

1 Honorable Sam Myers
2 Criminal Court Presiding Judge
3 Superior Court of Arizona, Maricopa County
4 175 W. Madison
5 Phoenix, AZ 85003
6 (602) 372-2940

7 IN THE SUPREME COURT
8 STATE OF ARIZONA

9
10 PETITION TO AMEND RULE 8.4
11 OF THE RULES OF CRIMINAL
12 PROCEDURE

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14 } Supreme Court No. R-16-____
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18 Pursuant to Rule 28, Rules of the Supreme Court of Arizona, the Presiding
19 Judge of the Criminal Court of the Superior Court of Arizona in Maricopa
20 County respectfully petitions this Court to adopt the attached proposed
21 amendment to Rule 8.4 of the Rules of Criminal Procedure.

22 Rule 8.4 of the Rules of Criminal Procedure excludes certain time periods
23 from the time limitations within which a defendant must be brought to trial
24 pursuant to Ariz. R. Crim. P. 8.2 and 8.3. Currently, Rule 8.4(a) excludes from
25 the computation of time limits any delays resulting from the examination and
26 hearing to determine the competency or intellectual disability of the defendant,
27 or the time periods when a defendant is incompetent to stand trial or is absent
28 and cannot be arrested or taken into custody. Once a delay caused by the
circumstances under Rule 8.4(a) terminate—i.e., the defendant is found by the
court to be competent to stand trial or is no longer absent—the excluded time
period also ends, and the time limits under Rules 8.2 and 8.3 begin to run again.
In some situations the end of the excluded time period can occur when the time

1 limits to bring the defendant to trial have nearly expired, requiring the defendant
2 to be brought to trial within days—even when the defendant’s trial has otherwise
3 been delayed for months or years due to the defendant’s incompetency or
4 absence. This in turn requires the scheduling of an immediate trial, locating and
5 subpoenaing witnesses, and trial preparation with little advance notice for the
6 court or the parties.

7 This petition seeks to amend Rule 8.4(a) to exclude from time limit
8 computations an additional period of 30 days when the reasons for the delay
9 under Rule 8.4(a) end within 30 days of the time limits of Rules 8.2 and 8.3. The
10 exclusion of an additional 30-day period from the time limits allows the court
11 and the parties sufficient time to schedule and prepare for a trial.

12 Other jurisdictions besides Arizona have similar rules in place. For
13 example, under the Kansas Rules of Criminal Procedure, where a defendant is
14 found to be competent to stand trial within 90 days of the 180-day time
15 limitations, “the trial shall be scheduled as soon as practicable and in any event
16 within 90 days of such finding.” K.S.A. 23-3402(e)(2). The proposed
17 amendment to Ariz. R. Crim. P. 8.4(a) seeks only an additional 30-day
18 exclusion.

19 For the foregoing reasons, the Presiding Judge of the Criminal Court of the
20 Superior Court in Maricopa County respectfully requests this Court amend Rule
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1 8.4(a) of the Rules of Criminal Procedure, as detailed in Exhibit A, to allow for a
2 an exclusion of an additional 30 days when a delay under Rule 8.4(a) ends within
3 30 days of the time limitations for which a defendant must be brought to trial.
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5 Respectfully submitted this 6th day of January, 2016.
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7 /s/ Sam Myers
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Hon. Sam Myers
9 Criminal Court Presiding Judge
Superior Court of Arizona, Maricopa County

10 Electronic copy filed with
11 the Clerk of the Supreme
12 Court of Arizona this 6th
13 day of January, 2016.
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Exhibit A
(new language is underlined)

Rules of Criminal Procedure

Rule 8.4 Excluded Periods.

The following periods shall be excluded from the computation of the time limits set forth in Rules 8.2 and 8.3:

a. Delays occasioned by or on behalf of the defendant, including, but not limited to, delays caused by an examination and hearing to determine competency or intellectual disability, the defendant's absence or incompetence, or his or her inability to be arrested or taken into custody in Arizona. If a finding by the court that the defendant is competent or has been restored to competency or is no longer absent occurs within 30 days of the time limits set forth in Rules 8.2 and 8.3, an additional period of 30 days is excluded from the computation of the time limits.

b. Delays resulting from a remand for new probable cause determination under Rules 5.5 or 12.9.

c. Delays resulting from extension of the time for disclosure under Rule 15.6.

d. Delays necessitated by congestion of the trial calendar, but only when the congestion is attributable to extraordinary circumstances, in which case the presiding judge shall promptly apply to the Chief Justice of the Arizona Supreme Court for suspension of any of the Rules of Criminal Procedure.

e. Delays resulting from continuances in accordance with Rule 8.5, but only for the time periods prescribed therein.

f. Delays resulting from joinder for trial with another defendant as to whom the time limits have not run when there is good cause for denying severance. In all other cases, severance should be granted to preserve the applicable time limits.

1 **g.** Delays resulting from the setting of a transfer hearing pursuant to Rule 40 of
2 these rules.
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