

David K. Byers
Administrative Director
Administrative Office of the Courts
1501 W. Washington, Suite 411
Phoenix, AZ 85007-3327
Phone: (602) 452-3301
Projects2@courts.az.gov

ARIZONA SUPREME COURT

In the matter of:)
)
PETITION TO AMEND RULE 49(d)(1),) Supreme Court No. 24-_____
RULES OF CIVIL PROCEDURE AND)
RULE 18.1, RULES OF CRIMINAL)
PROCEDURE)
_____)

Pursuant to Rule 28 of the Rules of the Supreme Court, Petitioner respectfully petitions this Court to amend Rule 49(d)(1), Rules of Civil Procedure, and Rule 18.1, Rules of Criminal Procedure, as shown in the Appendix to address a conflict regarding jury verdict unanimity requirements for jury trials held under A.R.S. § 13-4521 and provide guidance for jury size and verdict requirements for the same. Jury trials held under A.R.S. § 13-4521 determine whether a defendant in a criminal case who is charged with a serious offense and determined to be incompetent and not restorable is dangerous and should be involuntarily committed.

I. Background

Senate Bill (SB) 1310 from the 2022 Second Regular Session of the 55th Legislature became effective on January 1, 2024 and amended A.R.S. § 13-4517(A)

to create a new subsection (4). A.R.S. § 13-4517(A)(4) provides that if a defendant charged with a serious offense as defined in A.R.S. § 13-706 is found by the court to be incompetent to stand trial with no substantial probability of regaining competency within the allowable timeframe, any party may request that the court order a trial to determine if the defendant is dangerous (defined) and should be involuntarily committed pursuant to A.R.S. § 13-4521. Pursuant to A.R.S. § 13-4521(C), the Arizona Rules of Civil Procedure apply to A.R.S. § 13-4521 trials.

II. Discussion

A. Article 2, Section 23 of the Arizona Constitution and A.R.S. § 21-102 Require a Unanimous Verdict

A.R.S. § 13-4521 is a new statute created by SB 1310 that sets forth certain requirements for determining whether a defendant is dangerous and should be involuntarily committed, which includes holding a trial to make that determination. The trial must be a jury trial if requested by the state or defendant, as provided by A.R.S. § 13-4521(B):

If the court does find the proof is evident or the presumption great pursuant to [A.R.S. § 13-4521(A)], the court shall hold a trial within one hundred twenty days after the court issued the order pursuant to [A.R.S. § 13-4517(A)(4)] to determine if the defendant is dangerous and should be involuntarily committed. *Unless the state or defendant requests a jury trial, a trial held pursuant to this subsection shall be before the court.* [emphasis added]

The A.R.S. § 13-4521 trial will occur in the criminal case while the charges are still pending, as provided by A.R.S. § 13-4521(F):

If the factfinder finds that the defendant is dangerous and should be involuntarily committed, the court shall dismiss the charges against the defendant without prejudice and order the defendant to be committed to a secure state mental health facility. The defendant shall receive education, care, supervision and treatment to render the defendant either competent or nondangerous.

Since the trial will occur in the criminal case, Article 2, Section 23 of the Arizona Constitution applies to A.R.S. § 13-4521 jury trials. Article 2, Section 23 of the Arizona Constitution provides:

The right of trial by jury shall remain inviolate. Juries in criminal cases in which a sentence of death or imprisonment for thirty years or more is authorized by law shall consist of twelve persons. ***In all criminal cases the unanimous consent of the jurors shall be necessary to render a verdict.*** In all other cases, the number of jurors, not less than six, and the number required to render a verdict, shall be specified by law. [emphasis added]

Therefore, a unanimous verdict is required in a jury trial held under A.R.S. § 13-4521 to determine whether the defendant is dangerous and should be involuntarily committed.

For the same reason, A.R.S. § 21-102(A) and (B) also apply to A.R.S. § 13-4521 jury trials, similarly requiring a unanimous verdict:

A. A jury for trial of a criminal case in which a sentence of death or imprisonment for thirty years or more is

authorized by law shall consist of twelve persons, and *the concurrence of all shall be necessary to render a verdict.*

B. A jury for trial in any court of record of any other criminal case shall consist of eight persons, and *the concurrence of all shall be necessary to render a verdict.* [emphasis added]

B. Civil Rule 49(d)(1) Conflicts with the Verdict Unanimity Requirements for A.R.S. § 13-4521 Jury Trials

A.R.S. § 13-4521(C) provides that the Arizona Rules of Civil Procedure apply to A.R.S. § 13-4521 trials:

The Arizona rules of evidence and *the Arizona rules of civil procedure apply to proceedings held pursuant to this section*, except that the court may consider evidence that is not admissible under the Arizona rules of evidence when making a determination pursuant to subsection A of this section. [emphasis added]

Regarding verdict requirements for jury trials, Civil Rule 49(d)(1) provides:

Subject to any stipulation of the parties under Rule 48, *if a jury has 8 members, 6 or more members must agree on the verdict.* [emphasis added]

Since Civil Rule 49(d)(1) allows for a less than unanimous verdict, applying it to a jury trial in a criminal case (e.g., a jury trial held under A.R.S. § 13-4521) conflicts with the requirement that the verdict in a criminal case be unanimous under Article 2, Section 23 of the Arizona Constitution and A.R.S. § 21-102.

