

1 Elizabeth Burton Ortiz, Bar No. 012838
2 Executive Director
3 Arizona Prosecuting Attorneys'
4 Advisory Council
5 3838 N. Central Avenue, Suite 850
6 Phoenix, AZ 85012
7 (602) 542-7222 / FAX (602) 274-4215
8 Elizabeth.Ortiz@apaacaz.com

9 **IN THE SUPREME COURT**
10 **STATE OF ARIZONA**

11 In the Matter of:

Supreme Court No. R-21-0004

12 **PETITION TO AMEND RULE**
13 **11.4(b), ARIZONA RULES OF**
14 **CRIMINAL PROCEDURE**

15 **COMMENT OF**
16 **THE ARIZONA PROSECUTING**
17 **ATTORNEYS' ADVISORY**
18 **COUNCIL**

19 The proposed rule change is an effort to incorporate Rule 15 expert disclosure
20 requirements into Rule 11. Rule 11.4(b) governs the disclosure requirements for
21 mental health experts who are not appointed by the court but retained by a party.
22 Rule 11.4(b) does not require the expert to prepare a report. If a report is prepared,
23 Rule 11.4(b)(3) requires the report to be disclosed, but for various reasons an expert
24 may not be asked to complete any written report. In the absence of a report, the rule
25 does not require disclosure of the expert's opinions.

This State has long discouraged trial by ambush. Full and free disclosure of an
expert's qualifications and basis of opinion, whether written or not, is crucial to a
fair hearing on the matter of competency. The requirement that an expert will be

1 required to provide at least a summary and basis for an opinion will bring structure
2 to Rule 11 proceedings.

3
4 The petition proposes that this Court modify Rule 11.4(b) to include the same
5 disclosure provisions as Rule 15 when a testifying expert in a competency hearing
6 does not prepare a written report. In addition, the proposed modification also
7 requires the parties to disclose the qualifications of retained experts which is also
8 required by Rule 15 for trial experts.
9

10 By modifying Rule 11.4(b) as proposed, the parties and the court will avoid
11 surprises at competency proceedings, litigation will be more efficient, and the goals
12 of disclosure rules will be met. For these reasons, APAAC supports this petition.
13

14 RESPECTFULLY SUBMITTED this 30th day of April, 2021.

15
16 *Elizabeth Burton Ortiz*
17 Elizabeth Burton Ortiz, #012838
18 Executive Director
19 Arizona Prosecuting Attorneys'
20 Advisory Council

21 Electronic copy filed with the
22 Clerk of the Arizona Supreme Court
23 this 30th day of April, 2021, by:

24
25 By: *Diana Cooney*