

## APPENDIX<sup>1</sup>

### Rule 12.10. Entering a not guilty plea

**a. Notice.** In a county where an arraignment is not held as provided in Rule 14.1(d), if an indictment is returned the defendant shall be brought before a magistrate within ten days of the return of the indictment 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.

**b. Form of Notice.** Notice to the defendant as provided in Rule 12.10(a) shall be in writing and signed by the defendant and defendant's counsel.

Added applicable to Maricopa County on an experimental basis Oct. 13, 1998, effective Nov. 1, 1998 to Oct. 31, 1999. Amended applicable to Maricopa County on an experimental basis Sept. 24, 1999, effective to Nov. 1, 1999 to Oct. 21, 2000.

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<sup>1</sup> Additions to text are indicated by underscoring; deletions by ~~striketrough~~.

# **EXHIBIT A**

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF YAVAPAI

IN THE MATTER OF: ) ADMINISTRATIVE ORDER  
 )  
 )  
 JUDICIAL ASSIGNMENTS ) No. 2004-07 (Amended)  
 )  
 \_\_\_\_\_ )

4 FILED  
O'Clock M  
MAR 24 2005  
BY: JEANNE RICHES, Clerk  
Deputy

In accordance with Rule 1.1 (B) of the Local Rules of Practice for Yavapai County, the following assignment of cases filed on and after May 3, 2004, are made to the respective divisions of the Superior Court:

A. VERDE VALLEY JUDICIAL DISTRICT – YAVAPAI COUNTY SUPERVISOR DISTRICT  
THREE CASES PURSUANT TO RULE 1.2 OF THE LOCAL RULES OF PRACTICE FOR  
YAVAPAI COUNTY.

1. DIVISION 4 – JUDGE HOWARD D. HINSON, JR.

a. 93% of criminal cases resulting from offenses committed in the Verde Valley Judicial District, including:

- (1) Writs of Habeas Corpus
- (2) Adult Interstate Compact (ISC) Probation Program probable cause administrative hearings
- b. All Adult Drug Court cases in Yavapai County
- c. All sexually violent cases in Yavapai County
- d. Verde Valley Judicial District revocation arraignments
- e. Out of State Criminal Subpoenas

Clerk of Court  
 Chief Deputy  
 Court Admin  
 Other

(3)

2. DIVISION 6 – JUDGE THOMAS B. LINDBERG

a. All civil cases filed in the Verde Valley Judicial District, excluding mental health, and including:

- (1) Arbitration appeals
- (2) Garnishments resulting in the Verde Valley Judicial District
- (3) Forfeitures from cases in Verde Valley Judicial District
- (4) Forcible entry and detainers
- (5) Post-judgment cases filed in Verde Valley Judicial District

b. All domestic relations cases filed in the Verde Valley Judicial District, including:

- (1) Orders of protection
- (2) Non-IV-D child support
- (3) Non-IV-D paternity
- (4) Post-decree matters

c. All Requests for Expedited Process, including requests to:

- (1) Establish, modify, and enforce support
- (2) Establish paternity
- (3) Establish temporary custody and/or visitation
- (4) Establish temporary spousal maintenance
- (5) Enforce spousal maintenance
- (6) Enforce custody and/or visitation (Parent-Child Access)

d. All probate cases assigned to the Verde Valley Judicial District

e. All juvenile delinquency cases filed in the Verde Valley Judicial District

- f. Conciliation Court
- g. Parent Education Program

3. DIVISION PRO TEM "B" – WARREN R. DARROW

- a. 7% of criminal cases resulting from offenses committed in Verde Valley Judicial District, including:
  - (1) Writs of Habeas Corpus
  - (2) Adult Interstate Compact (ISC) Probation Program probable cause administrative hearings
- b. Extradition and review hearings

B. PRESCOTT JUDICIAL DISTRICT – YAVAPAI COUNTY SUPERVISOR DISTRICTS ONE AND TWO CASES

1. DIVISION 1 – JUDGE DAVID L. MACKEY

- a. 50% of civil cases filed in Supervisor Districts 1 and 2, excluding mental health, and including:
  - (1) Arbitration appeals
  - (2) Garnishments resulting in Supervisor Districts 1 and 2
  - (3) Forfeitures from cases in Supervisor Districts 1 and 2
  - (4) Post-judgment matters filed in Supervisor Districts 1 and 2
- b. 40% of domestic relations cases filed in Supervisor Districts 1 and 2, including:
  - (1) Orders of protection
  - (2) Non-IV-D child support
  - (3) Non-IV-D paternity

- (4) Post-decree matters
- c. All Requests for Expedited Process in cases assigned to Division 1, including requests to:
  - (1) Establish, modify, and enforce support
  - (2) Establish paternity
  - (3) Establish temporary custody and/or visitation
  - (4) Establish temporary spousal maintenance
  - (5) Enforce spousal maintenance
  - (6) Enforce custody and/or visitation (Parent-Child Access)
- d. All forcible entry and detainers in Supervisor Districts 1 and 2
- e. 50% of probate cases filed in Supervisor Districts 1 and 2
- f. Master of the Verde Ditch

2. DIVISION 2 – JUDGE ROBERT M. BRUTINEL

- a. Presiding Judge
  - (1) Pro Tempore orders of appointment for Justices of the Peace
  - (2) Budget
- b. Presiding Juvenile Court Judge for Yavapai County
- c. Juvenile Court cases, including:
  - (1) All dependency cases in Yavapai County
  - (2) All adoptions in Yavapai County
  - (3) All termination and severance cases in Yavapai County
  - (4) All delinquency cases in Supervisor Districts 1 and 2

(5) Court Appointed Special Advocate Program

(6) Foster Care Review Board

d. All election contest cases in Yavapai County

e. Master of Mayer Townsite

3. DIVISION 3 – JUDGE JANIS ANN STERLING

a. 55% of criminal cases resulting from offenses committed in Supervisor Districts 1 and 2, excluding arraignments, and including:

(1) Writs of Habeas Corpus

(2) Adult Interstate Compact (ISC) Probation Program probable cause administrative hearings

b. All civil and criminal lower court appeals in Yavapai County

4. DIVISION 5 – JUDGE WILLIAM T. KIGER

a. Associate Presiding Judge

b. Presides over Early Disposition Court

(1) All cases in which a plea is entered and sentencing will take place within 30 days will be assigned to Judge Kiger. All other criminal cases will be assigned according to administrative order.

c. All Grand Jury returns

d. Out of State Criminal Subpoenas

e. Prescott Judicial District initial appearances and revocation arraignments

5. DIVISION PRO TEM "A" – JUDGE RALPH M. HESS
- a. 40% of domestic relations cases filed in Supervisor Districts 1 and 2, excluding default dissolutions, and including:
    - (1) Orders of protection
    - (2) Non-IV-D child support
    - (3) Non-IV-D paternity
    - (4) Post-decree matters
  - b. All Requests for Expedited Process in cases assigned to Division Pro Tem - A, including requests to:
    - (1) Establish, modify, and enforce support
    - (2) Establish paternity
    - (3) Establish temporary custody and/or visitation
    - (4) Establish temporary spousal maintenance
    - (5) Enforce spousal maintenance
    - (6) Enforce custody and/or visitation (Parent-Child Access)
  - c. 50% of civil cases filed in Supervisor Districts 1 and 2 including:
    - (1) Arbitration appeals
    - (2) Garnishments resulting in Supervisor Districts 1 and 2
    - (3) Forfeitures from cases in Supervisor Districts 1 and 2
    - (4) Post-judgment matters filed in Supervisor Districts 1 and 2
  - d. Civil and criminal settlement conferences in Supervisor Districts 1 and 2, as assigned by the Presiding Judge

