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10 **IN THE ARIZONA SUPREME COURT**

11 IN THE MATTER OF:
12 PETITION TO AMEND THE
13 ARIZONA RULES OF CRIMINAL
14 PROCEDURE

R-17-0002

COMMENT FROM ARIZONA
VOICE FOR CRIME VICTIMS RE:
SUPPLEMENTAL PETITION TO
AMEND THE ARIZONA RULES
OF CRIMINAL PROCEDURE

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17 **I. Introduction**

18 Arizona Voice for Crime Victims (AVCV), founded in 1996, is an Arizona
19 nonprofit corporation that works to promote and protect crime victims' rights
20 throughout the criminal justice process. To achieve these goals, AVCV empowers
21 victims of crime through legal advocacy and social services. AVCV seeks to
22 foster a fair and compassionate justice system in which all crime victims are
23 informed of their rights under the laws of the United States and Arizona, fully
24 understand their rights, and have a meaningful way to enforce their rights. A key
25

1 part of AVCV's mission is working to give the judiciary information and policy
2 insights that may be helpful in upholding crime victims' state constitutional rights
3 under the Arizona Victims' Bill of Rights (VBR), Ariz. Const. art. II, § 2.1.
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5 Upon request of the chair of the Task Force on the Arizona Rules of
6 Criminal Procedure, the Hon. Joseph Welty, AVCV submitted a comment on
7 March 14, 2017 to R-17-0002, *Petition to Amend the Arizona Rules of Criminal*
8 *Procedure*. AVCV suggested amendments that would fully integrate victims'
9 rights throughout the Rules rather than keeping them tucked away in Rule 39.
10 Most of the revisions suggested by AVCV were rejected by the task force. AVCV,
11 in this comment to the *Supplemental Petition to Amend the Arizona Rules of*
12 *Criminal Procedure*, renews its request. AVCV's request is appropriate for this
13 task force's restyling effort.
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16 The amendments proffered by AVCV do not create new victims' rights,
17 violate the rights of the accused, or put the victim in an elevated position over any
18 party to a criminal proceeding. Rather, AVCV's request is made for ease of
19 practice by trial judges and attorneys who are not likely to flip between the
20 applicable rule and Rule 39 during hearings to ensure that the rights of all parties
21 and victims are considered. Ensuring each applicable rule is fully in accord with
22 the constitutional and statutory provisions will safeguard the rights of crime
23 victims, especially for the majority who do not have the benefit of their own
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1 counsel. There have been instances of trial judges not allowing victims to be heard
2 during pretrial proceedings where a victim’s right has been at issue. *See State ex.*
3 *rel Montgomery v. Padilla*, 238 Ariz. 560, 566 (Ct. App. 2015) (holding that
4 victims have “standing to seek an order from the superior court pursuant to A.R.S.
5 § 13-4437(A)). Whether victims’ rights violations stem from a lack of knowledge
6 or indifference, these occurrences can be minimized by expressly specifying the
7 rights of both parties *and* victims in each rule provision.
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10 **II. Comments**

11 **Rule 1.2**

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13 AVCV proposes Rule 1.2, Purpose and Contraction, be amended to specify
14 that one of the purposes of the Rules is to protect the fundamental rights of both
15 the accused and the victim. Victims’ rights have been part of Arizona’s legal
16 landscape for over twenty-five years; however, most assume that the individual
17 rights in these rules only belong to the accused. AVCV suggests the following
18 addition to Rule 1.2:
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20 These rules are intended to provide for the just and speedy
21 determination of every criminal proceeding. Courts, parties, and crime
22 victims should construe these rules to secure simplicity in procedure,
23 fairness in administration, the elimination of unnecessary delay and
24 expense, and to protect the fundamental rights of the **individual
accused and the victim** while preserving the public welfare.

25 **Rule 1.3(a)(5)**

1 AVCV proposes Rule 1.3(a)(5), Computation and Time- Additional Time
2 After Service, be amended to also include crime victims. Victims are not parties to
3 criminal proceedings. *State v. Lamberton*, 183 Ariz. 47 (Ariz. 1995). However,
4 victims are participants with enforceable rights that attach upon the arrest or formal
5 charging. A.R.S. § 13-4402. In asserting victims' rights, counsel for the victim
6 will often file motions with the court; thus, making this rule provision applicable to
7 victims. AVCV has encountered situations where a party has argued that the
8 victim can't file motions because the rules do not allow it. As mentioned above,
9 AVCV has also encountered situations where a trial judge would not consider a
10 motion filed by victim's counsel. *Padilla*, 238 Ariz. 560. In that instance, victim's
11 counsel was told she had to present her motion to the state and the state would
12 argue it if they felt it was worthy. *Id.* The Court of Appeals, however, ruled that
13 victim's counsel was entitled to make objections/arguments on behalf of the victim
14 at a pre-trial hearing. *Id.* To prevent future occurrences, AVCV suggests the
15 following addition to Rule 1.3(a)(5):
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20 If a party **or crime victim** may or must act within a specified time
21 after service and service is made under a method authorized by Rule
22 1.7(c)(2)(C), (D), or (E), 5 calendar days are added after the specified
23 time period would otherwise expire under (a)(1)-(4), except as
24 provided in Rule 31.3(d). This provision does not apply to the clerk's
25 distribution of notices, minute entries, or other court-generated
documents.

Rule 1.5(c)(3)

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2 AVCV proposes Rule 1.5(c)(3), Interactive Audiovisual Systems- By
3 Stipulation, be amended to require the court to find that allowing a defendant to
4 appear via interactive audio-visual system will not in any way hinder victims'
5 constitutional rights to be present and heard at a criminal proceeding. Ariz. Const.
6 art. II, §§2.1(A)(3)-(4). AVCV suggests the following addition to Rule 1.5(c)(3):
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9 For any proceeding not included in (c)(1) and (c)(2), the parties may
10 stipulate that the defendant may appear at the proceeding by use of an
11 interactive audiovisual system. The parties must file a stipulation
12 before the proceeding begins or state the stipulation on the record at
13 the start of the proceeding. Before accepting the stipulation, the court
14 must find that the defendant knowingly, intelligently and voluntarily
15 agrees to appear at the proceeding by use of an interactive audiovisual
16 system—**and that the system will allow a victim means to view and
17 participate in the proceedings and ensure compliance with all
18 victims' rights laws.**

16 **Rule 1.5(c)(4)**

17 AVCV proposes Rule 1.5(c)(4), Interactive Audiovisual Systems-Change in
18 Hearing's Scope, be amended require notice be given to counsel, including counsel
19 for the victim, in the event the hearing conducted by audio video conference goes
20 beyond the permitted scope. To comport with victims' constitutional right to be
21 informed of all criminal proceedings where a defendant has a right to be present
22 under Ariz. Const. art. II, § 2.1(A)(3), AVCV suggests the following addition to
23 Rule 1.5(c)(4):
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1 If the scope of a hearing expands beyond that specified in (c)(1) and
2 (c)(3), the court must reschedule a videoconference **and give notice**
3 **to counsel including any counsel for the victim**, and require the
4 defendant's personal appearance.

