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

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PETITION TO AMEND RULE 15.8,
ARIZONA RULES OF CRIMINAL
PROCEDURE

Supreme Court No. R-13- _____

**Petition to Amend Rule 15.8, Ariz.
R. Crim. P.**

The State Bar of Arizona, pursuant to Arizona Supreme Court Rule 28, respectfully petitions the Court to amend Rule 15.8 of the Arizona Rules of Criminal Procedure.

I. Introduction and Discussion

Rule 15.8 authorizes sanctions if a prosecutor imposes a plea deadline and fails to make material disclosure to the defense at least thirty days before the plea offer expires. The rule fails, however, to address the Court's authority to impose sanctions when the same conduct occurs involving an open plea offer (*i.e.*, a plea offer with no express deadline for its acceptance). The Court addressed the issue in *Rivera-Longoria v. Slayton*, 228 Ariz. 156 (2011). Specifically, it found that Rule 15.8, as written, only applies when the prosecution puts a deadline on a plea offer. Even though the Court recognized that a prosecutor's untimely disclosure might impact a defendant in the same way whether the plea has expired or the offer has been withdrawn, it held that it was limited by the language of the rule. The

1 Court suggested that implementing an amendment to the rule would be the most
2 appropriate manner of addressing this inconsistency.

3 The important policy concerns addressed by Rule 15.8 should apply whether
4 or not the prosecutor has imposed a plea deadline. The purpose of the rule is to
5 enable a defendant to make an informed decision when deciding whether to accept
6 a plea offer. A defendant is prejudiced when deprived of the opportunity to make
7 an informed decision due to the prosecutor's failure to disclose material information
8 in the case. The prejudice to the defendant is the same, whether or not the offer has
9 an express deadline. Rule 15.8 contemplates that a defendant facing criminal
10 charges in the Superior Court should have at least thirty days to evaluate the State's
11 disclosures before deciding whether to accept a plea offer. All defendants
12 considering a plea offer in Superior Court should have the right to make an
13 informed decision. The right to make an informed decision should not be dictated
14 by whether the prosecutor has assigned a specific deadline to the plea offer.
15 Rule 15.1 imposes an obligation on the prosecutor to make timely disclosures in all
16 cases.

17 **II. Proposed Amendment**

18 Rule 15.8 should be amended to read as follows:

19 If the prosecution has ~~imposed a plea deadline~~ **made a plea offer** in a
20 case in which an indictment or information has been filed in Superior
21 Court, but does not provide the defense with material disclosure listed
22 in Rule 15.1(b) at least 30 days prior to the plea deadline **or**
23 **withdrawal of the plea offer**, the court, upon motion of the
24 defendant, shall consider the impact of the failure to provide such
25 disclosure on the defendant's decision to accept or reject a plea offer.
26 If the court determines that the prosecutor's failure to provide such
disclosure materially impacted the defendant's decision and the
prosecutor declines to reinstate the lapsed **or withdrawn** plea offer,
the presumptive minimum sanction shall be preclusion from


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admission at trial of any evidence not disclosed at least 30 days prior to the deadline **or withdrawal of the offer.**

III. Conclusion

The State Bar of Arizona Criminal Practice and Procedure Defense Subcommittee unanimously supports the Rule 15.8 amendment proposed herein. Petitioner respectfully requests that the Court consider this petition and proposed rule change.

RESPECTFULLY SUBMITTED this 9th day of January, 2013.



John A. Furlong
General Counsel

Electronic copy filed with the Clerk of the Supreme Court of Arizona this 9th day of January, 2013.

By: Kathleen A. Lundgren