change creates an ambiguity. As stated, the proposal provides  
22 a mechanism for the court to continue the hearing, *sua sponte*, and it is not clear  
23 whether the Court is bound by the 7-day limitation. The petition acknowledges the  
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1 modification is sought to grant the Court such authority. (Petition at 8). But while  
2 the petition posits that any continuances will usually be for 1 day, and not more than  
3 3 days, there is nothing in the proposed rule change that places any limitation on the  
4 continuance, or the number of continuances that may be ordered. Further, the  
5 petition concedes that the problems requiring a continuance arise – with only one  
6 noted medical exception – as the result of scheduling errors and docket congestion  
7 in Maricopa County. (*Id.*). The proposal is too vague and ambiguous to be able to  
8 give meaning to due process and the presumption of innocence. *Foucha v.*  
9 *Louisiana*, 504 U.S. 71, 80 (1992) (the right to be free from restraint is fundamental).

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11  
12 Certainly, occasions will arise due to unforeseen circumstances that are not  
13 the fault of any person or entity. If this Court acts favorably on the proposed  
14 change, any modification should contain unambiguous language spelling out what  
15 may constitute an extraordinary circumstance and what the limits are regarding the  
16 length and number of any continuance.  
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19 **B. Proposed Rule 7.2(b)(4)(C)(i) and (ii)**

20 The Petition proposes to amend Subsection (4)(C) of Rule 7.2(b) by creating  
21 subsections for when probable cause is found (subsection (4)(C)(i)) and when  
22 probable cause is not found (subsection (4)(C)(ii)). (Petition at 11). The proposed  
23 deletions to subsection (4)(C) coupled with the new language found in (4)(C)(ii) –  
24 mandating dismissal of the complaint and discharge of the defendant – will result  
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1 in some cases being dismissed at a bail eligibility hearing where probable cause has  
2 already been found as the result of a grand jury indictment or by a finding of  
3 probable cause at a preliminary hearing. While a bail eligibility hearing usually  
4 takes place before a preliminary hearing or the return of an indictment, this is not  
5 always the case. As proposed, the requested modification creates a situation  
6 whereby a defendant may be discharged after an indictment is issued or probable  
7 cause has been found following a preliminary hearing.  
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10 **C. Proposed Change to Rule 7.4(b)(3).**

11 The Petition notes that the requested change to Rule 7.4(b)(3) is only being  
12 made to conform the language of Rule 7.4 to the proposed change to Rule 7.2(b).  
13 (Petition at 7).  
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15

16 **CONCLUSION**

17 On many occasions, the charges for which an individual is booked are not  
18 what is ultimately charged. The Petition acknowledges that even under the  
19 proposed modifications, there will be many instances where more than one hearing  
20 will be necessary. (Petition at 6).  
21

22 For the above-stated reasons, the State Bar respectfully requests that the  
23 Arizona Supreme Court not amend Criminal Rules 5.4(a), 7.2(b), and 7.4(b)(3), as  
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1 requested in the Petition.

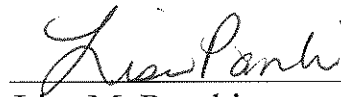
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RESPECTFULLY SUBMITTED this 1<sup>st</sup> day of May, 2019.

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Lisa M. Panahi  
General Counsel

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10 Electronic copy filed with the  
11 Clerk of the Supreme Court of Arizona  
this 1<sup>st</sup> day of May, 2019.

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by: 

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