5 **Rules 1.7(c), 1.7(c)(1), and 1.7(c)(2)(E)(3)**

6 AVCV proposes Rules 1.7(c), 1.7(c)(1), and 1.7(c)(2)(E)(3), Filing and
7 Service of Documents- Service of All Documents Required: Manner of Service, be
8 amended to comport with new legislation that will require service to victim's
9 counsel under A.R.S. § 13-4437(D) on all pleadings that involve victims' rights.
10 When victim's counsel is not served on pleadings, it hinders their ability to
11 respond in a timely manner and to maintain the ethical duties owed to our clients,
12 victims, to keep them informed of the status of the case. AVCV suggests the
13 following addition to Rule 1.7(c):

14 person filing a document with any court must serve a copy of the
15 document on all other parties **and victim's attorney** as follows:

16 AVCV suggests the following addition to Rule 1.7(c)(1):

17 If a party **or victim** is represented by an attorney, service under this
18 rule must be made on the attorney unless the court orders service on
19 the party.

20 AVCV suggests the following additions to Rule 1.7(c)(2)(E)(3):

21 The date and manner of service must be noted on the last page of the
22 original of the served document or in a separate certificate, in a form
23 substantially as follows:
24
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1 *A copy has been or will be mailed/emailed/hand-delivered [select*
2 *one]*

3 *on [insert date] to:*

4 *[Name of opposing party or attorney]*

5 *[Address of opposing party or attorney]*

6 ***[Name of victim's attorney]***

7 ***[Address of victim's attorney]***

8 If the precise manner in which service has actually been made is not
9 noted, it will be presumed that the document was served by mail. This
10 presumption will only apply if service in some form has actually been
11 made.

11 **Rules 1.8(a) and 1.8(b)**

12 AVCV proposes Rules 1.8(a) and 1.8(b), Clerk's Distribution of Minute
13 Entries and Other Documents, be amended to include the victim's attorney.
14 AVCV has encountered various courtroom clerks who seem unsure of whether
15 they are permitted to endorse and e-mail minute entries to counsel for the victim.
16 When AVCV doesn't receive minute entries from the court, it creates issues
17 getting information on important rulings to victims in a timely manner. In one
18 instance, *State v. Martinson*, CR2004-124662-001, a clerk did not include victim's
19 counsel on an e-mail with a ruling dismissing first degree murder charges against a
20 defendant. Fortunately, the prosecutor noticed victim's counsel had not been
21 included in the e-mail and was able to alert victim's counsel, who was able to
22 make the victims aware of the ruling before she found out on the evening news.
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1 To prevent similar occurrences, AVCV suggest the following addition to Rule
2 1.8(a):

3
4 Generally. The clerk must distribute, either by U.S. mail, electronic
5 mail, or attorney drop box, copies of every minute entry to all parties,
6 **and to victim's attorney.**

AVCV suggests the following addition to Rule 1.8(b):

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8 The clerk may distribute minute entries, notices and other court-
9 generated documents to a party or a party's attorney **and to victim's**
10 **attorney** by electronic means. Electronic distribution of a document is
11 complete when the clerk transmits it to the email address that the party
12 or attorney **or victim's attorney** has provided to the clerk.

13 **Rules 1.9(b), 1.9(d), 1.9(e), 1.9(f)**

14 AVCV proposes amendments to Rules 1.9(b), 1.9(d), 1.9(e), 1.9(f), Motions
15 and Oral Arguments, for the same reasons stated for AVCV's proposed revisions
16 to Rule 1.7. AVCV suggests the following additions to Rule 1.9(b):

17 The moving party **or the victim's attorney** must serve the motion on
18 all other parties. No later than 10 days after service, another party **or**
19 **the victim's attorney** may file and serve a response, and, no later than
20 3 days after service of a response, the moving party **or the victim's**
21 **attorney** may file and serve a reply. A reply must be directed only to
22 matters raised in a response. If no response is filed, the court may
23 deem the motion submitted on the record.

AVCV suggests the following addition to Rule 1.9(d):

24 On a party's **or victim's attorney's** request or on its own, the court
25 may waive a requirement specified in this rule, or it may overlook a
formal defect in a motion.

AVCV suggests the following addition to Rule 1.9(e):

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2 On a party's **or victim's attorney's** request or on its own, the court
3 may set a motion for argument or hearing.

4 AVCV suggests the following additions to Rule 1.9(f):

5 A proposed order must be prepared as a separate document and may
6 not be included as part of a motion, stipulation, or other document.
7 There must be at least two lines of text on the signature page of a
8 proposed order. A party **or victim's attorney** must serve the proposed
9 order on the court and all other parties **and victim's attorney**. A party
10 **or victim's attorney** must not file a proposed order, and the court will
11 not docket it, until a judge has reviewed and signed it. Absent a notice
12 of filing, proposed orders will not be part of the record.

11 **Rules 4.1(a), 4.1(b), 4.1(c)(1), and 4.1(c)(2)**

12 AVCV proposes amendments to Rules 4.1(a), 4.1(b), 4.1(c)(1), and
13 4.1(c)(2), Procedure Upon Arrest, so the rule provisions are in full accord with
14 victims' constitutional rights to be notified when the accused is released from
15 custody, notified of all proceedings where a defendant has a right to be present,
16 and to be heard at any proceeding involving a post-arrest release decision under
17 Ariz. Const. art. II, §§ 2.1(A)(2)-(4). Because initial appearances happen so
18 quickly after an arrest, victims who have requested notification are often not
19 notified of a hearing where they may have important information to share with the
20 judge regarding their own safety as well as the safety of others. AVCV
21 encountered this situation in *State v. Bolin*, CR2012-007268-001. Fortunately,
22 AVCV successfully sought a reexamination hearing under A.R.S. § 13-4436(A),
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1 but the victim lived in fear until we were able to make a judge aware of the danger
2 the defendant posed to the victim and her family. Concerns regarding safety make
3 it imperative for victims to be notified of release. AVCV proposes the following
4 addition to Rule 4.1(a):
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6 An arrested person must be promptly taken before a magistrate. **Upon**
7 **request, the victim must be informed of the date, time, and place for the**
8 **initial appearance.** At the initial appearance, the magistrate will advise
9 the arrested person of those matters set forth in Rule 4.2. If the initial
10 appearance does not occur within 24 hours after arrest, the arrested
11 person must be immediately released from custody.

