

1 WILLIAM G. MONTGOMERY
2 MARICOPA COUNTY ATTORNEY
(FIRM STATE BAR No. 0003200)

3 MARK C. FAULL
4 CHIEF DEPUTY
5 301 WEST JEFFERSON STREET, SUITE 800
6 PHOENIX, ARIZONA 85003
7 TELEPHONE: (602) 506-3800
(STATE BAR NUMBER 011474)

8 IN THE SUPREME COURT OF THE STATE OF ARIZONA

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10 IN RE:

R-12-0015

11 PETITION TO AMEND RULE 12.9(b),
12 ARIZONA RULES OF CRIMINAL
13 PROCEDURE

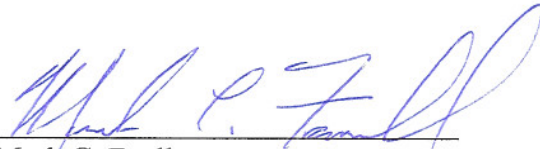
MARICOPA COUNTY ATTORNEY'S
COMMENT TO PETITION TO AMEND
RULE 12.9(b), ARIZONA RULES OF
CRIMINAL PROCEDURE

14 The Maricopa County Attorney hereby submits this comment regarding Petition to Amend Rule
15 12.9(b), Arizona Rules of Criminal Procedure.
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17 Respectfully submitted this 18th day of May, 2012.

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19 WILLIAM G. MONTGOMERY
MARICOPA COUNTY ATTORNEY

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22 By:


23 Mark C. Faull
24 Chief Deputy
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 The Petition to Amend Rule 12.9(b), Arizona Rules of Criminal Procedure, seeks to provide a
3 deadline for filing a motion for a new finding of probable cause following remand of a case for a new
4 trial. The clear intent of the Petition is to provide the court and parties with guidance on when such a
5 motion should be filed in cases where the issue on remand is such that a renewed motion for a new
6 grand jury presentation is justified—i.e., when the appellate court has made the application of a criminal
7 statute retroactive. Such appellate decisions are rare.
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9 The Maricopa County Attorney understands the reasons for the proposed change and supports
10 the suggested change in the limited circumstances where a new finding of probable cause is directly
11 related to the reason for the remand. However, the proposed language in the Petition would allow a
12 renewed motion for a new finding of probable cause in every remand, regardless of the reason for the
13 remand. For example, a remand for misconduct by a trial juror, something that is far removed from the
14 grand jury’s determination, would re-open the door for the defense to file a motion for a new finding of
15 probable cause. This is undoubtedly not the intent of the Petition.
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17 To avoid such unforeseen consequences, the Maricopa County Attorney would offer the
18 following alternative language:
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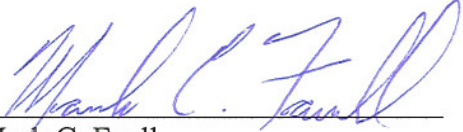
20 (b) A motion under Rule 12.9(a) may be filed only after an indictment is returned
21 and no later than 25 days after the certified transcript and minutes of the grand
22 jury proceedings have been filed, or 25 days after the arraignment is held,
23 whichever is later. WHEN A REVERSAL AND REMAND FOR A NEW
24 TRIAL CREATES GROUNDS FOR A MOTION UNDER RULE 12.9(A) THAT
DID NOT PREVIOUSLY EXIST, THE RENEWED MOTION MAY BE FILED
NO LATER THAN 25 DAYS FROM THE ISSUANCE OF THE MANDATE.

25 This additional language would provide a safeguard against unnecessary and unwarranted
26 motions that would otherwise be allowed under the language proposed in the Petition. With this
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1 amendment, the Maricopa County Attorney would be in support of the Petition to Amend Rule 12.9(b),
2 Arizona Rules of Criminal Procedure.

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4 Respectfully submitted this 18th of May, 2012.

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8 By: 
9 Mark C. Faull
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