III. Proposed Amendments

Petitioner proposes an amendment to Civil Rule 49(d)(1), as shown in the Appendix, to exempt A.R.S. § 13-4521 jury trials and insert verbiage to indicate that Criminal Rule 18.1 governs the number of jurors required to render a verdict in a jury trial held under A.R.S. § 13-4521.

Petitioner also proposes an amendment to Criminal Rule 18.1 as shown in the Appendix, to provide guidance to judges and practitioners regarding jury size and unanimity requirements for A.R.S. § 13-4521 jury trials. Specifically, Petitioner proposes adding a new subsection c to Criminal Rule 18.1 to specify that Criminal Rule 18.1(a) governs jury size and unanimity requirements in A.R.S. § 13-4521 jury trials. Petitioner also proposes adding a corresponding sentence in the existing comment to Criminal Rule 18.1(a) to indicate that A.R.S. § 13-4521 jury trials adhere to the same standards as those in other criminal cases.

IV. Request

Petitioner respectfully requests that this Court open this petition for public comment, consider the petition and comments in the regular course provided by Supreme Court Rule 28, and adopt the proposed amendments as set forth in the Appendix. Additionally, because SB 1310 became effective on January 1, 2024, Petitioner respectfully requests that any adopted amendments become effective immediately upon adoption.

RESPECTFULLY SUBMITTED this 10th day of January, 2024.

By /s/David K. Byers
David K. Byers, Administrative Director
Administrative Office of the Courts
1501 W. Washington, Suite 411
Phoenix, Arizona 85007
(602) 452-3301
Projects2@courts.az.gov

APPENDIX

(deletions shown with ~~strikethrough~~, new language is underlined)

Rules of Civil Procedure

Rule 49. Special Verdict; General Verdict and Questions; Proceedings on Return of Verdict; Form of Verdict

(a) through (c) [No change]

(d) Return of Verdict.

(1) *Number of Jurors Who Must Agree.* Except in trials held under A.R.S. § 13-4521 and § subject to any stipulation of the parties under Rule 48, if a jury has 8 members, 6 or more members must agree on the verdict. Criminal Rule 18.1 governs the number of jurors required to render a verdict in a jury trial held under A.R.S. § 13-4521.

(2) [No change]

(e) and (f) [No change]

Rules of Criminal Procedure

Rule 18.1. Trial by Jury

(a) and (b) [No change]

(c) Trials by Jury Under A.R.S. § 13-4521. Rule 18.1(a) governs jury trials held under A.R.S. § 13-4521 to determine whether a defendant is dangerous and should be involuntarily committed.

COMMENT

Rule 18.1(a) and (c). The right of trial by jury is inviolate. A jury must consist of 12 persons in a criminal case in which a sentence of death or imprisonment for 30 years or more is authorized by law. In all such cases, the verdict must be unanimous. In all other cases, a jury must consist of at least 6 jurors, with the number required to render a verdict as specified by law. *See generally* Ariz. Const. art. 2, § 23 (restating comment); A.R.S. § 21-102 (jury size, degree of unanimity required; waiver); *Williams v. Florida*, 399 U.S. 78, 103 (1970) (Sixth Amendment does not require 12-person jury in a criminal matter; Sixth Amendment rights not violated by Florida statute providing for a 6-person jury). Jury trials under A.R.S. § 13-4521 adhere to the same standards.

The right to a jury trial for misdemeanor offenses extends to charges where the statutory offense has a common law antecedent that guaranteed the right to jury trial at the time of statehood, or where the offense qualifies as a “serious” offense with

“additional severe, direct and uniformly applied statutory consequences.” *Derendal v. Griffith*, 209 Ariz. 416, 423 ¶ 26, 104 P.3d 147, 154 (2005). Statutory offenses with 6 months or less of possible incarceration are presumptively not “serious offenses” unless the “additional grave consequences” of the misdemeanor conviction indicate the legislative determination that the offense is “serious” and mandates a jury. *Id.* at 422 ¶ 21, 104 P.3d at 153.

Rule 18.1(b). Rule 18.1(b)(1) reflects the constitutional provision that a defendant may waive a jury trial only with the consent of the court and the State. Ariz. Const. art. 6, § 17 (a jury may be waived by the parties in a criminal case with the court's consent); *see also* Ariz. R. Crim. P. 41, Form 20 (form for waiving jury trial).