12 AVCV proposes the following addition to Rule 4.1(b):

13 person arrested without a warrant must be taken before the nearest or
14 most accessible magistrate in the county of arrest. A complaint, if not
15 already filed, must be promptly prepared and filed. If a complaint is
16 not filed within 48 hours after the initial appearance before the
17 magistrate, the arrested person must be immediately released from
18 custody and any pending preliminary hearing dates must be vacated.
19 **The victim must be notified of any release.**

20 AVCV proposes the following addition to Rule 4.1(c)(1):

21 A person arrested in the county where the warrant was issued must be
22 taken before the magistrate who issued the warrant for an initial
23 appearance. If the magistrate is absent or unable to act, the arrested
24 person must be taken to the nearest or most accessible magistrate in
25 the same county. **Upon request, the victim must be informed of the**
date, time, and place for the initial appearance.

AVCV proposes the following addition to Rule 4.1(c)(2):

If a person is arrested in a county other than the one where the warrant was issued, the person must be taken before the nearest or most accessible magistrate in the county of arrest. If eligible for release as a

1 matter of right, the person must then be released under Rule 7.2. If not
2 released immediately, the arrested person must be taken to the issuing
3 magistrate in the county where the warrant originated, or, if that
4 magistrate is absent or unable to act, before the nearest or most
5 accessible magistrate in the county where the warrant originated. **The
6 victim must be notified of any release.**

7 **Rule 4.2(a)(7)**

8 AVCV proposes Rules 4.2(a)(7), Initial Appearance, be amended to include
9 a consideration of victims' constitutional rights to be free from intimidation,
10 harassment, and abuse by the defendant when determining appropriate release
11 conditions, if any. AVCV encountered this in *State v. Gordon*, CR2016-101535-
12 001, where a victim was not notified of the initial appearance and no consideration
13 of her right to be free from intimidation, harassment, and abuse was given. After
14 AVCV asked for a reexamination hearing, the defendant's release conditions were
15 modified to protect the safety of the victim. AVCV proposes the following
16 addition to Rule 4.1(a)(7):
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19 At an initial appearance, the magistrate must: determine the conditions
20 of release under Rule 7.2, including **considering that the victim has a
21 constitutional right to be free from intimidation, harassment, and abuse,
22 and** whether the defendant is non-bailable under article 2, section 22
23 of the Arizona Constitution and A.R.S. § 13-3961;

24 **Rule 4.2(c)**

25 AVCV proposes changes to Rule 4.2(c), Combining an Initial Appearance
with an Arraignment, to ensure the rule provision is consistent with victims'

1 constitutional right to be notified and heard under Ariz. Const. art. II, §§ 2.1(a)(3)-
2 (4):
3

4 If the defendant is charged with a misdemeanor or indicted for a
5 felony and defense counsel is present or the defendant waives the
6 presence of counsel, **and, if requested, the victim has been given notice
7 and an opportunity to be present and heard**, the magistrate may
8 arraign a defendant under Rule 14 during an initial appearance under
9 (a). If, however, the magistrate lacks jurisdiction to try the offense, the
10 magistrate may not arraign the defendant and must instead transfer the
11 case to the proper court for arraignment. If the court finds that
12 delaying the defendant's arraignment is indispensable to the interests
13 of justice, the court when setting a date for the continued arraignment
14 must provide sufficient notice to victims under Rule 39(b)(2).

15 **Rules 5.1(a) and 5.1(b)**

16 AVCV proposes amendments to Rules 5.1(a) and 5.1(b), Right to Preliminary
17 Hearing, Waiver, Continuance, to ensure the rule provisions are in full accord with victims'
18 constitutional right to notice under Ariz. Const. art. II, § 2.1(a)(3). AVCV proposes the
19 following addition to Rule 5.1(a):

20 A defendant has a right to a preliminary hearing if charged in a
21 complaint with a felony. **The victim, if requested, must be given
22 notice of the preliminary hearing.** A preliminary hearing must
23 commence before a magistrate no later than 10 days after the
24 defendant's initial appearance if the defendant is in custody, or no
25 later than 20 days after the defendant's initial appearance if the
26 defendant is not in custody, unless:

- 27 (1) the complaint is dismissed;
- 28 (2) the hearing is waived;
- 29 (3) the defendant has been transferred from the juvenile court for
30 criminal prosecution on specified charges; or

1 (4) the magistrate orders the hearing continued under (c);

2 AVCV proposes the following addition to Rule 5.1(b):

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4 The parties may waive a preliminary hearing but the waiver must be
5 in writing and the defendant, defense counsel, and the State must sign
6 it. **The victim, if requested, must be given notice of the waiver.**

7 **Rule 5.1(c)(2)**

8 AVCV proposes Rule 5.1(c)(2) be amended to ensure the applicable
9 constitutional right of the victim to a speedy trial under Ariz. Const. art. II, §
10 2.1(A)(10) is considered before granting a continuance of the preliminary hearing.

11
12 The speedy trial rights of victims are often overlooked or rarely considered when
13 trial courts grant continuances. Victims of violent crimes often experience
14 secondary victimization as a result of delay and a prolonged criminal justice
15 process. Jim Parsons & Tiffany Bergin, *The Impact of Criminal Justice*
16 *Involvement on Victims' Mental Health*, 23 J. Traum. Stress 182, 183 (2010). To
17 make the language of the rule consistent with victims' constitutional right to a
18 speedy trial and to notice under Ariz. Const. art. II, § 2.1(A)(3), AVCV suggests
19 the following additions:
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22 On motion or on its own, a magistrate may continue a preliminary
23 hearing beyond the 20-day deadline specified in (a). A magistrate may
24 continue the hearing only if it finds that extraordinary circumstances
25 exist **and**, that delay is indispensable to the interests of justice, **and**
that it does not infringe the victim's right to a speedy trial. The
magistrate also must file a written order detailing the reasons for these

1 findings. The court must promptly notify the parties **and, if**
2 **requested, the victim** of the order.

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4 **Rule 5.1(d)**

5 AVCV proposes Rule 5.1(d), Preliminary Hearing- Hearing Demand, be
6 amended to include notice must be given to the victim to ensure the rule provision
7 is consistent with victims' constitutional right to notice under Ariz. Const. art. II,
8 § 2.1(A)(3). AVCV recommends the following addition:
9

10 A defendant who is in custody may demand that the court hold a
11 preliminary hearing as soon as practicable. In that event, the
12 magistrate must set a hearing date and must not delay its
13 commencement more than necessary to secure the attendance of
14 counsel, a court reporter, **the victim**, and necessary witnesses.

