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IN THE SUPREME COURT OF THE STATE OF ARIZONA

In the Matter of:	) No. R-26-0024
	)
	) Reply to Comments to Petition to
Petition to Amend Arizona Rules of	) Amend Arizona Rules of Criminal
Criminal Procedure 1.9, 15.1, 32.6, and	) Procedure 1.9, 15.1, 32.6, and 33.6
33.6	)
	)
_____	)

Pursuant to Rule 28 of the Arizona Rules of the Supreme Court, Petitioner, David J. Euchner, hereby replies to the comments to his petition to amend Arizona Rules of Criminal Procedure 1.9, 15.1, 32.6, and 33.6, to allow ex parte motions and hearings for discovery.

Maricopa County Superior Court and State Bar comments.

The Maricopa County Superior Court and State Bar of Arizona both consider the petition premature, because *State v. Smith*, 585 P.3d 808 (Ariz. App. 2025), which the petition seeks to overrule by rule change, has a petition for review pending in this Court. *See* CR-26-0008-PR. Those comments assume this Court will grant review. They fail to account for Justice Bolick's concurring opinion in *Allen v. Sanders*, 240 Ariz. 569, 573 ¶ 22, 574 ¶ 29 (2016), which makes the point that the

rulemaking process is a preferable forum for deciding what the rules should say. Petition at 2. Petitioner agrees Smith's petition for review should be granted, but this Court may choose to deny that petition for several reasons. Additionally, it might depublish the opinion under Arizona Rule of the Supreme Court 111(g).¹ This Court should have options when deciding how to resolve the problem created by *Smith*.

On at least one prior occasion, in 2011, this Court was confronted simultaneously with a rule change petition and a petition for review on the same exact issue. In *Lear v. Fields*, 226 Ariz. 226 (App. 2011), the court of appeals held A.R.S. § 12-2203, colloquially referred to as the *Daubert*² statute, unconstitutionally infringed on this Court's rulemaking authority, and Lear petitioned for review, see No. CV-11-0038-PR. This Court was also considering the overhaul of the Arizona Rules of Evidence, see R-10-0035, which included the substantial change to Rule 702 that would bring Arizona in line with Federal Rule of Evidence 702 and *Daubert*. This Court denied Lear's petition for review and adopted the rule change.

Maricopa County Attorney's Office (MCAO) and Arizona Attorney General's Office (AGO) comments.

AGO's comment, while lengthy, largely relies on its arguments from *Smith* that convinced a three-judge panel to upend decades of practice, to which AGO itself

¹ Smith's counsel also suggested depublishation. *State v. Smith*, CR-,26-0008-PR, Petition for Review at 3, 8, 20.

² *Daubert v. Merrell Dow Pharmaceuticals*, 509 U.S. 579 (1993).

has assented (and continues that practice in other cases). However, most of AGO's argument against changing the rule has nothing to do with good policy, and the extent of its argument that addresses policy is weakened by its failure to grasp the nature of criminal defense work in Arizona.

It is remarkable that AGO never had a problem with ex parte hearings until a year ago in *Smith*. In the last decade, this Court appointed two task forces to restyle the Criminal Rules and to consider substantive changes to Arizona Rule of Criminal Procedure 32. The then-section chief of AGO's capital litigation section served on the Rule 32 Task Force, where discovery rules were written into Rule 32 (and now Rule 33). AGO was fully aware of the practice of ex parte discovery hearings and never expressed any concern with it. This alone invalidates all AGO's claims that ex parte hearings are dangerous to the perception of fairness.

MCAO's comment has some good insights. Although it purports to disagree with the petition, Petitioner does not see as much daylight between their two viewpoints. Petitioner agrees with MCAO about the need for some notice to appear in the public file that an ex parte motion was filed. MCAO's concerns about abuses of the ex parte process would actually be reduced if the petition is adopted. What MCAO fails to grasp is that ex parte litigation is the Wild West because there is no rule that helps to standardize the process. Adopting the petition would help to standardize that process.

A. Ex parte communications are “expressly authorized.”

The MCAO comment briefly mentions the “general prohibition” on ex parte communications but offers little more than citation to Ariz. R. Sup. Ct. 81, Canon 2.9(A). MCAO Comment at 2. This issue is the focus of the AGO comment, which acknowledges the exception in Canon 2.9(A)(5) that a court may “initiate, permit, or consider any ex parte communication when expressly authorized by law to do so.” AGO finds the exception inapplicable because no other rule expressly refers to allowing ex parte hearings for discovery matters. AGO Comment at 2-3.

