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ARIZONA SUPREME COURT

In the Matter of:

PETITION TO AMEND RULE
11.4(b), ARIZONA RULES OF
CRIMINAL PROCEDURE

SUPREME COURT NO. R-

**PETITION TO AMEND ARIZONA
RULE OF CRIMINAL PROCEDURE,
RULE 11.4(b), TO FACILITATE
DISCLOSURE OF EXPERT OPINIONS**

Pursuant to Rule 28, Rules of Supreme Court, the Maricopa County Attorney respectfully requests this Court to modify Rule 11.4(b) of the Arizona Rules of Criminal Procedure to facilitate the disclosure of expert opinions in mental competency proceedings by adopting the current disclosure requirements in Rule 15.

Rule 11 *et seq*, Arizona Rules of Criminal Procedure, dictates the process for pre-trial competency proceedings in Arizona. Rule 11.4(a) addresses court appointed experts and it requires the expert to submit a report to the court that is available to the parties. Rule 11.4(b) governs the disclosure requirements for mental health experts who are not appointed by the court but retained by a party. Rule

11.4(b) does not require the expert to prepare a report. If a report is prepared, Rule 11.4(b)(3) requires the report to be disclosed, but for various reasons an expert may not be asked to complete any written report. In the absence of a report, the rule does not require disclosure of the expert's opinions.

Rule 15, which governs disclosures for trial, specifically addresses situations where experts do not prepare written reports. That rule provides that a party must disclose "a summary of the general subject matter and opinions on which the expert is expected to testify" if the expert does not prepare a written report. Ariz. R. Crim. P. 15.1(b)(4)(c).


In the absence of a written report, disclosure of a summary of the opinions of a testifying expert is no less important in a hearing under Rule 11 than it is for a trial. Under the current rule, a party preparing for and conducting a hearing under Rule 11 is subject to hearing by ambush if the opposing expert has not prepared a written report. Surprise expert testimony is contrary to the intent of the rules, causes unnecessary litigation, and is needlessly inefficient for the parties and the court. There are often situations in competency proceedings where the admissibility of the conclusions and opinions of mental health evaluators is the entire basis of litigation. If a party first learns of such opinions during the expert's testimony, this serves only to frustrate and delay the entire process.

In order to correct this oversight and provide for a fair and efficient process for competency hearings, this petition proposes that this Court modify Rule 11.4(b) to include the same disclosure provisions as Rule 15 when a testifying expert in a competency hearing does not prepare a written report. In addition, the proposed modification also requires the parties to disclose the qualifications of retained experts which is also required by Rule 15 for trial experts. The sound reasons for including this provision in Rule 15 apply equally to experts retained for competency hearings.

By modifying Rule 11.4(b) as proposed, the parties and the court will avoid surprises at competency proceedings, litigation will be more efficient, and the goals of our disclosure rules will be met. For these reasons, this Court should adopt the changes to Rule 11.4(b) as specified in Attachment A.

Respectfully submitted this 5th day of January 2021.

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By /s/ 
Kenneth N. Vick
Chief Deputy

Attachment A

Rule 11.4. Disclosure of Experts' Reports

(a) *No Change*

(b) Reports of Other Experts. For any other mental health expert who has personally examined the defendant or any evidence in connection with the case to determine competence or the defendant's mental status at the time of the offense, the 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, AND QUALIFICATIONS;

(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 OR, IF THE EXPERT WILL TESTIFY WITHOUT PREPARING A WRITTEN REPORT, A SUMMARY OF THE GENERAL SUBJECT MATTER AND OPINIONS ON WHICH THE EXPERT IS EXPECTED TO TESTIFY.