14 **Rule 5.4(a)**

15 AVCV proposes Rules 5.4(a), Determining Probable Cause-Holding a
16 Defendant to Answer, is amended to fully comply with victims' constitutional right
17 to be heard at a release hearing under Ariz. Const. art. II, §2.1(A)(4) and under
18 A.R.S. § 13-4422 (the right to be heard when the court considers the post-arrest
19 release of the accused). AVCV proposes the following addition to Rule 5.4(a):
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22 If a magistrate finds that there is probable cause to believe that an
23 offense has been committed and that the defendant committed it, the
24 magistrate must file a written order holding the defendant to answer
25 for the offense before the superior court. Upon request, the magistrate
may reconsider the conditions of release, **after giving the victim the
right to be heard.**

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2 **Rule 5.8(a)(3)**

3 AVCV proposes Rule 5.1(a)(3), Notice if an Arraignment is Not Held, be
4 amended to require that notice be given to the victim. This would ensure that the
5 rule provision complies with victims’ constitutional right to notice under Ariz.
6 Const. art. II, § 2.1(A)(3). AVCV recommends the following addition:
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8 If a defendant is held to answer in a county where an arraignment is
9 not held as provided in Rule 14.1(d), the magistrate must: advise the
10 parties **and, if requested, the victim**, in writing of the dates set for
11 further proceedings and other important deadlines;

12 **Rules 6.7(a)**

13 AVCV proposes Rule 6.7(a), Appointment of Investigators and Expert
14 Witnesses for Indigent Defendant, be amended to include advising those appointed
15 of victims’ constitutional right for a speedy trial under Ariz. Const. art. II, §
16 2.1(A)(10) for the same reasons stated above in AVCV’s proposes amendments to
17 Rule 5.1(c)(2). AVCV suggests the following addition to Rule 6.7(a):
18

19 On application, if the court finds that such assistance is reasonably
20 necessary to adequately present a defense at trial or at sentencing, the
21 court may appoint an investigator, expert witnesses, and/or, in a felony
22 matter, a mitigation specialist for an indigent defendant at county or
23 city expense. **Any person so appointed must be advised that the
24 victim has a right to a speedy trial.**

25 **Rule 6.7(d)**

1 AVCV proposes Rule 6.7(d), Appointment of Investigators and Expert
2 Witnesses for Indigent Defendant- Motion, be amended to require indigent
3 defendants to file a motion for a mitigation specialist or investigator within 30
4 days, rather than 60 days, to give effect and meaning to victims’ constitutional
5 right to a speedy trial under Ariz. Const. art. II, § 2.1(A)(10) and for the same
6 reasons stated above in AVCV’s proposed amendments to Rule 5.1(c)(2). AVCV
7 suggests the follow addition to Rule 6.7(d):
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10 In a capital case, a defendant should make any motion for an expert or
11 mitigation specialist no later than ~~60~~30 days after the State makes its
12 disclosure under Rule 15.1(i)(3).

13 **Rules 7.2(a)(2), 7.2(c)(1)(A)(ii), 7.2(c)(1)(B), 7.2(c)(2)(C)(i), and 7.2(c)(2)(C)(iii)**

14 AVCV proposes the amendments to Rules 7.2(a)(2), 7.2(c)(1)(A)(ii),
15 7.2(c)(1)(B), 7.2(c)(2)(C)(i), 7.2(c)(2)(C)(iii), Right to Release, to include a
16 consideration specifically about the safety of the victim, rather than lumping
17 victims in with “others” in the community. Victims, while not a party, are
18 participants, not by choice, in the criminal justice system with enforceable rights
19 that “others” in the community do not have, such as a right to be treated with
20 fairness, respect, and dignity, and to be free from intimidation, harassment, and
21 abuse.
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24 Notably, Rule 9.3(b)(1), pertaining to spectators, expressly specifies that the
25 public incudes the news media. It is correct that Arizona’s public records law does

1 not distinguish the media from the public, but the rules specifically address news
2 media. Victims, on the other hand, are distinguishable from “others” as they are
3 given a legal status with rights pertaining directly to the criminal prosecution that
4 “others” do not have. Yet, victims are lumped in with “others” when it comes to
5 something as important as a consideration of their safety. Additionally, to protect
6 victims’ constitutional rights to justice and due process, AVCV is proposing that
7 the intimidation of witnesses be part of the court’s determination. AVCV suggests
8 the following changes to Rule 7.2(a)(2):
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11 Except as these rules otherwise provide, any defendant charged with
12 an offense bailable as a matter of right must be released pending and
13 during trial on the defendant’s own recognizance with only the
14 mandatory conditions of release required under Rule 7.3(a). This rule
15 does not apply if the court determines that such a release will not
16 reasonably assure the defendant’s appearance, **protect against the
17 intimidation of witnesses, and protect the safety of the victim, and
18 any other person in the community or protect others or the
19 community** from risk of harm by the defendant. If the court makes
20 such a determination, it must impose the least onerous conditions of
21 release set forth in Rule 7.3(d).

22 AVCV suggests the following addition to Rule 7.2(c)(1)(A)(ii):

23 After a defendant is convicted of an offense for which the defendant
24 will, in all reasonable probability, receive a sentence of imprisonment,
25 the court may not release the defendant on bail or the defendant’s own
recognizance unless: the parties stipulate otherwise and the court
approves the stipulation. **If the person is released the court shall
require conditions of release that protect the safety of the victim,
any other person, or the community.**

AVCV suggests the following additions to Rule 7.2(c)(1)(B):

1 If a defendant is convicted of a felony offense and is sentenced to
2 prison, the court may not release the defendant on bail or on the
3 defendant's own recognizance pending appeal unless the court, **after**
4 **considering the views of the victim**, finds the defendant is in such a
5 physical condition that continued confinement would endanger the
6 defendant's life. **If the person is released the court shall require**
7 **conditions of release that protect the safety of the victim, any**
8 **other person, or the community.**

9 AVCV suggests the following addition to Rule 7.2(c)(2)(C)(i):

10 Upon the filing of a timely notice of appeal, the court—on motion or
11 on its own—may amend the conditions of release if it finds a
12 substantial risk exists that the defendant presents a danger to **the**
13 **victim**, another person, or the community, or the defendant is unlikely
14 to return to court if required to do so after the appeal concludes.

15 AVCV suggests the following changes to Rule 7.2(c)(2)(C)(iii):

16 The court may amend the conditions of release in accordance with the
17 standards set forth in Rule 7.3 and Rule 7.4(b). In determining the
18 method of release or the amount of bail, the court must consider the
19 nature and circumstances of the offense, family or local ties,
20 employment, financial resources, the defendant's character and mental
21 condition, the length of residence in the community, the record of
22 arrests or convictions, the risk of harm to **other persons the victim** or
23 the community, and appearances at prior court proceedings.

