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**IN THE SUPREME COURT
STATE OF ARIZONA**

In the Matter of:)	
)	Supreme Court No. R-20-0022
)	
PETITION TO AMEND)	
RULE 28, ARIZ. R. SUP. CT.)	Comment in Support of
)	Petition to Amend
)	Rule 28, Ariz. R. Sup. Ct.
_____)	

Pursuant to Rule 28(D), Rules of the Supreme Court, I respectfully submit this comment for the Court’s consideration.

I support the proposal to amend Rule 28(g)(3), Ariz. R. Sup. Ct., and urge this Court to disclose more information about its actions when it discharges its constitutionally mandated administrative duty to make court rules.

Rule-change petition R-20-0022 proposes a relatively modest amendment that would make the Court’s rule-making decisions more transparent, which will benefit the public in general and lawyers in particular.

The Court’s rule-making function, separate from its adjudicative function, is a critical part of the state’s legal system. The Court exercises constitutional authority over the entire state judicial system, in part by adopting procedural rules as well as substantive rules regulating lawyers. *Scheehle v. Justices of the Supreme Court*, 211 Ariz. 282, 289, ¶ 23 (Ariz. 205) (“This Court fulfills the administrative responsibilities assigned to it under the constitution by, among other methods, promulgating rules”). Article 6, section 1 of the Arizona Constitution creates an integrated judiciary, giving the court the power to regulate all state courts as well as the practice of law. *Id.* at ¶ 290, ¶ 29. In addition, Article 6, § 5(5) gives this Court the “[p]ower to make rules relative to all procedural matters in any court.”

Disclosing the reasons for its decisions on rule-change petitions and how individual justices voted on each petition would help the general public better understand how our legal system works. The Court’s administrative control over rules governing lawyers, judges, court procedures and court records affects every citizen of this state who has anything to do with the legal system. If citizens want legal advice, they use a lawyer who is admitted and regulated by Court rules that are adopted, changed or eliminated via rule-change petitions. If citizens want to contest a civil traffic ticket, they must abide by rules promulgated by this Court the same way. And yet there is no public record documenting this Court’s reasoning why rules are adopted or not adopted and how individual justices vote on each

petition.

In addition, carrying out the constitutionally mandated administrative duties are official acts, and the public is entitled to know how individual justices discharge their official duties and the reasons for the Court's actions. The Court already discloses this kind of information – explanations of its rulings, who joins the majority and who dissents – when issuing opinions and memorandum decisions. It should do the same on rule-change petitions.

Explaining the Court's reasons for its actions on rule-change petitions also would help lawyers specifically. Without an explanation, the petitioner (usually a lawyer or a group of lawyer) is left with the judicial equivalent of a parent responding to a child with "Because I said so." But the reason for not amending an existing rule, or not adopting a new rule, would be particularly important for lawyers who then need to construe and apply the rule. If the Court has granted a rule-change proposal, does that mean the Court, in its administrative capacity, did not believe the existing rule was adequate? Or is it choosing to change the rule because of new or different priorities? If the Court denies a rule-change proposal, does that mean the Court believes the existing rule adequately addresses the issue prompting the proposal? Or that the proposal isn't a good one but that another proposed change might be?

Finally, identifying how individual justices vote on rule-change petitions is

no different from how the Court already discloses dissenting votes when the Court denies petitions for review. Individual justices who would have voted to grant petitions for review that are denied are listed on the public minutes of the Court's conferences, and, pursuant to court rule, also are noted in published Court of Appeals decisions. Rule 111(f), Ariz. R. Sup. Ct. ("If a Petition for Review is denied and a justice of the Supreme Court voted to grant review, such justice's dissenting vote shall be reported in the caption of the decision of the Court of Appeals, if such decision is published in accordance with these rules").

Petition R-20-0022 proposes that the Court document its very important administrative decisions on rules that govern the legal system. By adopting the proposed amendment, and providing information to the public, the Court would be following the spirit of its robust public-records policy. Rule 123(c)(1), Ariz. R. Sup. Ct. ("Historically, this state has always favored open government and an informed citizenry. In the tradition, the records in all courts and administrative offices of the Judicial Department of the State of Arizona are presumed to be open..."). After all, democracy, as this Court has said, "blooms where the public is informed and stagnates where secrecy prevails." *Phoenix Newspapers v. Jennings*, 107 Ariz. 557, 561 (1971) (overturning a justice of the peace's order closing a preliminary hearing to the public, including the news media).

For the reason stated above and in Petition R-20-0022, I respectfully urge

this Court adopt the proposed amendments to Rule 28(g)(3).

RESPECTFULLY SUBMITTED this May 1, 2020.

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