- e. All mental health cases filed in Yavapai County
  - f. 50% of probate cases filed in Supervisor Districts 1 and 2
6. DIVISION PRO TEM "B" – WARREN R. DARROW
- a. 45% of criminal cases resulting from offenses committed in Supervisor Districts 1 and 2, excluding arraignments, and including:
    - (1) Writs of Habeas Corpus
    - (2) Adult Interstate Compact (ISC) Probation Program probable cause administrative hearings
  - b. Extradition and review hearings
7. FAMILY LAW DIVISION –  
COMMISSIONER AND JUDGE PRO TEMPORE RHONDA L. REPP
- a. All IV-D, URESA, and UIFSA child support cases in Yavapai County
  - b. All IV-D paternity cases in Yavapai County
  - c. All domestic relations default matters in Yavapai County
  - d. 20% of domestic relations cases filed in Supervisor Districts 1 and 2, including:
    - (1) Orders of protection
    - (2) Non-IV-D child support
    - (3) Non-IV-D paternity
    - (4) Post-decree matters
  - e. All Requests for Expedited Process in cases assigned to Family Law Division, including requests to:
    - (1) Establish, modify, and enforce support

- (2) Establish paternity
  - (3) Establish temporary custody and/or visitation
  - (4) Establish temporary spousal maintenance
  - (5) Enforce spousal maintenance
  - (6) Enforce custody and/or visitation (Parent-Child Access)
- f. Orders to Show Cause regarding collections in Yavapai County
  - g. Other cases as assigned by the Presiding Judge
  - h. All matters related to civil and domestic relations cases not assigned to a judge in Supervisor Districts 1 and 2, and not requiring a hearing

C. GENERAL CONSIDERATIONS

1. The Presiding Judge waives the requirement of an arraignment pursuant to Rule 14.1(d) of the Rules of Criminal Procedure.
2. Civil and domestic relations cases will be assigned to a judge when a responsive pleading is filed or specific judicial action requiring a hearing is requested, whichever occurs first.
3. Any case previously assigned to a retired judge which involves post-conviction proceedings, further action by appellate court mandate or post dissolution proceedings shall be assigned according to the order set forth above.
4. Any case which involves post-adjudication proceedings shall be assigned according to the order set forth above, except for cases which involve post-conviction relief (PCR) proceedings or restoration of rights, which shall be assigned to the sentencing judge.
5. Deferred cases as well as criminal post-adjudication matters shall be assigned to the sentencing judge, if the sentencing judge is currently assigned to receive new criminal cases.

If the sentencing judge is not currently assigned to receive new criminal cases, Prescott cases involving deferred or post-adjudication matters shall be assigned according to the above distribution. Verde Valley cases involving deferred or criminal post-adjudication matters which were sentenced prior to January 1, 2002 shall be assigned to Judge Hinson. Verde Valley sentences of deferral or probation after January 1, 2002 assigned to Judge Mackey or Judge Lindberg while handling criminal cases in the Verde Valley shall be assigned to Division Pro Tem - B, Judge Darrow. Verde Valley cases that were previously assigned to Judge Hinson while sitting in Prescott shall be assigned to Judge Hinson. Any Prescott cases that were previously assigned to Judge Hinson shall be assigned according to the order set forth above.

6. Probation terminations in Prescott shall be assigned to the sentencing judge, unless the sentencing judge was Judge Hinson when he was sitting in Prescott. In that case, petitions to terminate probation shall be assigned according to the above distribution. Probation terminations in the Verde Valley shall be assigned according to the order set forth above.

DATED at Prescott, Arizona, the 24 day of March, 2005.

  
\_\_\_\_\_  
**ROBERT M. BRUTINEL**  
Presiding Judge

## **EXHIBIT B**

## Andrew Falick

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**From:** Robert Gundacker  
**Sent:** Friday, January 27, 2012 10:18 AM  
**To:** Kennedy Klagge  
**Cc:** Andrew Falick; Jeffrey McNeice  
**Subject:** FW: Rule 8 calculations

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**From:** William Feldhacker  
**Sent:** Thursday, January 12, 2012 9:22 AM  
**To:** Robert Gundacker  
**Subject:** FW: Rule 8 calculations

For your edification.

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**From:** Dennis McGrane  
**Sent:** Wednesday, January 11, 2012 1:28 PM  
**To:** Dean Trebesch; William Feldhacker  
**Cc:** Attorney - Attorneys Only Criminal; Deborah Cowell; Kathy Durrer; Maggie Robertson; Pat Kavanaugh; Rhonda Grubb; Susan Fields  
**Subject:** Rule 8 calculations

Dean and Bill,

It has come to my attention that there may be a misunderstanding of the meeting that the three of us had with Judges Brutinel and Kiger on October 18, 2010 regarding Rule 8 and when trial dates are to be set. The purpose of this email is to clarify that agreement.

On Nov. 1, 2010, I sent an email (and then a second email clarifying a point) to all of our prosecutors that memorialized and explained the agreement to them. Both emails are found below. Those emails constitute the nature and extent of the agreement we reached (and by "we", I mean the courts too). To date, I have not seen a memo from Judge Kiger to the criminal division judges, as was discussed at that meeting. If you have, I would like to get a copy of it. If it exists, it should corroborate what I put in those emails.

I am copying the prosecutors and paralegals in this office on this email so that their memories are refreshed about the agreement. I would request that you forward this email to your attorneys so that they too can understand the nature and extent of the agreement.

Also, with your permission, I would like to forward this to Judge Ainley as the presiding criminal judge (I would copy you on such an email). Perhaps she would be willing to talk to the other judges so that they (and we) can all be on the same page.

Thanks in advance and please let me know if you have any questions.

Dennis

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Nov 01 2010 - 9:42am

I met with Judges Brutinel and Kiger as well as Trebesch and Feldhacker of the Public Defenders Office. By mutual agreement it was decided that the judges will be setting trial dates using Rule 8 timeframes, but starting the count from

the date of GJ. This applies to those cases that don't waive at EDC and proceed to GJ.

However, I don't think we can waive Rule 8 by agreement, so it is important to agree to the trial date but not agree that Rule 8 time runs out at that point. If a case later exceeds these artificial timeframes, we can then argue that the rules control (see my previous email re: Rule 1.3[b], etc. and the start date). As Judge Kiger pointed out, it really hasn't been an issue (he says he has been setting trial dates this way for some time) so we should not make a big deal out of nothing.

Also, I did not agree to any different time frames with regard to Rule 15. I haven't seen Judge Kiger's memo to the judges yet, but I made it quite clear the agreement was limited to trial settings, not disclosure.

Let me know if you have any questions.

DMM

Later that same day, I sent a clarification email in response to a question.

Date: Nov 01 2010 - 10:41am

I should have been more specific. In most cases, Defendant waives time to EXTEND the deadline. What I was trying to convey is that we don't want to stipulate to a SHORTER deadline for Rule 8, but it is fine to agree to a trial setting that is well before the deadline (just don't say "Rule 8 time runs out on this date").

I don't think we can or, at the very least, should stipulate to shorten Rule 8 time with the sanction of dismissal if it does not get to trial by that agreed upon date. Rather, the dismissal sanction should only kick in with the real Rule 8 time, which starts to run from the date of the Rule 12.10 notice (see Rule 1.3(b)), not the GJ date, which the courts will be using.