24 **Rule 7.3(a)**

25 AVCV proposes Rule 7.3(a), Conditions of Release, be amended to require a
mandatory no-contact order unless the Court clearly finds good cause to conclude
the victim's safety will be protected without one. AVCV suggests the following
changes to Rule 7.3(a):

Every order of release must contain the following conditions:

- (1) the defendant must appear at all court proceedings;

- 1 (2) the defendant must not commit any criminal offense;
- 2 (3) the defendant must not leave Arizona without the court's
permission; **and**
- 3 (4) if a defendant is released during an appeal after judgment and
sentence, the defendant will diligently pursue the appeal; **and**
- 4 **(5) the defendant not contact the victim, unless the court**
5 **clearly finds good cause to conclude that the victim's safety**
6 **would be protected without a no-contact order.**

7 **Rules 7.3(c), 7.3(c)(2)(A), 7.3(c)(2)(B)**

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9 AVCV proposes amendments to Rules 7.3(c), 7.3(c)(2)(A), 7.3(c)(2)(B),
10 Discretionary Conditions of Release, for the same reasons stated above in AVCV's
11 proposed amendments to Rules 7.2(a)(2), 7.2(c)(1)(A)(ii), 7.2(c)(1)(B),
12 7.2(c)(2)(C)(i), and 7.2(c)(2)(C)(iii). AVCV suggests the following changes to
13

14 **Rule 7.3(c):**

15 The court may impose as a condition of release one or more of the
16 following conditions, if the court finds the condition is reasonably
17 necessary to secure the defendant's appearance or to protect **another**
18 **person the victim** or the community from risk of harm by the
19 defendant. In making this determination, the court must consider the
results of a risk assessment approved by the Supreme Court or a law
enforcement agency's lethality assessment, if any.

20 AVCV suggests the following changes to Rule 7.3(c)(2)(A):

21 A court's imposition of a monetary condition of release must be based
22 on an individualized determination of the defendant's risk of non-
23 appearance, risk of harm to **others the victim** or the community, and
24 the defendant's financial circumstances. The court may not rely on a
25 schedule of charge-based bond amounts, and it must not impose a
monetary condition that results in unnecessary pretrial incarceration
solely because the defendant is unable to pay the imposed monetary
condition.

1
2 AVCV suggests the following changes to Rule 7.3(c)(2)(B):

3 If the court determines a monetary condition is necessary, it must
4 impose the least onerous type of condition in the lowest amount
5 necessary to secure the defendant's appearance or protect **other**
6 **persons the victim** or the community from risk of harm by the
7 defendant.

8
9 **Rule 7.4(b)(2)**

10 AVCV proposes an amendment to Rule 7.4(b)(2), Procedure- Motion
11 Requirements and Hearing, for the same reasons stated above in AVCV's proposed
12 amendments to Rules 7.2(a)(2), 7.2(c)(1)(A)(ii), 7.2(c)(1)(B), 7.2(c)(2)(C)(i), and
13 7.2(c)(2)(C)(iii). Including the victim's right to be heard ensures the rule provision
14 is fully in accord with the victim's constitutional right to be heard regarding post-
15 arrest release decisions under Ariz. Const. art. II, § 2.1(A)(4). AVCV suggests the
16 following addition to Rule 7.4(b)(2):

17
18 The court may modify the conditions of release only after giving the
19 parties **and the victim** an opportunity to respond to the proposed
20 modification. A motion to reexamine the conditions of release must
21 comply with victims' rights requirements provided in Rule 39.

22
23 **Rule 7.5(c)**

24 AVCV proposes an amendment to Rule 7.5(c), Review of Conditions;
25 Revocation of Release on Victim's Petition, to fully comport with the
constitutional language of Ariz. Const. art. II, § 2.1(A)(1), guaranteeing victims a

1 right to be treated with fairness, respect, and dignity, and to be free from
2 intimidation, harassment, and abuse throughout the criminal justice process.

3
4 AVCV suggests the following addition to Rule 7.5(c):

5 On Victim’s Petition. If the prosecutor decides not to file a petition
6 under (a), the victim may petition the court to revoke the defendant’s
7 bond or own recognizance release, or otherwise modify the conditions
8 of the defendant’s release. Before filing a petition, the victim must
9 consult with the prosecutor about the requested relief. The petition
10 must include a statement under oath by the victim asserting any
11 harassment, threats, physical violence, **abuse**, or intimidation by the
12 defendant, or on the defendant’s behalf, against the victim or the
13 victim’s immediate family.

14 **Rule 7.5 (d)(2)(B)**

15 AVCV proposes amending Rule 7.5(d)(2)(B), Hearing on Moderation of
16 Conditions-Release, to specifically require a consideration of the safety of the
17 victim for the same reasons stated above in AVCV’s proposed amendments to
18 Rules 7.2(a)(2), 7.2(c)(1)(A)(ii), 7.2(c)(1)(B), 7.2(c)(2)(C)(i), and 7.2(c)(2)(C)(iii).

19 AVCV suggests the following addition to Rule 7.5(d)(2)(B):

20 The court may revoke release of a defendant charged with a felony if,
21 after a hearing, the court finds that the proof is evident or presumption
22 great as to the present charge and: the defendant poses a substantial
23 danger to **the victim**, another person, or the community, and no other
24 conditions of release will reasonably assure the safety of the other
25 person or the community.

Rule 7.6(c)(2)

1 AVCV proposes an amendment to Rule 7.6(c)(2), Transfer and Disposition
2 of Bond- Forfeiture Procedure, to comply with the notice provisions under Ariz.
3 Const. art. II, § 2.1(A)(3). AVCV suggests the following addition:
4

5 After issuing the arrest warrant, the court must set a hearing within a
6 reasonable time, no later than 120 days after it issued the warrant,
7 requiring the parties and any surety to show cause why the bond
8 should not be forfeited. The court must notify the parties **and, if**
9 **requested, the victim** and any surety of the hearing in writing or
electronically. The forfeiture hearing may be combined with a Rule
7.5(d) hearing.

10
11 **Rules 8.1(e), 8.2(e), 8.4(a), 8.5(b)**

12 AVCV proposes amendments to Rules 8.1(e), 8.2(e), 8.4(a), and 8.5(b) for
13 the reasons stated above in AVCV’s proposed amendments to Rule 5.1(c)(2) and in
14 order to ensure these provisions are fully in accord with victims’ constitutional
15 right to a speedy trial under Ariz. Const. art. II, § 2.1(A)(10) and victims’ right to
16 be present under Ariz. Const. art. II, § 2.1(A)(3).
17

18 Once a victim has attended criminal proceedings and continuances have
19 been granted over the victim’s speedy trial objections, a victim who wants to
20 attend trial should not be prevented from doing so because of the schedules of the
21 court or the parties (other trials, vacations, etc.). Courts should consider
22 reasonable requests from victims who wish to exercise their constitutional right to
23 be present when setting trial dates. AVCV suggests the following addition to Rule
24
25 8.1(e), Suspension of Rule 8:

1 No later than 25 days after a superior court arraignment, either party
2 may move for a hearing to establish extraordinary circumstances
3 requiring a suspension of Rule 8. No later than 5 days after the motion
4 is filed, the court must hold a hearing on the motion, **permit the**
5 **victim to be heard**, and, **after considering the victim's right to a**
6 **speedy trial**, make findings of fact about whether extraordinary
7 circumstances exist that justify the suspension of Rule 8. If the trial
8 court finds that Rule 8 should be suspended, the court must
9 immediately transmit its findings to the Supreme Court Chief Justice.
10 If the Chief Justice approves the findings, the trial court may suspend
11 Rule 8's provisions and reset the trial for a later specified date.

