

Christopher B. DuPont (State Bar #014158)  
President  
Arizona Attorneys for Criminal Justice  
2340 West Ray Road, Ste 1  
Chandler, Arizona 85224  
(480) 812-1700

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AUG 13 2007

CLERK SUPREME COURT

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

In the Matter of:

Amendment of Rules 4.2, 7.2, 7.4, 27.7  
and  
31.6, Rules of Criminal Procedure

No. R07-0003


**NOTICE OF ERRATA  
REGARDING COMMENT  
OPPOSING AMENDMENT OF  
RULES 4.2, 7.2, 7.4, 27.7 AND 31.6,  
RULES OF CRIMINAL  
PROCEDURE**

The Arizona Attorneys for Criminal Justice (“AACJ”) filed with this Court on August 10, 2007, its Comment Opposing Amendment of Rules 4.2, 7.1, 7.4, 27.7 and 31.6, Rules of Criminal Procedure (“Comment”). On page 16 of its Comment, the AACJ erroneously referred to “Rule XX.” The correct Rule number is Rule 4.2. A copy of corrected page 16 is attached.

Dated: August 13, 2007.

RESPECTFULLY SUBMITTED this 13th day of August, 2007.

ARIZONA ATTORNEYS FOR  
CRIMINAL JUSTICE

By  for CBD.

Christopher B. DuPont  
President  
2340 West Ray Road, Ste One  
Chandler, Arizona 85224  
480.812.1700

ORIGINAL and SIX COPIES  
filed with the Court this 13th  
day of August, 2007.

COPY mailed this same date to:

David Byers, Administrative Director  
Arizona Supreme Court, Administrative Office of the Courts  
1501 West Washington Street, Suite 411  
Phoenix, Arizona 85007



proposed amendments, however, demand that bondability and proof is evident or presumption great be determined at IA. Therefore, if these Rule changes are adopted, they necessarily transform the IA into a critical stage of the prosecution.<sup>3</sup> Accordingly, Rule 4.2 should also be amended to provide defendants with counsel at the IA.

### Conclusion

The Supreme Court has instructed that procedural due process requires adversarial safeguards be afforded defendants before bail can be denied by statutory authority. *Simpson* applied this rule to Arizona, requiring a full and adversarial evidentiary hearing before bail is denied under A.R.S. § 13-3-961(A). The proposed amendments to the Rules are contrary to these holdings. Therefore, they must be rejected.

Moreover, any Rule changes that are adopted, must address the separation of powers and Fifth Amendment violations that result from PTS interviews with in-custody defendants. Finally, if the proposed Rules are adopted over these constitutional defects, defendants must be provided with counsel at IA.

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<sup>3</sup> Adoption of the proposed Rules, therefore, would require the Court to revisit *State v. Cook*, 150 Ariz. 470, 475, 724 P.2d 556, 561 (1986) which held that “no right to an attorney exists at the initial appearance.” *Cook*, however, is now obsolete in light of the recent changes to Arizona law concerning nonbailable offense and the “proof is evident or presumption great” standard. Under these changes the IA is a critical proceeding at which there is a constitutional right to counsel.