DMM

# **EXHIBIT C**

YAVAPAI COUNTY PUBLIC DEFENDER  
Bar Number 0040500  
2830 N. Commonwealth Drive, Suite 101  
Camp Verde, AZ 86322  
Phone Number (928) 567-7758  
Fax Number (928) 567-7764  
E-Mail: YavapaiCounty.PublicDefender@co.yavapai.az.us

2012 FEB -2 AM 10:28 ✓  
BY: V REISINGER


ATTORNEY FOR THE DEFENDANT

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA  
IN AND FOR THE COUNTY OF YAVAPAI

STATE OF ARIZONA, ) Case No.: P1300CR201200119  
)  
Plaintiff, ) DEMAND FOR RULE 12.10 HEARING  
) WITHIN 10 DAYS OF THE FILING OF  
) INDICTMENT  
WILLIAM C. GUNN )  
Defendant. ) HONORABLE TINA AINLEY  
) DIVISION III  
)  
)  
)  
)

Pursuant to Rules 12.10 and 14.1 of the Arizona Rules of Criminal Procedure, Defendant demands a 12.10 hearing within 10 days of the filing of the indictment in this matter. An indictment was filed on February 1, 2012.

RESPECTFULLY SUBMITTED this 2<sup>nd</sup> day of February, 2012.

By:   
Andrew Falick  
Deputy Public Defender

Copies of the foregoing hand delivered  
this 2<sup>nd</sup> day of February, 2012 to:  
  
The Honorable Tina Ainley, Division III  
  
Assigned Deputy County Attorney  
By: Charlene Bolton

w/o

SUPERIOR COURT, STATE OF ARIZONA, IN AND FOR THE COUNTY OF YAVAPAI

STATE OF ARIZONA,  Plaintiff,  vs.  WILLIAM C. GUNN,  Defendant.	Case No. P1300CR201200119  <b>ORDER</b>	FILED  DATE: <u>FEB - 7 2012</u> <u>8:11</u> O'Clock <u>A</u> .M.  SANDRA K. MARKHAM, CLERK BY: <u>B Chamberlain</u> Deputy
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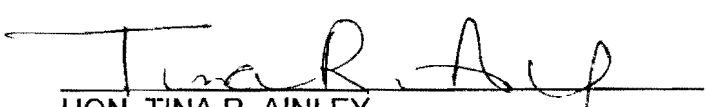
HONORABLE TINA R. AINLEY  DIVISION 3	BY: Dawn Paul, Judicial Assistant  DATE: February 6, 2012
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The Court having received and reviewed Defendant's *Demand for Rule 12.10 Hearing Within 10 Days of the Filing of Indictment*,

IT IS ORDERED denying the Defendant's Motion.

IT IS FURTHER ORDERED confirming Case Management Conference and hearing pursuant to Rule 12.10 is set in this Division on Monday, March 5, 2012 at 10:00 a.m.

DONE IN OPEN COURT this 6<sup>th</sup> day of February, 2012.

  
 HON. TINA R. AINLEY  
 Judge of the Superior Court

- cc:
- \* Andrew Falick, Esq., Deputy County Public Defender, Yavapai County Public Defender's Office, Counsel for Defendant
  - \* Deputy Yavapai County Attorney, Yavapai County Attorney's Office
  - \* Victim Services

Attorneys/Parties have been notified by phone/fax DP  
 Date: 2/6/12

YAVAPAI COUNTY PUBLIC DEFENDER'S OFFICE  
Bar Number 0040500  
595 White Spar Road  
Prescott, AZ 86303  
Phone Number (928) 771-3588  
Fax Number (928) 771-3413  
E-Mail: YavapaiCounty.PublicDefender@co.yavapai.az.us

SUPERIOR COURT  
YAVAPAI COUNTY, ARIZONA

2012 FEB -9 AM 10:50 ✓

CANDRA K. TAYLOR, CLERK  
BY: S. LANDINO

ATTORNEY FOR THE DEFENDANT

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA  
IN AND FOR THE COUNTY OF YAVAPAI

STATE OF ARIZONA,

Plaintiff,

WILLIAM C. GUNN,

Defendant.

) Case No.: P1300CR201200119

)  
) MOTION TO RECONSIDER  
) DEMAND FOR RULE 12.10 HEARING

)  
) HONORABLE TINA AINLEY  
) DIVISION III

\_\_\_\_\_  
COMES NOW the Defendant, by and through undersigned counsel hereby moves this Court to reconsider its Order denying the Defendant an Arizona Rule of Criminal Procedure 12.10 Hearing on or before February 13, 2012. A timely hearing pursuant to this Rule is necessary to preserve the defendant's rights under the Fifth, Sixth and Fourteenth Amendments of The U.S. Constitution, Arizona Constitution Article II §§ 4, 13 and 24, and Arizona Rules of Criminal Procedure 8 and 15.

This motion is supported by the following Memorandum of Points and Authorities.

**MEMORANDUM OF POINTS AND AUTHORITIES**

In 2004 the Yavapai County Judiciary eliminated arraignments for criminal defendants and implemented Early Disposition Court (hereinafter "EDC"). In EDC a criminal defendant is presented with three options: 1) request a preliminary hearing, and if a plea bargain being offered

to the defendant, the plea bargain will be revoked by the State once a Preliminary Hearing is set by the judge (if this option is chosen, in all likelihood there will be no Preliminary Hearing, the State in most instances will take the case to the “Grand Jury” and file a Supervening Indictment. Since the creation of EDC in 2004, there have only been a dozen or so preliminary hearings held in Yavapai County); 2) the defendant chooses to waive their right to a Preliminary Hearing, this choice will preserve the plea bargain being offered for a five week period until the defendant’s Case Management Conference (hereinafter “CMC”); at this point in EDC after a waiver pursuant to Arizona rule of Criminal Procedure 5.8, the judge will enter not guilty pleas on behalf of the defendant, the Defendant will be informed of his next court date, and an Information of the defendant’s charges is immediately filed with the Court and so is a “5.8” document; and 3) the plea bargain is accepted by the defendant and he or she is sentenced by the Court.

In the event that a defendant’s case is presented to the Grand Jury and an Indictment is returned, Arizona Rule of Criminal Procedure 12.10 (hereinafter “Rule 12.10”) applies since there are no arraignments in Yavapai County. The Rule 12.10 Hearings are not conducted until the first CMC, five weeks after EDC, and six weeks after the defendant’s Initial Appearance. This is creating confusion as to when a defendant’s speedy trial rights begin and when the defendant is entitled to disclosure. This is discussed in detail below.

Rule 12.10(a) provides:

“In a county where an arraignment is not held as provided in Rule 14.1(d)<sup>1</sup>, if an indictment is returned the defendant shall be brought before a magistrate who shall:

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<sup>1</sup> 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.”

- (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." (Emphases added.)

**A Defendant's Rights to a Speedy Trial and Discovery are Negatively Impacted by not Conducting a Rule 12.10 Hearing Promptly After an Indictment is Returned Thereby Prejudicing the Defendant.**

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 a Rule 12.10 Hearing is completed within the times dictated Arizona Rule of Criminal Procedure 14, there is no time problem created under Rules 8.2(a) and 15.1(c). However, in Yavapai County when Indictments are returned, a Rule 12.10 hearing is not conducted until the Case Management Conference, which is typically five weeks after the Defendant's appearance in Early Disposition Court. Cases in Yavapai County go to the Grand Jury within days of Early Disposition Court, and within ten days of the Initial Appearance. This delay negatively impacts both the Speedy Trial and Discovery clocks. The State asserts that these Constitutional rights, and their obligations according to Rule 1.3(b) are not triggered until

the CMC. This is confirmed by an email that was sent to the Public Defender's Office by the Chief Deputy of the Yavapai County Attorney's Office (please see exhibit "A"). Since there is no local rule addressing speedy trial rights and timeliness of disclosure of discovery after an Indictment is filed when no arraignment is conducted, nor is there a stipulation by the parties, or case law to offer direction on this matter; conducting a Rule 12.10 Hearing within the time frames set forth in Rule 14 is critical for a defendant to receive vital constitutional protections. The policies underlying one's right to a speedy trial and prompt disclosure of discovery 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.

