

1 Honorable Joseph C. Welty
2 Criminal Department Presiding Judge
3 Superior Court of Arizona, Maricopa County
4 175 W. Madison St.
5 Phoenix, AZ 85003
6 (602) 372-2537

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IN THE SUPREME COURT OF THE STATE OF ARIZONA

In the Matter of: } Supreme Court No. R-13-____
}
}
} PETITION TO AMEND RULE 32.4
} OF ARIZONA RULES OF
} CRIMINAL PROCEDURE
}
}

Pursuant to Rule 28, Rules of the Supreme Court of Arizona, the Criminal Department Presiding Judge respectfully petitions this Court to amend Rule 32.4 of the Arizona Rules of Criminal Procedure. The current rule provides for the filing of a petition on a post-conviction relief (PCR) proceeding in a capital case within 120 days from the notice of post-conviction relief. This timeframe is unrealistic given the time required to review the record in the case and conduct a sufficient investigation to file a PCR petition in a capital case.

The review required for newly appointed defense counsel on a capital PCR is significant. Counsel must review the entire trial court record, including thousands of pages of transcripts and numerous exhibits. In addition, the investigation and development of mitigation evidence continues by defense counsel during the PCR. *See, e.g.,* Supplementary Guidelines for the Mitigation Function of Defense Teams in Death Penalty Cases (2008) (“the responsibility for the development and presentation of mitigation evidence must be incorporated into the defense case at all stages of the proceedings from the moment the client is taken into custody, and extending to all stages of every case

1 in which the jurisdiction may be entitled to seek the death penalty, including
2 initial and ongoing investigation, pretrial proceedings, trial, appeal, *post-*
3 *conviction review*, clemency proceedings and any connected litigation.”)
4 (emphasis added); American Bar Association Guidelines for the Appointment
5 and Performance of Defense Counsel in Death Penalty Cases (2003) (“Post-
6 conviction counsel should fully discharge the ongoing obligations imposed by
7 these Guidelines, including the obligations to: . . . continue an aggressive
8 investigation of all aspects of the case.”) The American Bar Association
9 Guidelines for the Appointment and Performance of Defense Counsel in Death
10 Penalty Cases promulgated in 2003 note that post-conviction relief counsel
11 “cannot rely on the previously compiled record but must conduct a thorough,
12 independent investigation . . . As demonstrated by the high percentage of
13 reversals and disturbingly large number of innocent persons sentenced to death,
14 the trial record is unlikely to provide either a complete or accurate picture of the
15 facts and issues in the case.” Understandably, this review takes a significant
16 amount of time.

17 In the experience of the Superior Court in Maricopa County, PCR
18 petitions in capital cases are generally filed more than 18 months after the
19 appointment of PCR counsel. Rather than continually granting motions for
20 extension of time to file the petition, the Superior Court in Maricopa County
21 proposes extending the time to file a petition to 18 months (see Exhibit A). This
22 is consistent with other states, which allow a year or more to file for post-
23 conviction relief. *See, e.g.*, Fla. R. Crim. P. Rule 3.850 (up to two years after the
24 judgment and sentence become final); 42 Pa.C.S.A. § 9545 (one year from the
25 date the judgment becomes final); Tenn. Code Ann. § 40-30-202 (one year of the
26 date of the final action of the highest state appellate court to which an appeal is
27 taken).

28 //

1 For the foregoing reasons, the Criminal Department Presiding Judge of
2 the Superior Court in Maricopa County respectfully requests this Court amend
3 Rule 32.4 to increase the time for defendant to file a petition for post-conviction
4 relief in a capital case.

5 Respectfully submitted this 10th day of January, 2013.

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7
8 Hon. Joseph C. Welty
9 Criminal Department Presiding Judge
Superior Court of Arizona, Maricopa County

10 Original and six (6) copies delivered this
11 10th day of January, 2013 to:

12 Clerk of the Arizona Supreme Court
13 1501 W. Washington, Suite 402
14 Phoenix, AZ 85007

15 Copy delivered this
16 10th day of January, 2013 to:

17 David K. Byers, Director
18 Administrative Office of the Courts
19 1501 W. Washington St.
20 Phoenix, Arizona 85007

1 Exhibit A

2
3 Rules of Criminal Procedure

4 **Rule 32.4. Commencement of proceedings**

5 ...

6 **c. Appointment of Counsel.**

7 (1) *Capital Cases.* After the Supreme Court has affirmed a defendant's conviction
8 and sentence in a capital case, the Supreme Court, or if authorized by the Supreme
9 Court, the presiding judge of the county from which the case originated, shall
10 appoint counsel for the defendant pursuant to A.R.S. § 13-4041 and Rule 6.8 if the
11 defendant is determined to be indigent. If the appointment is made by the
12 presiding judge, a copy of the court's order appointing counsel shall be filed in the
13 Supreme Court.

14 Upon the filing of a successive notice, the presiding judge shall appoint the
15 previous post-conviction counsel of the capital defendant unless counsel is waived
16 or good cause is shown to appoint another qualified attorney from the list
17 described in A.R.S. § 13-4041.

18 On the first notice in capital cases, appointed counsel for the defendant shall have
19 ~~one hundred twenty days~~ 18 months from the filing of the notice to file a petition
20 raising claims under Rule 32.1. A capital defendant proceeding without counsel
21 shall have ~~one hundred twenty days~~ 18 months from the filing of the notice to file
22 a petition. On the filing of a successive notice, appointed counsel, or the defendant
23 if proceeding without counsel, shall file the petition within thirty days from the
24 filing of the notice. On a showing of good cause, a defendant in a capital case may
25 be granted a sixty day extension in which to file the petition. Additional
26 extensions of thirty days may be granted for good cause. If a petition for post-
27 conviction relief is not filed within ~~one hundred and eighty days~~ 18 months from
28 the date of appointment of counsel, or ~~one hundred and eighty days~~ 18 months

1 from the date the notice is filed, or the date a request for counsel is denied if the
2 defendant is proceeding without counsel, the defendant or counsel for the
3 defendant shall file a notice in the Supreme Court, advising the court of the status
4 of the proceedings. Thereafter, defendant or counsel for the defendant shall file
5 status reports in the Supreme Court every sixty days until the petition for post-
6 conviction relief is filed.

7 ...