

Rosemarie Pena-Lynch
Bar No 023400
Mcpa. Office of Public Defense Svc.
620 W. Jackson Suite 3076
Phoenix, AZ 85003
602 506-7228
Rosemarie.pena-lynch@maricopa.gov

Gary Kula
Bar No. 012507
Mcpa. Public Defender's Office
620 W. Jackson, Suite 4015
Phoenix, AZ 85003
602 506-7711
gary.kula@maricopa.gov

Steve Koestner
Bar No. 011566
Mcpa. Office of Legal Advocate
222 N. Central, Suite 154
Phoenix, AZ 85004
602 506-4111
Steve.koestner@maricopa.gov

Shannon Burns
Bar No. 015976
Mcpa. Office of the Public Advocate
106 E. Baseline Rd
Mesa, AZ 85210
602 372-2815
Shannon.Burns@maricopa.gov

Sherri McGuire Lawson
Bar No. 013605
Mcpa. Office of Legal Defender
222 N. Central, Suite 8100
Phoenix, AZ 85004
602 506-8800
sherri.mcguire@maricopa.gov

In the Matter of:

PETITION TO AMEND RULE 15.8(a)
OF THE ARIZONA RULES OF
CRIMINAL PROCEDURE

Supreme Court No. R-22-0021

Joint Comment by the Directors of the Maricopa
County Indigent Defense Agencies

The Maricopa County Indigent Defense Offices, which jointly represent the majority of indigent individuals charged with criminal offenses in our jurisdiction, support the proposed amendment to Rule 15.8(a) of the Arizona Rules of Criminal Procedure. This rule change is long overdue and necessary to eliminate the arbitrary distinction between the discovery protections afforded to defendants who are proffered plea agreements prior

to a probable cause finding, and those proffered plea agreements after probable cause has been found at a preliminary hearing or grand jury proceeding. The rule as currently written creates an illogical situation by which defendants who have not yet been provided a probable cause hearing pursuant to Article 2, § 30 of the Arizona Constitution are forced to make high-stakes plea decisions with fewer discovery rights than similarly situated defendants for whom probable cause has been established. The necessity of this rule change is especially critical because of the significant expansion of the scope of early disposition courts in Maricopa and other Arizona counties.

“Early Disposition Courts” in Maricopa County have expanded far beyond their original intent to promote efficacy in resolution of low-level drug possession cases.

In Maricopa County, between July 2020 and April 2022, approximately 32.5% of felony criminal cases assigned to the staffed indigent defense offices were initiated by direct complaint and flowed through the Maricopa County Superior Court’s Early Disposition Courts (EDC) ¹ Of those cases, 42.6% resolved by way of plea agreement. While the creation of the EDC was well intentioned and effective in its early years, it is a victim of its own success. The massive expansion of the EDC in Maricopa County has undermined due process and the protections afforded defendants by Arizona’s discovery rules.

The EDC was created after the 1996 passage of proposition 200, which modified how drug charges are prosecuted, “necessitating a change in the system to provide

¹ Previously called “expedited drug court.” From 2000-2020, EDC heard felony drug possession cases while non-drug felony cases were heard, using the same model, in the Regional Court Center (RCC). EDC and RCC were combined in 2020 and currently all the early resolution courts are referred to as EDC.

incentives to early pleas and earlier treatment.”² The goal of the EDC was to allow simple drug possession cases to resolve by plea agreement or diversion at the earliest opportunity. The EDC, as originally conceived, was effective in quickly getting prop 200 eligible defendants out of jail and into treatment programs.

