

1 RICHARD M. ROMLEY  
2 MARICOPA COUNTY ATTORNEY  
(Firm State Bar No. 0003200)

3 Paul W. Ahler  
4 Chief Deputy County Attorney  
5 301 West Jefferson Street, Suite 800  
6 Phoenix, Arizona 85003  
7 Telephone: (602) 506-3800  
(State Bar Number 005379)

8 IN THE SUPREME COURT

9 STATE OF ARIZONA

10  
11 IN THE MATTER OF:

R-09-0037

12 PETITION TO AMEND RULE 10.2 OF  
13 THE ARIZONA RULES OF CRIMINAL  
14 PROCEDURE.

MARICOPA COUNTY ATTORNEY'S  
RESPONSE TO PETITION TO AMEND  
RULE 10.2 OF THE ARIZONA RULES  
OF CRIMINAL PROCEDURE.

15 The Maricopa County Attorney hereby supports the Petition to Amend Rule 10.2 of the Arizona  
16 Rules of Criminal Procedure.

17 Respectfully submitted this 20<sup>th</sup> day of May, 2010.

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19 RICHARD M. ROMLEY  
MARICOPA COUNTY ATTORNEY

20 BY: 

21 PAUL AHLER  
22 CHIEF DEPUTY  
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EXHIBIT A

**Rule 10.2. Change of judge upon request**

**a. Entitlement.** ~~Any party shall be entitled to request a change of judge as a matter of right no later than ten (10) days after the state files a notice of intention to seek the death penalty.~~ In any criminal case other than a death penalty case, each side is entitled as a matter of right to a change of judge. Each non-death penalty case, whether single or consolidated, shall be treated as having only two sides; except that, whenever two or more parties on a side have adverse or hostile interests, the presiding judge or that judge's designee may allow additional changes of judge as a matter of right. Notwithstanding the foregoing provision, the right to a change of judge shall be inapplicable to Rule 32 petitions for post-conviction relief or remands for resentencing.

**b. Procedure.** (No Change)

**c. Time for Filing – non-death penalty case.** A notice of change of judge in a non-death penalty case shall be filed within ten days after any of the following:

(1) Arraignment, if the case is assigned to a judge and the parties are given actual notice of such assignment at or prior to the arraignment;

(2) Filing of the mandate from an Appellate Court with the clerk of the Superior Court;

(3) In all other cases, actual notice to the requesting party of the assignment of the case to a judge.

Notwithstanding the foregoing provision, if a new judge is assigned to a non-death penalty case fewer than ten (10) days before trial (inclusive of the date of assignment), a notice of change of judge shall be filed, with appropriate actual notice to the other party or parties, by 5:00 p.m. on the next business day following actual receipt of notice of the assignment, or by the start of trial, whichever occurs sooner.

**d. Time for Filing – death penalty case.** A notice of change of judge in a death penalty case shall be filed within ten days after any of the following:

(1) Filing of a notice of intention to seek the death penalty;

(2) Actual notice to the requesting party of the administrative reassignment of the case to a new trial judge, but only if the party requesting the change of judge has not previously requested a change of judge pursuant to subsection (1) above.

**d e.** At the time of the filing of a notice of change of judge, the parties shall inform the court in writing if they have agreed upon a judge or judges who are available and are willing to have the action assigned to that judge. An agreement of all parties upon such judge may be honored and, if so, shall preclude further changes of judge as a matter of right unless the agreed-upon judge becomes unavailable. If no judge has been agreed upon, then the presiding judge shall immediately reassign the action.

If a judge to whom the action has been assigned by agreement later becomes unavailable because of a change of calendar assignment, death, illness, or other legal incapacity, the parties shall be restored to their rights under this rule as they existed immediately before the assignment of the action to such judge.