*State v. Carpenter*, 176 Ariz. 486, 488, 862 P.2d 246, 248 (App. 1993) holds:

“Rule 15 defines with particularity the materials and information subject to discovery in a criminal action and the procedures a party should follow to obtain discoverable material. Rule 15.1a explicitly describes the state's obligation to make detailed disclosure no later than ten days after arraignment.”

The purpose and time frame of disclosing discovery pursuant to Rule 15 is ignored by the current situation of performing a Rule 12.10 Hearing five weeks after an Indictment is filed

with the Court. The State through Rule 1.3(b), is reading the rules and case law, and using it in a fashion which deprives the Defendant of his constitutional rights.

The current situation in Yavapai County allows for a defendant to be incarcerated for over six weeks before his right to speedy trial begins to run. It also allows him to sit in custody for over six weeks before receiving a single piece of discovery. The assigned or retained defense attorney cannot intelligently discuss the case with the Defendant until such discovery is disclosed, nor can the defense attorney start the investigative process with law enforcement and pertinent witnesses, until such critical discovery is received. This current scenario in Yavapai County prejudices the Defendant, while benefitting the State since the defendant is now five to six weeks behind on discovery.

If a plea bargain is offered after an Indictment but prior to the CMC, defense counsel cannot begin to intelligently and adequately discuss with their client whether to accept a plea bargain without discovery. This situation created by there being no local rule, no stipulation by the parties, and no case law on this subject, has created an untenable process which violates a defendant's due process and the defendant's right to have effective counsel. "Due process requires that a defendant be able to assess intelligently the numerous factors which bear upon choice of whether to formally admit his guilt or put the state to its proof." *State v. Draper*, 162 Ariz. 433, 436, 784 P.2d 259, 262 (1989).

*State v. Donald*, 198 Ariz. 406, 412-413, 10 P.3d 1193, 1199-1200 (App. 2000) held:

"To ensure that a defendant is adequately advised, [d]efense counsel has a duty to communicate...nor only the terms of a plea bargain offer, but also the relative merits of the offer compared to defendant's chances at trial."

"Once the State engages in plea bargaining, the defendant has a Sixth Amendment right to be adequately informed of the consequences before deciding whether to accept or reject the plea offer."

**Not Holding a Rule 12.10 Hearing Ten Days After the Return of Indictment Violates a Defendant's Equal Protection Rights.**


Both Rule 8 and Rule 15 are triggered by an arraignment. Mr. Gunn is currently in custody at the Yavapai County Jail Facility, and an Indictment was returned against him February 1, 2012. A defendant who is also in custody, and also had EDC the same date as Mr. Gunn, but choose to waive his constitutional right to have a Preliminary Hearing, was informed pursuant Rule 5.8, by the judge at his EDC appearance that “not guilty pleas are entered upon the defendant’s behalf, the defendant’s next court date, and advice the parties in writing of further proceedings and written deadlines.” After that occurred, an Information was immediately filed with the Court. The State maintains under this scenario, that the defendant’s Rule 8 and 15 clocks started ticking at that moment.

However, Mr. Gunn whose case went the way of a grand jury after a Preliminary Hearing was requested by him, The State in this scenario, contends that the clocks for Rules 8 and 15 do not begin ticking until five weeks later at the CMC. The State is penalizing a defendant of vital constitutional rights simply for requesting a Preliminary Hearing. The Court permitting the State to enact a procedure that grants one group of defendants’ who waive a preliminary hearing different terms in receiving one’s constitutional rights according to the Rules of Criminal Procedure, versus a similar situated group of defendants who request a Preliminary Hearing and their constitutional rights begin under a different term five weeks later. This violates Mr. Gunn’s Equal Protection Rights under the United States and Arizona Constitutions’. “Equal protection requires that classification resulting in unequal treatment be founded upon reason predicated upon a substantial difference between those within and those without the class.” *Lindsay v. Industrial Commission of Arizona*, 115 Ariz. 254, 564 P.2d 943 (App. 1977).

**CONCLUSION**

As such, Defendant hereby demands that he be immediately be brought before the court to conduct a hearing pursuant to Rule 12.10. Since Rule 14.1(a) requires that arraignments be conducted within ten (10) days after the filing of the Indictment, it follows that 12.10 hearings should also be conducted within that timeframe. The Indictment in this case was returned on February 1, 2012. WHEREFORE, Defendant respectfully demands to be brought before the court for a Rule 12.10 hearing on or before February 13, 2012.

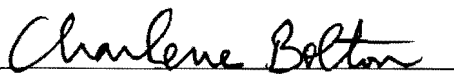
RESPECTFULLY SUBMITTED this 9<sup>th</sup> day of February, 2012.

By:   
Andrew Falick  
Deputy Public Defender

Copy of the foregoing *hand delivered*  
this 9<sup>th</sup> day of February, 2012, to:

Honorable Tina R. Ainley, Judge of Superior Court

Assigned Deputy County Attorney

By: 

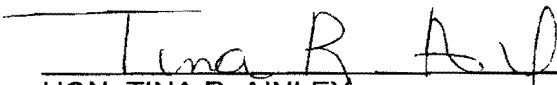
SUPERIOR COURT, STATE OF ARIZONA, IN AND FOR THE COUNTY OF YAVAPAI

STATE OF ARIZONA,  Plaintiff,  vs.  WILLIAM C. GUNN,  Defendant.	Case No. P1300CR201200119  <b>ORDER DENYING MOTION FOR RECONSIDERATION</b>	<b>FILED</b>  DATE: <u>FEB 16 2012</u> <u>3</u> O'Clock <u>10</u> .M.  <b>SANDRA K. MARKHAM, CLERK</b>  BY: <u>SHEETAL PATEL</u> <b>Deputy</b>
HONORABLE TINA R. AINLEY  DIVISION 3		BY: Dawn Paul, Judicial Assistant  DATE: February 13, 2012

The Court has received and reviewed the Defendant's Motion to Reconsider Demand for Rule 12.10 Hearing.

**IT IS ORDERED** denying the Motion for Reconsideration. The Court confirms the Case Management Conference and hearing pursuant to Rule 12.10 is set in Division 3 on Monday, March 5, 2012 at 10:00 a.m.

**DONE IN OPEN COURT** this 13<sup>th</sup> day of February, 2012.

  
\_\_\_\_\_  
HON. TINA R. AINLEY  
Judge of the Superior Court

cc:

- Andrew Falick, Esq., Deputy County Public Defender, Yavapai County Public Defender's Office, Counsel for Defendant
- Deputy County Attorney, Yavapai County Attorney's Office, Counsel for State
- Victim Services

1 YAVAPAI COUNTY PUBLIC DEFENDER  
2 STATE BAR NUMBER 00405000  
3 595 White Spar Road  
4 Prescott, AZ 86303-4627  
5 Phone: (928)771-3588  
6 Fax: (928)771-3413  
7 Email: YavapaiCounty.PublicDefender@co.yavapai.az.us

8 SUPERIOR COURT  
9 YAVAPAI COUNTY, ARIZONA

10 2012 FEB 17 PM 4: 15 ✓

11 SANDRA R. HANNAH, CLERK  
12 BY: *[Signature]*

13 ATTORNEY FOR DEFENDANT

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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA  
IN AND FOR THE COUNTY OF YAVAPAI

STATE OF ARIZONA,

Plaintiff,

vs.

WILLIAM C. GUNN,

Defendant.

