

1 Honorable Sam Myers  
2 Criminal Department Presiding Judge  
3 Superior Court of Arizona, Maricopa County  
4 175 W. Madison  
5 Phoenix, AZ 85003  
6 (602) 506-5262

7 IN THE SUPREME COURT  
8 STATE OF ARIZONA

9  
10 PETITION TO AMEND RULES )  
11 32.4, 32.5, 32.6 AND 32.8 OF THE ) Supreme Court No. R-17-\_\_\_\_  
12 RULES OF CRIMINAL )  
13 PROCEDURE )

14 Pursuant to Rule 28, Rules of the Supreme Court of Arizona, the Presiding  
15 Judge of the Criminal Department of the Superior Court of Arizona in Maricopa  
16 County respectfully petitions this Court to adopt the attached proposed  
17 amendments to Rules 32.4, 32.5, 32.6 and 32.8 of the Rules of Criminal  
18 Procedure.

19 In 2003, the Presiding Judge of the Superior Court in Maricopa County  
20 created a Rule 32 Management Unit within the Criminal Department to help  
21 handle the processing of petitions for post-conviction relief brought under Rule  
22 32, Ariz. R. Crim. P. On average, more than 1,600 new petitions for post-  
23 conviction relief are filed in the Superior Court in Maricopa County each year.  
24 In late 2015, the Presiding Judge requested an internal audit of the Rule 32  
25 Management Unit to ensure that Rule 32 petitions were being processed as  
26 effectively and efficiently as possible. As part of the audit review and report, the  
27 Rules of Criminal Procedure for post-conviction relief (Rules 32.1 through  
28 32.12, Ariz. R. Crim. P.) were reviewed to see where changes might be made to

1 bring the Rules closer in line to actual practice, as well as help make the  
2 processing of Rule 32 petitions more efficient. Proposed amendments to the  
3 rules were circulated to Judicial Officers who provided additional feedback and  
4 suggestions. These amendments are proposed in the interest of judicial economy  
5 and efficiency in the post-conviction relief process.

6 Currently, Rule 32.4(a) requires the court to send copies of notices of  
7 post-conviction relief to the defendant, the county attorney, the defendant's  
8 attorney, and the attorney general or prosecutor. In reality, approximately 500  
9 untimely notices are filed each year in the Superior Court in Maricopa County  
10 that do not raise claims under Rule 32.1(d), (e), (f), (g) or (h). These are flagged  
11 by the Rule Management Unit and are quickly and summarily dismissed. The  
12 proposed amendment to Rule 32.4(a) would eliminate the needless task of  
13 sending copies of untimely notices that have been summarily dismissed by the  
14 court.

15 The proposed amendments to Rule 32.4(c)(2) allows the court to appoint  
16 counsel for indigent defendants where there has been a previous indigency  
17 determination without requiring a new affidavit of indigency. The amendments  
18 further require that a notice of completion filed by defendant's counsel  
19 indicating there are no colorable claims to be raised on the defendant's behalf  
20 will *also* indicate the actual materials counsel has reviewed and the date the  
21 complete record was provided to the defendant. This will ensure a record for the  
22 court's reference in subsequent untimely proceedings filed by *pro se* defendants  
23 in which defendants claim they have acquired newly discovered material facts  
24 (under Rule 32.1(e)) or that their petition is untimely because the defendant  
25 never received communications or portions of the file from their assigned  
26 counsel after their counsel filed the original notice of completion. The proposed  
27 amendment to Rule 32.4(c)(2) also clarifies that after filing a notice of  
28 completion, assigned counsel remains advisory counsel to the defendant until

1 completion of the Rule 32 proceeding or “unless otherwise ordered by the  
2 court.”

3 The proposed amendment to Rule 32.5 would expand the maximum page  
4 length of a Rule 32 petition and the State’s response in capital cases from 40  
5 pages to 80 pages, and expand the maximum length of the reply from 20 pages  
6 to 40 pages. These changes are designed to take into account the complexity of  
7 issues often raised in capital cases and eliminate the need for motions from the  
8 parties to exceed the page limits as currently set forth in the Rule.

9 The proposed amendments to Rule 32.6(c) would eliminate the  
10 requirement that a court “review” a petition for post-conviction relief within 20  
11 days of the filing of the defendant’s reply. This timeline is often unrealistic  
12 considering Rule 32 petitions are assigned to the original sentencing judge and  
13 often at the time a petition is filed, the judicial officer has rotated out of the  
14 Criminal Department and is handling full caseloads in other Court Departments.  
15 Furthermore, if the requirement for a review of the filings within 20 days is  
16 eliminated, all superior court judges would still be required by Article VI,  
17 Section 21 of the Arizona Constitution, as well as Supreme Court Rule 91(e), to  
18 rule within 60 days on any matter submitted for decision.