12
13 AVCV suggests the following additions to Rule 8.2(e):

14
15 The superior court must set a specific trial date either at the
16 arraignment or a pretrial conference, unless the court has suspended
17 Rule 8. **In setting the date, the court shall consider the views of**
18 **the victim.**

19
20 AVCV suggests the following addition to Rule 8.4(a):

21
22 Delays caused or resulting from the following time periods are
23 excluded from the time computations set forth in Rules 8.2 and 8.3
24 **after considering the victim's right to a speedy trial:**

- 25 (1) those caused by or on behalf of the defendant, whether or not intentional or willful, including, but not limited to, delays caused by an examination and hearing to determine competency or intellectual disability, the defendant's absence or incompetence, or the defendant's inability to be arrested or taken into custody in Arizona;
- (2) a remand for a new probable cause determination under Rules 5.5 or 12.9;
- (3) a time extension for disclosure under Rule 15.6;
- (4) trial calendar congestion, but only if the congestion is due to extraordinary circumstances, in which case the presiding judge must promptly apply to the Supreme Court Chief Justice to suspend Rule 8 or any other Rule of Criminal Procedure;
- (5) continuances granted under Rule 8.5;
- (6) joinder for trial with another defendant for whom the time limits have not run, if good cause exists for denying severance, but in all

1 other cases, severance should be granted to preserve the applicable
2 time limits; and
3 (7) the setting of a transfer hearing under Rule 40.

4 AVCV suggests the following addition to Rule 8.5(b):

5 A court may continue trial only on a showing that extraordinary
6 circumstances exist and that delay is indispensable to the interests of
7 justice, **is not a denial of the victim's right to a speedy trial**, and only
8 for so long as is necessary to serve the interests of justice. The court
9 must consider the rights of the defendant and any victim to a speedy
10 disposition of the case. The court must state specific reasons for
11 continuing trial.

12 **Rule 9.3(b)(1)**

13 AVCV proposes amending Rule 9.3 (b)(1), Spectators, to include the
14 victim's right to be treated with fairness, respect, and dignity, and to be free from
15 intimidation, harassment, and abuse. There are instances, especially involving
16 minor victims or victims of sex crimes, when trial courts may elect to close the
17 court room to the public to protect the victim. *See Globe Newspaper Co. v.*
18 *Superior Court for Norfolk County*, 457 U.S. 596 (1982). Thus, AVCV suggests
19 the following addition to Rule 9.3(b)(1):

20
21 All proceedings must be open to the public, including news media
22 representatives, unless the court finds, on motion or on its own, that an
23 open proceeding presents a clear and present danger to the defendant's
24 right to a fair trial by an impartial jury: **or to the victim's rights to be
25 treated with fairness, respect, and dignity and to be free from
intimidation, harassment, and abuse.**

Rule 10.2(c)(2)

1
2 AVCV proposes amending Rule 10.2(c)(2), Change of Judge as a Matter of
3 Right-Timing, as a change of judge within ten days of trial could implicate
4 victims' constitutional right to a speedy under Ariz. Const. art. II, § 2.1(A)(10) if
5 the new judge were not available to proceed. Victims should also be given notice
6 so they can lodge an objection if necessary. AVCV suggests the following
7 addition to Rule 10(c)(2):
8

9 Despite (c)(1), if a new judge is assigned to a case less than 10 days
10 before trial (inclusive of the date of assignment), a notice of change of
11 judge must be filed, with appropriate actual notice to the other party or
12 parties **and the victim**, no later than by 5:00 p.m. on the next business
13 day following actual receipt of a notice of the assignment or by the
14 start of trial, whichever occurs earlier.

14 **Rule 10.3(c)**

15 AVCV proposes amending Rule 10.3(c), Changing the Place of Trial, to
16 include giving the victim a right to be heard on the matter and considering the
17 victims' right to be present at trial under Ariz. Const. art. II, § 2.1(A)(3). A change
18 of venue could cause a hardship on a victim who has a constitutional right to be
19 present, but would suffer a hardship if the trial location changes. Including victims
20 when deciding who can be heard on the matter ensures this rule provision will
21 direct courts to consider victims' constitutional right to be present before a
22 decision is made. AVCV suggests the following addition to Rule 10.3:
23
24
25

A party seeking to change the place of trial must file a motion

1 seeking that relief. The motion must be filed before trial, and, in
2 superior court, at or before a pretrial conference. **The victim must be**
3 **given the right to be heard on the matter. Prior to deciding the**
4 **motion, the court must consider the victim’s right to be present.**

5 **Rule 15.1(e)(2)**

6 AVCV proposes amending Rule 15.1(e)(2), Disclosures upon Request, to
7 include a consideration of a victims’ constitutional right to be treated with fairness,
8 respect, and dignity, and to be free from intimidation, harassment, and abuse
9 throughout the process. AVCV suggests the following addition to Rule
10 15.19(e)(2):
11

12 The State may impose reasonable conditions, including an appropriate
13 stipulation concerning chain of custody to protect physical evidence or
14 to allow time for the examination or testing of any items. **In the case**
15 **of 911 calls from a victim, before permitting access or testing of**
16 **such tapes, the court must consider the victim’s rights to be**
17 **treated with fairness, respect, and dignity and to be free from**
18 **intimidation, harassment, and abuse.**

19 **Rule 15.1(g)(1)**

20 AVCV proposes an amendment to Rule 15.1(g)(1), Disclosure by Court
21 Order, to ensure the rule provision is fully in accord with victims’ constitutional
22 right to refuse a discovery request under Ariz. Const. art. II, § 2.1(A)(5). The
23 Arizona Victims’ Bill of Rights abrogated a defendant’s right under Rule 15 to
24 seek discovery from an unwilling victim. *See State v. Warner*, 168 Ariz. 261 (Ct.
25 App.1990). AVCV proposes the following addition to Rule 15.1(g)(1):

1 On the defendant's motion, a court may order any person **other than**
2 **the victim** to make available to the defendant material or information
3 not included in this rule if the court finds:

