

1 John Furlong, General Counsel  
2 Bar No. 018356  
3 State Bar of Arizona  
4 4201 N. 24th Street, Suite 100  
5 Phoenix, AZ 85016-6288  
6 (602) 252-4804  
7 [John.Furlong@staff.azbar.org](mailto:John.Furlong@staff.azbar.org)

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

10 In the Matter of:

11 PETITION TO AMEND RULE 15.8,  
12 ARIZONA RULES OF CRIMINAL  
13 PROCEDURE

Supreme Court No. R-13-0004

14 **COMMENT OF**  
15 **THE STATE BAR OF ARIZONA**

16 In response to a petition the State Bar of Arizona filed in 2013, the Arizona  
17 Supreme Court amended Rule 15.8, Ariz. R. Crim. P., effective January 1, 2014, but  
18 re-opened the matter for comment. As a result, this comment applies to the amended  
19 version of Rule 15.8 – the version now in effect.

20 The State Bar proposes two modifications to the amended Rule 15.8.

21 First, Rule 15.8 now is titled “Disclosure prior to expiration of a plea offer;  
22 sanctions.” Although the former version of the rule pertained exclusively to plea  
23 offers with a deadline — and thus by implication excluded open-ended plea offers  
24 — the amended version cured that problem. The title should therefore not refer to  
25 “expiration” of a plea offer, as open-ended plea offers have no expiration and  
tendered plea offers may be withdrawn or revoked by a prosecutor before a declared  
“expiration” or deadline. This would be cured by changing the title to “Disclosure prior  
to ~~expiration~~ termination of a plea offer; sanctions.”

Second, the last sentence of the amended rule’s subsection (b) now states:

1 “Disclosure of evidence, including the results of any scientific testing, after the offer  
2 expires or is withdrawn does not violate Rule 15.8(a) as long as the disclosure did not  
3 exist when the offer was extended.” Although the amended rule expressly  
4 incorporates a prosecutor’s continuing obligation to disclose material information  
5 received while the tendered plea offer remains viable, this last sentence suggests  
6 that disclosure received after the offer expires or withdrawn is not subject to the  
7 sanction provisions *so long as that disclosure did not exist when the offer was extended.*

8 The last sentence should be modified to make clear that subsection (a) would  
9 still apply if the prosecutor subsequently came into possession of additional  
10 information but failed to disclose that information while the tendered plea was still  
11 available to the defendant, even if the prosecutor did not possess the disclosure at  
12 the time the plea offer was extended.

13 To resolve any ambiguity, the last sentence of subsection (b) should be  
14 modified to read: “Disclosure of evidence, including the results of any scientific  
15 testing, after the offer expires or is withdrawn does not violate Rule 15.8(a) as long  
16 as the disclosure did not exist ~~when the offer was extended~~ during the pendency of  
the plea offer.”

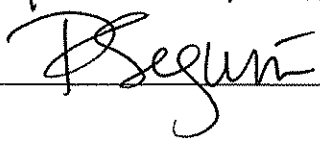
### 17 CONCLUSION

18 The State Bar’s proposals clarify the intent of the amended Rule 15.8. The  
19 State Bar respectfully request that the Court further amend Rule 15.8 as proposed.

20  
21 RESPECTFULLY SUBMITTED this 8<sup>th</sup> day of May, 2014.

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25 John Furlong  
General Counsel

1 Electronic copy filed with the  
2 Clerk of the Arizona Supreme Court  
3 this 9<sup>th</sup> day of May, 2014.

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1 **State Bar of Arizona's Proposed Amendment to Rule 15.8, Ariz. R. Crim. P.**

2 *(Proposed additions are shown by underscoring and*  
3 *proposed deletions are shown by ~~strikethrough~~)*

4  
5 Rule 15.8. Disclosure prior to termination ~~expiration~~ of a plea offer; sanctions

6 a. In a case in which an indictment or information has been filed in Superior  
7 Court, when extending a plea offer, the prosecutor must provide the defense with  
8 material disclosure listed in Rule 15.1(b) then within the prosecutor's possession,  
9 if the prosecutor has not previously made such disclosure. If the disclosure is made  
10 less than 30 days before the offer expires or is withdrawn, sanctions may be  
11 imposed under Rule 15.8(b), unless the prosecutor reasonably believes that an offer  
12 should be withdrawn because, in light of new information, it is contrary to the  
13 interests of justice. While a plea offer is pending, the prosecutor must continue to  
14 comply with Rule 15.6, but additional disclosures under that rule do not extend the  
15 30-day period.

16 b. Upon motion of the defendant, the court shall consider the impact of the  
17 prosecutor's failure to comply with Rule 15.8(a) on the defendant's decision to  
18 accept or reject a plea offer. If the court determines that the prosecutor's failure  
19 to provide such disclosure materially impacted the defendant's decision and the  
20 prosecutor declines to reinstate the lapsed or withdrawn plea offer, then the  
21 presumptive minimum sanction shall be preclusion from admission at trial of any  
22 evidence not disclosed as required by Rule 15.8(a). Disclosure of evidence,  
23 including the results of any scientific testing, after the offer expires or is  
24 withdrawn does not violate Rule 15.8(a) as long as the disclosure did not exist  
25 ~~when the offer was extended~~ during the pendency of the plea offer.