

(B) any report prepared by the expert and the results of any completed physical examination, scientific test, experiment, or comparison conducted by the expert; and

(C) if the expert will testify at trial without preparing a written report, a summary of the general subject matter on which the expert is expected to testify; and

(3) a list of all documents, photographs, and other tangible objects the defendant intends to use at trial.

**(d) Time for Disclosures.** Unless the court orders otherwise, the defendant must disclose the material and information listed in (b) and (c) no later than:

(1) in superior court, 40 days after arraignment, or 10 days after the State's disclosure under Rule 15.1(b), whichever occurs first;

(2) in a limited jurisdiction court, 20 days after the State's disclosure under Rule 15.1(b).

**(e) Additional Disclosures upon Request.**

(1) *Generally.* Unless the court orders otherwise, the defendant must make the following items available to the State for examination, testing, and reproduction no later than 30 days after receiving the State's written request:

(A) any of the items specified in the list submitted under (c)(3); and

(B) any completed written report, statement, and examination notes made by an expert listed in (c)(2) in connection with the particular case.

(2) *Conditions.* The defendant may impose reasonable conditions, including an appropriate stipulation concerning chain of custody for physical evidence or to allow time for the examination or testing of any items.

**(f) Scope of Disclosure.** A defendant's disclosure obligation extends to material and information within the possession or control of the defendant, defense counsel, staff, agents, investigators, or any other persons who have participated in the investigation or evaluation of the case and who are under the defendant's direction or control.

**(g) Disclosure by Court Order.**

(1) *Disclosure Order.* On the State's motion, a court may order any person to make available to the State material or information not included in this rule if the court finds:

(A) the State has a substantial need for the material or information for the preparation of the State's case;

(B) the State cannot obtain the substantial equivalent by other means without undue hardship; and

(C) the disclosure of the material or information would not violate the defendant's constitutional rights.

(2) *Modifying or Vacating Order.* The court may modify or vacate an order if the court determines that compliance would be unreasonable or oppressive.

**(h) Additional Disclosures in a Capital Case.**

**(1) Initial Disclosures.**

(A) *Generally.* No later than 180 days after receiving the State's initial disclosure under Rule 15.1(i)(3), the defendant must disclose the following to the State:

(i) a list of all mitigating circumstances the defendant intends to prove;

(ii) the name and address of each person, other than the defendant, the defendant intends to call as a witness during the aggravation and penalty hearings, and any written or recorded statement of the witness;

(iii) the name and address of each expert the defendant intends to call during the aggravation and penalty hearings, and any written or recorded statements of the expert or other disclosure as required in (c)(2), excluding any portions containing statements by the defendant; and

(iv) a list of all documents, photographs, or other tangible objects the defendant intends to use during the aggravation and penalty hearings.

(B) *Time Extensions.* The court may extend the deadline for the defendant's initial disclosures under (h)(1) or allow the defendant to amend those disclosures only if the defendant shows good cause or if the parties stipulate to the deadline extension **and only after considering the victim's right to a speedy trial.**

(2) *Later Disclosures.* No later than 60 days after receiving the State's supplemental disclosure under Rule 15.1(i)(4), the defendant must disclose the following to the State:

(A) the name and address of each person the defendant intends to call as a rebuttal witness, and any written or recorded statement of the witness; and

(B) the name and address of each expert the defendant intends to call as a witness at the penalty hearing, and any report the expert has prepared.

### **Rule 15.3. Depositions; Victims' Right to Refuse**

**(a) Availability.** A party or a witness may file a motion requesting the court to order the examination of any person, except the defendant and a victim, by oral deposition under the following circumstances:

(1) a party shows that the person's testimony is material to the case and that there is a substantial likelihood that the person will not be available at trial; or

(2) a party shows that the person's testimony is material to the case or necessary to adequately prepare a defense or investigate the offense, that the person was not a witness at the preliminary hearing or at the probable cause phase of the juvenile transfer hearing, and that the person will not cooperate in granting a personal interview; or

(3) a witness is incarcerated for failing to give satisfactory security that the witness will appear and testify at a trial or hearing.

