

1 John A. Furlong, Bar No. 018356  
2 General Counsel  
3 STATE BAR OF ARIZONA  
4 4201 N. 24th Street, Suite 100  
5 Phoenix, Arizona 85016-6266  
6 (602) 252-4804  
7 John.Furlong@staff.azbar.org

8 **IN THE SUPREME COURT**  
9 **STATE OF ARIZONA**

10 PETITION TO AMEND RULE 12.9(b)  
11 OF THE ARIZONA RULES OF  
12 CRIMINAL PROCEDURE

Supreme Court No. R-12-0015

**Comment of the State Bar of  
Arizona on Petition to Amend  
Rule 12.9(b), Ariz. R. Crim. P.**

13  
14 Petitioner notes that Rule 12.9(b) of the Arizona Rules of Criminal Procedure  
15 currently lacks any clear deadline for filing a motion for a new finding of probable  
16 cause following remand of a case for new trial.

17 Petitioner seeks to remedy the defect by adding language to the rule directing  
18 that a motion to remand to a grand jury must be filed “within 25 days after issuance of  
19 the mandate reversing a conviction and remanding a case for new trial . . . .”

20 In *Rios v. McMurdie*, 1 CA-SA 11-0187 (filed August 23, 2011), the Court of  
21 Appeals issued an unpublished Decision Order on Special Action interpreting the  
22 defective rule to require that under circumstances of remand for new trial, a motion to  
23 remand the matter to the grand jury must be filed within twenty-five days of either  
24 (a) the day after the mandate was issued, or (b) the day after the defendant or his  
25 counsel returns the grand jury transcripts to the clerk of the court. Petitioner seeks to  
26 modify the rule to expressly state the former. From a practical standpoint, however, it

1 is often the case that the twenty-five-day period proposed would start to run before a  
2 defendant or his counsel has actual knowledge that the mandate has issued and, in  
3 many cases, may run and expire before counsel is appointed following remand. The  
4 State Bar is of the opinion that the issuance of the mandate may be the appropriate  
5 triggering mechanism for the commencement of time within which a motion to  
6 remand must be filed; but if so, twenty-five days is too short. Sixty days would  
7 impose a definitive deadline while at the same time ensuring that defense counsel is  
8 appointed and aware of the mandate's issuance. Alternatively, the rule could direct  
9 that the twenty-five-day deadline commence to run on the day following the first  
10 court date held on the remanded matter.

11 The rule needs to be revised to include a time in which a motion for remand to  
12 the grand jury must be filed following the grant of a new trial. If that time is to be  
13 triggered by the issuance of the mandate, then adequate time must be afforded a  
14 defendant or his counsel to learn of the mandate's issuance and for counsel to be  
15 appointed. Thus, the State Bar recommends that Rule 12.9(b) be modified to assert a  
16 deadline for moving to remand within twenty-five days following the first court  
17 appearance on the remanded case.

18 **Conclusion**

19 For the reasons discussed above, the State Bar of Arizona opposes the petition.

20 RESPECTFULLY SUBMITTED this 18<sup>th</sup> day of May, 2012.

21  
22  
23   
24 John A. Furlong  
25 General Counsel  
26

1 Electronic copy filed with the Clerk  
2 of the Supreme Court of Arizona this  
3 18<sup>th</sup> day of May, 2012,

4 By: Katherine A. Ludgren  
5

6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26