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8 IN THE SUPREME COURT

9 STATE OF ARIZONA

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11  
12 IN THE MATTER OF:

13 PETITION TO AMEND RULE 8.2 (a)(4),  
14 ARIZONA RULES OF CRIMINAL  
15 PROCEDURE


**R10-0012**

**MARICOPA COUNTY ATTORNEY'S  
COMMENT TO THE PETITION TO  
AMEND RULE 8.2(A)(4), RULES OF  
CRIMINAL PROCEDURE**

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17 The Maricopa County Attorney hereby submits this Comment, objecting to the Petition to  
18 Amend Rule 8.2(a)(4) of the Rules of Criminal Procedure.

19 Respectfully submitted this 19<sup>th</sup> day of May, 2010.

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22 RICHARD M. ROMLEY  
23 MARICOPA COUNTY ATTORNEY

24  
25 BY:   
26 PAUL W. AHLER  
27 Chief Deputy County Attorney  
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION AND BACKGROUND**

3 The Maricopa County Attorney’s Office (“MCAO”) agrees with the background and  
4 summary of the Capital Case Oversight Committee (“Oversight Committee”) as set forth in the  
5 Introduction section of Mr. Meltzer’s Petition. We would initially note that the meeting leading to  
6 the December, 2009 Oversight Committee Report to the Arizona Judicial Counsel was quite  
7 contentious and there was insufficient time for all parties to be heard on such an important issue. It  
8 was scheduled through the lunch hour and several attendees had to leave for other commitments  
9 while the meeting was still underway. Ultimately, as Petitioner indicates, the final vote to make the  
10 recommendation to modify Rule 8.2(a)(4), Ariz. R. Crim. P., was only five to four in favor of  
11 extending the time limits for capital cases to go to trial. MCAO objects to the imposition of either  
12 of the proposed modifications of this Rule for the reasons set forth in this Comment.  
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15 **II. LAW AND ARGUMENT**

16 **A. The Current 18-Month Timeline for Prosecution of Capital Cases is Realistic**

17 One of the strongest arguments against modification of Rule 8.2(a)(4) (hereinafter “Rule”) is  
18 actually made by the Petitioner. He concedes that “capital cases in Pima County are frequently  
19 resolved within eighteen months from arraignment.” Petition at 3. Pima County is, of course, the  
20 second most populous county in Arizona and, as such, handles sufficient capital cases to render  
21 such data statistically significant. This fact alone highlights the crux of the matter, which is that the  
22 primary issues of dysfunction and delay in Maricopa County are attributable to resource issues and  
23 other inefficiencies. As will be discussed, these factors are the result of many circumstances which  
24 are temporary and are improving over time. Changing the Rule based on issues that are improving  
25 day-to-day would not be appropriate. Further, while Maricopa County is working on systemic  
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1 resource and related issues in the capital case arena, there are provisions in the current Rule that  
2 allow for extension of the 18-month time limit as needed, based on the specific facts and  
3 circumstances of each particular case. That is as it should be. This Court should not be left with  
4 the impression that the “worst of the worst” are being released due to the fact that many capital  
5 cases are not concluded within 18 months of arraignment in Maricopa County.  
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7         Moreover, in the criminal justice system, Rules of Criminal Procedure often act as the main  
8 impetus for particular action being taken by many of the parties involved. That is to say, it should  
9 not be assumed that attorneys, experts, and others involved in the plea negotiation and/or trial  
10 process will work expeditiously at every stage to move a case along if they are not required to do so  
11 by enforcement of the Rules of Criminal Procedure. This is an unfortunate reality. It is also  
12 something that should be weighed heavily when the extension of any Criminal Rule is  
13 contemplated; especially, one as consequential as the Rule at bar. This Court can safely assume that  
14 if the Rule is extended, work that could have been done will be delayed for the simple fact that it  
15 *can* be delayed. This is adverse to the wishes of the public and especially victims (as will be further  
16 discussed), along with presumably many defendants who are being confined with the presumption  
17 of innocence on a very serious criminal charge.  
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20         Ultimately, the fact that capital cases are functioning well in Pima County under the current  
21 Rule is evidence of the workability of the Rule as it reads today. Eighteen months from  
22 arraignment to trial has been demonstrated to be a realistic benchmark for capital cases to reach  
23 trial when resources are not at a critical mass. Again, there are provisions to delay the 18-month  
24 time limitation as justice requires in a particular case, and enforcement of the Rule is beginning to  
25 speed up case resolution in Maricopa County. Therefore, the Rule should not be modified.  
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1           **B. Victims Have the Right to a Speedy Resolution**