) Case No.: P1300CR201200119

) MOTION TO DISMISS

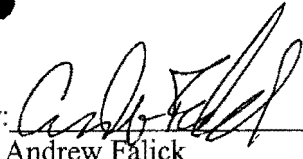
) HONORABLE TINA AINLEY  
) DIVISION III

) \*Oral Argument Requested\*  
) (Yavapai County Local Rule 2(c))

COMES NOW the defendant William Gunn, by and through his undersigned counsel, hereby moves this Court to dismiss Mr. Gunn's case. Mr. Gunn has been in custody in the Yavapai County Jail Facility since January 21, 2012 for the current charges pending against him. On February 1, 2012 the State filed an Indictment against him for felony charges. On February 2, 2012 the Defendant filed a "Demand for a Rule 12.10 Hearing" to occur within ten days after the filing of the Indictment. This was denied by the Court on February 6, 2012. On February 9, 2012, defense counsel filed a motion to reconsider. The motion to reconsider was denied by the Court on February 13, 2012. The Court's order(s) denying Mr. Gunn of an Arizona Rule of Criminal Procedure 12.10 Hearing within ten days after the filing of said Indictment; prejudices the Defendant since it violates Mr. Gunn's rights pursuant to the Fifth, Sixth, and Fourteenth Amendments of the U.S. Constitution; Arizona Constitution Article II §§ 3, 4, 13, and 24; and Arizona Rules of Criminal Procedure 8 and 15. Therefore, the Defendant moves for Dismissal of this action.

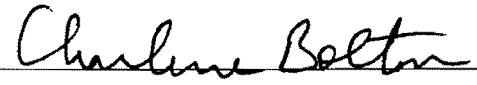
RESPECTFULLY SUBMITTED this 17<sup>th</sup> day of February, 2012.

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By:   
Andrew Falick  
Deputy Public Defender

Copies of the foregoing hand delivered  
this 17<sup>th</sup> day of February, 2012 to:

The Honorable Tina Ainley, Division III  
Steven Sisneros, Assigned Deputy County Attorney

By: 

YAVAPAI COUNTY ATTORNEY'S OFFICE  
Steven J. Sisneros, SBN 023466  
Deputy County Attorney,  
[ycao@co.yavapai.az.us](mailto:ycao@co.yavapai.az.us)

RECORDED  
INDEXED

2012 FEB 28 AM 10:44 ✓

SANDRA K. HANCOCK, CLERK  
BY: 

Attorneys for STATE OF ARIZONA

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF YAVAPAI

STATE OF ARIZONA,

Plaintiff,

v.

**WILLIAM CHARLES GUNN,**

Defendant.

NO. P1300CR201200119

Division 3

**STATE'S RESPONSE TO DEFENSE MOTION  
TO DISMISS**

**(Rule 12.10 Hearing)**

The State of Arizona, by and through the Yavapai County Attorney Sheila Sullivan Polk, and her deputy undersigned, files its response to the Defendant's Motion to Dismiss as relating to his misguided requested for a Rule 12.10 Hearing. The State objects.

**PROCEDURAL HISTORY:**

State does not dispute the procedural history outlined in Defense's motion. The State does dispute Defense's proposed application of that history. Further, the State adds that a Case Management Conference was set on March 5, 2012, for 10:00 A.M., in Division 3 of the Yavapai County Superior Court after the Indictment was returned on February 1, 2012.

**LAW and ARGUMENT:**

First, Rule 12.10 of the Ariz.R.Crim.P., explains the process for the return an indictment by the grand jury.

**Rule 12.10. Entering a not guilty plea**

**a. Notice.** In a county where an arraignment is not held as provided in Rule 14.1 (d), 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.

Second, Rule 14, of Ariz.R.Crim.P., entitled "Arraignment" governs the appropriate procedure and exceptions:

**Rule 14.1. When held**

**d. Exception for Superior Court.** 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 shall not apply to those cases in the Superior Court of that county.**

Next, directly on point is administrative order No. 2004-07 (Amended), specifically (C)(1) signed by the presiding judge in Yavapai County that waives the requirement of an arraignment pursuant to Rule 14.1(d), Ariz.R.Crim.P. . (Exhibit 1).

**C. General Considerations**

1. The Presiding Judge waives the requirement of an arraignment pursuant to Rule 14.1(d) of the Rules of Criminal Procedure.

Last, Rules of the *Supreme Court Rules of Professional Conduct*, ER 3.3, Candor Towards the Tribunal requires the following:

- (a) A lawyer shall not knowingly:

(1) fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing client; or ...

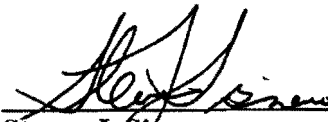
Under the present facts is there is no requirement for a Rule 12.10 hearing to be held within 10 days of an indictment. The Defense is attempting to blend rules 14.1 and 12.10 to create an artificial time frame for 12.10 hearings and that provides zero authority to request a Motion to Dismiss. Defense has neglected to reference administrative order No. 2004-07 (Amended) (C)(1) which is fatal to its position. The plain reading of the law works against the Defense's position and was rightfully denied by this Court on February 6, 2012. The State now argues that the Court should not now re-address the same misguided request.

**CONCLUSION:**

Defense motion should be summarily denied without oral argument.

**RESPECTFULLY SUBMITTED** this 28 day of February, 2012.

**Sheila Sullivan Polk**  
**YAVAPAI COUNTY ATTORNEY**

By:   
Steven J. Sisneros  
Deputy County Attorney

**ORIGINAL** of the foregoing delivered this  
28 day of February, 2012, to:

**Clerk of the Court  
Yavapai County Superior Court**

**COPY** of the foregoing via **courthouse mailbox** this  
29 day of February, 2012, to:

**Public Defender's Office  
Andrew Falick  
Prescott, AZ 86301**

Attorney for Defendant

By:  \_\_\_\_\_

1 YAVAPAI COUNTY PUBLIC DEFENDER'S OFFICE  
2 STATE BAR NUMBER 00405000  
3 595 WHITE SPAR ROAD  
4 Prescott, AZ 86303-4627  
5 Phone: (928)771-3588  
6 Fax: (928) 771-3413  
7 Email: YavapaiCounty.PublicDefender@co.yavapai.az.us

SUPERIOR COURT  
YAVAPAI COUNTY, ARIZONA  
2012 MAR -2 PM 4:14  
BY ~~V REISINGER~~

ATTORNEY FOR DEFENDANT

8 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**  
9 **IN AND FOR THE COUNTY OF YAVAPAI**

10 **STATE OF ARIZONA,**  
11 **Plaintiff,**  
12 **vs.**  
13 **WILLIAM C. GUNN,**  
14 **Defendant.**

) **Case No.: P1300CR201200119**  
) **REPLY TO STATE'S RESPONSE TO**  
) **MOTION TO DISMISS**  
) **HONORABLE TINA AINLEY**  
) **DIVISION III**  
) **\*Oral Argument Requested\***

15 COMES NOW the defendant William Gunn, by and through his undersigned counsel,  
16 hereby replies to the State's response to deny Defendant's motion to dismiss for not having a  
17 Rule 12.10 hearing within ten days of the return of Defendant's Indictment.

18 **MEMORANDUM OF POINTS OF AUTHORITIES**

19 **I. Reply to State's first and second arguments in its response.**

20 If the Defendant is reading the State's response correctly; Defendant concurs that if there  
21 is no arraignment pursuant to Rule 14.1(d) then there is a Rule 12.10 Hearing after an indictment  
22 is returned. The defense also agrees that in 2004 then Presiding Judge Robert Brutinel (now,  
23 Justice Brutinel of the Arizona Supreme Court) waived the requirement of arraignments in  
24 Yavapai County by issuing Administrative Order No. 2004-07. Administrative Order No. 2004-  
25 07 (C)(1) states:  
26

27 "The Presiding Judge waives the requirement of arraignment pursuant to Rule 14.1(d)  
28 of the Rules of Criminal Procedure."

1 Unfortunately, Administrative Order No. 2004-07 is silent as to when a Rule 12.10  
2 Hearing is to be held; nor is there a local rule to guide one to find the answer to this question.

