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9 **(STATE BAR NUMBER 011474)**

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

11 **IN RE:**

12 **PETITION TO AMEND RULE 8.4**
13 **OF THE RULES OF CRIMINAL**
14 **PROCEDURE**

R-16-0007

MARICOPA COUNTY ATTORNEY'S
RESPONSE TO PETITION TO AMEND RULE
8.4 OF THE RULES OF CRIMINAL
PROCEDURE

15 The Maricopa County Attorney's Office hereby responds to the Petition to
16 Amend Rule 8.4 of the Arizona Rules of Criminal Procedure and asks this Court to
17 adopt the modification requested in the Petition for the reasons that follow.
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19 Rules 8.2 and 8.3 set various time limits for trials depending on several factors,
20 including whether the defendant is in or out of custody, whether the case is complex
21 or capital, and whether a defendant is imprisoned in or out of Arizona. ARIZ. R.
22 CRIM. P. 8.2, 8.3. Rule 8.4 lists several types of delay that are excluded from the
23 time limits. ARIZ. R. CRIM. P. 8.4. One of these excluded time periods is "[d]elays
24 occasioned by or on behalf of the defendant" which includes time spent determining
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1 competency or intellectual disability issues and time when the defendant is absent or
2 unable to be arrested in Arizona. ARIZ. R. CRIM. P. 8.4(a)

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4 The Petition highlights an important practical problem with the current rule. If a
5 defendant becomes absent or enters the competency process near the time of trial,
6 months may be excluded under Rule 8.4 until the defendant is apprehended or
7 restored to competency, but the amount of time remaining to try the case may be
8 extremely short after the excluded period ends. For example, assume a case is set for
9 trial on May 1 and that the “last day” to try the case under Rule 8.2 is May 8. On
10 April 24, one week before the trial, and two-weeks before the “last day,” the
11 defendant enters the Rule 11 competency process. A few months later, the defendant
12 is found to be competent on July 1. While Rule 8.4 would require the exclusion of all
13 time between April 24 and July 1 from the speedy trial computation, the “last day” to
14 try the case would still be just two weeks away. This time limit would give the court
15 and parties just fourteen days – 10 working days – to get the case set on a calendar
16 before an available judicial officer, to get subpoenas issued and served for the new
17 trial date, and to begin the trial. Such a short deadline is a significant burden for
18 already congested court calendars and it is particularly unfair for the prosecution who
19 must find witnesses and present a trial on very short notice and any victims.

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21 The proposed modification strikes the proper balance between the defendant’s
22 right to a speedy trial and the prosecution’s need to have sufficient time to arrange the
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1 necessary logistics for a trial. First, the recommended preparation time would only
2 be added to the excluded periods which are occasioned on behalf of the defendant, as
3 defined under Rule 8.4(a). Because any delay was either for the defendant's benefit
4 or because the defendant violated his or her release conditions by not appearing in
5 court, the State and any associated victims should not be disadvantaged by having to
6 throw a trial together on very short notice when the excluded period suddenly ends.
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8 It is difficult for anyone to predict when competency proceedings will end and it is
9 impossible to know when an absconder will be apprehended. Imposing unrealistic
10 time restraints on the State in these scenarios is particularly unfair considering that
11 the State had nothing to do with the need for the delay. This fact is equally true for
12 the court system that must rush a case to trial, delaying other cases that were ready,
13 when the court was certainly not responsible for the delay.
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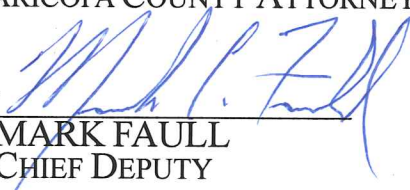
17 Second, the modified rule would only grant the extra 30 days in those situations
18 where the remaining time to start the trial is less than one month. Thus, in cases
19 where Rule 11 proceedings, for example, are handled early in the case, there will be
20 no addition to the time periods described in Rule 8.2 or 8.3. The proposed modified
21 rule is specifically and narrowly limited to only those situations where the delay on
22 behalf of the defendant would require that trial begin with less than 30 days' notice.
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25 Third, the requested extra time period would only extend the "last day" for the
26 trial to begin by 30 days. As Petitioner notes, there are other States with similar rules
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1 that permit a much longer additional time period. Petitioner, by limiting the extra
2 time to 30 days, has reached a fair balance between the defendant's right to a speedy
3 trial, the court's need to efficiently manage its system and calendars, and the
4 prosecution's need for adequate time to assemble the necessary witnesses for a trial.
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6 The Petition to modify Rule 8.4 appropriately protects a defendant's right to a
7 speedy trial under Rule 8 but still allows the court adequate time to schedule and
8 arrange for a trial while giving the State a fair opportunity to assemble witnesses to
9 conduct the trial. Additionally, the change would also give victims time to properly
10 exercise their rights to be involved in the trial process. For these reasons, the
11 Maricopa County Attorney urges this Court to adopt the rule change as drafted in the
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Petition.

Respectfully submitted this 20 day of May, 2016.

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By 
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