2           In Arizona, victims have the right to a “speedy trial or disposition” pursuant to the Arizona  
3 Constitution, Art. II, § 2.1(10). Unfortunately, when we refer to “victims” in the context of capital  
4 cases, we are necessarily referring to next-of-kin or other family members who have lost a loved  
5 one due to an alleged homicide with aggravating factors. To the extent that “closure” can even be  
6 achieved by resolution of a criminal case, 18 months is not a particularly short amount of time. In  
7 addition, it should be noted that any conviction triggers a lengthy appellate process along with the  
8 constant victim notifications which are attached to post-conviction proceedings.  
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10           While we cannot put ourselves in a position to appreciate the grief, stress, and other  
11 emotions that any particular person feels in dealing with the murder of a loved one, the criminal  
12 justice system must always be mindful of those impacted most by serious crimes. To the extent that  
13 structures are in place to resolve crimes, the impact upon victims of extending deadlines must weigh  
14 heavily in the Court’s analysis. Fortunately, in Arizona, this consideration is also *required* pursuant  
15 to Victims’ Rights provisions in the Arizona Constitution. For this reason, along with the  
16 workability of the current Rule as discussed above, the Petition should be denied.  
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19           **C. The Number of Active Capital Cases in Maricopa County is Falling**  
20 **Drastically**

21           This Court should take note of the positive trend occurring in the resolution of capital cases  
22 in Maricopa County. In the past 12 months, MCAO’s inventory of active capital cases has *declined*  
23 *by 30%.*<sup>1</sup> This is largely due to increased enforcement of the Rule by the Maricopa County Superior  
24 Court, along with MCAO’s efforts to avoid all unnecessary continuances in these cases. Case  
25 resolution time averages are a lagging indicator that will almost certainly emerge from this trend. A  
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28 <sup>1</sup> Statistics provided by the Maricopa County Superior Court the Arizona Supreme Court

1 reduction in capital cases in the system will reduce the stress on each “choke point” in the process,  
2 those being a fixed number of prosecutors, defense attorneys, judges, expert witnesses, and others  
3 involved in processing a capital case. In actuality, due to the economy and an ongoing hiring freeze,  
4 there are a declining number of prosecutors at MCAO to handle these cases. This makes the 30%  
5 reduction even more significant.  
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7 Moreover, as this Court is aware, the affect of *Ring v. Arizona*, 536 U.S. 584 (2002), has been  
8 severe with respect to capital case resolution. With a limited number of capital-qualified  
9 prosecutors and defense attorneys, the need to essentially re-try a backlog of older homicide cases  
10 has had a ripple effect that continues today. The *Ring* decision was, of course, a one-time decision  
11 with a monumental impact. Now that the backlog is almost depleted (only one case remains  
12 according to internal MCAO data), this factor will coalesce with reduced active capital cases and  
13 increased enforcement of the Rule to speed up the process even more going forward.  
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### 16 III. CONCLUSION

17 MCAO objects to modification of the Rule as it stands. The fact that capital cases are still  
18 taking far longer than 18 months in Maricopa County, on average, to get from arraignment to trial  
19 does not argue for an extension; quite the opposite. As discussed, the Rule as currently written is  
20 increasingly being enforced to drive cases forward in a relatively expeditious manner. The trend in  
21 case reduction is very positive. The depletion of *Ring* sentencing retrials will allow stagnant cases to  
22 accelerate their pace toward resolution. There is every expectation that these factors will lead to a  
23 steady decrease in the time it takes to litigate a capital case in Maricopa County.  
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26 Ultimately, now is not the time to revisit the Rule because the passage of some time is  
27 needed to allow the system to continue moving in the right direction. Any extension of the current  
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1 Rule, whether it be a full six months or a new “trigger” to begin the computation of time, will send  
2 the wrong message to all parties involved with these cases, and will have a negative impact on  
3 victims. For each of these reasons, MCAO respectfully requests that this Court reject the  
4 Petitioner’s requests to modify the Rule.  
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6 Respectfully submitted this 19<sup>th</sup> of May, 2010.

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8 RICHARD M. ROMLEY  
9 MARICOPA COUNTY ATTORNEY

10  
11 BY:   
12 PAUL W. AHLER  
13 Chief Deputy County Attorney

14 Copies of the forgoing mailed  
15 this 19 day of May, 2010 to:

16 Clerk of the Court  
17 Arizona Supreme Court

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