3  
4 **II. Reply to State's response that Defense Counsel violated Supreme Court Rules of**  
5 **Professional Conduct, ER 3.3, Candor Towards the Tribunal.**

6 The State's response addresses two parts; a blending of Rules 12.10 and 14.1 and  
7 Administrative Order No. 2004-07.

8 **A. Reply to State's response that Defendant is blending Rules 14.1 and 12.10 to**  
9 **create an artificial time frame for 12.10 Hearings.**

10 Defendant is not attempting to blend the rules, between 14.1 and 12.10 to create some  
11 frivolous artificial date to conduct a Rule 12.10 Hearing. Defense counsel has requested that the  
12 Court hold a Rule 12.10 Hearing ten days from the return of the Indictment against Defendant  
13 (an Indictment against Mr. Gunn was returned on February 1, 2012) so Mr. Gunn is not deprived  
14 of his Fifth, Sixth and Fourteenth Amendments of the U.S. Constitution, Arizona Constitution  
15 Article II §§ 4, 13 and 24, and Arizona Rules of Criminal Procedure 8 and 15.

16  
17 The State is correct, as written in Defendant's original motion; there is no authority in  
18 Arizona that Defense Counsel can locate to cite to the Court that a 12.10 Hearing shall be held  
19 within ten days. Nor does Rule 12.10 provide a time frame to conduct such a hearing. However  
20 this silence is violating Mr. Gunn's constitutional rights under Yavapai County's current  
21 handling of 12.10 Hearings.

22  
23 In every other county in Arizona, a defendant's speedy trial right, and right to disclosure  
24 begin at their arraignment ten days after the filing of an indictment, information, or complaint.  
25 In Yavapai County, these same constitutional rights do not begin until five to six weeks after the  
26 return of the indictment, and the defendant first appears before a Superior Court Judge for his or  
27

1 her first Case Management Conference, which is the same time as the Defendant's Rule 12.10  
2 Hearing is conducted.

3  
4 Are we to assume that the Arizona Supreme Court, the adopters of Rule 12.10, intended  
5 for a defendant to sit in custody for over a month before his or her constitutional rights started to  
6 run? Are we to assume that Justice Brutinel, who ordered in 2004 that Yavapai County waive  
7 arraignments so he could implement Early Disposition Court, a program designed to benefit  
8 criminal defendants; that he intended the end result of Administrative Order No. 2004-07 to  
9 actually punish and deprive a criminal defendant of constitutional rights simply for asking for  
10 their right to a preliminary hearing? Unfortunately, the State does not see a legal or ethical  
11 problem with this lengthy delay in one's constitutional rights; and argues that this is proper per  
12 Rule 1.3(b) (please see Exhibit A attached to original motion). This is disturbing since it directly  
13 contradicts a comment made in reference to Supreme Court Rules of Conduct, E.R. 3.8., Special  
14 Responsibilities of Prosecutor reads in part: "A prosecutor has the responsibility of a minister of  
15 justice and not simply that of an advocate. The responsibility carries with it specific obligations  
16 to see that the defendant is accorded procedural justice and that guilt is decided upon the basis of  
17 sufficient evidence."  
18

19  
20 The Defendant is requesting a ten day time frame to conduct a Rule 12.10 Hearing after  
21 the return of an indictment. This is the same time frame as is obligated under Rule 14 for  
22 arraignments. The reason Defendant is requesting a time frame of ten days, is that the Arizona  
23 Supreme Court holds under Rule 14, a ten day time frame from the filing of an indictment to the  
24 arraignment of a criminal defendant is fair and reasonable, and accords a criminal defendant due  
25 process of law and preserves his or her constitutional rights.  
26

27  
28 ///





## **EXHIBIT D**



**Court of Appeals**

RUTH WILLINGHAM  
CLERK OF THE COURT

STATE OF ARIZONA  
DIVISION ONE  
STATE COURTS BUILDING  
1501 WEST WASHINGTON STREET  
PHOENIX ARIZONA 85007

Phone (602) 542-4821  
Fax (602) 542-4833

**FILED**  
3:00 O'Clock P.M.

May 11, 2012

**MAY 16 2012**

SANDRA K MARKHAM, Clerk  
By: *[Signature]*

Sandra K Markham, Clerk  
Yavapai County Superior Court  
Yavapai County Courthouse  
120 S Cortez St No 300  
Prescott AZ 86301-3868

Dear Ms. Markham:

RE: 1 CA-SA 12-0060

GUNN v. HON AINLEY/STATE

Yavapai County Superior Court  
P1300CR201200119

The following are enclosed in the above entitled and numbered cause:

Certified Copy of ORDER declining jurisdiction of special  
action.

There are no records to be returned

RUTH WILLINGHAM, CLERK

By *[Signature]*  
Deputy Clerk

Enclosures (as noted)  
cc (letter only):  
Andrew R Falick  
Steven John Sisneros  
Hon Tina R Ainley, Judge

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION ONE

APR 05 2012

RUTH WILLINGHAM, CLERK  
BY     

WILLIAM CHARLES GUNN,	)	No. 1 CA-SA 12-0060
	)	
Petitioner,	)	DEPARTMENT D
	)	
v.	)	Yavapai County
	)	Superior Court
THE HONORABLE TINA R. AINLEY,	)	No. P1300CR201200119
Judge of the SUPERIOR COURT OF	)	
THE STATE OF ARIZONA, in and for	)	<b>ORDER DECLINING</b>
the County of YAVAPAI,	)	<b>JURISDICTION OF</b>
	)	<b>SPECIAL ACTION PETITION</b>
Respondent Judge,	)	
	)	
STATE OF ARIZONA,	)	
	)	
Real Party in Interest.	)	
_____	)	

The court, Judge Peter B. Swann presiding and Judges Michael J. Brown and Jon W. Thompson participating, having received and considered the above-captioned Petition for Special Action,

**IT IS ORDERED** declining jurisdiction over this special action.



\_\_\_\_\_  
Peter B. Swann, Presiding Judge



YAVAPAI COUNTY PUBLIC DEFENDER  
STATE BAR NUMBER 00405000  
595 White Spar Road  
Prescott, AZ 86303  
PHONE: (928) 771-3588  
FAX: (928) 771-3413  
EMAIL: YavapaiCounty.PublicDefender@co.yavapai.az.us

ANDREW R. FALICK, STATE BAR NUMBER 019454  
ATTORNEY FOR DEFENDANT/PETITIONER

**IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION ONE**

William Charles Gunn,	}	Court of Appeals Case No.:
Petitioner,		
vs.	}	Yavapai County Superior Court
		Case No. P1300CR201200119
Honorable Tina R. Ainley, Judge of the Superior Court of the State of Arizona, in and for the County of Maricopa,	}	
Respondent, and		
State of Arizona,		
Respondent-Real Party in Interest.	}	

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**PETITION FOR SPECIAL ACTION**

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## JURISDICTIONAL STATEMENT

This Court has jurisdiction to accept this petition and to grant relief by virtue of Article 6, § 9 of the Arizona Constitution, A.R.S. § 12-120.21, and the Rules of Procedure for Special Actions.

This Court should accept special action jurisdiction when the Petitioner has no remedy by appeal. *State v. Newell*, 221 Ariz. 112, 210 P.3d 1283 (App. 2009). “Special action jurisdiction is proper when the ultimate remedy available to the petitioner by way of appeal is neither plain, speedy, nor adequate.” *State v. Perez*, 172 Ariz. 290, 292, 836 P.2d 1000, 1002 (App. 1992). In this case, Petitioner seeks relief from an order denying the Petitioner an immediate hearing pursuant to Rule 12.10, Arizona Rules of Criminal Procedure. This has the effect of causing the clocks under Rule 8 and Rule 15 to trigger much later than they normally would. The harm inherent in these delays will have already occurred by the time an appeal could be taken.