**(b) Follow-up Examination.** If a witness testifies at a preliminary hearing or probable cause phase of a juvenile transfer hearing, the court may order the person to attend and give testimony at a follow-up deposition if:

(1) the magistrate limited the person's previous testimony under Rule 5.3; and

(2) the person will not cooperate in granting a personal interview.

**(c) Motion for Taking Deposition; Notice; Service.**

**(1) Requirements.** A motion to take a deposition must:

(A) state the name and address of the person to be deposed;

(B) show that a deposition may be ordered under (a) or (b);

(C) specify the time and place for taking the deposition; and

(D) designate any nonprivileged documents, photographs, or other tangible objects that the person must produce at the deposition.

**(2) Order.** If the court grants the motion, it may modify any of the moving party's proposed terms and specify additional conditions governing how the deposition will be conducted.

**(3) Notice and Subpoena.** If the court grants the motion, the moving party must notice the deposition in the manner provided in Arizona Rule of Civil Procedure 30(b). The notice must specify the terms and conditions in the court's order granting the deposition. The moving party also must serve a subpoena on the deponent in the manner provided in A.R.S. § 13-4072(A)-(E) or as otherwise ordered by the court.

**(d) Manner of Taking.**

**(1) Generally.** Unless this rule provides or the court orders otherwise, the parties must conduct depositions in the manner provided in Rules 28(a) and 30 of the Arizona Rules of Civil Procedure.

**(2) Deposition by Written Questions.** If the parties consent, the court may order that a deposition be taken on written questions in the manner provided in Rule 31 of the Arizona Rules of Civil Procedure.

**(3) Deponent Statement.** Before the deposition, a party who possesses a statement of a deponent must make it available to any other party who would be entitled to the statement at trial.

**(4) Recording.** A deposition may be recorded by someone other than a certified court reporter. If someone other than a certified court reporter records the deposition, the party taking the deposition must provide every other party with a copy of the recording no later than 14 days after the deposition, or no later than 10 days before trial, whichever is earlier.

**(5) Remote Means.** The parties may agree or the court may order that the parties conduct the deposition by telephone or other remote means.

**(e) The Defendant's Right to Be Present.** A defendant has the right to be present at any deposition ordered under (a)(1) or (a)(3). If a defendant is in custody, the moving party must notify the custodial officer of the deposition's time and place. Unless the defendant waives the right to be present, the officer must produce the defendant for the deposition and remain with the defendant until it is completed.

**(f) Use.** A party may use a deposition in the same manner as former testimony.

**(g) Interviews, Depositions, and Other Discovery Requests of a Victim.**

**(1) Communication.** The defense must communicate the request to interview the victim to the prosecutor or to the victim's attorney if the victim is represented. A victim's response to any request must be communicated through the prosecutor or

the victim's attorney, if the victim is represented. A defendant, a defendant's attorney, or any person acting on the defendant's behalf may not contact the victim.

**(2) Right to Refuse.** A victim has the right to refuse a defense request for interview, deposition, or any other discovery. If a victim consents to an interview, the victim has the right to refuse to answer any question and to terminate the interview at any time.

**(3) Right to assistance and to set conditions.** If a victim consents to a defense interview, the victim has the right to be accompanied by a parent or other relative, or by an appropriate support person named by a victim, including a victim's caseworker or advocate unless the testimony of the person accompanying the victim is required in the case. If the court finds that a party's claim that a person is a prospective witness is not made in good faith, it may impose sanctions, including holding counsel in contempt. A victim also has the right to condition the interview or deposition on specification of a reasonable date, time, duration, and location of the interview or deposition including a requirement that it be held at the victim's home, at the prosecutor's office, or at an appropriate location in the courthouse.

**(4) Jury Instruction if a victim's refusal is commented on at trial.** If there is any comment or evidence at trial regarding a victim's refusal to be interviewed, the court must instruct the jury that a victim has the right under the Arizona Constitution to refuse an interview.

