



Tempe Police Department
Criminal Investigations Bureau

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Clerk of the Arizona Supreme Court
1501 W. Washington Street, Rm. 402
Phoenix, AZ 85007-3329

Re: R-17-002, Opposition to Proposed Change to Rule 15.3(c)(1)(C)(3) of the Arizona Rules of Criminal Procedure Concerning Mandatory Service of Deposition Subpoenas by Police Officers

This letter is written on behalf of the Arizona Law Enforcement Legal Advisors Association (ALELAA) and the Arizona Association of Chiefs of Police (AACOP) to strongly oppose changing Arizona Criminal Rules of Procedure 15.3(c)(1)(C)(3), as proposed in petition R-17-002. (See, p.77 in Appendix A of the Petition) The proposed change would mandate law enforcement officers serve subpoenas for depositions in criminal matters.

Requiring law enforcement officers to serve subpoenas for pre-trial litigation would be a burden on law enforcement agencies and an undue expansion of any existing law. Under ARS 13-4072(F), it provides....*"A peace officer shall serve in his county any subpoena delivered to him for service, either on behalf of this state or the defendant."* From time to time, police officers serve subpoenas to witnesses requiring attendance at a hearing before a court or magistrate. Under ARS 13-4071(A), a subpoena is defined as "the process by which attendance of a witness **before a court or magistrate** is required." (emphasis added) The definition makes clear that only subpoenas for court attendance merit service by peace officers. Expanding service from the narrow category of subpoenas for court to the broader category of pre-trial, deposition subpoenas also expands the time and expense of law enforcement officers. The time spent serving deposition subpoenas for attorneys (and not for courts) is time taken from core police duties such as patrol and crime prevention.

Neither of these state laws currently requires officers to expand this meaning by including subpoenas for depositions. Moreover, to the extent these laws could be expanded to serve the deposition needs of attorneys, such expansion should come from the legislature and not indirectly through a change to the Rules of Criminal Procedure.

Requiring police officers, who are agents of the state in criminal matters, to serve deposition subpoenas for defense attorneys is a conflict of interest. Law enforcement officers do not work for defense attorneys, yet this proposed rule essentially authorizes criminal defense attorneys to direct the work of police. Further, providing criminal defense attorneys free service of process using police officers removes any incentive to use private process servers, constables, or

mailed notices of depositions. Courts should not wish for prosecutorial agents to work in this fashion, particularly during the preliminary stages of criminal matters and with the ever present possibility that the police officer/agency serving the deposition subpoena may be the same police officer/agency who will be assisting in prosecuting the case (if not testifying outright at any hearing or trial). Further, this additional responsibility placed on police officers via a Rule of Criminal Procedure is an unfunded mandate and forces management to re-prioritize already overburdened manpower issues. The change would take away from the enforcement and investigative duties of local law enforcement officers and instead require redirection to serving criminal attorneys' administrative, pre-trial business needs. As it stands now, most law enforcement agencies struggle to have street coverage without using overtime to answer calls for service. In addition, agencies are unable to have every police vehicle occupied with two officers without more resources. To add another high maintenance, administrative job duty (subpoena service calls tend to come with short deadlines and thus prevent thoughtful and effective police deployment) burdens police with less officers responding to high priority calls for service such as in-progress crimes needing immediate and robust police response. ALELAA and AACOP has seen no compelling, or even good, reason why the current system of serving deposition subpoenas through the use of process servers or constables is broken or deficient. ALELAA and AACOP respectfully requests the Arizona Supreme Court decline to change Rule 15.3 to require Arizona's law enforcement officers to serve pre-trial, deposition subpoenas for appearance before attorneys (and not before courts) in criminal matters.

Sincerely,

Bill V. Amato on behalf of



Arizona Law Enforcement
Legal Advisors Association

Eric Edwards on behalf of



Arizona Association of Chiefs
of Police