Special action jurisdiction is appropriate when the issues raised are ones of first impression, involve purely legal questions, are of statewide importance, and are likely to recur. *Tanque Verde Unified School District No. 13 of Pima County v. Bernini*, 206 Ariz. 200, 76 P.3d 874 (App. 2003). Each of these factors is present in this case. Yavapai County is the only

County in Arizona that does not hold arraignments. Counsel has found no cases interpreting when hearings pursuant to Rule 12.10 must be conducted. As such, this is a case of first impression. When a hearing must be conducted under a rule of criminal procedure is a purely legal question. While at present this issue only affects Yavapai County, there is no reason the presiding judges in other counties could not issue an order pursuant to Rule 14.1 doing away with arraignments in that county. At which point, this would become an issue of statewide importance. As it stands, it is certainly an issue of county-wide importance. Since this issue occurs in a large percentage of felony cases in Yavapai County, no clarification on this issue will cause this issue to recur repeatedly in Yavapai County.

Special action jurisdiction has been found in relation to Rule 8 violations. *State v. Vasko*, 193 Ariz. 142, 971 P.2d 189 (App. 1998). “We are aware that our supreme court has rejected the requirement that *all* speedy trial issues should be brought by special action; however, it has also acknowledged that ‘a special action on speedy trial issues promotes judicial economy.’ [citation omitted].” *Id.*, at 147, 971 P.2d at 194. Because Rule 12.10 triggers the Rule 8 clock pursuant to Rule 1.3(b), the issue here is a speedy trial issue in its essence.

Accordingly, Petitioner asks this court to accept jurisdiction over this petition and grant the sought relief.

### **STATEMENT OF THE ISSUES**

- A. DID THE TRIAL COURT ERR IN SETTING THE RULE 12.10 HEARING THIRTY-TWO DAYS AFTER THE FILING OF AN INDICTMENT IN A COUNTY WHICH DOES NOT CONDUCT ARRAIGNMENTS?
- B. IF SO, IS TEN DAYS THE APPROPRIATE TIME FRAME WITHIN WHICH TO CONDUCT RULE 12.10 HEARINGS IN NON-ARRAIGNMENT COUNTIES?

### **STATEMENT OF FACTS**

In 2004, the Yavapai County Judiciary eliminated arraignments for criminal defendants and implemented Early Disposition Court (hereinafter “EDC”). (See Exhibit 1, Administrative Order, 03/24/2005.) In EDC, a criminal defendant is presented with three options: 1) request a preliminary hearing, and if a plea bargain is being offered to the defendant, the plea bargain will be revoked by the State once a preliminary hearing is set by the judge (if this option is chosen, in all likelihood there will be no preliminary hearing, the State in most instances will take the case to the grand jury and file a supervening indictment. Since the creation of EDC in 2004, there have

only been a dozen or so preliminary hearings held in Yavapai County); 2) the defendant chooses to waive his right to a preliminary hearing; this choice will preserve the plea bargain being offered for a five-week period until the defendant's first Case Management Conference (hereinafter "CMC"); at this point in EDC after a waiver of a preliminary hearing pursuant to Arizona Rule of Criminal Procedure 5.8 (hereinafter "Rule 5.8"), the judge will enter not guilty pleas on behalf of the defendant, the defendant will be informed of his next court date, and an information of the defendant's charges is immediately filed with the court and so is a "5.8" document" (*see* Exhibit 2, Nature of Proceeding: Rule 12.10 / 5.8 Notice, 03/05/2012); and 3) the plea bargain offered to the defendant is accepted and he is sentenced by the court (sentencing occurs the majority of time at EDC when a plea is accepted by the defendant, on rare occasions sentencing is set for a later date).

In the event that a defendant's case is presented to the grand jury and an indictment is returned, Arizona Rule of Criminal Procedure 12.10 (hereinafter "Rule 12.10") applies since there are no arraignments in Yavapai County. The Rule 12.10 hearings are not conducted until the defendant's first CMC, five weeks after EDC, and six weeks after the defendant's initial appearance.

This is creating confusion as to when a defendant's speedy trial rights begin and when the defendant is entitled to disclosure. This is discussed in detail below.

Rule 12.10(a) provides:

In a county where an arraignment is not held as provided in Rule 14.1(d)<sup>1</sup>, 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." (Emphasis added.)

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<sup>1</sup> 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."

Mr. Gunn was arrested on January 21, 2012, and was booked into the Yavapai County Jail (Mr. Gunn is still in custody as of this writing). On January 31, 2012, Mr. Gunn had EDC in the Yavapai County Superior Court in Prescott, Arizona. At EDC there was no plea being offered to Mr. Gunn so a preliminary hearing was requested. Instead of holding a preliminary hearing, the State presented Mr. Gunn's case to the grand jury on February 1, 2012; the grand jury indicted him on fourteen counts with a supervening indictment filed the same day. (See Exhibit 3, Indictment, 02/01/2012; Exhibit 4, Notice of Supervening Indictment, 02/01/2012).

The fourteen counts related to an incident alleged to have occurred on January 21, 2012. Count one charges Defendant with aggravated assault on a peace officer, a class 4 felony. Counts two through five charge aggravated assault on a peace officer but each as a class 5 felony. Count six is attempted aggravated assault on a peace officer, a class 6 felony. Count seven is resisting arrest, a class 6 felony. Count eight is threatening or intimidating, a class 1 misdemeanor. Count nine is endangerment per domestic violence, a dangerous offense and a class 6 felony. Counts ten through twelve charge Defendant with endangerment as a dangerous offense and each a class 6 felony. Count thirteen is a charge of criminal damage per domestic violence, a class 6 felony. The final count fourteen, charges

Defendant with disorderly conduct per domestic violence, a class 1 misdemeanor.

On February 2, 2012, Defendant filed a Demand for a Rule 12.10 Hearing within ten days of the filing of the Indictment against Defendant (*see* Exhibit 5). The Court denied Defendant's demand on February 7, 2012 (*see* Exhibit 6).

On February 9, 2102, Defendant filed a Motion to Reconsider Demand for Rule 12.10 Hearing (*see* Exhibit 7). The Court denied Defendant's Motion for Reconsideration on February 16, 2012 (*see* Exhibit 8).

On February 17, 2012, Defendant filed a Motion to Dismiss for not conducting a Rule 12.10 Hearing within ten days of the filing of the Indictment (*see* Exhibit 9). The State responded on February 28, 2012 (*see* Exhibit 10) and Defendant replied on March 2, 2012 (*see* Exhibit 11).

On March 5, 2012, at Defendant's first CMC, the Court denied Defendant's Motion to Dismiss. Defense counsel requested a stay from the Court to "Special Action" this issue. The Court denied Defendant a stay, and set this case out sixty days for a Pre-Trial Conference on May 7, 2012 (*see* Exhibit 12).

## ARGUMENT

I. **A Defendant's Rights to a Speedy Trial and Discovery are Negatively Impacted by Not Conducting a Rule 12.10 Hearing Within Ten Days After an Indictment is Returned Thereby Prejudicing the Defendant.**

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.

However, Rule 12.10 does not provide a time frame as to when one must be conducted. Hence, so long as a Rule 12.10 hearing is completed within the times dictated in Arizona Rule of Criminal Procedure 14, there is no time problem created under Rules 8.2(a) and 15.1(c). Currently in Yavapai County when indictments are returned, a Rule 12.10 hearing is not conducted until the first CMC, which is typically five weeks after the Defendant's appearance in EDC. Cases in Yavapai County go to the grand jury within days of EDC, and within ten days of the initial appearance. This delay in conducting a Rule 12.10 hearing negatively impacts both the speedy

trial and discovery clocks since the State asserts that these constitutional rights and their obligations according to Rule 1.3(b), are not triggered until the first CMC since this is when a Rule 12.10 hearing is conducted. This is confirmed by an e-mail that was sent to the Yavapai County Public Defender's Office by the Chief Deputy of the Yavapai County Attorney's Office (*see* Exhibit 13, e-mail from Dennis McGrane, 01/11/2012).

