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ARIZONA SUPREME COURT

10 IN RE: PETITION TO AMEND THE
11 ARIZONA RULES OF CRIMINAL
12 PROCEDURE

R-17-0002

MARICOPA COUNTY ATTORNEY'S
RESPONSE TO PETITION TO AMEND THE
RULES OF CRIMINAL PROCEDURE

14 The Maricopa County Attorney hereby responds to the Petition to Amend the
15 Rules of Criminal Procedure and asks this Court to modify three proposed changes as
16 discussed below.

18 Rule 11

19 According to Appendix B submitted with the Petition, the Task Force decided to
20 split Rule 11 between competency proceedings and inquiries into the defendant's
21 mental status at the time of the offense. The current rule blends both inquiries
22 together. MCAO agrees with the Task Force that dividing these two topics makes the
23 rule clearer and easier to use.

26 The division, however, has left some ambiguity in the rule. Nothing in the new
27 11.8 addresses the delivery of an expert's report. Therefore, in the proposal, only
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1 Rule 11.4 addresses the disclosure of mental health reports. But, as currently drafted,
2 Rule 11.4 is confusing because it does not reference the new Rule 11.8 but it does
3 reference Rule 11.3 in (a)(1) and it references Rule 11.5 in (b) and that rule only
4 addresses competency hearings. The proposed rule needs to be modified to be clear
5 that Rule 11.4(a) addresses experts appointed for competency determinations while
6 (b) address the reports of any other type of mental health expert.
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9 MCAO suggests the following modification to the proposed Rule 11.4.

10 **Rule 11.4. Disclosure of Experts' Reports**

11 **(a) Reports of Appointed Experts UNDER RULE 11.3.**

12 (1) ***Deadline.*** An expert appointed under Rule 11.3 must submit a report to the
13 court no later than 10 business days after the expert's examination is
14 completed. The expert must inform the court if the report cannot be made
15 available at least 7 days before the scheduled hearing.

16 (2) ***Availability.*** An expert's report COMPLETED UNDER RULE 11.3 must be
17 made available to the examined defendant and the State, except that any
18 statement by the defendant about the charged offense or any other charged or
19 uncharged offense (or any summary of such a statement) may be made
20 available only to the defendant. Upon receipt, court staff will copy and provide
21 the expert's report to the court and defense counsel. Defense counsel is
22 responsible for editing a copy of the report for the State. Defense counsel must
23 provide the edited report to court staff to be made available to the State no later
24 than 3 days after receiving the unedited report.

25 **(b) Reports of Other Experts.** For any OTHER mental health expert who has
26 personally examined the defendant or any evidence in connection with the case TO
27 DETERMINE COMPETENCY OR THE DEFENDANT'S MENTAL STATUS
28 AT THE TIME OF THE CRIME, THE that defendant and the State must disclose;
~~to each other at least 15 business days before any Rule 11.5 hearing:~~

(1) the expert's name and address;

(2) the results of any mental examinations, scientific tests, experiments, or
comparisons conducted on the defendant or on any evidence in the case by or
on the behalf of the mental health expert; and

(3) any written report or statement in connection with the case.

Rule 15.1(b)(2)

Although the Task Force retained the current substance of Rule 15.1(b)(2), the rule was poorly written in the first instance and should be modified to correct a peculiar oversight. Rule 15.1(b) deals with supplemental disclosures the State must provide to the defense. Nearly every subsection has some limiting language to limit the items that need to be disclosed to material that pertains to the current prosecution. Subsection (b)(1) requires the State to disclose the names and address of witnesses and any “relevant written or recorded” statements. Subsection (b)(3) requires the State to disclose law enforcement reports “in connection with the charged offense.” Subsection (b)(4) requires the disclosure of an expert “who has examined a defendant or any evidence in the case, or who the State intends to call at trial.” Subsection (b)(5) requires disclosure of a list of tangible objects that the State “intends to use at trial.”

Every subsection under Rule 15.1(b) limits the disclosure to items that will be used at trial or are connected with the specific case being prosecuted – with one exception. Rule 15.1(b)(2) requires the State to disclose “all statements of the defendant and of any person who will be tried with the defendant” (in the current version) or “any statement of the defendant and any co-defendant” (in the revised version). This subsection is the only one that does not limit the disclosure obligation to the trial or to the specific crime being prosecuted. Given the very broad definition

1 of “statement” in Rule 15.4(a) and the unfortunate fact that many defendants make
2 many statements to law enforcement over many years of different arrests and
3 prosecutions, it would be impossible and nonsensical for anyone to comply with the
4 rule’s literal mandate. Rule 15.1(b)(2) needs to have the same limiting language as
5 every other section in Rule 15.1(b). Therefore, MCAO requests that Rule 15.1(b)(2)
6 be modified to read, “any statement of the defendant and any codefendant that was
7 made in connection with the charged offense.”
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10 **Rule 39(d)(3)**

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12 The petition proposes a modification to Rule 39 that would renumber current
13 Rule 39(c)(3) as Rule 39(d)(3) and the new rule changes the end of the sentence from
14 “the prosecutor shall have the responsibility to direct the victim to the appropriate
15 legal referral, legal assistance, or legal aid agency” to “the prosecutor must advise the
16 victim of the right to seek independent legal counsel and provide contact information
17 to the appropriate state or local bar association for referral to a lawyer.” While the
18 MCAO appreciates the need to refer victims to independent counsel, the options in
19 the proposed rule are too limiting. The MCAO recommends the following language,
20 “the prosecutor must advise the victim of the right to seek independent legal counsel
21 and provide contact information to an appropriate organization for referral to a lawyer
22 which may include a state or local bar association or the Attorney General’s Victims’
23 Rights Program.”
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Respectfully submitted this 14th day of March, 2017.

By MARK FAULL
CHIEF DEPUTY