

1 Honorable Norman J. Davis  
2 Presiding Judge  
3 Superior Court of Arizona, Maricopa County  
4 125 W. Washington St.  
5 Phoenix, AZ 85003  
6 (602) 506-5262

7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

IN THE SUPREME COURT OF THE STATE OF ARIZONA

In the Matter of: } Supreme Court No. R-12-0015  
}   
} ARIZONA RULES OF CRIMINAL } COMMENT OF THE SUPERIOR  
} PROCEDURE, RULE 12.9(b) } COURT OF ARIZONA, MARICOPA  
} } COUNTY IN OPPOSITON TO  
} } PETITION TO AMEND RULE  
} } 12.9(b) OF THE ARIZONA RULES  
} } OF CRIMINAL PROCEDURE

---

The Presiding Judge of the Superior Court in Maricopa County files the following comment pursuant to Rule 28, Arizona Rules of the Supreme Court, in opposition to the petition to amend Rule 12.9(b) of the Arizona Rules of Criminal Procedure. The petition proposes to allow a defendant to file a motion to challenge the grand jury proceedings following a mandate reversing the conviction and remanding the case for a new trial.

The proposed rule change is unnecessary. Prior to the first appeal, defendant would have had an opportunity under the current version of Rule 12.9 to file a motion remand. There is simply no reason to provide a second opportunity for such a challenge. Appeals courts grant new trials for many reasons, but most are unrelated to the grand jury process or evidence presented to the grand jury. No basis exists to allow a new motion to challenge the grand jury proceedings if a case is remanded based on flawed jury instructions, improper admission of other bad act evidence, or some other trial issue.

1           Regardless, any defect in the grand jury proceedings is nullified by the  
2 petit jury's guilty verdict. *See, e.g., State v. Atwood*, 171 Ariz. 576, 601, 832 P.2d  
3 593, 613 (1992), *cert. denied*, 506 U.S. 1084 (1993) (trial jury's guilty verdict  
4 necessarily renders any defect in the grand jury process harmless).

5           The Superior Court in Maricopa County was unable to find a criminal  
6 procedure rule in any other jurisdiction which includes a provision for a motion  
7 to remand to the grand jury following a reversal on appeal.

8           The proposed amendment to Rule 12.9 does not serve the interests of  
9 justice. If the defendant had previously challenged the grand jury and his motion  
10 was denied, this ruling becomes law of the case and the defendant should not  
11 have a second opportunity at remand.

12           In addition, the proposed amendment cause delay and potentially interfere  
13 with the requirement in Rule 8.2(c), which requires a new trial following a  
14 remand to occur within 90 days of the mandate. Under this proposal, the motion  
15 to challenge the grand jury proceedings could still be at issue at the end of the  
16 90-day time provided for a new trial. Defendant would have 25 days to file the  
17 challenge to the grand jury proceedings, the State has 10 days to file a response,  
18 defendant has 3 days to reply, the court may schedule the challenge for oral  
19 argument which adds additional time, and after oral argument, the court then  
20 could take up to 60 days to issue a ruling. All of this could take more than 90  
21 days, and if such a challenge is unsuccessful, defendant can file a special action  
22 and request a stay of the trial court proceeding.

23           Finally, the proposed amendment has no limitations on the issues that  
24 could be raised in a motion to challenge the grand jury proceedings after the case  
25 is remanded for a new trial. At a minimum, the rule should preclude defendant  
26 from raising issues that either were or could have been included in a motion to  
27 challenge the grand jury proceedings within 25 days after the certified transcript  
28 of the grand jury proceedings has been filed.

1 For the foregoing reasons, the Superior Court in Maricopa County  
2 opposes the petition to amend Rule 12.9(b) of the Arizona Rules of Criminal  
3 Procedure.

4 Respectfully submitted this 21st day of May, 2012.

5  
6  
7 

---

Honorable Norman J. Davis  
8 Presiding Judge  
Superior Court of Arizona, Maricopa County

9 Original and six (6) copies delivered this  
10 21st day of May, 2012 to:

11 Clerk of the Arizona Supreme Court  
12 1501 W. Washington, Suite 402  
13 Phoenix, AZ 85007

14 Copy mailed this  
15 21st day of May, 2012 to:

16 David K. Byers, Director  
17 Administrative Office of the Courts  
18 1501 W. Washington  
19 Phoenix, AZ 85007-3231  
20  
21  
22  
23  
24  
25  
26  
27  
28