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4  
5 **IN THE SUPREME COURT**  
6 **STATE OF ARIZONA**  
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8  
9 ) Supreme Court No. \_\_\_\_\_

10 ) PETITION TO AMEND RULE  
11 ) 8.2(a)(4) OF THE ARIZONA  
12 ) RULES OF CRIMINAL  
PROCEDURE

13  
14 This petition seeks an amendment of Rule 8.2(a)(4), Arizona Rules of  
15 Criminal Procedure, to allow sufficient time to prepare for capital cases following  
16 the modification of Arizona’s statutory procedure in capital cases effective August  
17 1, 2002. It’s primary aim is to ensure counsel’s ability to comply with the  
18 practitioner specific guidelines set forth in the American Bar Association  
19 Guidelines for the Appointment and Performance of Defense Counsel in Death  
20 Penalty Cases (Revised February 2003) as incorporated into Rule 6.8 by Order of  
21 this Court, effective January 1, 2007. However, the proposed modification  
22 simultaneously serves the public’s confidence in the integrity of the process, the  
23 interests of crime victims’ next of kin, and honors the guarantees afforded to all by  
24 our State and Federal Constitutions.  
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1 **A. THE CURRENT RULE, HISTORY AND PROPOSED AMENDMENT:**

2 In its current form, the Rule at issue states:

3 **Rule 8.2. Time limits**

4 **a. General.** Subject to the provisions of Rule 8.4, every person  
5 against whom an indictment, information or complaint is filed shall be  
6 tried by the court having jurisdiction of the offense within the  
7 following time periods:

8 \* \* \*

9 **(4) Capital Cases.** Eighteen months from arraignment, if the state  
10 files a notice of intent to seek the death penalty.

11 The proposed amendment seeks to modify subsection (a)(4) to read as follows:

12 **(4) Capital Cases.** Thirty months from the date the state files a notice  
13 of intent to seek the death penalty or from the date a new trial is  
14 ordered.

15 The current version of the Rule pre-dates the incorporation of the ABA  
16 Guidelines for the Appointment and Performance of Defense Counsel in Death  
17 Penalty Cases into Arizona’s Rules of Criminal Procedure, Rule 6.8, and similarly  
18 pre-dates the standards articulated by the United States Supreme Court in *Wiggins v.*  
19 *Smith*, 539 U.S. 510, 123 S.Ct. 2527 (2003) and *Rompilla v. Beard*, 125 S.Ct. 2456,  
20 545 U.S. 374 (2005), each discussed *infra*.

21 Prior to the concluding months of 2002, no rule expressly governed the time  
22 within which capital cases must proceed to trial. Rule 8.2(b) required simply that  
23 “[e]very person held in custody in this state on a criminal charge shall be tried by  
24 the court having jurisdiction of the offense within 120 days from the date of the  
25 person’s initial appearance before a magistrate on the complaint, indictment or  
26 information, or within 90 days from the date of the person’s arraignment before the  
27 trial court, whichever is the lesser.” These time limits were typically suspended in  
28 capital cases to provide the prosecution and defense adequate time to prepare for  
what is now known as the “guilt phase” of the proceedings. Back then, in  
circumstances where the defendant was found guilty of first degree murder

1 following trial, the aggravation/mitigation phase was postponed between one to two  
2 years to permit the State to formally allege aggravating factors it would seek to  
3 prove beyond a reasonable doubt before the trial judge and to prepare for the  
4 aggravation phase (which rendered the defendant eligible for the death penalty).  
5 While it is conceded that in most cases the State’s evidence in support of  
6 aggravating factors was grounded in testimony derived from the trial itself, this was  
7 not always the case. During this post-verdict one-to-two year time  
8 period, defense counsel secured the appointment of mitigation specialist(s) to  
9 prepare a detailed social history of the defendant, and secured the appointment of  
10 other experts (including but not limited to mental health experts) with the aim of  
11 conducting a thorough investigation into the convicted defendant’s background,  
12 history and character in order to establish the existence of mitigating factors  
13 justifying a sentence less than death. *Lockett v. Ohio*, 438 U.S. 586, 601-04, 98  
14 S.Ct. 2954 (1987); *State v. Bocharski*, 200 Ariz. 50, 22 P.3d 43 (2001) (“In every  
15 capital case, the court is required to consider the defendant's background before  
16 imposing sentence.”). The aggravation/mitigation phase was then presented to the  
17 trial judge, who alone determined whether or not the aggravating factor (s) had been  
18 proved, the weight of the mitigating factors presented, and ultimately, whether the  
19 death penalty was the appropriate punishment in the case.

