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

9 In the Matter of:)
10 AMENDMENT OF RULES 16.1(b))
11 AND 16.4 OF THE ARIZONA RULES) Supreme Court No. R_____
12 OF CRIMINAL PROCEDURE)
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17 The Arizona Public Defender Association petitions the Court, pursuant to
18 Rule 28, Rules of the Supreme Court, to amend Rules 16.1(b) and 16.4 of the
19 Rules of Criminal Procedure relating to Omnibus Hearings as indicated in Exhibit
20 A. This petition is proposed in order to bring them into line with Ariz. R. Crim. P.
21 15.1(e), the amendment for which was effective July 1, 2005.

22 Rule 15.1(e) allows the prosecution 30 days after the arraignment to comply
23 with its requirement under Rule 15.1(b). Prior to the amendment of Rule 15.1(e),
24 the prosecution had 10 ten days from the date of arraignment in which to provide
25 the Rule 15.1(b) disclosure. However, the ten day requirement proved problematic
26 and upon petition to this Court the time was extended to 30 days. However, at the
27 same time Rule 16.1(b) was not amended. That Rule requires an omnibus hearing
28 only if affirmatively requested within 30 days of the date of arraignment. When
the time limit for Rule 15.1(b) disclosure was 10 days from arraignment, a request

1 for an omnibus hearing within 30 days of the date of arraignment was not
2 problematic. Now, however, a party wishing an omnibus hearing must make a
3 request prior to the time that all disclosure is required to be provided under Rule
4 15.1(b). This requires a party that might wish an omnibus hearing to speculate as
5 to whether one of the critical factors in an omnibus hearing, disclosure, will be
6 complete. It is only after full disclosure has been made that a proper decision
7 concerning the need for an omnibus hearing arises. This petition, therefore,
8 requests that Rule 16.1(b) be amended to require a party to affirmatively request an
9 omnibus hearing within 45 days after arraignment or 10 days from the receipt of all
10 disclosure required by Rule 15.1(e), whichever is later. This proposed amendment
11 will:

- 12 1) Correct the inconsistencies between Rule 15.1(e) and Rule 16.1(b);
- 13 2) Avoid meaningless filings of requests for omnibus hearings in the event
14 that full disclosure is received, thus obviating the need for the request; and,
- 15 3) Will give parties adequate time in which to evaluate the disclosure to
16 determine whether a request for an omnibus hearing is appropriate.

17 Petitioner also requests that Rule 16.4 be amended to allow the mandated
18 pretrial conference to be conducted 45 days after arraignment or at the same time
19 set for an omnibus hearing, if an omnibus hearing is affirmatively requested
20 pursuant to Rule 16.1(b). This amendment to Rule 16.4 will:

- 21 1) Obviate the possibility of multiple hearings by allowing both the
22 omnibus hearing and pretrial conference to be heard at the same time since many
23 of the matters set forth to be conducted in both those hearings are similar;
- 24 2) Allow an effective pretrial conference to be held, and appropriate
25 decisions made, by the trial court after there has been full disclosure pursuant to
26 Rule 15.1(b). The current rule mandates a pretrial conference with 25 days of the
27 date of arraignment, whereas Rule 15.1(b) disclosure is not mandated until 30 days
28 after arraignment;

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EXHIBIT A

Rule 16.1. General provisions

“b. Making of Motions Before Trial. All motions shall be made no later than 20 days prior to trial, or at such other time as the court may direct. The opposing shall have 10 days within which to file a response, unless the opposing party waives response. Lack of jurisdiction may be raised at any time. An omnibus hearing will be held only if affirmatively requested in writing by either or both parties within ~~30~~ 45 days of the date of arraignment in the Superior Court or 10 days after receipt of disclosure required by Rule 15.1(e), whichever is later, or ordered by the Court on its own motion. The omnibus hearing shall be set at the earliest convenient date following the filing of the request but no later than 20 days prior to the trial date.”

Rule 16.4. Mandatory prehearing conference

“a. Timing and Scope of Conference. No later than ~~25~~ 45 days after the arraignment or at the time set for an omnibus, if an omnibus hearing has been affirmatively requested pursuant to Rule 16.1(b) counsel for the parties, or a defendant if he or she is not represented by counsel , shall settle as many issues in the case as possible, and shall notify the court in writing of all issues which remain in dispute. This notification shall be filed no later than 3 days after the conference. A jointly prepared omnibus hearing form may be filed with the notification.”