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

11 In the Matter of:

12 **PETITION TO AMEND RULE 12.9,**
13 **ARIZONA RULES OF CRIMINAL**
14 **PROCEDURE**

15 Supreme Court No. R-20-0041

16 **COMMENT OF**
17 **THE ARIZONA PROSECUTING**
18 **ATTORNEYS' ADVISORY**
19 **COUNCIL**

20 While citing no reasoning or support, the Petition seeks to eliminate the current
21 requirement in Rule 12.9 that challenges to a grand jury presentation be filed within
22 45 days of the certification (although the Petitioner apparently believes the Rule to
23 state 25 days) of the transcript and minutes or within 45 days of arraignment,
24 whichever is later. Indeed, the Petition would allow such a challenge to be urged at
25 any time prior to trial.

Such a change would be a complete departure from the intent of the Rule and
would serve no purpose other than to inject delay and uncertainty into the trial
process. The parties, court, victim and community must be able to move past the
probable cause process within a time certain and focus on the next steps of the case

1 as it proceeds towards trial. Recognizing that sufficient time to file a motion for
2 remand should be given, this Court actually increased the time to file from 25 to 45
3 days in 2018.
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5 It is important to remember that the purpose of a motion to remand is to
6 challenge the probable cause finding made by a grand jury. It is not meant to be a
7 litigation on the merits of the case. If a motion to remand can be filed at any time,
8 though, this is what will most likely happen. A hearing to remand will look different
9 if done after witness interviews are complete, expert witnesses are hired and the
10 parties are prepared for trial. Instead of testing the probable cause determination, a
11 defendant could use court time to develop trial strategies, test cross examination or
12 just needlessly delay the trial. A well taken motion to remand could be delayed until
13 shortly before trial, needlessly adding months to the case to make it grow stale. The
14 current language provides sufficient time within which the parties can litigate the
15 grand jury presentation and the Arizona Prosecuting Attorneys' Advisory Council
16 opposes this Petition.
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20 RESPECTFULLY SUBMITTED this 30th day of April, 2021.
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22 *Elizabeth Burton Ortiz*
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24 Executive Director
25 Arizona Prosecuting Attorneys'
Advisory Council

1 Electronic copy filed with the
2 Clerk of the Arizona Supreme Court
3 this 30th day of April, 2021, by:

4 By: Diana Cooney
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