20 Moreover, the current version of the rule is silent as to the time limits within  
21 which a capital defendant must be re-tried following reversal on appeal or in post-  
22 conviction proceedings, save for Rule 8.2(d), which requires that a new trial “upon  
23 the reversal of a judgment by an appellate court” commence within 90 days of the  
24 “service of the mandate of the Appellate Court.” Since it takes approximately three  
25 years to conclude a direct appeal in capital cases--and even longer where the case is  
26 reversed in post-conviction proceedings brought pursuant to Rule 32 or reversed by

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1 the United States District Court or the Ninth Circuit Court of Appeals in capital  
2 *habeas* proceedings-- preparation for retrial by both the prosecution and defense  
3 requires a period substantially longer than 90 days for retrial in capital cases. Thus,  
4 the general rule currently in existence governing time limits for retrials is clearly  
5 insufficient when applied to capital cases.

6       Significantly, when Rule 8.2(a)(4) was modified in October and November,  
7 2002, the Arizona Supreme Court could not have predicted practical considerations  
8 such as the limited number of qualified attorneys available to defend capital cases or  
9 the number of capital cases those lawyers can effectively handle. Nor could it have  
10 predicted the scant number of qualified mitigation specialists available to assist each  
11 capital defendant,<sup>1</sup> the schedules of those court-appointed mitigation specialists and  
12 experts necessary to the progression of the mitigation investigation, or the volume  
13 of capital cases currently filed (which to date is approximately 130 pending in  
14 Maricopa County alone). Indeed, up to 2002 capital cases were more rare than  
15 common.

16       Nor did these factors--wholly outside the control of appointed first-chair  
17 defense counsel--significantly hinder the progress of preparation in capital cases  
18 prior to the modification of Arizona statute (effective August 1, 2002) since counsel  
19 was required only to prepare for *the guilt phase* portion of the proceedings.

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21       <sup>1</sup> As this Court recognized: "A mitigation specialist is 'an individual who  
22 specializes in compiling potentially mitigating information about the accused in a  
23 capital case'; this individual *aids the defendants* in 'presenting favorable evidence  
24 to the factfinder in the penalty phase of the trial.'" *State v. Bocharski*, 200 Ariz. 50,  
25 53, 22 P.3d 43 (2001). In this vein, the Court discussed, *inter alia*, the necessity of  
26 services provided by mitigation specialist Mary Durand, whom the Court  
27 characterized as "a highly experienced mitigation specialist" and the circumstances  
under which she was "forced to perform her duties." *Id.* at 552. The Court  
acknowledged Ms. Durand's sworn testimony that "in her experience the average  
cost of a mitigation investigation 'is about 20 to \$100,000.'" In light of this, Ms.  
Durand's \$50 per hour fee most aptly demonstrates that the work of the mitigation  
specialist in any given capital case is of significant magnitude.

1 Effective August 1, 2002 the Arizona legislature modified Arizona's capital  
2 scheme in two significant ways relevant to the instant Petition: First, it modified the  
3 procedure to require the sentencing phase to commence *immediately* after a jury's  
4 finding of guilt on the charge of first degree murder; second, it altered Arizona's  
5 previously existing capital sentencing procedure from one of judge sentencing to  
6 one of jury sentencing. A.R.S. §13-703.01 now states:

7 **C.** If the trier of fact finds the defendant guilty of first degree murder,  
8 the trier of fact shall then immediately determine whether one or more  
9 alleged aggravating circumstances have been proven. The proceeding  
is the aggravation phase of the sentencing proceeding.

10 \* \* \*

11 **F.** The penalty phase shall be held immediately after the trier of fact  
finds at the aggravation phase that one or more of the aggravating  
circumstances under §13-703, subsection F have been proven. ....

12 Effective October 16, 2003, this Court modified Rule 19.1 so that it was consistent  
13 with the statutory procedural modifications referenced above. Rule 19.1(c), (d).

