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

10 PETITION TO AMEND RULE 12.9
11 ARIZONA RULES OF CRIMINAL
12 PROCEDURE

Supreme Court No. R-13-0015

**Comment of the State Bar of
Arizona on the Petition to Amend
Rule 12.9 of Arizona Rules of
Criminal Procedure**

13 The State Bar of Arizona supports the petition filed by the Honorable
14 Joseph C. Welty, seeking to amend Rule 12.9, Ariz. R. Crim. P., to add a deadline
15 for filing a motion for a new finding of probable cause following remand of a case
16 for new trial. This amendment would allow for better management of cases and
17 eliminate uncertainty for defendants.

18 Although the State Bar supports the petition, it wishes to acknowledge that
19 its Criminal Practice and Procedure Committee was divided.

20 The Criminal Practice and Procedure Committee's *defense* subcommittee
21 supported the petition but recommended:

- 22 1. Modifying subsection (c) to indicate that if a complaint must be filed
23 within 15 days of remand, then so too must an indictment (or
24 information); and
25

1 Exhibit A

2
3 **State Bar proposed revisions to Petitioner's Proposed Rule 12.9(c)**

4 [State Bar additions are shown by double underlining; deletions are shown by
5 ~~double strike-through~~]

6 Rules of Criminal Procedure

7 **Rule 12.9. Challenge to grand jury proceedings**

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9 **a. Grounds.** The grand jury proceedings may be challenged only by motion for a
10 new finding of probable cause alleging that the defendant was denied a substantial
11 procedural right, or that an insufficient number of qualified grand jurors concurred
12 in the finding of the indictment.

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

17 **c. Relief.** If a motion for a new finding of probable cause is granted under this
18 rule, the State may proceed with the prosecution of the case pursuant to Rule 2,
19 Rules of Criminal Procedure, or by resubmission to the same or a another grand
20 jury. Unless a complaint is filed, ~~or a~~ grand jury consideration is commenced or a
21 motion to continue the grand jury consideration is granted within fifteen days after
22 entry of the order granting the motion under this rule, the case shall be dismissed
23 without prejudice.