

Kevin M. Morrow Esq.
2005 N. Central Ave.,
Phoenix, AZ 85004
602-542-2928
Kevin.Morrow@azag.gov
AZ Bar # 034697.

**IN THE SUPREME COURT
STATE OF ARIZONA**

PETITION TO AMEND RULE 19.1,
ARIZONA RULES OF CRIMINAL
PROCEDURE

Supreme Court No. R-25-0010

Petitioner's Reply to Comments

Pursuant to Rule 28(e)(5) and this Court's order of May 8, 2025, the undersigned attorney (Petitioner) respectfully reply to the comments to the petition raised by the Maricopa County Indigent Defense Agencies and Judge Reinstein.

As an initial matter, none of the comments refute Petitioner's contention that there is a reoccurring problem with Rule 19.1 and a lack of guidance for trial court judges in penalty phase retrials of capital cases. The Defense Agencies would simply prefer that the facts of a murder be read in a short concise sentence rather than allow a jury to hear powerful live testimony regarding the murder(s); the punishment for which the jury must decide.

However, Judge Reinstein astutely pointed out the substantial difference between the two proposed versions of Rule 19.1(f). Petitioner no longer has an older draft version of the proposed petition and is unsure how the discrepancy occurred.

Judge Reinstein also pointed out that no prosecuting agency commented on the petition. Petitioner drafted the petition in his personal capacity after discussing the issue last year with several capital trial prosecutors. Petitioner was told that the Maricopa County Attorney's Office intended to file a comment in support of the petition, but did not do so before the deadline due to other obligations.

Judge Reinstein also pointed out that the Capital Jury Instructions Workgroup, a subgroup of the Capital Case Oversight Committee, discussed the petition but also did not file a comment.

During Petitioner's recent discussions with several prosecutors and other members of the Oversight Committee, a consensus formed that defense counsel should be allowed to give the first opening statement in the proposed 19.1(f) penalty phase (as proposed in Appendix A).

However, given the unfortunate discrepancy in the original petition, and lack of relevant comments from stakeholders, Petitioner requests this Court do one of the following: (1) "continue the petition for later consideration." *See* Rule 28(g)(1). Petitioner could then file a revised proposal for consideration at next year's Rules Agenda. Or (2) continue the petition and instruct that the proposal be sent to the Capital Case Oversight Committee for further discussion and revision. *See* Arizona Code of Judicial Administration § 1-104.

Finally, Petitioner was unaware that *In Re Rules of Criminal Procedure*, No. R-22-0035 (Ariz. Dec. 8, 2022), utilized a specific naming scheme to identify provisions for

Victims Rights. Unlike other provision of the Criminal Rules, the change to 19.1 created a new subsection, rather than a renumbering. Petitioner would ask this Court to disregard the proposed renumbering of 19.1(v).

This Court should take action that will lead, eventually, to the adoption of a specific rule to govern the unusual, but not uncommon, circumstances described in the petition and avoid the ad hoc resolutions being adopted by the trial courts.

CONCLUSION

For the foregoing reasons, Petitioner respectfully asks this Court to take an action continuing the proposed amendment to Rule 19.1.

Respectfully submitted,

/s/_____

Kevin M. Morrow Esq.

AZ SBN 034697