4 **Rules 15.1(i)(3)(A)(i), 15.1(i)(4)(A), and Rule 15.1(i)(4)(B)**

5 AVCV proposes amendments to Rules 15.1(i)(3)(A)(i), 15.1(i)(4)(A), and
6 Rule 15.1(i)(4)(B), Additional Disclosures in a Capital Case and Rebuttal and
7 Penalty Phase Disclosures, to ensure the rule provision is consistent with the
8 privacy protections provided to victims under A.R.S. § 13-4434. AVCV suggests
9 the following addition to Rule 15.1(i)(3)(A)(i):
10

11 No later than 30 days after filing a notice of intent to seek the death
12 penalty, the State must disclose the following to the defendant: the
13 name and address of each person the State intends to call as a witness
14 at the aggravation hearing to support each alleged aggravating
15 circumstance, and any written or recorded statement of the witness,
16 **except that a victim's address or other locating information need**
17 **not be disclosed;**

18 AVCV suggests the following addition to Rule 15.1(i)(4)(A):

19 No later than 60 days after receiving the defendant's disclosure under
20 Rule 15.2(h)(1), the State must disclose the following to the
21 defendant: the name and address of each person the State intends to
22 call as a rebuttal witness on each identified aggravating circumstance,
23 and any written or recorded statement of the witness, **except that a**
24 **victim's address or other locating information need not be**
25 **disclosed;**

AVCV suggests the following addition to Rule 15.1(i)(4)(B):

the name and address of each person the State intends to call as a
witness at the penalty hearing, and any written or recorded statement
of the witness, **except that a victim's address or other locating**
information need not be disclosed;

1
2 **Rules 15.2(h)(1)(B) and 15.6(e)(2)**

3
4 AVCV proposes amendments to Rules 15.2(h)(1)(B) and 15.6(e)(2),
5 Defendant's Disclosures and Extension, in order to ensure the rule provisions are
6 fully in accord with a victims' constitutional right to a speedy trial under Ariz.
7 Const. art. II, § 2.1(A)(10). AVCV suggests the following addition to Rule
8
9 15.2(h)(1)(B):

10 The court may extend the deadline for the defendant's initial
11 disclosures under (h)(1) or allow the defendant to amend those
12 disclosures only if the defendant shows good cause or if the parties
13 stipulate to the deadline extension **and only after considering the**
victim's right to a speedy trial.

14 AVCV suggests the following addition to Rule 15.6(e)(2):

15 If a motion is filed under (e)(1), the court must grant reasonable time
16 to complete disclosure unless the court finds that the need for the
17 extension resulted from dilatory conduct or neglect, **would infringe on**
the victim's right to a speedy trial, or that the request is being made for
18 an improper reason by the moving party or a person listed in Rule
19 15.1(f) or 15.2(f).

20 **Rule 16.3(d)**

21 AVCV proposes an amendment to Rule 16.3(d), Pretrial Conference-Scope
22 of Proceeding, that would include the court's consideration of the views of the
23 victim. A number of motions or other matters can implicate victims' constitutional
24 rights. In those instances, victims' constitutional right to due process requires an
25

1 opportunity to be heard on a matter. Amending this rule to comport with the due
2 process rights of victims would not put victims in an elevated position over the
3 parties or infringe on the rights of the accused. AVCV suggests the following
4 addition to Rule 16.3(d):
5

6
7 At the conference, the court, **after considering the views of the
victim**, may:

- 8 (1) hear motions made at or filed before the conference;
- 9 (2) set additional pretrial conferences and evidentiary hearings as
appropriate;
- 10 (3) obtain stipulations to relevant facts; and
- 11 (4) discuss and determine any other matters that will promote a fair
and expeditious trial, including imposing time limits on trial
12 proceedings, using juror notebooks, giving brief pre-voir dire opening
statements and preliminary instructions, and managing documents and
13 exhibits effectively during trial.

14 15 **Rules 16.4(a) and 16.4 (d)**

16 AVCV proposes amendments to Rules 16.4(a) and 16.4(d), Dismissal of
17 Prosecution and Effect of Dismissal, that require courts to consider the views of
18 the victim and their constitutional rights to justice and due process before
19 dismissing a criminal prosecution. AVCV suggests the following addition to Rule
20 16.4(a):
21

22
23 On the State's Motion. On the State's motion and for good cause, the
court, after considering the views of the victim, may order a
24 prosecution dismissed without prejudice if it finds that the dismissal is
not to avoid Rule 8 time limits.
25

AVCV suggests the following addition to Rule 16.4(d):

1 Dismissal of a prosecution is without prejudice to commencing
2 another prosecution, unless the court finds, **only after considering the**
3 **rights of the victim to justice and due process**, that the interests of
4 justice require that the dismissal to be with prejudice.

5 **Rule 17.1(f)(1)(C)**

6 AVCV proposes an amendment to Rule 17.1(f)(1)(C), The Defendant's
7 Plea- Limited Jurisdiction Court Alternatives for Entering a Plea, to include the
8 victim's presence in an effort to uphold victims' constitutional rights to be present
9 at all criminal proceedings where a defendant has a right to be present under Ariz.
10 Const. art. II, § 2.1(A)(3), and to be heard regarding a plea under Ariz. Const. art.
11 II, § 2.1(A)(4). Victims' constitutional rights to be present and heard should be
12 upheld regardless of whether the defendant appears in-person or telephonically.
13

14 AVCV suggests the following addition to Ruel 17.1(f)(1)(C):

15
16 Before accepting a plea, the court must hold a telephonic hearing with
17 the parties, **and the victim if any**, inform the defendant that the offense
18 may be used as a prior conviction, and find:

- 19 (i) it has personally advised the defendant of the items set forth in
20 the form;
21 (ii) a factual basis exists for believing the defendant is guilty of the
22 charged offenses; and
23 (iii) the defendant's plea is knowingly, voluntarily, and intelligently
24 entered.

25 **Rule 26.7(b)(2)**

AVCV proposes an amendment to Rule 26.7(b)(2), Presentencing Hearing;
Prehearing Conference, to ensure victims' constitutional right to be heard under

1 Ariz. Const. art. II, § 2.1(A)(4) is upheld as well as A.R.S. § 13-4426 (victims have
2 a right to present evidence and to be present and heard at sentencing proceedings).

3
4 AVCV suggests the following additions to Rule 26.7(b)(2):

5 At the hearing, **the victim must be afforded the right to be heard and**
6 any party may introduce any reliable, relevant evidence, including
7 hearsay, to show aggravating or mitigating circumstances, to show
8 why the court should not impose a particular sentence, or to correct or
9 amplify the presentence, diagnostic, or mental health reports.