14 The practical effect of the modified procedure is that the prosecution is now  
15 required to formally allege *prior to trial* the aggravating factors it will seek to prove  
16 in the event of conviction. Defense counsel is now required to prepare to defend  
17 against the aggravating factors alleged while simultaneously conducting a thorough  
18 investigation into the defendant's background, character, and mental health--  
19 including the retention of all experts who will not only assist in the assessment of  
20 defendant, but who will testify during the penalty phase. It is critical to understand  
21 that the process of preparing the penalty phase involves *far more* than the seemingly  
22 simple task of collecting documents relating to the defendant's life, and arranging  
23 for psychological testing by experts, for at least two reasons: First, it must be  
24 recognized that while defendants are typically eager to assist counsel in defending  
25 against the criminal charges alleged, they are seldom forthright and willing  
26 participants in the preparation for the penalty phase. Many are of the opinion that

1 this phase is less important than the guilt phase--or that counsel is assuming  
2 defendant will be convicted during the guilt phase, a notion which splinters the  
3 accused's confidence in the trial attorney. Additionally, defendants are often  
4 mentally ill or mentally deficient, and almost always extremely protective of their  
5 family, ashamed of their upbringing, or both--resulting in an effort on their part to  
6 provide counsel and/or appointed experts with incomplete, misleading or flatly  
7 inaccurate information surrounding their social history.<sup>2</sup> Some refuse to cooperate  
8 all together, while others initially refuse to cooperate, only to change their stance  
9 over time. Bottom line is that humanity being what it is, it takes time to develop  
10 the trust relationship between the capital defense team and the client--a trust that is  
11 necessary if not critical to conducting a thorough mitigating investigation.

12 Second, the obligations of counsel in connection with the mitigation  
13 investigation sufficient to satisfy the Sixth Amendment continues to evolve. The  
14 United States Supreme Court has made clear that defense counsel is not required to  
15 simply turn over all documents and information which *may* be used in mitigation to  
16 the prosecution upon its collection. Such a requirement--although admittedly more  
17 expeditious--would clearly violate a capital defendant's Sixth Amendment right to  
18 the effective assistance of counsel, given that counsel must do a thorough mitigation  
19 investigation in order render an intelligent decision regarding what will, and will  
20 not, be presented in mitigation. *Rompilla v. Beard*, 125 S.Ct. 2456, 545 U.S. 374

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23 <sup>2</sup> This Court is well aware of the frequency with which capital defendants  
24 declined to cooperate with the mitigation effort. *See, e.g. State v. Kayer*, 194 Ariz.  
25 423, 434-436, 984 P.2d 635 (1996) (defendant refused to cooperate with the  
26 mitigation specialist concerning psychological evidence she wanted to explore, but  
27 wanted the mitigation specialist and his attorneys to advocate on his behalf at the  
mitigation hearing.); *State v. Bocharski*, 200 Ariz. 50, 54-55, 22 P.3d 43 (2001)  
(defendant "essentially gave up", terminated mitigation efforts and asked to be  
sentenced immediately "based in large part on his growing frustration with the  
court system and poor jail conditions.")

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1 (2005)<sup>3</sup> and *Wiggins v. Smith*, 539 U.S. 510, 123 S.Ct. 2527 (2003).<sup>4</sup> It is  
2 axiomatic that the process of gathering information and conducting witness  
3 interviews is at its very core *a process*-- each step providing information necessary  
4 for the next--undeniably critical to ultimate consult with appointed experts in  
5 preparation for their opinion and testimony. Defense counsel cannot make *any*  
6 decision--much less an intelligent one--regarding what mitigation will be presented  
7 to the sentencing jury until the mitigation investigation (including receipt of  
8 documents, psychological testing results, etc.) is complete.<sup>5</sup>

9 The Final Report of the Office of the Attorney General, Capital Case  
10 Commission published December 31, 2002 compiled data regarding capital cases  
11 filed state wide between 1995 and 1999, and concluded that the median between  
12 indictment and trial in Maricopa County was 1.9 years, in Pima County was 11.6  
13 months, and in outlying counties was 1.5 years. Thus, while defense counsel's duty  
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15 <sup>3</sup> Held: Even when a capital defendant and his family members have  
16 suggested that no mitigating evidence is available, his lawyer is bound to make  
17 reasonable efforts to obtain and review material relevant to mitigation; reversing  
18 the conviction and death sentence where "[T]he undiscovered 'mitigating evidence,  
taken as a whole, 'might well have influenced the jury's appraisal of [Rompilla's]  
culpability...'"