AGO disputes this Court authorized trial courts to hold ex parte proceedings in *Morehart v. Barton*, 226 Ariz. 510 (2011), and *State v. VanWinkle*, 230 Ariz. 387 (2012). AGO is wrong. It is true that in *Morehart* the State never contested whether ex parte hearings are allowed for discovery purposes, and for that reason this Court assumed that then-Rule 15.9 “authorizes such a proceeding ancillary to the court’s appointment of a mitigation specialist...” 226 Ariz. at 513 ¶ 12. But this Court nevertheless stated:

Our holding today respects these provisions while ensuring capital cases are conducted in the manner the United States Supreme Court has said is constitutionally required. **To summarize, an ex parte hearing related to pretrial mitigation discovery is permitted under Rule 15.9(b) only when the defense has made a proper showing of a need for confidentiality.**

Id. at 515-16 ¶ 22 (emphasis added). And in *VanWinkle* this Court plainly authorized such proceedings: “[I]f VanWinkle was concerned about disclosing matters of trial

strategy or work product, he could have requested an ex parte hearing. *See* Ariz. R. Crim. P. 15.9(b) (allowing ex parte proceedings when defendant requires confidentiality).” 230 Ariz. at 391 ¶ 11. These quotes plainly constitute “express authorization” under Canon 2.9(A)(5).

AGO’s argument against *VanWinkle* is nothing more than asserting the statement is dictum. AGO mistakenly assumes that dictum cannot “expressly authorize.” AGO Comment at 5-6. This reflects a misunderstanding of the power of dictum. What dictum cannot do is control the question on a particular point. But if dictum expressly authorizes a particular action, then the action is “expressly authorized by law.” Obviously this Court would never have said *VanWinkle* could do something that he legally cannot. Notably, AGO fails to respond to the claim that “it is far-fetched to imagine that this Court used dictum to suborn ethical violations.” Petition at 5. “The State’s reticence perhaps reflects that there is no convincing argument” against that position. *State v. Glissendorf*, 235 Ariz. 147, 153 ¶ 24 (2014).

Even supposing AGO were correct that no law expressly authorizes ex parte hearings on discovery, adopting the rule change petition would indisputably expressly authorize them.

B. Ex parte hearings are appropriate for criminal defendants’ discovery requests and should not be subject to blanket prohibition.

Petitioner takes no issue with the assertion that ex parte proceedings are “disfavored” and “generally prohibited.” AGO Comment at 1, 3, 16; MCAO

Comment at 2, 3, 5, 6. Both terms imply exceptions to the general rule, including ex parte discovery requests by defendants under limited circumstances (as shown above). The general rule applies to all kinds of cases and all kinds of issues. The exception applies in narrow circumstances contemplated in this petition.

Many authorities cited by AGO for the proposition that ex parte proceedings are common until criticized by a higher court have nothing to do with discovery. AGO Comment at 7-8. The general prohibition on ex parte proceedings is to ensure that other parties' interests are protected. AGO relies on cases where the ex parte proceedings were found to be improper precisely because they infringed on the rights of the party that was given no notice. In *Glenn H. v. Hoskins*, the case “addresse[d] a single issue: whether the superior court had subject matter jurisdiction to grant a hospital’s employees’ oral requests, made via an emergency telephone line, to authorize medical procedures for a minor patient whose parents did not consent.” 244 Ariz. 404, 406 ¶ 1 (App. 2018).

In re Peck, 177 Ariz. 283 (1994), involved a corrupt nonlawyer justice of the peace who used his office to injure three people who opposed his election or had a personal grievance with him. One count involved ex parte communications with a defendant’s family and then calling the police to report his opinion of the weight of the evidence; hardly a judicial function. *Id.* at 285-86. AGO quotes *Peck* as saying: “other cases suggest, unfortunately, that [the ex parte practice] may occur all too

often.” AGO Comment at 7 (quoting *Peck*, 177 Ariz. at 286). The dependent clause beginning the quoted sentence says: “Although we hope the claim is unfounded...” *Peck*, 177 Ariz. at 286. As evidence of the Court’s concern that ex parte proceedings “may occur all too often,” *Peck* cited *In re Gumaer*, 177 Ariz. 280 (1994)—another case involving a nonlawyer justice of the peace whose misconduct in office went far beyond excessive ex parte proceedings.

