

1 Committee on Superior Court
2 Honorable James A. Soto, Chair
3 Superior Court in Santa Cruz County
4 P.O. Box 1929
5 Nogales, Arizona 85628
6 (520) 375-7730

7
8 **IN THE SUPREME COURT STATE OF ARIZONA**

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10)
11 In the Matter of PETITION TO) Supreme Court No. R-06-0024
12 AMEND RULE 15 OF THE)
13 ARIZONA RULES OF CRIMINAL) **COMMENT OF THE**
14 PROCEDURE) **COMMITTEE ON**
15) **SUPERIOR COURT**
16)
17 _____)
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19 The Committee on Superior Court, through undersigned, files the
20 following comment pursuant to Rule 28, Arizona Rules of the Supreme
21 Court, to Petition R-06-0024, concerning amendments to Rule 15,
22 Ariz.R.Crim.P., relating to *ex parte* communications, proceedings or
23 requests.

24 The Committee on Superior Court discussed the rule change petitions
25 currently out for comment, including R-06-0024, during its February 16,
26 2007, public meeting. The Committee on Superior Court is of the opinion
27 that the proposed amendment to Rule 15 should not be adopted.

28 The proposed amendment would replace current Rule of Criminal
29 Procedure 15.9. The current rule allows *ex parte* communications with the

1 trial judge to address only the issues of appointment of investigators, expert
2 witnesses and mitigation specialists in criminal cases. Requests for
3 application of the current rule are virtually always from appointed counsel
4 on behalf of indigent defendants. In contrast, defendants able to pay for
5 their own defense attorneys do not require court approval or appointment of
6 such individuals. A defendant who can afford to hire an expert witness may;
7 therefore, do so without compromising or publicizing their trial strategy and
8 their work product. The current rule allows indigent defendants the same
9 protection. At the same time, the current rule permits the court to determine
10 on a case-by-case basis whether expenditure of public funds to appoint such
11 individuals is justified.

12 The Proposed Rule would treat indigent defendants differently from
13 those who can afford their own attorney. The changes would give
14 prosecutors insight into the strategy of an indigent defendant that they would
15 not have in other cases.

16 The proposed rule change is based upon a case in Maricopa County
17 wherein an issue raised in a Rule 15.9 hearing went outside the scope of the
18 current Rule 15.9. Obviously, only issues within the scope of Rule 15.9 may
19 be raised in such a hearing, and any violations should not be tolerated.
20 However, the Committee on Superior Court does not feel that this isolated

1 incident is sufficient to justify the proposed rule change. The current rule
2 has worked very well to balance indigent defendants' rights with the need to
3 oversee the proper and necessary expenditure of public funds. The trial
4 judge presiding over the case is in the best position to make such decisions.
5 Trial judges do so on a regular basis without any problems whatsoever.

6 The proposed rule gives prosecutors an advantage over indigent
7 defendants they do not have with defendants who can afford to hire their
8 own attorneys. The proposed rule adds unnecessary bureaucratic
9 requirements that promote inefficiency and place an additional, and
10 unnecessary, burden on presiding criminal judges and the criminal justice
11 system. Because there are other remedies in extreme cases where the current
12 rule is not followed, such as complaints to the Bar Association and Judicial
13 Commission, there is no benefit from the proposed rule.

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15 **RESPECTFULLY SUBMITTED** this 11th day of May 2007.

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17 **COMMITTEE ON SUPERIOR COURT**

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19 _____
20 Honorable James A. Soto
21 Committee on Superior Court Chair

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23 Electronically filed with the Clerk
24 Of the Supreme Court of Arizona
25 this 11th day of May 2007.

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27 By: Susan R. Pickard

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2 Copy the foregoing mailed
3 this 11th day of May 2007, to:

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5 Philip J. MacDonnell, Chief Deputy
6 Maricopa County Attorney's Office
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