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3 **(FIRM STATE BAR NO. 00032000)**

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10 **(STATE BAR NUMBER 017540)**

11 **ARIZONA SUPREME COURT**

12 **IN RE:**

13 **PETITION TO AMEND VARIOUS**
14 **RULES OF PROCEDURE**
15 **RELATED TO CREATING THE**
16 **VERBATIM RECORD OF**
17 **JUDICIAL PROCEEDINGS**

R-20-0013

MARICOPA COUNTY ATTORNEY'S
COMMENT IN OPPOSITION

18 The Maricopa County Attorney submits this comment opposing the Petition
19 because an electronic record is not as reliable or accurate as one created by a certified
20 court reporter. The Petition's proposed changes would allow reliance solely on
21 electronic recordings for crucial criminal proceedings such as grand jury proceedings
22 and felony jury trials, including capital cases. While relying on an electronic record
23 would not raise concerns if the technology was as accurate as an in-person court
24 reporter, that is simply not the case today.

25 First, grand jury proceedings present unique challenges because these proceedings
26 must be limited to audio only recordings due to the secrecy and privacy issues involved.
27 As anyone who has ever listened to an audio recording with more than two speakers
28

1 can attest, it is often difficult to determine who is speaking. Additionally, without the
2 video, the possibly of a garbled or inaudible recording is significantly greater than with
3 video recordings, which are themselves prone to inaudible recordings. These facts
4 make audio recording of grand jury proceedings an insufficient substitute for an in-
5 person court reporter.
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8 Second, even when accompanied with video, electronic recordings can be
9 unreliable. For example, even when the speaker can be seen on video, extraneous
10 noises such as shuffling paper or coughing can make the speaker difficult to hear or
11 understand.¹ In Maricopa County, the courts currently use For the Record (FTR) to
12 create an audio and video record of proceedings. In criminal matters, this is used as a
13 secondary system to a court reporter. The FTR system works well most of the time,
14 but there are still many occasions when the sound quality is so poor that it is impossible
15 to determine what is being said. When a court reporter is present, he or she can ask a
16 speaker to repeat something or caution individuals about speaking over one another.
17 Obviously, that is not possible with an electronic recording.
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21 Without an in-person court reporter, the result in far too many cases will be an
22 incomplete, unreliable record. The stakes in criminal cases for the defendants, the
23 victims, and the community are too high to accept anything less than the best record
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27 ¹ This problem will be even greater if lawyers, judges, and witnesses need to wear
28 mouth and nose coverings in future proceedings due to pandemics like COVID-19.

1 possible which today is an in-person, certified court reporter. While these proposed
2 changes are undoubtedly inevitable at some future point, the stakes are too high to
3 adopt them prematurely. Having an accurate and reliable record of the proceedings in
4 our courtrooms is critical and until electronic recording systems are as reliable and
5 accurate as a court reporter, this Court should not expand their current use.
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8 Respectfully submitted this 30th day of April 2020.

9 ALLISTER ADEL
10 MARICOPA COUNTY ATTORNEY

11 By /s/ 
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