Perhaps realizing that Arizona law is not as helpful to its cause, AGO reaches outside the state for help. *United States v. Earley*, 746 F.2d 412, 413 (8th Cir. 1984), involved a trial judge, after receiving from the prosecutor a “trial brief” that tells the court what witnesses would testify about, refusing to provide a copy to the defense. This is improper because the judge may receive information about the case without giving the other party an opportunity to respond to inaccuracies. *Commonwealth v. Carman*, 455 S.W.3d 916, 926 (Ky. 2015), involved a practice of modifying bail conditions after initial appearance, based on an (erroneous) interpretation of what constituted an “initial fixing of bail.” It goes without saying that both sides have substantive interests in bail hearings; and in Arizona, the Victims’ Bill of Rights (VBR) guarantees notice of such hearings. ARIZ. CONST. art. 2, § 2.1(A)(3), (4).

It is not clear why AGO relies on *Ex parte Prudential Ins. Co. of America*, 721 So.2d 1135 (Ala. 1998). The Alabama Supreme Court overturned the process of allowing class certification by ex parte proceeding in several cases; but in each of

those cases, the practice had been expressly authorized by a published opinion of the state court of appeals that had not yet been reversed by the higher court. As stated above, such proceedings affect the rights of the opposing party. Its citation to *In re Miller*, 644 So.2d 75, 78 (Fla. 1994), is even more puzzling, because the ex parte communication criticized in that opinion, consulting with other judges, is expressly authorized by our Canon 2.9(A)(3).

The cases that MCAO cites are equally irrelevant. MCAO Comment at 3-4. *Herring v. New York*, 422 U.S. 853 (1975), held unconstitutional a state law that allowed a judge to deny defense counsel the opportunity to make a closing argument. *Carroll v. President and Comm'rs of Princess Anne*, 393 U.S. 175 (1968), involved an ex parte order that constituted a prior restraint on free speech. *Kaley v. United States*, 571 U.S. 320 (2014), involved seizure of a criminal defendant's assets by ex parte order. *San Carlos Apache Tribe v. Bolton*, 194 Ariz. 68 (1999), is a water rights case, and while the ex parte communication was authorized by statute, it could have had an effect on a party's rights in litigation. The subject matter of the ex parte conference at issue in *McElhanon v. Hing*, 151 Ariz. 403 (1986), easily could have been conducted with all parties present. MCAO puts great weight behind *Kaufman v. Am. Fam. Mut. Ins. Co.*, 601 F.3d 1088 (10th Cir. 2010), MCAO Comment at 4, 6, but all that is known about the ex parte communication there is it was improper and the other side received attorney fees for litigation related to it.

The only case AGO cites that bears any resemblance to the discovery issue present in this petition is *Commonwealth v. Cambron*, 546 S.W.3d 556 (Ky. App. 2018). In that case, the trial judge granted 30 separate ex parte oral requests without any record of the substance of the requests and why it was appropriate to grant them ex parte. Unlike in Arizona, Kentucky defendants can obtain a subpoena *duces tecum*. *Id.* at 560. A.R.S. § 13-4071(D) prohibits the court from issuing subpoenas in criminal cases. Petition at 8. AGO neglects to note this distinction. One can only wonder why the attorney in *Cambron* would seek to involve the judge when the court’s subpoena power was readily available; but Petitioner confidently asserts that Arizona criminal defense attorneys would prefer the subpoena. AGO’s reliance on *Cambron* for the assertion that ex parte proceedings “skew[] the adversarial process to one side and allows one party to the proceedings to subvert the allowable methods of discovery,” AGO Comment at 11, ignores that Kentucky law permitted not just defendants but also prosecutors to use the court’s subpoena powers. Thus, the parties were already on a level playing field with discovery.

AGO and MCAO cite cases showing search warrants are ex parte proceedings that are permitted; but only AGO admits that neither the constitution nor statutes “expressly authorize” the court to conduct an ex parte proceeding. AGO Comment at 9-11; MCAO Comment at 9-10. AGO fails to appreciate that its own argument in *Smith*—and here—requires it to ignore case law in favor of the text of the

constitution, statutes, and rules. AGO cannot have its cake and eat it too; it must admit that its argument is fundamentally flawed, or else it must foreswear, on behalf of all agents of the government, ex parte access to judges to apply for search warrants. The Petition does not sincerely seek to end ex parte search warrant applications; it merely points out the absurd results that flow from AGO's argument.

C. As long as the discovery request is not from or for a victim, neither the State nor the victim has standing to object.

