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IN THE SUPREME COURT
STATE OF ARIZONA

In the Matter of:	Arizona Supreme Court No. R-12-_____
THE ARIZONA RULES OF CRIMINAL PROCEDURE	**PETITION TO AMEND ARIZONA RULE OF CRIMINAL PROCEDURE 12.10**

PETITION TO AMEND THE ARIZONA RULES OF CRIMINAL PROCEDURE

Pursuant to Rule 28, Rules of the Supreme Court, the Yavapai County Public Defender's Office petitions the Court to amend Rule 12.10 of the Arizona Rules of Criminal Procedure as reflected in the attached Appendix

I. INTRODUCTION AND BACKGROUND.

Arizona Rule of Criminal Procedure, Rule 14.1(d) allows the presiding judge of a county to issue an order stating that arraignment shall not be held in felony cases in the superior court of that county. However, currently, Yavapai County is the only county which does not conduct arraignments. This was accomplished by the promulgation of Yavapai County Superior Court Administrative Order 2004-07(C)(1). (Exhibit A.)

When arraignments are not held, then Rule 12.10 applies. Rule 12.10(a) provides:

> "In a county where an arraignment is not held as provided in Rule 14.1(d)[1], if an indictment is returned the defendant shall be brought before a magistrate who shall:
> (1) Enter a plea of not guilty for the defendant and prepare and provide the defendant and defendant's counsel with a notice specifying that a plea of not guilty has been entered.
> (2) Set the date for the trial or pretrial conference.
> (3) Advise the parties in writing of the dates set for further proceedings and other important deadlines.
> (4) Advise the defendant of the defendant's right to be present at all future proceedings, that any proceeding may be held in the defendant's absence and that the defendant may be charged with an offense and a warrant may be issued for defendant's arrest.
> (5) Advise the defendant of the right to jury trial if applicable."

It is important to note that Rule 12.10 nowhere provides for *how long after* the indictment is returned that the hearing pursuant to this rule is to be held. The reason this is important is because other important clocks are triggered by the timing of the arraignment. Rule 8.2(a)(1) and (2) provides that the speedy trial clock starts from the time of arraignment. Rule 15.1(c) provides that the clock for deadlines for discovery begins from the time of arraignment. The time problem created by allowing the dispensing with arraignments is solved by Rule 1.3(b) which provides:

> "In computing any period of time based upon the date of arraignment, if an arraignment is not held as provided in Rule 14.1(d), the date that the defendant receives notice of the next court date as provided in Rules 5.8 and 12.10 shall be deemed the date of arraignment."

Hence, so long as Rule 12.10 is complied with in a timely manner, there is no time problem created under Rules 8.2(a) and 15.1(c). However, in Yavapai County when Indictments are returned the Rule 12.10 hearing is not conducted until the Case Management Conference.

[1] Rule 14.1(a) is the Rule which requires that arraignments be held. However, Rule 14.1(d) is the Rule which provides the authority for counties to dispense with arraignments. It provides: "An arraignment at which a plea of not guilty is to be entered shall not be held after the filing of an indictment or information if the Presiding Judge of the Superior Court issues an order stating that Rule 14 does not apply to those cases in the Superior Court of that county."

which is typically five weeks after Early Disposition Court, and six weeks after the Initial Appearance. This delay negatively impacts the Speedy Trial and Discovery clocks.

The policies underlying the right to a speedy trial are impacted by the current situation.

> "'[T]he major evils protected against by the speedy trial guarantee exist quite apart from actual or possible prejudice to an accused's defense. ... Arrest is a public act that may seriously interfere with the defendant's liberty, whether he is free on bail or not, and that may disrupt his employment, drain his financial resources, curtail his associations, subject him to public obloquy, and create anxiety in him, his family and his friends.'" *United States v. MacDonald*, 456 U.S. 1, 8, 102 S.Ct. 1497, 1502 (1982), quoting *United States v. Marion*, 404 U.S. 307, 320, 92 S.Ct. 455, 463 (1971).

