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## IN THE SUPREME COURT OF THE STATE OF ARIZONA

IN THE MATTER OF:  
PETITION TO AMEND THE  
RULES OF CRIMINAL  
PROCEDURE , RULE 1.4

Supreme Court No. R-09 -0006

### PETITIONER'S REPLY

Pursuant to Rule 28 of the Rules of the Arizona Supreme Court, the Hon. Dennis Lusk, hereby files this reply to the comments to the petition to amend the Rules of Procedure Criminal Procedure, Rule 1.4.

Presently, Rule 1.4 (a), Arizona Rules of Criminal Procedure, provides:

“...For other courts: the judge, or in courts having more than one judge...”

(Emphasis Added)

On its face, it seems apparent that the original intent of the rule was that in a “one judge” court, that the judge in a one judge court was the presiding judge. In *Hornbeck v. Lusk*, 217 Ariz. 581, 177 P.3<sup>rd</sup> 323 (Div. 2, 2008), Division Two imposed a new procedure that requires the Presiding Justice of the Peace in the county to make the reassignment for all Justice Courts in the county.

REPLY TO COMMENTS OF THE MARICOPA COUNTY ATTORNEY’S OFFICE (MCAO)

In Maricopa County ( and Pima County) local rules consolidate management of the courts, and those Justice Courts are not affected by the *Hornbeck, supra*, holding. It would seem therefore that the concerns of the MCAO are not apropos, as the proposed rule will not affect Maricopa County (or Pima County).

The comment refers to the Petitioner as the “*de facto*” presiding judge. Given that outside Maricopa and Pima counties, the Justice Courts do not have consolidated management, it would be more appropriate to label the Justice of the Peace as the “*de jure*” presiding judge. Each Justice of the Peace manages his or her own court subject only to the supervision of the Presiding Superior Court Judge.

The MCAO argues that it is fundamentally unfair for the noticed judge to make the reassignment. This suggestion ignores the clear language of Rule 10.2 (d), that..."[i]f no judge has been agreed upon, then the presiding judge shall immediately reassign the action." See, also Rule 1.4 (a), *supra*, and Rule 10.6, Arizona Rules of Criminal Procedure.

The MCAO argues that "repeated injustices" are the natural result. In fact, the same Justices of the Peace *pro tem* that the Petitioner was assigning are now being assigned by the Presiding Justice of the Peace. The only difference is that now, because of logistics, the reassignment takes up to one month, delaying justice and disrupting the orderly management of the case load.

In Arizona there are 77 one judge Magistrate courts and 4 counties with single Superior Court judge. In those courts, if the judge is noticed with a Rule 10.2 Change of Judge Upon Request, that judge, being the presiding judge, makes the reassignment. To apply the logic of the MCAO comment universally, the Chief Justice would have to make the reassignment in the 4 one judge Superior Courts and the Presiding Superior Court Judges of the respective counties would have to make all of the reassignments in the 77 Magistrate Courts. Not even the MCAO would make that bizarre of a suggestion.

## REPLY TO THE COMMENTS OF THE ARIZONA STATE BAR

The State Bar argues that it is not wise or necessary to return to the original intent of Rule 1.4, Arizona Rules of Criminal Procedure. To put their suggestion in context, it should be noted that they believe that to be the case only in the rural Justice courts. In their opinion the *Hornbeck, supra*, rule is fine for Justices of the Peace in the rural counties, but not one judge Magistrate or Superior Courts.

It should be noted that in the 13 rural counties, there are 72 Justice Courts that are adversely impacted by this rule. The Petitioner would submit that creating a standard for rural Justice Courts that differs from Magistrate and Superior Courts with one judge, is discriminatory and without justification. Petitioner notes that the President of the Justice of the Peace Association, a rural Justice of the Peace, has filed a comment in favor of Petitioner's propose rule change.

Moreover, the administration of the caseload is dramatically impacted. Reassignment in a geographically diverse county often takes several weeks to accomplish. On pre-trial day, it is most likely that the presiding judge of the Justice Court will be on the bench. Budgetary concerns prohibit having the reassigned judges standing by for one case.

Petitioner has repeatedly seen matters where counsel have a request that is more administrative in effect than substantive, and is willing to “waive” the Rule 10.2 Notice for the limited purpose of requesting a continuance, a discovery order or similar ministerial act. Post *Hornbeck, supra*, the presiding judge cannot act unless the presiding justice of the peace reassigns the matter back to the presiding judge for that limited purpose.

Similarly, the deputy county attorney and defense counsel will often reach a stipulated plea agreement and the attorney who filed the notice is again willing to waive the notice and allow the noticed judge to do the change of plea without having to make a return visit to the court. Without a reassignment by the Presiding Justice of the Peace back to the noticed Justice of the Peace, that again is not possible.

In these scenarios, it is necessary to continue the matter until the assigned judge will be sitting in the court. That may be a substantial period of time. If the assigned judge is not otherwise scheduled to be in the court, he or she must be scheduled to sit in the court for that limited purpose, at great expense to the county. Again, given that the attorney filing the notice is willing to waive the notice, such expense seems unnecessary.

Petitioner's experience since *Hornbeck, supra*, has been that a 10.2 Notice creates a delay of a minimum of 2 months in every case that could be avoided under the original interpretation of the rule. The *Hornbeck, supra*, rule has resulted in no change in which judge is assigned, but has created major delays and unnecessary expenses.

For these reasons, Petitioner requests that the Rule 1.4 be amended to reflect its original intent.

DATED this the 29th day of June, 2009.

*/ S / Dennis Lusk*

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Judge Dennis Lusk  
Justice of the Peace