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

10 In the Matter of:

11 **PETITION TO AMEND RULE 15.4,**
12 **RULES OF CRIMINAL**
13 **PROCEDURE**

Supreme Court No. R-15-0025

DRAFT COMMENT OF
THE ARIZONA PROSECUTING
ATTORNEYS' ADVISORY
COUNCIL IN SUPPORT

14 The Maricopa County Attorney's Office ("MCAO") has filed a petition to
15 amend Rule 15.4 of the Rules of Criminal Procedure. The proposed amendment
16 will clarify when statements of cooperating witnesses must be disclosed and,
17 therefore, the Arizona Prosecuting Attorney's Advisory Council ("APAAC")
18 supports the petition with a proposed modification.

19 **I. BACKGROUND OF PETITION**

20 The Maricopa County Attorney's Office has proposed an amendment to
21 Rule 15.4 of the Rules of Criminal Procedure. At present, the Rules governing the
22 disclosure of witness statements in criminal cases do not address when disclosure
23 must be made when those statements are made during "free talks". In its Petition,
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1 MCAO sets forth the importance of “free talks” as an investigatory tool, the
2 potential danger to the “free talking” witness and the confusion that Courts are
3 facing when dealing with issues of disclosure of statements resulting from those
4 talks. APAAC agrees with MCAO on these points, and, therefore supports the
5 Petition but suggests that the amendment include a definition of “free talk”.

7 **II. DISCUSSION/ANALYSIS**

8 Many “free talks” involve co-defendants, but not all. Not infrequently,
9 prosecutors are contacted by counsel for a defendant who purports to have
10 information on criminal activity on a case or defendant unrelated to him or his
11 criminal case. Whether an unrelated “free talk” or one involving co-defendants,
12 the agreements entered into are the same. All parties to the agreement participate
13 in it because it is intended to be confidential unless the person agrees to testify or
14 other Rules or the Constitutional Rights of the defendant require it. This is the
15 fundamental understanding of prosecutors, and defense attorneys, across the State.
16 It is a matter of statewide importance to the criminal justice practitioners in
17 Arizona that we clarify our obligations under the Rule and that there is agreement
18 as to what is contemplated and practiced in this area.

19 APAAC suggests the following modification to the proposed amendment to
20 Rule 15.4:

21 **A FREE TALK IS DEFINED AS A PROFFER OF INFORMATION**

1 TO THE STATE FROM A CO-DEFENDANT, OR ANY PERSON,
2 CONCERNING ACTIVITY RELATED TO THE COMMISSION OF
3 A CRIME AND IS MADE WITH AN EXPECTATION OF
4 CONFIDENTIALITY, WITH OR WITHOUT AN EXPECTATION
5 OF A BENEFIT.

6 The proposed rule change, with this definition, clarifies not only the
7 expectation of confidentiality that exists in current practice but when disclosure of
8 these statements must be made. As written the proposed amendment to Rule 15.4
9 also recognizes that when any statement contains any information which is
10 material must be disclosed to the defendant. Hence, the defendant's Constitutional
11 Rights as set forth in *Brady v. Maryland*, 373 U.S. 83 (1969) and *Giglio v. United*
12 *States*, 405 U.S. 150 (1972) are fully protected.

13 **III. CONCLUSION**

14 The proposed rule amendment along with a definition of "free talk" will
15 recognize the confidential nature of these proffers of information and provide
16 much needed clarification to the Courts concerning the discoverability of these
17 statements. APAAC supports Petition R-15-0025 and respectfully asks the Court to
18 adopt it with the suggested definition.
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21 RESPECTFULLY SUBMITTED this ____ day of May, 2015.
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23 SHEILA SULLIVAN POLK
24 YAVAPAI COUNTY ATTORNEY
25 Chair, Arizona Prosecuting Attorneys'
Advisory Council

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ELIZABETH ORTIZ
Executive Director, Arizona Prosecuting
Attorneys' Advisory Council

By: _____
ELIZABETH ORTIZ

Electronic copy filed with the
Clerk of the Arizona Supreme Court
this _____ day of _____, 2015.

by: _____