AGO's argument that ex parte hearings violate the VBR, AGO Comment at 19, is foreclosed by *Morehart*: "The issue here is whether [VBR] entitles victims to attend an ex parte hearing on the return of summonses issued as part of defense counsel's pretrial investigation of mitigation evidence in a capital case. Because the defendant has no right to attend such a purely procedural hearing, victims also have no right to attend." 226 Ariz. at 511 ¶ 1. AGO cites the exception to the rule for discovery related to victims, *id.* at 516 ¶ 23, and tries to turn this exception into the rule itself. The victims' right to be present "at any proceeding involving a post-arrest release decision, a negotiated plea, and sentencing," AGO Comment at 19-20 (quoting ARIZ. CONST. art. 2, § 2.1(A)(4)), does not apply in discovery proceedings.³

³ MCAO makes similar points but does not urge as directly as AGO that such ex parte hearings violate the requirement of open proceedings. MCAO Comment at 12.

The State has no standing to object to discovery requests from third parties. In *Lopez v. State*, 581 P.3d 741 (Ariz. App. 2025), the court of appeals repeated longstanding law limiting the prosecution’s authority to object to discovery from another state agency. *Id.* at 746 ¶ 16 (“Generally, a party may not challenge a discovery order directed to a nonparty witness, the right to object being reserved solely for the witness subpoenaed.” (quoting *Humana Hosp. Desert Valley v. Superior Ct.*, 154 Ariz. 396, 403 (App. 1987))); *id.* ¶ 17 (“The prosecution has no right to interfere with or prevent a defendant’s access to a witness.”) (quoting *Mota v. Buchanan*, 26 Ariz. App. 246, 249 (1976)); *id.* (“Unless a party to an action can make claim to some personal right or privilege in respect to the subject matter of a subpoena duces tecum directed to a nonparty witness, the party to the action has no right to relief.”) (quoting *MacDonald v. Hyder*, 12 Ariz. App. 411, 417 (1970)).

Thus, even if the State were present for a hearing on discovery of records, the court should not even ask the prosecutors for their position; they are, at most, passive observers. For this reason, the authorities MCAO relies upon for the proposition that ex parte proceedings deprive the other party of the opportunity to be heard, MCAO Comment at 3-4, are inapplicable. And its reliance on *Draper v. Gentry*, 255 Ariz. 417 (2023), is misplaced, because that involved disclosure directly from a victim, which implicates not only the victim’s right to be heard but also to refuse the defendant’s discovery request. ARIZ. CONST. art. 2, § 2.1(A)(3), (5).

D. Having a rule in place, instead of the ad hoc practice that currently exists, will guide trial courts in their exercise of discretion and help ensure that ex parte discovery motions and hearings are not abused.

While MCAO and AGO oppose the petition, neither opposes the continuing practice of having ex parte discovery hearings in trial courts. AGO Comment at 9 (“But that does not change the fact that *Smith*’s holding applies only to ex parte discovery in the post-conviction context and not to other ex parte practices or to other contexts. Litigants cannot change that fact.”); MCAO Comment at 9 (“[*Smith*’s] limited holding has no impact on discovery matters pursuant to Rule 15.”). These positions are inherently contradictory. If the practice properly exists, then a clear rule should guide the practice. MCAO puts a lot of emphasis on the abuses it has observed in the ex parte discovery process. MCAO Comment at 6. No doubt this is because everyone is figuring it out on the fly in absence of a clear rule.

MCAO’s primary concern is the lack of notice that an ex parte motion was filed. This is a valid point, and Petitioner agrees that additional language is necessary to the proposed change to Rule 1.9 to account for that. It is Petitioner’s understanding that the common practice is for defense counsel to file a notice of lodging of the ex parte motion, which would alert the State to the fact of the filing. This might not be the case. If such a requirement were built into the rule, then judges would have the necessary guidance from this Court and could reject non-compliant filings.

MCAO's secondary concern is that trial judges sometimes grant overbroad motions. This is true in every facet of law, and it is inconceivable to draft a rule that would protect against this. The participation of a prosecutor in a hearing on a defense request for discovery from a third party would not necessarily help (of course, "another set of eyes" always helps), because the third party affected by the discovery request still would not be present. MCAO provided in its attachment an order from *State v. Woodman*, Maricopa County Superior Court No. CR2020-104765-002 (order dated 9/15/2022). This order shows the court's acknowledgment that the original ex parte order was plainly erroneous because it had the effect of limiting another party's access to information through an independent source, i.e., its own request. Judges should always scrutinize proposed orders drafted by counsel—not just for ex parte discovery requests.