19 <sup>4</sup> Held: Conviction and death sentence reversed where defense attorney  
20 conduct fell short of the American Bar Association's capital defense work  
21 standards for failure to thoroughly investigate mitigating aspects, and thus he could  
22 not for a reasonably strategic defense to the death penalty. "Strategic choices made  
23 after thorough investigation of law and facts relevant to plausible options are  
virtually unchallengeable; and strategic choices made after less than complete  
investigation are reasonable precisely to the extent that reasonable professional  
judgments support the limitations on the investigation. In other words, counsel has  
a duty to make reasonable investigations or to make a reasonable decision that  
makes particular investigations unnecessary."

24 <sup>5</sup> See, ABA Guidelines for Appointment and Performance of Defense  
25 Counsel in Capital Cases, Guideline 10.11, "The Defense Case Concerning  
26 Penalty."  
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1 has doubled since that time as a consequence of the 2002 modification of Arizona  
2 statute and procedural rules--requiring the simultaneous preparation for the *guilt*  
3 *phase*, the *aggravation phase* and the *penalty phase*--the time limit of 18 months  
4 from arraignment is plainly untenable in the vast majority of capital cases.<sup>6</sup> Simply  
5 put, the current version of the rule fails to provide a viable time frame within which  
6 to competently prepare a capital case in the face of Arizona's commitment to the  
7 interests of crime victims juxtaposed with the public's interest in providing the  
8 effective assistance of counsel at the trial court level. *See, e.g., Summerlin v.*  
9 *Schriro*, 427 F.3d 623 (2005) (Granting defendant's Writ of *Habeas Corpus* 24  
10 years following defendant's conviction and death sentence for ineffective assistance  
11 of counsel during the penalty phase, for failure to thoroughly investigate and  
12 adequately present *all* potentially mitigating information; remanding same to the  
13 Maricopa County Superior Court for resentencing where it presently stands to date.)

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15 **B. THE INTERPLAY BETWEEN RULE 8.2(d) AND OTHER**  
16 **GOVERNING RULES OF CRIMINAL PROCEDURE:**

17 Modification of Rule 8.2(d) from 18 months to 30 months *from the date the*  
18 *state files a notice of intent to seek the death penalty* is easily supportable when  
19 considered in connection with the current procedural rules governing capital cases  
20 as well as the ABA Standards adopted by Arizona. Notably, the current Rule 8.2  
21 time limit commences *from arraignment* ; however, the remaining time lines  
22 outlined by the rules are triggered by the date on which the State of Arizona files  
23 notice of its intent to seek the death penalty.

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25 <sup>6</sup> Office of the Attorney General, State of Arizona, Capital Case  
26 Commission Final Report, Attachment C, Summary of First-degree Murder Cases  
27 in Four Arizona Counties, 1995-1999: Data Set II research Report to Arizona  
28 Capital Case Commission, June 2002, Exhibit 13 (County Comparison: Major  
Time Intervals for Processing First Degree Murder Indictments, 1995-1999) (page  
14)

1           Once a defendant is arraigned on the charge of first degree murder, the State  
2 has 60 days within which to file its notice of intent to seek the death penalty. Rule  
3 15.1(i)(1). This period may be extended for 30 days upon stipulation of counsel,  
4 and additional extensions may be granted upon motion of the state and approval of  
5 the court--whether the defense stipulates or not. *Ibid.* Consequently, it can be 60 to  
6 90 days (or more) before a defendant is provided with notice that the State of  
7 Arizona will seek the death penalty in the event the accused is convicted.

8           Although the conscientious practitioner will undoubtedly commence  
9 preparation of the guilt phase during this period, counsel will not commence  
10 preparation for the penalty phase--or even have the capital defense team (including  
11 second chair counsel) in place--until the state provides actual notice that the death  
12 penalty will be sought.<sup>7</sup> After the Notice of Intent to seek death is filed, Rule  
13 15.1(i)(3) directs the State of Arizona to produce certain disclosure “no later than 30  
14 days after filing a notice to seek the death penalty”, and Rule 15.9(d) permits  
15 defense counsel to seek the appointment of investigators and expert witnesses  
16 (including mitigation specialists) by filing a motion with the court “no later than 60  
17 days after the state makes it disclosure pursuant to Rule 15.1(i)(3). Considering  
18 these rules, it can be 90 days before a capital defendant obtains discovery, and 180  
19 days before experts critical to the mitigation task are appointed--leaving only one  
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23           <sup>7</sup> “National standards on defense services have consistently recognized that  
24 quality representation cannot be rendered unless assigned counsel have access to  
25 adequate supporting services [including] secretaries[,] investigators[, and] ...expert  
26 witnesses, as well as personnel skilled in social work and related disciplines to  
27 provide assistance at pretrial release hearings and at sentencing. This need is  
28 particularly acute in death penalty cases.” ABA Guidelines for the Appointment  
and Performance of Defense Counsel in Death Penalty Cases (February 2003),  
Guideline 4.1 (“The Defense Team and Supporting Services”) and Commentary  
 (“The Team Approach to Capital Defense”); Guideline 10.4 (“The Defense Team”)

1 year to actually prepare both the guilt and penalty phase of the capital case.<sup>8</sup> Under  
2 any Constitutional or Guideline standard, this time frame is untenable.