#### **Rule 15.6. Continuing Duty to Disclose; Final Disclosure Deadline; Extension**

**(a) Continuing Duties.** The parties' duties under Rule 15 are continuing duties without awaiting a specific request from any other party.

**(b) Additional Disclosures.** Any party who anticipates a need to provide additional disclosure no later than 30 days before trial must immediately notify both the court and all other parties of the circumstances and when the party will make the additional disclosure.

**(c) Final Deadline for Disclosure.** Unless otherwise permitted, all disclosure required by Rule 15 must be completed at least 7 days before trial.

**(d) Disclosure After the Final Deadline.**

**(1) Motion to Extend Disclosure.** If a party seeks to use material or information that was disclosed less than 7 days before trial, the party must file a motion to extend the disclosure deadline and to use the material or information. The moving party also must file a supporting affidavit setting forth facts justifying an extension.

(2) **Order Granting Motion.** The court must extend the disclosure deadline and allow the use of the material or information if it finds the material or information:

(A) could not have been discovered or disclosed earlier with due diligence; and

(B) was disclosed immediately upon its discovery.

(3) **Order Denying Motion or Granting Continuance; Sanctions.** If the court finds that the moving party has failed to establish facts sufficient to justify an extension under (d)(2), it may:

(A) deny the motion to extend the disclosure deadline and deny the use of the material or information; or

(B) extend the disclosure deadline and allow the use of the material or information and, if it extends the deadline, the court may impose any sanction listed in Rule 15.7 except preclusion or dismissal.

**(e) Extension of Time for Completion of Testing.**

(1) **Motion.** Before the final disclosure deadline in (c), a party may move to extend the deadline to permit the completion of scientific or other testing. The motion must be supported by an affidavit from a crime laboratory representative or other scientific expert stating that additional time is needed to complete the testing or a report based on the testing. The affidavit must specify how much additional time is needed.

(2) **Order.** If a motion is filed under (e)(1), the court must grant reasonable time to complete disclosure unless the court finds that the need for the extension resulted from dilatory conduct or neglect, or that the request is being made for an improper reason by the moving party or a person listed in Rule 15.1(f) or 15.2(f).

(3) **Extending Time.** If the court grants a motion under (e)(2), the court may extend other disclosure deadlines as necessary. **In determining new deadlines under this rule, the court must consider the victim's and defendant's right to a speedy trial.**

**Rule 16.3. Pretrial Conference**

(a) **Generally.** A court may conduct one or more pretrial conferences. The court may establish procedures and requirements that are necessary to accomplish a conference's objectives, including identifying appropriate cases for pretrial conferences, identifying who must attend, and determining sanctions for failing to attend. A superior court must conduct at least one pretrial conference.

(b) **Objectives.** The objectives of a pretrial conference may include:

(1) providing a forum and a process for the fair, orderly, and just disposition of cases without trial;

(2) permitting the parties, without prejudice to their rights to trial, to engage in disclosure and to conduct negotiations for dispositions without trial;

(3) discussing compliance with discovery requirements set forth in these rules and constitutional law; and

(4) enabling the court to set a trial date.

**(c) Duty to Confer.** The court may require the parties to confer and submit memoranda before the conference.

**(d) Scope of Proceeding.** At the conference, the court may:

(1) hear motions made at or filed before the conference;

(2) set additional pretrial conferences and evidentiary hearings as appropriate **after considering the rights and views of the victim, the victim's right to a speedy trial, and the victim's right to be present at all proceedings;**

(3) obtain stipulations to relevant facts; and

(4) discuss and determine any other matters that will promote a fair and expeditious trial, including imposing time limits on trial proceedings, using juror notebooks, giving brief pre-voir dire opening statements and preliminary instructions, and managing documents and exhibits effectively during trial.

**(e) Stipulated Evidence.** At a pretrial conference or any time before the start of an evidentiary hearing, the parties may submit any issue to the court for decision based on stipulated evidence.