> "The Sixth Amendment right to a speedy trial is thus not primarily intended to prevent prejudice to the defense caused by the passage of time; that interest is protected primarily by the Due Process Clause and by statutes of limitations. The speedy trial guarantee is designed to minimize the possibility of lengthy incarceration prior to trial, to reduce the lesser, but nevertheless substantial, impairment of liberty imposed on an accused while released on bail, and to shorten the disruption of life caused by arrest and the presence of unresolved charges." *MacDonald*, at 1502, 102 S.Ct. at 8.

In the recent case, *Longoria v. Superior Court*, 228 Ariz. 156, 264 P.3d 866, 867-868 (2011) the Arizona Supreme Court reiterated the importance of discovery being given to the defense early on in the case: "The 2003 amendments sought, among other things, to align the disclosure rules more closely 'with the realities of modern practice,' and to recognize 'the defense attorney's need for basic information early in the process in order to meaningfully confer with the client and make appropriate strategic decisions.'" The court added, "...Rule 15.8 reflects the view that defendants should receive certain basic disclosures before having to decide on plea offers made early in the case." *Id.*, at 870.

The current situation in Yavapai County allows for a defendant to be incarcerated for over six weeks before his speedy clock even begins to run. It also allows him to sit in custody for over ten weeks before receiving a single piece of discovery. It is only at that point where

defendants can *begin* to intelligently discuss with their attorneys whether to accept a plea bargain. Since Rule 12.10 contains no time limitations, it is conceivable that felony defendants could sit in custody for even longer than the current Yavapai County situation with no violation of the rules as currently drafted. Presiding Judges in other counties could presumably do away with arraignments and not hold Rule 12.10 hearings indefinitely without violating the current rules. This situation is untenable and violative of due process.

Attempts were made in Yavapai County to resolve this dilemma by agreement of the parties. A meeting was held between the Presiding Judge, the Presiding Criminal Judge, the Public Defender and the Chief Deputy of the Yavapai County Attorney's Office. The Chief Deputy of the Yavapai County Attorney sent an email to the Yavapai County Public Defender outlining the office's position on the matter and giving marching orders to the deputies. (Exhibit B.)[2] Further, demands to conduct Rule 12.10 hearings prior to the Case Management Conference in Yavapai County have been filed and denied by the court. (Exhibit C.)[3] The denial of the motion was taken to the Court of Appeals on Special Action and jurisdiction was declined. (Exhibit D.)

This issue is a matter of statewide concern because there is nothing which prevents any other county from doing away with arraignments; the Rules specifically contemplate it. Even if no other county did away with arraignments, it is still a matter of statewide concern because there is disparate treatment of criminal defendants in one county. This should not be tolerated.

This matter is also of statewide concern because of a common practice in limited jurisdiction courts. For misdemeanor offenses, defendants typically contact private counsel

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[2] It is interesting to note that the email concedes that the current state of affairs operates to extend Rule 8 Speedy Trial Deadlines. It is further interesting to note that the prosecutor's position is that the formal agreement allows for the discovery problems outlined in this Petition.

[3] The State only responded to the Motion to Dismiss; they did not file responses to the original Demand or the Motion to Reconsider.

prior to the arraignment date set on the ticket of the summons. A common service provided private defense attorneys is to enter a plea of not guilty in the Notice of Appearance, along with requesting a pretrial conference be set. This prevents clogging of morning calendars, and saves clients from having to take time off work to attend an arraignment. Justices of the Peace and City Court judges routinely grant these requests. Given the Supreme Court's concern about efficient processing of misdemeanor DUI cases, this extension of Rule 15 discovery deadlines makes it more difficult for city court and justice court judges to process cases in the time frames given by the Supreme Court.

The only way to remedy this situation is to modify Rule 12.10 to add a reasonable timeframe. Since Rule 14.1(a) requires that arraignments be conducted within ten (10) days after the filing of the Indictment, it makes sense that 12.10 hearings should also be conducted within that same timeframe.

RESPECTFULLY SUBMITTED this 4th day of January, 2013.

Yavapai County Deputy Public Defender's Office