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4 **C. THE “RIGHT TO SPEEDY TRIAL”:**

5 In the State of Arizona, both crime victims and the accused have a right to  
6 speedy trial. “The speedy trial provisions of the federal and state constitutions do  
7 not provide a specific time limit within which trial must be held. They simply state  
8 that criminal defendants have the right to a speedy and public trial. U.S. Const.  
9 Amend. VI; Ariz. Const. Art. 2, §24.” *State v. Henry*, 176 Ariz. 569, 578-579, 863  
10 P.2d 861 (1993) “The factors applied under the federal constitution to determine  
11 whether delay warrants reversal [of a criminal conviction] are: (1) the length of the  
12 delay; (2) reasons for it, (3) defendant’s assertion of the right, and (4) resulting  
13 prejudice.” *Henry, supra., citing Barker v. Wingo*, 407 U.S. 514, 530-33, 92 S.Ct.  
14 2182, 2192-93 (1972); *State v. Schaaf*, 169 Ariz. 323, 327, 819 P.2d 909, 913  
15 (1991). “The least important factor is the length of delay. The most important is its  
16 prejudicial effect. *Schaaf*, 169 Ariz. At 327, 819 P.2d at 913.” *Ibid.*

17 Of course, “Rule 8 time limits are not constitutional commands,” rather they  
18 are rules of procedure. *State v. Smith*, 146 Ariz. 325, 326, 705 P.2d 1376  
19 (App.1985) *Smith* aptly asserts the preference of a well prepared lawyer over a Rule  
20 8 time limit, stating: “While our rule-based time limits are important in insuring  
21 prompt trials, they should not be slavishly adhered to when to do so would damage  
22 other equally significant values. Prime among these is that any trial at its inception  
23 must appear proper to resolve finally the issues dividing the parties. When defense

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26 <sup>8</sup> This assumes the process is not marred or delayed by withdrawal of one or  
27 both defense counsel, a change in the assigned prosecutor, the loss of experts or  
other team members, or the unanticipated delays in obtaining crucial discovery  
such as biological/DNA testing results from the prosecution. Those who practice  
in the capital area are well aware that these and other dilemmas do indeed arise.

1 counsel states that he is not adequately or fully prepared on the eve of trial, where  
2 the lack of preparation is not due to an absence of diligence on his part, a trial judge  
3 does not err in continuing the matter. Nor is this result changed because defendant  
4 insists on going to trial. The judge's obligation is to see that justice is done. It is  
5 not to require a trial, a conviction in which may be immediately overturned for  
6 ineffective assistance of counsel." *Id.*, 146 Ariz., at 326-327. "By imposing explicit  
7 time standards, the rule 8 requirements restrict the state more than either the state or  
8 federal constitutions." *Schaaf, supra., citing State ex rel Berger v. Superior Court,*  
9 *111 Ariz. 335, 339, 529 P.2d 686, 690 (1974).* Of course, those restrictions must  
10 comport with current notions of due process.

11 Unlike crime victims, the criminally accused also enjoy a *federal*  
12 Constitutional right to speedy trial, the right to the effective assistance of counsel at  
13 every stage of the proceeding, and the right to present a defense to each element  
14 alleged by the prosecution—including those elements affiliated exclusively with  
15 aggravating and mitigating factors utilized by the jury in determining the  
16 appropriate sentence to impose following conviction. These federal Constitutional  
17 guarantees are, of course, applied to the State through the Fourteenth Amendment.  
18 Significantly, these procedural due process rights have been deemed to prevail over  
19 the victim's right to speedy trial afforded by the State Constitution when that right is  
20 in direct conflict with the rights of the accused.

