

1 WILLIAM G. MONTGOMERY
2 MARICOPA COUNTY ATTORNEY
3 (FIRM STATE BAR NO. 00032000)

4 MICHAEL R. McVEY
5 DEPUTY CHIEF – CRIMINAL GROUP
6 301 WEST JEFFERSON STREET, SUITE 800
7 PHOENIX, ARIZONA 85003
8 TELEPHONE: (602) 506-3800
9 (STATE BAR NUMBER 006926)

8 ARIZONA SUPREME COURT

10 IN RE:

R-19-0013

11 PETITION TO MODIFY RULES 5.4,
12 7.2, AND 7.4 OF THE ARIZONA
13 RULES OF CRIMINAL
14 PROCEDURE

MARICOPA COUNTY ATTORNEY’S REPLY
TO THE COMMENT OF THE STATE BAR OF
ARIZONA

15 The Maricopa County Attorney’s Office hereby submits this Reply to the
16 Comment of the State Bar in this matter. The Comment raises two concerns. The first
17 is that the proposed rule change does not provide sufficient guidance to trial courts
18 regarding continuances of bail hearings. Although the trial court is in the best position
19 to “give meaning to due process and the presumption of innocence” [Comment at 3] in
20 light of the specific circumstances of a given case, if this Court is concerned about the
21 amount of discretion the proposed change gives trial judges the Maricopa County
22 Attorney’s Office proposes the following change to the proposed changes to Rule
23 7.2(b)(4)(B) in the initial petition:
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1 (B) Timing.
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3 (i) If the State makes an oral motion under A.R.S. § 13-3961(E),
4 the court must hold this hearing within 24 hours of the initial
5 appearance, subject to continuances as provided in A.R.S. § 13-
6 3961. If this motion is not made, the hearing must be held as soon
7 as practicable, but no later than 7 days after the initial appearance
8 unless the detained defendant moves for a continuance OR THE
9 COURT GRANTS A CONTINUANCE UNDER (B)(ii).

10 (ii) THE COURT MAY CONTINUE THE HEARING IF THE
11 COURT FINDS THAT EXTRAORDINARY CIRCUMSTANCES
12 EXIST AND DELAY IS INDISPENSABLE TO THE
13 INTERESTS OF JUSTICE. FOR THIS PURPOSE,
14 EXTRAORDINARY CIRUCMSTANCES ARE EVENTS THAT
15 WOULD PROHIBIT THE HEARING FROM OCCURRING
16 THAT ARE BEYOND THE PROSECUTOR'S
17 CONTROL. UPON A FINDING OF EXTRAORDINARY
18 CIRCUMSTANCES, THE COURT MAY CONTINUE THE
19 HEARING ONCE AND FOR NO MORE THAN 5 DAYS.

20 The Comment's second concern is that the change to Rule 7.2(b)(C)(ii) might
21 cause a case to be dismissed despite the fact that a probable cause finding was made
22 *before* the bail eligibility hearing. This concern can be adequately addressed with the
23 addition of the following language to the proposed Rule 7.2(b)(C)(ii):

24 (C) Determination of Probable Cause and Release Conditions. If the
25 court does not find the proof evident or the presumption great under
26 (b)(1) or (b)(2)(A), AND THERE HAS BEEN NO PRIOR
27 FINDING OF PROBALE CAUSE FOR THE CHARGES BY A
28 GRAND JURY OR THROUGH A PRELIMINARY HEARING,
the court must determine whether there is probable cause to believe
that an offense was committed and that the defendant committed it.
(i) PROBABLE CAUSE FOUND. If the court finds probable
cause, OR PROBABLE CAUSE FOR THE CHARGES
WAS PREVIOUSLY DETERMINED BY A GRAND