19 Furthermore, once the court determines claims exist that might entitle a  
20 defendant to post-conviction relief, the proposed amendments to Rule 32.6(c)  
21 expand the time—in capital cases only—for the court to set a hearing on the  
22 petition to 60 days rather than the current 30 days. This amendment is necessary  
23 because of the complexity of issues in a capital case and will help eliminate  
24 requests by parties to continue the hearing in order to allow the parties more  
25 time to prepare.

26 Under the current Rule 32.6(c), if the court does not dismiss the petition  
27 after reviewing the pleadings and the record, the court must set a hearing  
28 regarding claims that present “a material issue of fact or law.” The proposed

1 amendments to Rule 32.6(c) would amend the requirement for a hearing when  
2 only material issues of *law* exist. Instead, the amended Rule would provide  
3 courts discretion as to whether to hold a hearing or whether a ruling on pure  
4 matters of law could be decided based on the briefing of the parties.

5 The proposed amendment to Rule 32.8(d) would eliminate the  
6 requirement that the court “shall rule within 10 days” after the conclusion of a  
7 post-conviction relief evidentiary hearing on a Rule 32 petition. The requirement  
8 to issue a final ruling with 10 days is unrealistic and unduly burdensome on the  
9 court. The removal of the 10-day requirement would not impact the  
10 requirements of Article VI, Section 21 of the Arizona Constitution and Supreme  
11 Court Rule 91(e) that judges must render a decision within 60 days of taking a  
12 matter under consideration.

13 For the foregoing reasons, the Presiding Judge of the Criminal Department  
14 of the Superior Court in Maricopa County respectfully requests this Court amend  
15 Rules 32.4, 32.5, 32.6 and 32.8 of the Rules of Criminal Procedure, as detailed in  
16 the Attachment, to promote judicial economy and efficiency in the processing of  
17 petitions for post-conviction relief.

18  
19 RESPECTFULLY SUBMITTED this 10th day of January, 2017.

20  
21 /s/ Sam Myers  
22 Hon. Sam Myers  
23 Criminal Department Presiding Judge  
24 Superior Court of Arizona, Maricopa County

25  
26 Electronic copy filed the  
27 Clerk of the Supreme Court  
28 of Arizona this 10th day of  
January, 2017.

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**ATTACHMENT**

(new language is underlined and deletions are ~~struck through~~)

**Rules of Criminal Procedure**

**Rule 32.4. Commencement of Proceedings**

**a. Form, Filing and Service of Petition.** A proceeding is commenced by timely filing a notice of post-conviction relief with the court in which the conviction occurred. The court shall provide notice forms for commencement of all post-conviction relief proceedings. In a Rule 32 of-right proceeding, the notice must be filed within ninety days after the entry of judgment and sentence or within thirty days after the issuance of the final order or mandate by the appellate court in the petitioner's first petition for post-conviction relief proceeding. In all other non-capital cases, the notice must be filed within ninety days after the entry of judgment and sentence or within thirty days after the issuance of the order and mandate in the direct appeal, whichever is the later. In a capital case, the clerk of the Supreme Court shall expeditiously file a notice for post-conviction relief with the trial court upon the issuance of a mandate affirming the defendant's conviction and sentence on direct appeal. Any notice not timely filed may only raise claims pursuant to Rule 32.1(d), (e), (f), (g) or (h). The notice shall bear the caption of the original criminal action or actions to which it pertains. On receipt of the notice, the court shall file a copy of the notice in the case file of each such original action. Unless the court summarily dismisses the notice, the court shall ~~and~~ promptly send copies to the defendant, the county attorney, the defendant's attorney, if known, and the attorney general or the prosecutor, noting in the record the date and manner of sending the copies. If the conviction occurred in a court other than the Superior Court, the copy shall be sent to the office of the prosecuting attorney who represented the state at trial. The state shall notify any victim who has requested notice of post-conviction proceedings.

