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IN THE SUPREME COURT

STATE OF ARIZONA

In the Matter of:

Petition to Amend Rule 16.4 of The  
Arizona Rules of Criminal  
Procedure

Supreme Court No. R-15 -0038

Request to Amend Petition to  
Amend Rule 16.4 of the Arizona  
Rules of Criminal Procedure

Pursuant to Rule 28 of the Rules of the Arizona Supreme Court, the Maricopa County Office of the Legal Defender respectfully requests that this Court allow an amendment to the previously filed Petition to Amend Rule 16.4 of the Arizona Rules of Criminal Procedure, as proposed in the accompanying Appendix A.

The amendment does two things:

1. It changes the language of the Rule to track the requirements of Rule 15.1(b)(8), rather than the language of *Brady v. Maryland*, 373 U.S. 83

- (1963), in order to clarify that the Court should inquire whether the prosecutor has complied with Rule 15.1(b)(8) which includes its *Brady* obligations. This will also clarify the scope of the Court's inquiry under proposed Rule 16.4(d).
2. It changes the language of the comment to make clear that the prosecutor is required to search for evidence which tends to mitigate or negate guilt or would tend to reduce punishment as described in Rule 15.1 (f), Arizona Rules of Criminal Procedure.

## APPENDIX A

### Proposed Rules Changes

(Proposed deletions are shown with ~~strikethrough~~, new language is shown with underscoring)

Arizona Rules of Criminal Procedure

Rule 16.4. Mandatory prehearing conference

a. [no changes]

b. [no changes]

c. [no changes]

**d. Prosecutor's Disclosure Obligations.** The Court shall ensure that the prosecutor has searched its files, the investigating police agency's files, and any other appropriate files, to determine whether information which tends to mitigate or negate the defendant's guilt, or which would tend to reduce the defendant's punishment exists and has been disclosed.

~~d~~ e. [no changes]

COMMENT: The prosecution is required to learn of any favorable evidence held by others acting on the prosecution's behalf. *Kyles v. Whitley*, 514 U.S. 419, 438 (1995). This would include, but is not limited to, evidence in the custody of the Department of Child Safety in cases investigated by that agency even if the charges had been filed by a police agency, state prison files, and evidence in the custody of crime labs utilized by the State, even if the crime lab is independent of the investigating law enforcement agency. The scope of the prosecutor's duty is defined by Rule 15.1(f) and case law.