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3 (FIRM STATE BAR NO. 0003200)

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10 (STATE BAR NUMBERS 003813 AND 020305)

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

12 **IN THE MATTER OF:**

No. R-09-0006

13 **PETITION TO AMEND RULE 1.4,**
14 **ARIZONA RULES OF CRIMINAL**
15 **PROCEDURE.**

MARICOPA COUNTY ATTORNEY'S
COMMENTS TO PETITION TO
AMEND RULE 1.4, ARIZONA RULES
OF CRIMINAL PROCEDURE

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17 The Maricopa County Attorney's Office opposes the proposed amendment to Rule
18 50 of the Arizona Rules of Criminal Procedure.

19 Judge Lusk requests that the definition of "presiding judge" be amended as it
20 relates to justices of the peace. His Petition comes on the heels of an opinion handed
21 down by the Court of Appeals, Division II, in which he was a party. In *Hornbeck v. Lusk*,
22 217 Ariz. 581, 177 P.3d 323 (2008), the Court held that justice courts are a unitary court
23 with distinct precincts. Given that finding, an individual justice of the peace cannot be
24 properly deemed a "presiding judge" over his or her individual precinct for the purposes
25 of powers granted presiding judges.
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1 The particular issue in the *Lusk* case was Judge Lusk’s personal reassignment of a
2 case after a notice of change of judge was filed upon him pursuant to Arizona Rule of
3 Criminal Procedure 10.2. Rather than sending the “notice” request to the presiding justice
4 of the peace of Pinal County, Judge Lusk reassigned the case to a justice of the peace pro
5 tempore in the Apache Junction precinct. In doing so, he acted as a *de facto* “presiding
6 judge” with powers of case reassignment. The Court of Appeals rejected Judge Lusk’s
7 action as exceeding the discretion given to an individual justice of the peace. The Court
8 summarized the reason for its holding as follows:
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12 Were we to interpret the [Arizona Rules of Criminal Procedure]
13 as the respondent judge did – characterizing each justice-of-the-
14 peace precinct as a separate court for purposes of Rule 1.4(a)
15 and therefore concluding that each justice of the peace, elected
16 by precinct, is a presiding judge under the rules – the general
17 intent of Rules 10.5(a) and 10.6, that a preempted judge not
18 choose his or her successor for the case, would be thwarted in
19 our justice courts.

20 217 Ariz. at 585, 177 P.3d at 327.

21 Judge Lusk now argues that it is inefficient to send a case to the presiding justice of
22 the peace for reassignment because it causes a delay in case processing. For this reason
23 alone, he submits that each justice of the peace should be considered a “presiding justice
24 of the peace.” Judge Lusk does not, however, counter the argument that it is
25 fundamentally unfair for a judge who is “noticed” to choose the judge to replace himself
26 or herself.
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1 Ultimately, the issues in the Petition at bar have been considered and rejected by
2 the Court of Appeals. The logic of the cited opinion is sound, and the Petitioner's request
3 would lead to predictable and repeated injustices in the assignment of cases.
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5 For these reasons, the Maricopa County Attorney's Office opposes the proposed
6 amendment to Arizona Rule of Criminal Procedure 1.4.
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8 Respectfully submitted this 19th day of May, 2009.
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