21 On *every* occasion in which a defendant's Federal Constitutional right  
22 conflicted with a victim's right afforded by the State Constitution, Arizona has held  
23 the former prevails. A clear example of this proposition is found in *State ex rel*  
24 *Romley v. Superior Court (Gottsfield)*, 172 Ariz. 232, 836 P.2d 445, 453-54  
25 (*App.1992*) where defense counsel sought an order compelling the disclosure of  
26 victim medical records--the production of which impacted the victim's right of  
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1 privacy. Ordering the records produced over objection, the Court recognized "that  
2 when the defendant's constitutional right to due process conflicts with the Victim's  
3 Bill of Rights in a direct manner, ... then due process is the superior right." *Id.*, at  
4 236. It explained:

5 This is so because due process is the foundation of our system of laws,  
6 having been first provided to the people in the Magna Carta and given  
7 to us by our founders in the United States Constitution. When there is  
8 a conflict, the due process clause of the U.S. Constitution prevails  
9 over a provision of a state constitution by virtue of the Supremacy  
10 Clause...

11 *Id.*, at 240-41; accord, *State ex rel Romley v. Dairman*, 208 Ariz. 484, 490 n.9, 95  
12 P.3d 548 (App. 2004) (same); *State v. Riggs*, 189 Ariz. 327, 330, 942 P.2d 1159  
13 (1997 *en banc*) ("Moreover, if, in a given case, the victim's state constitutional rights  
14 conflict with a defendant's federal constitutional rights to due process and effective  
15 cross-examination, the victim's rights must yield."); see also, *State v. Moya*, 136  
16 Ariz. 534, 538, 667 P.2d 234, 238 (App.1983) (defendant's motion for disclosure of  
17 victim's medical records); *State ex rel Romley v. Superior Court (Hutt)*, 195 Ariz.  
18 256, 259, 987 P.2d 218, 221 (App.1999) (same)

19 Significantly, Arizona has recognized that "[t]he federal and state due process  
20 clauses contain nearly identical language and protect the same interests." *State v.*  
21 *Casey*, 205 Ariz. 359, 362, 71 P.3d 351 (2003), citing U.S. Const. Amend. XIV, §1;  
22 Ariz. Const. art. II, §4. See also, *State v. Melendez*, 172 Ariz. 68, 71, 834 P.2d 154  
23 (1992) ("The touchstone of due process under both the Arizona and federal  
24 constitutions is fundamental fairness."); *State v. Mangum*, 214 Ariz. 165, 150 P.3d  
25 252, 255, n. 1 (App.2007); *State v. Kaiser*, 204 Ariz. 514, n. 2, 65 P.3d 463  
26 (App.2003). Therefore, since Arizona's due process right is coextensive with the  
27 federal right, there exists a basis under the *state* constitution, apart from the  
28 supremacy clause, to hold that it takes precedence over the victim's right to speedy  
trial when said right conflicts with those rights being asserted on behalf of the

1 accused.

2           When asserting a victim’s right to speedy trial in circumstances where  
3 counsel for the accused is not prepared to proceed, the prosecution must be mindful  
4 of “the state’s interest in conducting a fair trial and upholding the integrity of the  
5 judicial process.” *State v. Bocharski*, 200 Ariz. 50, 54, 22 P.3d 43 (2001). And  
6 while a capital defendant may elect to forgo the presentation of mitigating evidence  
7 all together—thereby speeding up the process-- such a waiver is limited by the  
8 “government’s right to a fair trial conducted in a judicious, orderly fashion,” and is  
9 further limited by the requirement that any waiver of a constitutional right be made  
10 voluntarily, knowingly and intelligently. *Ibid.*, citing *State v. Djerf*, 191 Ariz. 583,  
11 591, 959 P.2d 1274 (1998). As our state supreme court recognized, “[t]his  
12 requirement strengthens the system’s integrity by protecting the due process  
13 entitlement of the accused.” *Ibid.*

14

15 **D. CONCLUSION:**

16           Rule 8.2(a)(4) as currently written provides insufficient time to allow defense  
17 counsel to adequately prepare for the guilt phase, the aggravation phase and the  
18 penalty phase, simultaneously. It is therefore respectfully requested that Rule  
19 8.2(a)(4)--which commences at the time of arraignment--be modified to provide for  
20 trial in capital cases within thirty months from the date the state files its notice of  
21 intent to seek the death penalty. It is further requested that this rule change apply to  
22 all capital cases pending within Arizona on the effective date of the modified rule.

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1 RESPECTFULLY SUBMITTED this 10th day of August, 2007.

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