MCAO's attachment of the order in *State v. Lamar*, Maricopa County Superior Court No. CR2017-130352-001 (order dated 3/5/2020), is helpful. It is proof positive that judges can apply the law. MCAO should want a rule that makes orders like this the norm. Why MCAO would prefer the status quo, where some judges allow motions without even requiring the defense to give notice of lodging the ex parte motion, is confusing. Clarity is always better.

MCAO is right; discovery "is not a game." MCAO Comment at 7 (quoting *Wells v. Fell*, 231 Ariz. 525, 529 ¶ 13 (App. 2013)). Yet, its own arguments not only

turn defense discovery requests into prosecutorial gamesmanship, but MCAO would do so without any rules—a courtroom version of TEGWAR.⁴

E. The Petition does not seek “expansive” or broad discovery; it seeks only to maintain the *status quo ante Smith*.

AGO uses the word “expansive” to describe the petition’s scope. AGO Comment at 12, 17. Nothing could be further from the truth. As stated in the petition, the purpose is only to restore the status quo prior to *Smith*.

MCAO makes a valid point when it says: “An additional concern is that Proposed Rule 15.1(g)(3) may allow the defense to circumvent the requirements of Rule 15.1 whereby they must make a showing of substantial need for discovery requests outside the normal course of materials in the State’s possession.” MCAO Comment at 7-8 (citing Rule 15.1(g)(1)(A) & (B)). It was not Petitioner’s intent to circumvent those requirements, rather it was an oversight in drafting due to the haste in filing a petition by the deadline for consideration this year. Attached to this reply is an amendment to the proposal that accounts for MCAO’s critique on this point.

F. Prosecutors’ fears that defense counsel and judges will act unethically are unfounded.

AGO expresses generalized concerns that attorneys and judges will act unethically in ex parte proceedings. AGO Comment at 7-9, 18-19; Attorneys are

⁴ The acronym stands for “the exciting game without any rules,” which is featured in the novel and film *Bang The Drum Slowly*.

bound by ER 3.3; the duty of candor to the tribunal trumps the obligation to assist the client. *In re Higgins*, 180 Ariz. 396, 398 (1994). *See also State v. Kruchten*, 101 Ariz. 186, 191 (1966) (“The duty of an attorney to a client, whether in a private or criminal proceeding, is subordinate to his responsibility for the due and proper administration of justice.”).

The orders issued by the trial judge in *Smith* prove that judges know how to protect the rights of others while hearing ex parte motions for discovery.⁵ The judge refused the defense request for a blanket order that would cover all future requests, and the judge said she would review the requests and ensure no discovery related to victims was requested or ordered. *Smith*, 585 P.3d at 811-12 ¶¶ 3-6. Throughout the litigation in *Smith*, AGO never cited to any real concern that the process was abused; instead, its argument is more academic (just as its comment to this petition).

G. AGO and MCAO miscellaneous points lack merit.

AGO and MCAO make several miscellaneous points that entirely lack merit and do not require substantial discussion. Petitioner will address them briefly.

“Petitioner has not identified any material problem created by the current rules.” MCAO Comment at 1. The material problem is the interpretation of the current rules in *Smith*; explicitly adopting the petition would rectify the problem.

⁵ The judge whose orders were challenged, Hon. Jennifer Green, authored the Maricopa County Superior Court comment to this petition.

“There is no general constitutional right to discovery in a criminal case.” MCAO Comment at 6-7 (citing *Weatherford v. Bursey*, 429 U.S. 545, 559 (1977)). This petition is not about defendants asking for discovery from the State; it is about defense counsel conducting investigations required by the Sixth Amendment right to assistance of counsel. *See Morehart*, 226 Ariz. at 513 ¶ 10, 515-16 ¶ 22. Similarly, reliance on *Carpenter v. Superior Court*, 176 Ariz. 486 (App. 1993), MCAO Comment at 7, is misplaced, because there the requested discovery was from the police department, which is an arm of the State for purposes of Rule 15.

Citing *State v. Carriger*, 143 Ariz. 142, 145-46 (1984), MCAO asserts “there is no constitutional right to a post-conviction proceeding” and in “all cases, civil or criminal, there must be an end to litigation.” MCAO Comment at 13. Not only is there a state constitutional right to some post-conviction proceedings, *see Montgomery v. Sheldon*, 181 Ariz. 256, *supp. op.* 182 Ariz. 118 (1995), but post-conviction proceedings are the only arena where defendants can vindicate the Sixth Amendment right to effective assistance of counsel. *State v. Spreitz*, 202 Ariz. 1 (2002). Society’s interest in finality does not trump the defendant’s right to pursue remedies that are available under law.

