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ARIZONA SUPREME COURT

IN RE:

R-13-0004

PETITION TO AMEND RULE 15.8,
ARIZ. R. CRIM. P.

MARICOPA COUNTY ATTORNEY'S
RESPONSE TO PETITION TO AMEND RULE
15.8 OF THE ARIZONA RULES OF
CRIMINAL PROCEDURE AND ORDER
MODIFYING RULE 15.8 EFFECTIVE
JANUARY 1, 2014

The Maricopa County Attorney hereby responds to the Petition to Amend Rule 15.8 of the Arizona Rules of Criminal Procedure and this Court's order amending the rule on an expedited basis effective January 1, 2014 and asks this Court to deny the petition and to repeal Rule 15.8 in its entirety.

Respectfully submitted this 20 day of May, 2014.

WILLIAM G. MONTGOMERY
MARICOPA COUNTY ATTORNEY

for By 
MARK FAULL
CHIEF DEPUTY

1 I. DISCUSSION

2 Last year, The State Bar of Arizona filed a petition in this matter asking this
3 Court to expand Rule 15.8 of the Arizona Rules of Criminal Procedure to apply to
4 any plea offer regardless of whether a plea deadline was imposed. Following the
5 comment period, on November 14, 2013, this Court issued an order adopting a re-
6 written Rule 15.8 effective January 1, 2014 with a comment period to follow.
7 Although the revised (and current) Rule 15.8 is an improvement over the previous
8 version, The Maricopa County Attorney’s Office (MCAO) continues to assert that
9 Rule 15.8 is a violation of separation of powers because it permits and directs the
10 judicial branch to interfere in the executive’s decision to offer and subsequently
11 withdraw a plea offer in a criminal case. Although this Court rejected these
12 constitutional arguments in Rivera-Longoria v. Slayton, 228 Ariz. 156, 158, ¶ 11, 264
13 P.3d 866, 868 (2011), MCAO argues that the case was wrongly decided and Rule
14 15.8 is a judicial encroachment into a purely executive function. A criminal
15 defendant has no right to a plea offer and the process of plea bargaining which must
16 include whether to extend an offer, the terms of any offer, and the length of time any
17 offer is available, is a core prosecutorial power and completely within the
18 prosecutor’s discretion. See *State v. Donald*, 198 Ariz. 406, 417, ¶39, 10 P.2d 1193,
19 1204 (App. 2000); *State v. Morse*, 127 Ariz. 25, 31-32, 617 P.2d 1141, 1147-48
20 (1980); *State v. Delk*, 153 Ariz. 70, 72, 734 P.2d 612, 614 (App. 1986); *State v. Felix*,
21 153 Ariz. 417, 418-19, 737 P.2d 393, 394-95 (App. 1986). Although a Court
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1 certainly acts within its power when deciding whether to accept or reject a proffered
2 plea agreement or its sentencing terms, ARIZ. R. CRIM. P. 17.4, Rule 15.8's mandate
3 that a plea offer remain open for a specified period of time or face the extreme
4 sanction of suppression of evidence is an unconstitutional judicial interference into a
5 core executive function.
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8 If this Court does not eliminate Rule 15.8, some of the separation of powers
9 issues can at least be minimized by the elimination of the arbitrary 30 day period set
10 forth in the rule. The 30 day period to consider a plea has no basis in the law or any
11 established notion of due process. That time period was essentially conjured out of
12 thin air without any logical basis. The provision is also in direct contradiction with
13 Rule 17.4 which permits either party to withdraw from a plea *at any time* until the
14 agreement is accepted by the court. Indeed, in many simple criminal cases, a 30 day
15 consideration period is far too long and in other more complex cases it is probably
16 too short. For this reason, how long a plea remains available should be based on the
17 facts and circumstances of individual cases and at the discretion of the prosecutor.
18 Determining how long an offer is available should be part of the give and take of the
19 plea negotiation process as it would be in any contract scenario, not dictated by a rule
20 of procedure. The arbitrary 30 day provision of the rule should be deleted.
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23 Likewise, the draconian sanction of suppression of evidence should also be
24 eliminated from the rule. As discussed in the previous comment MCAO filed on this
25 petition, the nature of the presumptive sanction in Rule 15.8 is completely
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1 inappropriate given the fact that courts “should seek to apply sanctions that affect the
2 evidence at trial and the merits of the case as little as possible since the Rules of
3 Criminal Procedure are designed to implement, not to impede, the fair and speedy
4 determination of cases.” State v. Roque, 213 Ariz. 193, 210, ¶ 50, 141 P.3d 368, 386
5 (2006) (quoting State v. Fisher, 141 Ariz. 227, 246, 686 P.2d 750, 769 (1984)). A
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7 mandatory sanction that requires that material evidence be suppressed at trial has
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9 devastating impacts on the goals of finding truth and achieving justice in a criminal
10 trial. If Rule 15.8 is to remain in our criminal rules, the mandatory sanction
11 provisions of the rule should be removed and a court should be allowed to exercise
12 discretion consistent with the requirements and considerations of Rule 15.7.

14 II. CONCLUSION

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16 Rule 15.8 violates separation of powers by inserting the judiciary into a core
17 prosecutorial function. For this reason the rule should be eliminated. If the rule is
18 retained, however, this Court should remove the mandated 30 day period and the
19 minimum sanction provisions.
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21 Respectfully submitted this 20th of May, 2014.

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