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**IN THE SUPREME COURT OF THE STATE OF ARIZONA**

In the Matter of:

No. R-16-0007

Petition to Amend Rule 8.4 of the  
Rules of Criminal Procedure

**COMMENT OF ARIZONA  
ATTORNEYS FOR CRIMINAL  
JUSTICE REGARDING  
PETITION TO AMEND RULE 8.4  
OF THE RULES OF CRIMINAL  
PROCEDURE**

Pursuant to Rule 28 of the Arizona Rules of Supreme Court, Arizona Attorneys for Criminal Justice (“AACJ”) submits the following comment to the above-referenced petition. AACJ, the Arizona state affiliate of the National Association of Criminal Defense Lawyers, was founded in 1986 to give a voice to the rights of the criminally accused and to those attorneys who defend the accused. AACJ is a statewide not-for-profit membership organization of criminal defense lawyers, law students, and associated professionals dedicated to protecting the rights of the accused in the courts and in the legislature, promoting excellence in the practice of criminal law through education, training and mutual assistance, and

fostering public awareness of citizens' rights, the criminal justice system, and the role of the defense lawyer.

### **Discussion**

AACJ agrees in principle with the proposed rule change. Getting a case back on track and trial-ready after a competency finding often requires time. AACJ's only disagreement is with the mandatory nature of the proposed rule. The proposed additional language is:

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.

Pet. Amend. R. 8.4, Exh. A (emphasis added). This language mandates the exclusion of thirty days regardless of whether the circumstances necessitate such an extension.

The goal of the Rules of Criminal Procedure is to govern all criminal cases, not just the worst-case scenarios. Just as there are circumstances which may call for a thirty-day extension, there are circumstances which may call for a lesser extension. Some circumstances may not require any extension. A complex case 1 day from the prescribed last day would be in a drastically different position than a simple case twenty-nine days out.

Thus, there is no reason to mandate a thirty-day extension. Rather, discretion should be left with the trial court to determine the proper extension.

Accordingly, AACJ suggests the Proposed Amendment be accepted with one minor change:

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, the court may exclude up to 30 additional days ~~an additional period of 30 days is excluded~~ from the computation of the time limits.<sup>1</sup>

This change merely makes the exclusion of up to thirty days permissive. If the trial court feels that the full thirty days is necessary, the trial court can exclude thirty days. If the trial court feels that some period less than thirty days is necessary, the trial court can exclude a period it deems fit. And if the trial court feels that no time need be excluded, the trial court can elect not to exclude time.

This change actually brings the proposal closer in line with the authority the proposal relies upon. The proposal relies upon the Kansas Rules of Criminal Procedure, K.S.A. 22-3402(e)(2).<sup>2</sup> This section provides:

If the defendant is subsequently found to be competent to stand trial, the trial shall be scheduled as soon as practicable and in any event within 90 days of such finding.

This section allows the trial court to exercise discretion in choosing the proper trial date. The trial court is required to schedule the trial “as soon as practicable” but may extend the trial date for as long as ninety days. It does not mandate the

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<sup>1</sup> AACJ’s offered inclusion in the proposed amendment is indicated by underline. AACJ’s offered deletion from the proposed amendment is indicated by ~~strikethrough~~.

<sup>2</sup> The citation to K.S.A. 23-3402 appears to have been a typo.

exclusion of time. It does not mandate the exclusion of a certain period of time. The rule allows the trial court to determine if an extension is necessary and, if necessary, the proper duration.

AACJ's proposed modification also ensures that the amendment is in line with Rule 8.5. When delay is based upon a motion to continue, "[a] continuance may be granted only for so long as is necessary to serve the interests of justice." Ariz.R.Crim.P. 8.5(b). The permissive phrasing allows the trial court to determine what justice requires. Justice would not likely be served by mandating a full thirty-day extension on a straightforward case with a limited number of witnesses that is still two weeks from the last day. An extension may not even be necessary if the case is four weeks from the last day.

By changing the exclusion from mandatory to permissive, the concerns raised in the Petition are addressed. Where a case is within thirty days of the last day and an extension is necessary, the trial court would have the discretion to exclude time. But a permissive rule would also allow the trial court to exercise its discretion to determine whether the circumstances of an individual case require an extension and the term of that extension.

Accordingly, AACJ asks that Rule 8.4(a) be modified as follows:

- a. Delays occasioned by or on behalf of the defendant, including, but not limited to, delays caused by an examination and hearing to determine the 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, the court may exclude up to 30 additional days from the computation of the time limits.<sup>3</sup>

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<sup>3</sup> Additions proposed in the Petition are indicated by single underline. Additions proposed herein are indicated by double underline. This proposal does not include the language “an additional period of 30 days is excluded” offered in the Petition which makes the exclusion of time mandatory.