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7 IN THE SUPREME COURT OF THE STATE OF ARIZONA

8 IN THE MATTER OF

R-13-0004

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

13 ARIZONA PROSECUTING ATTORNEYS'  
14 ADVISORY COUNCIL'S  
15 COMMENTS TO PETITION TO AMEND  
16 RULE 15.8, ARIZONA RULES OF  
17 CRIMINAL PROCEDURE

18 Pursuant to the Arizona Rules of the Supreme Court, Rule 28(C), the Arizona  
19 Prosecuting Attorneys' Advisory Council ("APAAC") hereby submits its comments  
20 as follows:

- 21 • APAAC opposes the original Petition to Amend Rule 15.8, filed on January 9,  
22 2013. Reasons in opposition were submitted by APAAC on May 21, 2013.
- 23 • As a better option, APAAC supports the Arizona Supreme Court's Amended  
24 Rule 15.8 as ordered on November 14, 2013, effective on an expedited basis on  
25 January 1, 2014.

1 **I. Introduction**

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3 On May 16, 2013, Maricopa County Attorney William Montgomery  
4 (“MCAO”) submitted a Comment to the Petition to Amend Rule 15.8 of the Arizona  
5 Rules of Criminal Procedure opposing the Petition but proposing a modification to  
6 Rule 15.8. Subsequently, on November 14, 2013, the Arizona Supreme Court  
7 amended Rule 15.8, effective on an expedited basis on January 1, 2014.  
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10 **II. APAAC’s Opposition to the original Petition to Amend Rule 15.8, filed on**  
11 **January 9, 2013.**

12 As explained in APAAC’s Comments in Opposition filed on May 21, 2013, the  
13 original Petition to Amend Rule 15.8 does not serve the interests of justice; is  
14 incompatible with the goals of Rule 15; would result in “gamesmanship;” and would  
15 cause delay in the processing of criminal cases. The Petition also raises constitutional  
16 issues of separation of powers, but APAAC recognizes such arguments are no longer  
17 persuasive in light of this Court’s decision in Rivera-Longoria v. Slayton, 228 Ariz.  
18 156, 158, ¶ 11, 264 P.3d 866, 868 (2011). APAAC respectfully refers the Court to  
19 its comments filed on May 21, 2013, for further explanation of its position.  
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23 **III. APAAC’s Support of Amended Rule 15.8, effective January 1, 2014.**

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25 While reserving the argument that Rule 15.8 is an unconstitutional violation of  
26 separation of powers, APAAC supports the Court’s current amended Rule 15.8 over  
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1 the original proposed amendment to the Rule. As amended, the Rule makes clear the  
2 prosecutor's obligation, when extending a plea offer after an indictment or  
3 information, to provide the defense with material disclosure listed in Rule 15.1(b)  
4 then within the prosecutor's possession. If the prosecutor fails to disclose material  
5 information in the prosecutor's possession at the time the plea offer is made, the  
6 prosecutor must keep the offer open for 30 days or face sanctions under Rule 15.8(b),  
7 unless the prosecutor reasonably believes that an offer should be withdrawn because,  
8 in light of new information, it is contrary to the interests of justice.  
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12 The amended Rule makes clear it applies to only those situations where the  
13 State withheld material evidence in its possession at the time the plea offer was  
14 extended, and provides for an exception in cases where the interests of justice so  
15 require. As such, APAAC supports the Amended Rule 15.8.  
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18 Respectfully submitted this 19<sup>th</sup> day of May, 2014.

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20 ARIZONA PROSECUTING ATTORNEYS' ADVISORY COUNCIL

21 SHEILA SULLIVAN POLK  
22 YAVAPAI COUNTY ATTORNEY  
23 APAAC Chair

24 By: Elizabeth Ortiz  
25 ELIZABETH ORTIZ  
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