

1 Honorable Barbara Rodriguez Mundell
2 Presiding Judge
3 Superior Court of Arizona, Maricopa County
4 125 W. Washington St.
5 Phoenix, AZ 85003
6 (602) 506-6130

7 IN THE SUPREME COURT OF THE STATE OF ARIZONA

8 In the Matter of:

9 ARIZONA RULES OF CRIMINAL
10 PROCEDURE, RULES 35.1 AND
11 35.4

12 } Supreme Court No. R-09-0036

13 } COMMENT OF THE SUPERIOR
14 } COURT OF ARIZONA, MARICOPA
15 } COUNTY IN OPPOSITON TO
16 } PETITION TO AMEND RULES 35.1
17 } AND 35.4 OF THE ARIZONA
18 } RULES OF CRIMINAL
19 } PROCEDURE

20 The Presiding Judge of the Superior Court in Maricopa County files the
21 following comment pursuant to Rule 28, Arizona Rules of the Supreme Court, in
22 opposition to the petition to amend Rules 35.1 and 35.4 of the Arizona Rules of
23 Criminal Procedure. The petition propose amending Rules 35.1 and 35.4 of the
24 Arizona Rules of Criminal Procedure to require responses to motions, deem a
25 failure to file a response as consent to grant the motion, allow the court to
26 summarily dispose of a motion if no response is filed, dictate that requests for
27 extensions for time be governed by Rule 6(b) of the Rules of Civil Procedure,
28 and prescribe that non-compliance with formal requirements be governed by
Rule 7.1(b) of the Rules of Civil Procedure.

The petition fails to identify any problem with the current motion process
employed by the criminal divisions of the Superior Court. Although the petition
provides general statements about a lack of standard, lack of direction, and
inconsistent rulings from the bench, the petition cites no examples and the Court
is unaware any specific issues in this area. No special actions or appeals have

1 been filed challenging the criminal motion practice in the Superior Court; nor
2 have any special actions, appeals, or complaints been filed alleging problems
3 with the criminal motion practice in the Superior Court. Moreover, the concern
4 about inconsistent rulings is inapplicable to the Superior Court in Maricopa
5 County. In July 2009, the Superior Court in Maricopa implemented a master
6 calendar system for criminal cases, in which all motions are heard by the
7 motions judges. Because all the motions are heard by a limited number of
8 judges, the concern about inconsistent handling is not an issue in the Superior
9 Court in Maricopa County. Moreover, under the current rules, the Superior Court
10 can rule on a motion when no response is filed or the Superior Court can order a
11 response. In addition, the Superior Court can waive, and often does waive, the
12 formal requirements for motions. There is simply no need for the proposed
13 amendments.

14 The proposed amendments would create a number of problems which are
15 unique to criminal proceedings. A significant number of motions filed in a given
16 case, especially after conviction, are filed by *pro per* defendants, many times
17 years after the conviction. The Court has no way to, and is unable to, ensure
18 proper service by the defendant. This is even more problematic post conviction,
19 when the prosecutor hands the case off to an appellate attorney. The defendant
20 may have sent a copy to the original prosecutor who is no longer the attorney of
21 record and may no longer be at the agency. The attorney representing the State at
22 that point is unlikely to have received a copy of the motion. If the Superior Court
23 deems the failure to file a response as consent to grant the motion, it will
24 generate a significant number of motions for reconsideration and increase the
25 workload for the Court. In addition, because a significant number of the motions
26 are filed by *pro per* defendants who are in prison without access to computers,
27 typewriters, or legal resources, the Court would constantly have to issue orders
28

1 waiving the formal requirements under the proposed amendment to Rule 35.4.
2 This would result in thousands of additional orders each year.

3 Finally, the proposed amendments are contrary to current appellate law.
4 The rule addressing extensions of time to file briefs in the Court of Appeals does
5 not conform to Rule 6(b) of the Rules of Civil Procedure. *See* Ariz. R. Crim. P.
6 31.13(d) (providing extensions based upon “extraordinary circumstances” and
7 not stating whether the request has to be made before the deadline for filing the
8 brief).

9 Respectfully submitted this 20th day of May, 2010.

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Honorable Barbara Rodriguez Mundell
13 Presiding Judge
Superior Court of Arizona, Maricopa County

14 Original and six (6) copies delivered this
15 20th day of May, 2010 to:

16 Clerk of the Arizona Supreme Court
17 1501 W. Washington, Suite 402
18 Phoenix, AZ 85007

19 Copy hand-delivered this
20 20th day of May, 2010 to:

21 David K. Byers, Director
22 Administrative Office of the Courts
23 1501 W. Washington
24 Phoenix, AZ 85007-3231
25
26
27
28