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

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

Supreme Court No. R-12-0015

**COMMENT OF THE ARIZONA
ATTORNEY GENERAL'S OFFICE
ON PETITION TO AMEND
ARIZONA RULE OF CRIMINAL
PROCEDURE 12.9(b)**

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16 The Arizona Attorney General's Office opposes the proposed amendment to
17 Rule 12.9(b) of the Arizona Rules of Criminal Procedure as currently drafted and
18 respectfully requests that the proposed amendment be narrowed as discussed below.

19 **I. INTRODUCTION.**

20 Rule 12.9(b) currently provides as follows:

21 *A motion under Rule 12.9(a) may be filed only after an indictment is*
22 *returned and no later than 25 days after the certified transcript and*
23 *minutes of the grand jury proceedings have been filed or 25 days after*
the arraignment is held, whichever is later.

24 Ariz. R. Crim. P. 12.9(b). As currently drafted, the proposed amendment to the rule
25 would give all defendants who have been granted a new trial additional time to
26 challenge the grand jury proceedings:

27 A motion under Rule 12.9(a) may be filed only after an indictment is
28 returned and no later than 25 days after the certified transcript and

1 minutes of the grand jury proceedings have been filed, ~~or~~ 25 days after
2 the arraignment is held, or 25 days after issuance of a mandate
3 reversing a conviction and remanding a case for new trial, whichever is
4 later.

(Petition, at 2.)

5 **II. THE PROPOSED AMENDMENT SWEEPS TOO FAR.**

6 The petition to amend notes that Rule 12.9(b) does not provide a “clear
7 deadline for filing a motion for a new finding of probable cause following remand
8 of a case for a new trial,” and states that this may be “problematic” in “cases where
9 the reversal and remand for a new trial presents grounds for a renewed motion for
10 remand to the grand jury.” (Petition, at 1.) The proposed amendment would rectify
11 this situation; however, it would also allow defendants to file new challenges to the
12 grand jury proceedings even where the basis for reversal and remand does *not*
13 provide grounds for a grand jury challenge. In this latter situation, there is no
14 reason to allow a defendant another opportunity to challenge the grand jury
15 proceedings; instead, these defendants should be bound by their initial failure to file
16 a timely challenge. *See State v. Lamb*, 142 Ariz. 463, 468, 690 P.2d 764, 769
17 (1984) (“A defendant waives his objections to the grand jury proceeding by failing
18 to comply with [Rule 12.9(b)’s] timeliness requirement.”) (quoting *State v. Smith*,
19 123 Ariz. 243, 247–48, 599 P.2d 199, 203–04 (1979)).

20 Consequently, it is respectfully suggested that the amendment be modified
21 as follows:


22 A motion under Rule 12.9(a) may be filed only after an indictment is
23 returned and no later than 25 days after the certified transcript and
24 minutes of the grand jury proceedings have been filed, or 25 days after
25 the arraignment is held, whichever is later. If a conviction has been
26 reversed and a new trial ordered, and the basis for the reversal calls
27 into question the initial grand jury finding, a defendant may file a
28 challenge to the grand jury proceedings within 25 days of the mandate
awarding him a new trial.

1 **III. CONCLUSION.**

2 The Arizona Attorney General's Office respectfully requests this Court to
3 modify the proposed amendment to Rule 12.9(b) as indicated above.

4 **RESPECTFULLY SUBMITTED** this 23rd day of May, 2012.

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