

1 **Arizona Public Defender Association**

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10 **BEFORE THE ARIZONA SUPREME COURT**

11 In the Matter of

12 AMENDMENT OF RULE 4.1
13 OF THE ARIZONA RULES OF
14 CRIMINAL PROCEDURE

15 } Supreme Court No. R_____.

16 }
17 } Petition to Amend Rule 4.1,
18 } Rules of Criminal Procedure


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20 The Arizona Public Defender Association petitions this Court pursuant to
21 Rule 28, Rules of the Supreme Court, to amend Rules 4.1 of the Rules of Criminal
22 Procedure relating to initial appearance as indicated in Exhibit A attached to this
23 Petition.

24 Currently, only two counties in Arizona, Pima and Pinal, provide attorneys
25 for eligible defendants at the initial appearances. Arizona Rules of Criminal
26 Procedure 4.2(a)(3) and 6.1(a) and the comment to Rule 6.1(a) indicate that
27 arrestees shall be advised of the right to counsel and that they have a right to
28 counsel at the initial appearance. Rule 16.1(a) has made initial appearances in
Arizona a critical stage in criminal proceedings requiring the assistance of counsel.
Recent Proposition 100 amending art II, § 22 of the Arizona Constitution and
A.R.S. 13-3961, as well as the Sixth Amendment right to counsel, due process and
Arizona case law, specifically *Simpson v. Owens*, 207 Ariz. 261, 85 P3d 478 (App.
2004) underscore the need for and a right to counsel at the initial appearances. In

1 addition, the Arizona Office of the Courts has petitioned this Court to amend Rule
2 4.2(a) and 7.2(b)¹. To assist in the clarification of the procedure to be following
3 pursuant to the amendment to art II, § 22 and A.R.S. 13-3961 and in light of the
4 failure of most counties in this State to provide counsel at initial appearances, and
5 given the liberty interests involved, as well as the evidentiary matters required in
6 order to effectuate the amendment to art II, § 22 and A.R.S. 13-3961, it is
7 incumbent upon this Court to establish and clarify the procedure for providing
8 counsel at initial appearances as set forth in Exhibit 1 hereto.

9 Submitted this 9th day of January, 2008.

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11 ARIZONA PUBLIC DEFENDER'S ASSOCIATION

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14 By 
15 Dana Hlavac, President

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26 ¹ This petition by reference incorporates the Arizona Public Defender
27 Association's comment opposing the Administrative Office of the Court's
28 petition to amend Rules 4.2, 7.2, 7.4, 27.7 and 36.1 of the Rules of Criminal
Procedure.

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EXHIBIT 1

Rule 4.1 Procedure Upon Arrest

(e) Assurance of Availability of Counsel at the Initial Appearance.

Each presiding judge shall take steps to ensure that counsel is present at the initial appearance to represent persons appearing at the initial appearance who are eligible for and desire appointed counsel.