**b. [no changes]**

**c. Appointment of Counsel.**

*(1) Capital Cases. [no changes]*

1 (2) *Rule 32 of-right and non-capital cases.* Upon the filing of a timely or first  
2 notice in a Rule 32 proceeding, the presiding judge, or his or her designee, shall  
3 appoint counsel for the defendant within 15 days if requested and the court has  
4 previously determined that defendant is ~~determined to be~~ indigent or defendant  
5 has completed an affidavit of indigency. Upon the filing of all other notices in  
6 non-capital cases, the appointment of counsel is within the discretion of the  
7 presiding judge. In non-capital cases appointed counsel for the defendant shall  
8 have sixty days from the date of appointment to file a petition raising claims under  
9 Rule 32.1. On a showing of good cause, a defendant in a non-capital case may be  
10 granted a thirty day extension within which to file the petition. Additional  
11 extensions of thirty days shall be granted only upon a showing of extraordinary  
12 circumstances.

13 In a Rule 32 of-right proceeding, counsel shall investigate the defendant's  
14 case for any and all colorable claims. If counsel determines there are no colorable  
15 claims which can be raised on the defendant's behalf, counsel shall file a notice  
16 advising the court of this determination. The notice must identify the specific  
17 materials that were reviewed by counsel and must indicate both the date the record  
18 was provided to the defendant and the contents of the record provided to the  
19 defendant. Counsel's role is then limited to acting as advisory counsel until the  
20 trial court's final determination in the Rule 32 proceeding unless otherwise  
21 ordered by the court. Upon receipt of the notice, the court shall extend the time for  
22 filing a petition by the defendant in propria persona. The extension shall be 45  
23 days from the date the notice is filed. Any extensions beyond the 45 days shall be  
24 granted only upon a showing of extraordinary circumstances.

25 A defendant proceeding without counsel shall have sixty days to file a  
26 petition from the date the notice is filed or from the date the request for counsel is  
27 denied.

28 **d. through f. [no changes]**

### **Rule 32.5. Contents of petition**

The petition shall be accompanied by a declaration by the defendant stating under penalty of perjury that the information contained is true to the best of the defendant's knowledge and belief. Facts within the defendant's personal knowledge shall be noted separately from other allegations of fact. Affidavits,

1 records, or other evidence currently available to the defendant supporting the  
2 allegations of the petition shall be attached to it. Legal and record citations and  
3 memoranda of points and authorities are required. In Rule 32 of-right and non-  
4 capital cases, the petition shall not exceed 25 pages. The response shall not exceed  
5 25 pages, and any reply shall not exceed 10 pages. In capital cases, the petition  
6 shall not exceed 80 ~~40~~pages. The response shall not exceed 80 ~~40~~pages, and any  
7 reply shall not exceed 40 ~~20~~pages. A petition which fails to comply with this rule  
8 shall be returned by the court to the defendant for revision with an order  
9 specifying how the petition fails to comply with the rule. A petition that has been  
10 revised to comply with the rule shall be returned by the defendant for refiling  
11 within 30 days after defendant's receipt of the non-complying petition. If the  
12 petition is not so returned, the court shall dismiss the proceedings with prejudice.  
13 The period for response by the state shall begin on the date a returned petition is  
14 refiled.

## 15 **Rule 32.6. Additional pleadings; summary disposition; amendments**

### 16 **a. through b. [no changes]**

17 c. Summary Disposition. ~~The court shall review the petition within twenty days~~  
18 ~~after the defendant's reply was due.~~ On reviewing the petition, response, reply,  
19 files and records, and disregarding defects of form, the court shall identify all  
20 claims that are procedurally precluded under this rule. If the court, after  
21 identifying all precluded claims, determines that no remaining claim presents a  
22 material issue of fact or law which would entitle the defendant to relief under this  
23 rule and that no purpose would be served by any further proceedings, the court  
24 shall order the petition dismissed. If the court does not dismiss the petition, the  
25 court shall set a hearing within thirty days (or sixty days in a capital case) on those  
26 claims that present a material issue of fact. ~~The court may set a hearing on those~~  
27 claims that present a material issue of ~~or~~ law. If a hearing is ordered, the state shall  
28 notify the victims, upon the victims' request pursuant to statute or court rule  
relating to victims' rights, of the time and place of the hearing.

### **d. [no change]**

1 **Rule 32.8. Evidentiary hearing**

2 **a. through c. [no changes]**

3  
4 **d. Decision.** ~~The court shall rule within 10 days after the hearing ends except in~~  
5 ~~extraordinary circumstances where the volume of the evidence or the complexity~~  
6 ~~of the issues require additional time.~~ If the court finds in favor of the defendant, it  
7 shall enter an appropriate order with respect to the conviction, sentence or  
8 detention, any further proceedings, including a new trial and conditions of release,  
9 and other matters that may be necessary and proper. The court shall make specific  
10 findings of fact, and state expressly its conclusions of law relating to each issue  
11 presented.

12 **e. [no changes]**