**(f) Record of Proceedings.** Proceedings at a pretrial conference must be on the record.

#### **Rule 16.4. Dismissal of Prosecution**

**(a) On the State's Motion.** On the State's motion and for good cause, the court, **after considering the views of the victim,** may order a prosecution dismissed without prejudice if it finds that the dismissal is not to avoid Rule 8 time limits.

**(b) On a Defendant's Motion.** On a defendant's motion, the court must order a prosecution's dismissal if it finds that the indictment, information, or complaint is insufficient as a matter of law.

**(c) Record.** If the court grants a motion to dismiss a prosecution, it must state on

the record its reasons for ordering dismissal.

**(d) Effect of Dismissal.** Dismissal of a prosecution is without prejudice to commencing another prosecution, unless the court finds that the interests of justice require that the dismissal to be with prejudice. **Before dismissing any case with prejudice, the court must consider a victim's right to justice and due process.**

**(e) Release of Defendant; Exoneration of Bond.** If a court dismisses a prosecution, the court must order the release of the defendant from custody, unless the defendant also is being held on another charge. It also must exonerate any appearance bond.

### **Rule 17.1. The Defendant's Plea**

#### **(a) Jurisdiction; Personal Appearance.**

**(1) Jurisdiction.** Only a court having jurisdiction to try the offense may accept a plea of guilty or no contest.

**(2) Personal Appearance.** Except as provided in these rules, a court may accept a plea only if the defendant makes it personally in open court. If the defendant is a corporation, defense counsel or a corporate officer may enter a plea for the corporation. For purposes of this rule, a defendant who makes an appearance under Rule 1.5 is deemed to personally appear.

**(b) Voluntary and Intelligent Plea.** A court may accept a plea of guilty or no contest only if the defendant enters the plea voluntarily and intelligently. Courts must use the procedures in Rules 17.2, 17.3, and 17.4 to assure compliance with this rule.

**(c) No Contest Plea.** A plea of no contest may be accepted only after the court gives due consideration to the parties' views and to the interest of the public in the effective administration of justice.

**(d) Record of a Plea.** The court must make a complete record of all plea proceedings.

**(e) Waiver of Appeal.** By pleading guilty or no contest in a noncapital case, a defendant waives the right to have the appellate courts review the proceedings on a direct appeal. A defendant who pleads guilty or no contest may seek review only by filing a petition for post-conviction relief under Rule 32 and, if it is denied, a petition for review.

#### **(f) Limited Jurisdiction Court Alternatives for Entering a Plea.**

##### **(1) Telephonic Pleas.**

**(A) Eligibility.** A limited jurisdiction court has discretion to accept a telephonic plea

of guilty or no contest to an offense if the defendant provides written certification and the court finds the defendant:

(i) resides out-of-state or more than 100 miles from the court in which the plea is taken; or

(ii) has a serious medical condition so that appearing in person would be an undue hardship, regardless of distance to the court.

**(B) Procedure.** The defendant must submit the plea in writing substantially in the form set forth in Rule 41, Form 28. It must include the following:

(i) a statement by the defendant that the defendant has read and understands the information in the form, waives applicable constitutional rights for a plea, and enters a plea of guilty or no contest to each of offenses in the complaint; and

(ii) a certification from a peace officer in the state in which the defendant resides—or, if the defendant is an Arizona resident, a peace officer in the county in which the defendant resides—that the defendant personally appeared before the officer and signed the certification described in (F)(1)(B)(i), and the officer affixes the defendant's fingerprint to the form.

**(C) Judicial Findings.** Before accepting a plea, the court must hold a telephonic hearing with the parties, **the victim if any**, inform the defendant that the offense may be used as a prior conviction, and find:

(i) it has personally advised the defendant of the items set forth in the form;

(ii) a factual basis exists for believing the defendant is guilty of the charged offenses; and

(iii) the defendant's plea is knowingly, voluntarily, and intelligently entered.

