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IN THE ARIZONA SUPREME COURT

PETITION TO AMEND RULE 8.2(a)(4),) Supreme Court No.
ARIZONA RULES OF CRIMINAL) R-09- _____
PROCEDURE)
_____)

Pursuant to Rule 28 of the Rules of the Supreme Court, the Capital Case Oversight Committee respectfully petitions this Court to amend Rule 8.2(a)(4) of the Arizona Rules of Criminal Procedure, as set forth in the attached Appendix.

Introduction. Administrative Order No. 2008-93 was issued in November 2008. Among other charges, A.O. 2008-93 directed the Oversight Committee to study and to make recommendations concerning the reasonableness of the speedy trial time limit for capital cases established by Rule 8.2(a)(4) of the Rules of Criminal Procedure.

In December 2009, the Oversight Committee submitted a report to the Arizona Judicial Council (“AJC”) that included a recommendation for an

amendment to Rule 8.2(a)(4). The AJC approved the Oversight Committee's report, and this petition is filed to implement the recommended rule change.

Background. The speedy trial limit for capital cases, as set out in Rule 8.2(a)(4) of the Rules of Criminal Procedure, provides that a capital case shall be tried by the court within "eighteen months from arraignment..."

Rule 8.2(a)(4) was adopted in 2002 at about the same time as Arizona's death penalty statutes were revised. Under the statutory scheme in effect before 2002, aggravation and the penalty in a capital case were determined by the trial judge at some time after a finding of guilt, which was typically months following the jury's verdict. Under the new statutes, aggravation and the penalty are decided by the same jury that determines guilt, and each phase of a trial follows immediately after the requisite verdict in the preceding phase. Accordingly, counsel must now be prepared on the first day of trial for all three phases of a capital case, including what may be factually intensive aggravation and penalty phases.

When Rule 8.2(a)(4) became effective in 2002, there was no baseline information regarding how long it would take capital counsel to fully prepare for a three-phase jury trial under the new statutes. Since its inception in 2008, the Oversight Committee has tracked capital case data. This data shows that the length of time required for resolution of a capital case in Arizona varies by county.

The Committee has found that about eighty percent of Arizona's capital cases are filed in Maricopa County, and that capital cases in Maricopa County rarely, if ever, resolve within eighteen months.¹ Capital cases in Maricopa County resolved by sentencing subsequent to a plea may take more than thirty months from arraignment to conclusion. Sentences following jury verdicts, both death and other-than-death, are occasionally imposed three years after arraignment. Although Maricopa County has achieved a significant reduction in its capital case inventory during 2009, the typical time to case resolution nonetheless continues to exceed the Rule 8.2(a)(4) time limit by more than six months.

The situation is different in Pima County. There are far fewer capital cases in Pima County than in Maricopa County, and capital cases in Pima County are frequently resolved within eighteen months from arraignment. A March 2009 Oversight Committee survey of prosecutors in counties other than Maricopa and Pima concerning the age of their respective capital cases obtained a median time of about thirty months.

Summary of the proposed rule amendment. There are two aspects of the proposed rule amendment. First, the members of the Oversight Committee agreed

¹ Most of the data periods discussed on this page are from arraignment to sentencing, or refer to case ages, because that data is the most commonly available. However, the eighteen month speedy trial time limit of Rule 8.2(a)(4) specifically concerns the period between arraignment and the commencement of trial, and not from arraignment to disposition of the case.

that the speedy trial time limit in a capital case should begin to run from the filing date of a notice of intent to seek the death penalty, rather than from the date of arraignment as provided in the existing rule. The calculation of a speedy trial limit from the filing date of the death notice may result in a time extension of only a couple months, or possibly just a few weeks. However, the filing date of a death notice is a logical starting point for the speedy trial time line in a capital case. It would also more realistically accommodate the amendments to Rule 15.1(i)(1) of the Rules of Criminal Procedure,² as well as any additional procedures which may be required for a *Chronis* hearing.³ The proposed rule amendment therefore includes a text change that the speedy trial time period for a capital case begin upon the filing of a death notice.

The second and more controversial issue before the Oversight Committee was whether the speedy trial time period should continue to be eighteen months, or if it should be longer. Five members of the Oversight Committee were in favor of a twenty-four month time limit. Four members supported an eighteen month time limit. The Chair did not vote.

² Rule 15.1(i)(1) permits the State to file a notice of intent to seek the death penalty up to sixty days after arraignment. The amendment to Rule 15.1(i)(1) adopted in 2008 permits this period to be extended for sixty days, or even longer upon the filing of a stipulation, and subject to court approval.

³ *Chronis v Steinle*, 220 Ariz. 559, 208 P.3d 210 (2009), allows a capital defendant to request a judicial finding of probable cause on alleged aggravating factors that might warrant a death sentence.

Summary of the arguments on extending the limit from eighteen months to twenty-four months. Some members of the Oversight Committee believe that because the Rule 8.2(a)(4) time limit is not suitable for many capital cases, it should be changed to one that is more appropriate and enforceable. These members feel that proceeding to trial in a hurried manner may result in cases being tried by counsel who have not had adequate time to prepare, and this could increase the possibility of reversible error in capital cases. Other members believe that the Maricopa County Superior Court should be allowed time to fully implement its new case management approach, which seeks to strictly enforce the existing Rule 8.2(a)(4) time limit. These members think that an extension of the speedy trial time limit in capital cases could be a start down a slippery slope to further delay.

A previous rule petition, Number 07-0005 sought to modify Rule 8.2(a)(4) by extending the speedy trial limit to thirty months. Rule Petition 07-0005 was rejected by an Order dated September 16, 2008. However, the content of that earlier petition, along with the comments that were filed, continue to provide historically useful information as well as thoughtful perspectives from prosecutors, defenders, and the bench. This present petition is being filed relatively soon after the disposition of R-07-0005 because the Oversight Committee members have studied and discussed the issue of time limits, as directed by A.O. 2008-93, and the

majority of members have concluded that there continues to be a need for an extension of the time limit in Rule 8.2(a)(4).

Conclusion. For the foregoing reasons, the Oversight Committee respectfully requests that the Supreme Court amend Rule 8.2(a)(4), Rules of Criminal Procedure, as set forth in the attached Appendix.

Respectfully submitted this 7th day of January, 2010.

Capital Case Oversight Committee:

By: /s/ Mark Meltzer

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APPENDIX

PROPOSED AMENDED RULE 8.2(a)(4), RULES OF CRIMINAL PROCEDURE

(New language is underlined.)

Rule 8.2. Time limits.

a. General. Subject to the provisions of Rule 8.4, every person against whom an indictment, information or complaint is filed shall be tried by the court having jurisdiction of the offense within the following time periods:

(1) – (3). [No change.]

(4). Capital Cases. ~~Eighteen~~ Twenty-four months from arraignment, ~~if the~~ date the state files a notice of intent to seek the death penalty pursuant to Rule 15.1(i).