AGO claims it did not argue in *Smith* that ex parte proceedings should be prohibited and that it only argued that the defendant there did not make an adequate showing of the need for confidentiality. AGO Comment at 13. This is not true, and

AGO's pleadings speak for themselves. Its comment to this petition says nothing except for arguing for barring the hearings from occurring in the first place. More to the point, the court of appeals barred *ex parte* proceedings in all cases. It does not matter that the State was not asking for the records themselves; the purpose of the *ex parte* hearing is to keep the State from knowing defense counsel's investigative leads. And if AGO was merely concerned that Smith did not make a strong enough showing for confidentiality, then it should have no problem with the petition, which expressly requires defense counsel to do this.

AGO insists the ABA Guidelines do nothing to support the claim that *ex parte* hearings are necessary. AGO Comment at 15. This is because AGO insists on a "hyperliteral" reading of the Guidelines. *State v. Serrano*, 259 Ariz. 493, 497 ¶ 15 (2025). Anyone with the slightest experience defending serious cases, not just capital cases, knows this is an uninformed opinion. Those experienced in defending such cases uniformly agree that following the Guidelines means doing whatever is necessary to avoid the situation where the State obtains information harmful to the client because defense counsel revealed their investigative leads. This point is sufficiently made both in the petition and in the comments from Arizona Attorneys for Criminal Justice and Maricopa County Office of Public Defense Services. It was also recently reinforced in *Lopez*. 581 P.3d at ¶ 14 (finding that the ABA Guidelines

reinforce defense counsel's right to discovery and investigation, and are directly connected to "the due process right to present a complete defense").

Conclusion

As expected, the comment period provided "enlightening discussion on the issue." Petition at 3. MCAO's comment highlighted two weaknesses with the language in the Petition, and the proposal in the attachment to this Reply fixes those two areas. The proposal now includes an additional sentence in Rule 1.9: "A party filing an ex parte motion must simultaneously file a notice of lodging of the ex parte motion." Rules 15.1(g)(3), 32.6(b)(3), and 33.6(b)(3) now include an additional phrase that require the ex parte motion to satisfy the requirements of Rules 15.1(g)(1), 32.6(b)(1), and 33.6(b)(1), respectively.

For these reasons, Petitioner requests this Court grant the petition to amend Arizona Rules of Criminal Procedure 15.1, 32.6, and 33.6.

DATED (electronically filed): June 1, 2026.

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

ATTACHMENT⁶

Ariz. R. Crim. P. 1.9

(a) [no change]

(b) Service of Motion; Response; Reply. Except for ex parte motions, ~~t~~The moving party must serve the motion on all other parties. No later than 10 days after service, another party may file and serve a response, and, no later than 3 days after service of a response, the moving party may file and serve a reply. A reply must be directed only to matters raised in a response. If no response is filed, the court may deem the motion submitted on the record. **A party filing an ex parte motion must simultaneously file a notice of lodging of the ex parte motion.**

(c)-(v) [no change]

Ariz. R. Crim. P. 15.1

(a)-(f) [no change]

(g) Disclosure by Court Order.

(1)-(2) [no change]

(3) Ex Parte Motions and Orders. The court may hear and grant ex parte motions filed by the defendant that satisfy the requirements of subsection (g)(1) when the defendant makes a proper showing of the need for confidentiality. The court must make a verbatim record of any ex parte proceeding, communication, or request.

(h)-(j) [no change]

Ariz. R. Crim. P. 32.6

(a) [no change]

(b) Discovery.

⁶ Changes or additions in rule text are indicated by **bold underscoring** and deletions from text are indicated by ~~strikeouts~~.

(1)-(2) [no change]

(3) *Ex Parte Motions and Orders.* The court may hear and grant ex parte motions filed by the defendant that satisfy the requirements of subsection (b)(1) when the defendant makes a proper showing of the need for confidentiality. The court must make a verbatim record of any ex parte proceeding, communication, or request.

(c)-(f) [no change]

Ariz. R. Crim. P. 33.6

(a) [no change]

(b) Discovery.

(1)-(2) [no change]

(3) *Ex Parte Motions and Orders.* The court may hear and grant ex parte motions filed by the defendant that satisfy the requirements of subsection (b)(1) when the defendant makes a proper showing of the need for confidentiality. The court must make a verbatim record of any ex parte proceeding, communication, or request.

(c)-(f) [no change]