## **(2) Plea by Mail.**

**(A) Eligibility.** A limited jurisdiction court has discretion to accept by mail a written plea of guilty or no contest to a misdemeanor or petty offense if the court finds that a personal appearance by the defendant would constitute an undue hardship such as illness, physical incapacity, substantial travel distance, or incarceration. The presiding judge of each court must establish a policy for the State's participation in pleas submitted by mail.

**(B) When a Plea May Not Be Accepted by Mail.** A court may not accept a plea by mail in a case:

- (i) involving a victim;
- (ii) in which the court may impose a jail term, unless the defendant is sentenced to time served or the defendant is currently incarcerated and the proposed term of incarceration would be served concurrently and not extend the period of incarceration;
- (iii) in which the court may sentence the defendant to a term of probation;
- (iv) involving an offense for which A.R.S. § 13-607 requires the taking of a fingerprint upon sentencing; or

(v) in which this method of entering a plea would not be in the interests of justice.

(C) *Procedure.* The defendant must submit the plea in writing substantially in the form set forth in Rule 41, Form 28(a). The defendant must sign the plea form, which must include the following:

(i) a statement that the defendant has read and understands the information on the form, waives applicable constitutional rights for a plea, and enters a plea of guilty or no contest to each of the offenses in the complaint and consents to the entry of judgment; and

(ii) a statement for the court to consider when determining the sentence.

(D) *Mailing.* The court must mail a copy of the judgment to the defendant.

#### **Rule 19.7. Victim's Right to Use of Facility Dog.**

(a) **Definition.** For the purposes of this rule, a "facility dog" means a dog that is a graduate of an assistance dog organization that is a member of an organization or entity whose main purpose is to improve the areas of training, placement and utilization of assistance dogs, staff and volunteer education and to establish and promote standards of excellence in all areas of assistance dog acquisition, training, and partnership.

(b) **Mandatory.** A court must allow a victim who is under eighteen at the time of testifying to have a facility dog accompany the victim while testifying if a facility dog is available.

(c) **Discretionary.** A court may permit any victim or witness to use a facility dog.

(d) **Notice.** A party seeking to use a facility dog must file a notice that includes the certification of the dog, the name of the certifying person or entity, and proof that the dog is insured.

**(e) Jury Instruction.** The court must take reasonable measures to ensure that the presence of a facility dog does not influence the jury or reflect on the truthfulness of any testimony that is offered during the use of a facility dog including instructing the jury on the role of the facility dog and that the facility dog is a trained animal.

#### **Rule 26.7. Presentencing Hearing; Prehearing Conference**

**(a) Request for a Presentencing Hearing.** If the court has discretion concerning the imposition of a penalty, it may—and, on any party's request, must—hold a presentencing hearing before sentencing.

#### **(b) Timing and Conduct of a Presentencing Hearing.**

**(1) Timing.** The court may not hold a presentencing hearing until the parties have had an opportunity to review all reports concerning the defendant prepared under Rules 26.4 and 26.5.

**(2) Presenting Evidence.** At the hearing, **the victim must be afforded the right to be heard and** any party may introduce any reliable, relevant evidence, including hearsay, to show aggravating or mitigating circumstances, to show why the court should not impose a particular sentence, or to correct or amplify the presentence, diagnostic, or mental health reports.

**(3) Record.** A presentencing hearing must be held in open court, and the court must make a complete record of the proceedings.

#### **(c) Prehearing Conference.**

**(1) Generally.** On motion or on its own, the court may hold a prehearing conference to determine what matters are in dispute, and to limit or otherwise expedite a presentencing hearing.

**(2) Attendance of Probation Officer.** The court may order the probation officer who prepared the presentence report to attend a prehearing conference.

**(3) Postponing Sentencing and Presentencing Hearing.** At the conference, the court may postpone the date of sentencing for no more than 10 days beyond the maximum extension permitted by Rule 26.3(b), and may delay the presentencing hearing accordingly, to allow the probation officer to investigate any matter the court specifies, or to refer the defendant for mental health examinations or diagnostic tests.