10 **Rule 26.10(b)(1)**

11 AVCV proposes an amendment to Rule 26.10(b)(1), Pronouncing Judgment
12 and Sentence, to ensure the rule provision is in accord with victims' constitutional
13 right to be heard under Ariz. Const. art. II, § 2.1(A)(4) as well as A.R.S. § 13-
14 4426(B) (victims have a right to be heard at sentencing proceedings). AVCV
15 suggests the following addition to Rule 26.10(b)(1):

16
17 When the court pronounces sentence, it must: give the defendant **and**
18 **the victim** an opportunity to address the court;

19 **Rules 27.3(c)(1)**

20
21 AVCV proposes an amendment to Rule 27.3(c)(1), Modification of
22 Conditions or Regulations- By the Court, that requires any modification to comply
23 with the rights of the victims. Adding the proposed language will ensure the rule is
24 consistent with A.R.S. § 13-4427 (victims' right to be present and heard at
25

1 probation modification and revocation proceedings). AVCV suggests the
2 following addition to Rule 27.3(c)(1).

3
4 After giving notice to the State, the probationer, and a victim who has
5 the right to notice under Rule 27.10, the court may modify or clarify
6 any term, condition, or regulation of probation. The court's authority
7 to modify probation must comply with due process, **the rights of the
8 victim**, statutory limitations, and party agreement.

8 **Rule 27.4(a)**

9 AVCV proposes an amendment to Rule 27.4(a), Early Termination of
10 Probation-Discretionary Probation Termination, upholding the victim's right to be
11 heard. Adding the proposed language will ensure the rule provision is consistent
12 with A.R.S. § 13-4427 (victims' right to be present and heard at probation
13 modification and revocation proceedings). AVCV suggests the following addition
14 to Rule 27.4(a):
15
16

17 At any time during the term of probation, the court may terminate
18 probation and discharge the probationer as provided by law. The court
19 may take such action on the probationer's motion, the probation
20 officer's motion, or on its own, but only after any required notice **and
21 opportunity to be heard** to the victim and the State.

21 **Rule 27.7(c)**

22 AVCV proposes an amendment to Rule 27.7(c), Initial Appearance After
23 Arrest, giving victims an opportunity to be heard when a probationer is arrested for
24 violating his conditions of probation. This is essential in cases where the victim's
25

1 safety is at issue. Adding the proposed language will ensure the rule is consistent
2 with A.R.S. § 13-4427 (victims' right to be present and heard at probation
3 modification and revocation proceedings). AVCV suggests the following addition
4 to Rule 27.7(c):
5

6 At the initial appearance, the court must advise the probationer of the
7 probationer's right to counsel under Rule 6, inform the probationer
8 that any statement the probationer makes before the hearing may be
9 used against the probationer, set the date of the revocation
10 arraignment, and make a release determination, **after considering the
11 views of the victim.**

11 **Rule 27.8(b)(2)**

12 AVCV proposes an amendment to Rule 27.8(b)(2), Probation Revocation,
13 adding that victims have a right to be heard at a probation revocation proceeding.
14 Adding the proposed language will ensure the rule provision is consistent with
15 A.R.S. § 13-4427 (victims' right to be present and heard at probation modification
16 and revocation proceedings). AVCV suggests the following changes:
17

18 The probationer **and the victim has have** a right to be present at the
19 violation hearing. If the probationer was previously arraigned under
20 Rule 27.8, the hearing may proceed in the probationer's absence under
21 Rule 9.1.

22 **Rules 31.3(b)(1), 31.3(e), and 31.9(c)(2)**

23 AVCV proposes amendments to Rules 31.3(b)(1), 31.3(e), and 31.9(c)(2)
24 requiring appellate courts to consider any applicable rights of victims, such as the
25 victim's constitutional right to a speedy trial or disposition and a prompt and final

1 conclusion of the case after conviction and sentence under Ariz. Const. art. II, §
2 2.1(A)(10), before suspending the rules, modifying a deadline, or extending a
3 deadline. AVCV suggests the following addition to Rule 31.3(b)(1):
4

5 An appellate court on motion or on its own, **after considering the**
6 **rights of the victim**, may suspend an appeal if a motion under Rule 24
7 or a petition under Rule 32 is pending to permit the superior court to
8 decide those matters.

8 AVCV suggests the following addition to Rule 31.3(e):

9 A party seeking to modify a deadline in the appellate court must
10 obtain an appellate court order authorizing the modified deadline. An
11 appellate court for good cause may shorten or extend the time for
12 doing any act required by Rule 31, a court order, or an applicable
13 statute **only after considering the rights of the victim**.

14 AVCV suggests the following addition to Rule 31.9(c)(2):

15 For good cause, the appellate court, **only after considering the rights**
16 **of the victim**, may grant one 20-day extension for transmitting the
17 record on appeal. The appellate court also may order the superior court
18 clerk to transmit the electronic record, or a portion of the record, at an
19 earlier time or it may order physical transmission of the entire record
20 or portions of the record under (d). The appellate clerk must distribute
21 a copy of any order entered under this rule to the parties, the superior
22 court clerk, and to the requesting authorized transcriber.

21 **Rules 32.4(c)(1)(C), 32.4(c)(2)(B), and 32.6(a)**

22 AVCV proposes amendments to Rules 32.4(c)(1)(C), 32.4(c)(2)(B), and
23 32.6(a), Time for Filing a Petition for Post-Conviction Relief-Extensions in Capital
24 and Non-Capital Cases, and Response Times. AVCV proposes a consideration of
25

1 the rights of the victim be added to the language of the rules. In many cases, the
2 victims' constitutional right to a prompt and final conclusion of the case after
3 conviction and sentence under Ariz. Const. art. II, § 2.1(A)(10) is implicated by the
4 multiple time extensions. AVCV has encountered this situation on numerous
5 occasions, including *State v. Fitzgerald*, *State v. Glassell*, and *State v. Miller*,
6 where a homicide was committed followed by an arrest more than ten years prior
7 to the post-conviction proceedings resolving in Arizona's Courts. As stated above
8 in AVCV's proposed amendments to the Rule 8 provisions, a prolonged criminal
9 justice process could cause secondary victimization. AVCV suggests the
10 following addition to Rule 32.4(c)(1)(C):
11
12

13
14 For good cause, the court may grant a capital defendant one60-day
15 extension in which to file a petition. The court may grant additional30-
16 day extensions for good **cause only after considering the rights of
the victim.**

17 AVCV suggests the following addition to Rule 32.4(c)(2)(B):

18 For good cause, the court may grant a defendant in a noncapital case a
19 30-day extension to file the petition. The court may grant additional
20 30-day extensions only on a showing of extraordinary circumstances
and only after considering the rights of the victim.

21 AVCV suggests the following addition to Rule 32.6(a):

22
23 The State must file its response no later than 45 days after the
24 defendant files the petition. The court may grant the State a 30-day
25 extension to file its response for good cause **only after considering
the rights of the victim**, and may grant the State additional extensions
only on a showing of extraordinary circumstances. The State's
response must include a memorandum that contains citations to