Since there is no local rule addressing speedy trial rights and timeliness of disclosure of discovery after an indictment is filed when no arraignment is conducted, neither is there a stipulation by the parties, nor case law to offer direction on this matter; conducting a Rule 12.10 hearing within the time frames set forth in Rule 14 is critical for a defendant to receive vital constitutional protections. The policies underlying one's right to a speedy trial and prompt disclosure of discovery are adversely 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). (additional citation omitted).

The Sixth Amendment right to a speedy trial is thus not primarily intended to prevent prejudice to the defense caused by 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 criminal charges. *MacDonald*, at 1502, 102 S.Ct. at 8.

*Carpenter v. Superior Court In and For County of Maricopa*, 176

Ariz. 486, 488, 862 P.2d 246, 248 (App. 1993) holds:

Rule 15 defines with particularity the materials and information subject to discovery in criminal action and the procedures a party should follow to obtain discoverable material. ... Rule 15.1.a explicitly describes the state's obligation to make detailed disclosures no later than ten days after arraignment.

The purpose and time frame of beginning one's speedy trial rights and disclosing discovery pursuant to Rules 8 and 15 is ignored by performing a Rule 12.10 hearing five weeks after an indictment is filed with the Court. The State, through Rule 1.3(b), is depriving Defendant of his constitutional rights.

Permitting Defendant (or any other defendant) to sit in custody for over six weeks without the required and necessary discovery, deprives a defense attorney of vital time to properly assess and work on a defendant's case; since the attorney cannot intelligently discuss the case with the defendant until such discovery is disclosed; nor can the defense attorney

start the investigative process with law enforcement and pertinent witnesses until such critical discovery is received. This current scenario in Yavapai County prejudices the defendant, while benefitting the State since defendant is now five to six weeks behind on discovery.

If a plea bargain is offered after an indictment but prior to the first CMC, defense counsel cannot begin to intelligently and adequately discuss with their client whether to accept a plea bargain without discovery. “[D]ue process requires that a defendant be able to assess intelligently ‘the numerous factors which bear upon his choice of whether to formally admit his guilt or put the state to its proof.’” *State v. Draper*, 162 Ariz. 433, 436, 784 P.2d 259, 262 (1989), quoting *United States ex rel. Healey v. Cannon*, 553 F.2d 1052, 1056 (7th Cir.1977).

*State v. Donald*, 198 Ariz. 406, 411-413, 10 P.3d 1193, 1199-1200 (App. 2000) held:

To ensure that a defendant is adequately advised, “[d]efense counsel has a duty to communicate ... not only the terms of a plea bargain offer, but also the relative merits of the offer compared to defendant’s chances at trial.” *Citing Commonwealth v. Napper*, 254 Pa.Super. 54, 385 A.2d 521, 524 (1978) (citing A.B.A. Project on Standards for Criminal Justice: Standards Relating to the Prosecution Function and the Defense Function, (Approved Draft, 1971)).

...

[O]nce the State engages in plea bargaining, the defendant has a Sixth Amendment right to be adequately informed of the

consequences before deciding whether to accept or reject the offer.

Since there is no local rule in place, no stipulation by the parties, no uniform agreement of the bench in Yavapai County on how to deal with these issues, and no case law on this subject; it has created an untenable process which violates a defendant's due process and the defendant's right to have effective counsel.

**II. Not Holding a Rule 12.10 Hearing Ten Days After the Return of Indictment Violates a Defendant's Equal Protection Rights.**

According to the Arizona Rules of Criminal Procedure, both Rule 8 and Rule 15 are triggered by an arraignment. Mr. Gunn has been in custody at the Yavapai County Jail facility since his arrest on January 21, 2012. Mr. Gunn had EDC on Tuesday, January 31, 2012. Mr. Gunn was not offered a plea agreement at EDC and a preliminary hearing was scheduled for February 1, 2012 at 4:00 p.m. On February 1, 2012, prior to the scheduled preliminary hearing, Mr. Gunn's case was presented to the grand jury, and an indictment containing fourteen felony counts was returned and filed on February 1, 2012.

In EDC that same day, there were other criminal defendants who were also in custody, but instead chose to waive their constitutional right to have a preliminary hearing. By agreeing to waive his constitutional right to a

preliminary hearing, that particular defendant's "plea agreement" being offered by the State will remain "open" until the first CMC, giving the defendant more time to discuss his case with his assigned or retained attorney. At the first CMC if the defendant who waived his right to a preliminary hearing does not accept the offered plea agreement from EDC, the plea agreement is revoked by the State. After the defendant waives his right to a preliminary hearing at EDC as discussed in the Statement of Facts, the following occurs: 1) not guilty pleas are entered on behalf of the defendant by the judge and the information containing the defendant's felony charges is immediately filed with the court and the defendant's case is transferred to the superior court from the justice court; 2) the defendant is informed of his next court date (the first CMC) and his conditions of release are confirmed or modified if requested by the defendant and a Rule 5.8 document is also filed with the Court.

The State maintains under this scenario, a defendant who waives his right to a preliminary hearing at EDC, both the Rule 8 and 15 clocks start ticking at that moment pursuant to Arizona Rules of Criminal Procedure Rule 1.3(b) since an information was filed with the court; and the judge entered not guilty pleas on behalf of the defendant; and the judge informed the defendant of his next court date (the first CMC).

However, Mr. Gunn whose case went the way of a grand jury after a preliminary hearing was requested by him, the State in this scenario, contends that the clocks for Rules 8 and 15 do not begin ticking until five weeks later at the CMC. The State is penalizing a defendant of vital constitutional rights simply for requesting a preliminary hearing. Since Rule 12.10 does not have a time limit as to when such a hearing must occur; the State is using this void in the language of Rule 12.10 to enact a procedure that grants one group of defendants who waive a preliminary hearing different terms in receiving their constitutional rights according to the Rules of Criminal Procedure, versus a similarly situated group of defendants who request a preliminary hearing and their constitutional rights begin under a different term five weeks later. This violates Mr. Gunn's Equal Protection Rights under the United States and Arizona Constitutions.

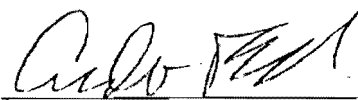
Yavapai County at this time is the only county in Arizona that does not conduct arraignments. In every other Arizona county, defendants that are in custody have an arraignment within ten days, and at that time their speedy trial and discovery rights begin. A defendant in custody in Yavapai County is receiving unequal treatment in not receiving one's constitutional rights at the same time a defendant in custody in any another Arizona county receives those same constitutional rights. A defendant in custody in Yavapai

County being similarly situated as a defendant in custody in another Arizona county is deprived of Equal Protection. "Equal protection requires that classification resulting in unequal treatment be founded upon reason predicated upon a substantial difference between those within and those without the class." *Lindsay v. Industrial Commission of Arizona*, 115 Ariz. 254, 564 P.2d 943 (App. 1977).

### CONCLUSION

Not conducting a Rule 12.10 hearing within ten days of the filing of the indictment against Mr. Gunn, denies Petitioner his rights under the Fifth, Sixth and Fourteenth Amendments, Arizona Constitution Article 2 §§ 4, 13 and 24, and Arizona Rules of Criminal Procedure Rules 8 and 15. For this reason the trial court erred in not conducting a Rule 12.10 hearing within a ten-day frame and Defendant's case should be dismissed.

RESPECTFULLY SUBMITTED this 14<sup>th</sup> day of March, 2012.



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