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IN THE SUPREME COURT OF THE STATE OF ARIZONA

In the Matter of:) No. R-20-0022
)
) COMMENT OF DAVID EUCHNER
Petition to Amend Rule 28, Arizona) REGARDING PETITION TO
Supreme Court) AMEND RULE 28, ARIZONA
) SUPREME COURT
_____)

Pursuant to Rule 28 of the Arizona Rules of the Supreme Court, undersigned hereby submits the following comment to the above-referenced petition. Undersigned is an attorney who practices primarily in this Court through representation of indigent defendants and as an *amicus curiae*, has been appointed to serve on several committees and task forces of this Court, and participates both as a petitioner and a commenter in the rule change process.

Undersigned supports the petition filed by Mauricio Hernandez to amend Ariz. R. Sup. Ct. 28(g)(3). This Court’s reasoning in adopting or denying rule change petitions is unnecessarily shrouded in secrecy. When a change is adopted, it is readily apparent that the Court considered the change appropriate. But when a rule change petition is denied, and no reasoning is provided, the legal community is left guessing

as to the reason. Some petitioners take the opportunity to resubmit substantially the same petition year after year. For example, in Petition No. R-17-0028, the Maricopa County Attorney's Office not only submitted an identical petition as its 2016 proposal, R-16-0031, but it frankly admitted that it did so because this Court expanded from five justices to seven justices and it felt the newest justices should have an opportunity to vote on their proposal.

If the Court communicated through a brief decision order why a petition is denied, the petitioner and other interested parties would have a greater understanding of what kind of contribution could be made in the future to improve the rules. For example, if the Court considered the petition poorly conceived from the beginning and soundly rejected it, the petitioner should recognize that it would be unwise to pursue that idea any further. If, on the other hand, the Court appreciated the spirit and purpose of the petition but thought that the suggested changes fell short of the mark or had some fatal flaws, the petitioner could correct those flaws and submit a new petition that might be adopted.

Recording the votes on each petition might also provide guidance to petitioners who are considering whether the Court might be receptive to a particular change. If the vote to adopt a petition falls short by one vote, the petitioner may see purpose in going back to the drawing board to improve on the proposal, whereas a unanimous defeat might lead a petitioner to scrap the idea altogether. Of course, one

should not put too much weight on how the votes were cast, as opposed to the reasoning behind those votes. But this Court already requires that if a petition for review is denied, the minutes will reflect the names of any justices who voted to grant review; and reporting that information has not resulted in substantial confusion.

A short order that explains why a rule change petition is denied, which is unpublished and not citable as authority, would be of great benefit to judges and practitioners alike.

DATED: May 1, 2020.

By /s/ David J. Euchner
David J. Euchner

This comment e-filed this date with:

Supreme Court of Arizona

Copy of this Comment
Electronically mailed this date to:

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