The EDC model was expanded in 2000 with the consolidation of felony filings from the justice courts to four Regional Court Centers (RCC).³ The RCC was “designed to speed resolution of lower level criminal cases.” The Superior Court further explained RCC as follows:

The direct complaint program handles all felony complaints (typically Class 4, 5 and 6 felonies) from inception, eliminating complaint paperwork being transferred between the Justice Court system and Superior Court, with judicial officers able to preside over the full range of case complexities. Preliminary hearings and arraignments are consolidated to the same day at the RCC, which saves ten days of potential jail time for in-custody defendants, eliminates duplication of efforts, and reduces Sheriff Office transport of in-custody defendants to the various Justice Courts. Status Conferences are scheduled a few days in advance of the Preliminary Hearing to encourage early communication between the parties and promote possible case resolution.⁴

In its early years, the RCC, like the EDC, was effective in allowing defendants facing low level felony offenses to get out of jail and onto probation at the earliest opportunity. However, the practice in EDC has expanded over the past 20 years from prosecution of only proposition 200 drug cases, to prosecution of most low-level felony offenses, to prosecution of serious felonies of all types. It is now common for class 2 and 3 felonies to be set for status conferences in the RCC and for the State to make plea offers

2 See <https://superiorcourt.maricopa.gov/criminal/specialized-courts/>

3 See Maricopa County Superior Court [Administrative Order 2000-70](#).

4 See <https://superiorcourt.maricopa.gov/criminal/departments-information/> (page last updated 7/9/2019.)

that require years in prison. In addition to the changes in case type, the scope of discovery related to criminal investigations has also changed. Where prosecutions in the early 2000s were often limited to short police reports which were provided to counsel in EDC/RCC; discovery now includes hours of body-worn camera footage, recorded interviews, reports authored by all involved law enforcement, photos and more. However, discovery in EDC generally remains limited to the initial written reports. The reality of the current EDC system is that defendants are facing high-stakes plea decisions without the protections of a probable cause hearing or discovery rights.

Consequently, it is now rare for cases in the EDC to resolve at the first status conference. Defense attorneys routinely move for continuances of the status conference and preliminary hearing to investigate case related issues, obtain mitigation, and attempt to negotiate a more favorable plea offer. These efforts are necessary at this early stage in the case because the rejection of a plea offer in the EDC and subsequently proceeding to preliminary hearing will result in loss of the proffered plea agreement and any future plea agreement offered by the Maricopa County Attorney's Office (MCAO) will be presumptively harsher.⁵

Thus, while the EDC was created to eliminate backlogs in trials, it has instead created a backlog of cases in the pre-arraignment stage of criminal case proceedings. This result occurs as the person considers a plea offer to a term of years in prison at the very stage of proceedings in which criminal defendants have the fewest due process

⁵ See MCAO Prosecution Policies and Procedures, [Procedure 7.1\(J\)](#).

protections.⁶

The protections afforded by Rule 15.8 should apply in all criminal cases.

Rule 15.8 of the Rules of Criminal Procedure provides important guardrails necessary to protect a criminal defendant's fundamental rights of fairness and due process when deciding whether to enter a plea agreement or proceed to trial. Under the current practices in the EDC, however, the State can, and regularly does, make an end-run around those guardrails because the language of 15.8(a) inexplicably precludes felony cases filed by direct complaint from the disclosure obligations. While the proposed rule change will not remedy all the harms of MCAO's pre-arraignment plea policies, it will allow defendants the ability to make more informed decisions about whether to accept a plea agreement or proceed to trial.

Additionally, as argued in the petition, the proposed rule change will clarify that the state must provide Rule 15.1(b) discovery to the defense when proffering plea agreements in both felony *and* misdemeanor cases. This is a commonsense measure to promote fairness in pre-trial plea negotiations and promotes confidence in the criminal justice system. Regardless of the classification of an offense, an individual should not be in a position of waiving their rights and deciding whether to plead guilty, without the benefit of seeing the extent of the government's evidence.

For the reasons stated above, the directors of the indigent defense agencies of

⁶ In addition to the inapplicability of Rule 15 discovery rights, Rule 8 speedy trial rights and Rule 16 motions to challenge the constitutionality of evidence obtained by the government are inapplicable prior to arraignment.

Maricopa County support the proposed amendment to Rule 15.8(a) of the Arizona Rules of Criminal Procedure.