

SUPREME COURT OF ARIZONA

In the Matter of	)	Arizona Supreme Court
	)	No. R-25-0016
RULE 31.23, RULES OF CRIMINAL	)	
PROCEDURE	)	
	)	
	)	
	)	
	)	
	)	
	)	FILED 08/28/2025

**ORDER CONTINUING PETITION'S CONSIDERATION
AND REOPENING FOR PUBLIC COMMENT
MODIFIED AMENDMENTS TO RULE 31.23 OF
THE RULES OF CRIMINAL PROCEDURE**

On January 10, 2025, Petitioner Deputy Solicitor General/Section Chief of Capital Litigation Jason D. Lewis filed a petition proposing to amend Rule 31.23 of the Rules of Criminal Procedure.

Having considered the petition, comments and reply,

IT IS ORDERED continuing this petition until the November 2025 Rules Agenda.

IT IS FURTHER ORDERED that this matter is reopened for public comment as to whether the proposed amendments to Rule 31.23 of the Rules of Criminal Procedure, as modified in accordance with the amendments shown on the attachment to this order, should be adopted, with all comments due by no later than October 1, 2025. The Court will consider this issue at its November 2025 Rules Agenda.

Rule petitions, including this one, may be viewed by going to: <http://www.azcourts.gov/Rules-Forum>. This opens the

"Welcome" page. Petitions are posted under the appropriate body of rules. For example, the Rules of Criminal Procedure can be found by scrolling down the page.

For instructions on how to post comments electronically, follow the steps listed above and click on "FAQ" at the top of the "Welcome" page and then find "How do I file a comment on a Rule 28 petition?"

Alternatively, commenters may submit a comment by filing an original and one paper copy of the comment and one electronic copy of the written comment and any supporting documents in Microsoft Word format on a CD or other compatible electronic medium with the Clerk of the Supreme Court, 1501 West Washington St., Room 402, Phoenix, Arizona 85007, in an envelope marked "Rule Comment."

Any person filing a comment must send a copy of the comment to the Petitioner electronically or by ordinary mail.

DATED this 27th day of August 2025.

/s/
ANN A. SCOTT TIMMER
Chief Justice

TO:

Rule 28 Distribution

Jason Lewis

Lisa M Panahi

Amy Armstrong

Sam Kooistra

Molly Patricia Brizgys

Amy P Knight

John R Mills

Jennifer Y Garcia

Jon M Sands

ATTACHMENT*
(Proposed Amendment)

RULES OF CRIMINAL PROCEDURE

Rule 31.23. Warrant of Execution

(a) Issuance of Warrant. After affirming a death sentence, the Supreme Court must issue a warrant of execution if the State files a notice stating that:

(1) the defendant has not filed a first Rule 32 petition for post-conviction relief and the time for filing a petition has expired;

(2) the defendant has not filed a petition for review seeking review of a superior court denial of the defendant's first Rule 32 petition for post-conviction relief and the time for filing a petition for review has expired; or

(3) the defendant has not initiated habeas corpus proceedings in federal district court within 15 days after the Supreme Court's denial of a petition for review seeking review of the denial of the defendant's first Rule 32 petition for post-conviction relief.

(b) Post-Habeas Warrant. On the State's motion, the Supreme Court must issue a warrant of execution when federal habeas corpus proceedings and habeas appellate review conclude.

(c) Notice of Motion for Warrant of Execution. Before filing a motion for warrant of execution, if the State requires a date certain when the Court will consider its motion for warrant of execution, it must file a notice informing the Court and defendant that the State intends to file a motion for warrant of execution. In the notice, the State must provide a specific date it plans to file its motion for warrant of execution that is not less than 65 days after the date the notice is filed with the Court and propose at least two alternative future dates. The notice must include as an attachment a copy of the State's motion for warrant of execution. Upon the State filing a notice of intent to file a motion for warrant of execution under this rule:

(1) the Court must issue an order not less than 30 calendar days but not more than 60 calendar days after the State files a notice of intent to file a motion for warrant of execution setting forth:

(A) the date on which the State must file its motion for warrant of execution;

(B) the date by which the defendant may file a response, if any, to the motion for warrant of execution;

(C) the date by which the State and the crime victim may file a reply, if any, to the defendant's response to the motion for warrant of execution;

* Additions to the text of a rule are shown by underscoring and deletions are shown by ~~strike-through~~.

(D) the date the Court anticipates considering the State's motion for warrant of execution; and

(E) any other orders the Court deems necessary to facilitate the State's, the defendant's, and the crime victim's timely filing of the motion, response, and reply, including whether the Court will entertain third party responsive pleadings to or briefs of amicus curiae regarding the State's motion for warrant of execution.

(2) the defendant may file a response to the notice of intent to file a motion for warrant of execution no later than 21 calendar days after the notice is served informing the Court of the defendant's position regarding only the dates provided in the State's notice and the specific orders that will be in the order the Court will issue under (c)(1); and

(3) the State and the crime victim may file separate replies to the defendant's response no later than 7 calendar days after the response is served that address only the specific issues raised in the defendant's response.

~~(e)~~(d) Date and Time of Execution. The warrant of execution must specify an execution date that is 35 days after the warrant's issuance. If the Supreme Court finds that it is impracticable to carry out an execution on that date, it may extend the execution date but may not extend it more than 60 days after the warrant's issuance. Additionally, the warrant must:

(1) state the date for starting the execution time period;

(2) state that the warrant is valid for 24 hours beginning at an hour to be designated by the director of the Arizona Department of Corrections;

(3) order the director to provide written notice of the designated hour of execution to the Supreme Court and each party at least 20 calendar days before the execution date; and

(4) authorize the director to carry out the execution at any time during the warrant's duration.

~~(d)~~(e) Return on Warrant. The director of the Arizona Department of Corrections must make a return on the warrant to the Supreme Court showing the manner and time of execution.