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IN THE SUPREME COURT OF THE STATE OF ARIZONA

In the Matter of:

No. R08-0010

AMENDMENT OF RULES 32.4(c)(2),
32.6(a), AND 32.6(b), ARIZONA RULES
OF CRIMINAL PROCEDURE

**COMMENT SUPPORTING THE
PIMA COUNTY PUBLIC
DEFENDER’S PETITION TO
AMEND RULES 32.4(c)(2), 32.6(a)
AND 32.6(b) OF THE ARIZONA
RULES OF CRIMINAL
PROCEDURE**

The Maricopa County Public Defender supports the Pima County Public Defender’s proposed amendments to Rule 32, Arizona Rules of Criminal Procedure.

Rule 32 is Arizona’s post-conviction relief remedy. It was promulgated by this Court in 1973 and it consolidated, under one rule, what had previously been seven separate avenues for relief, each of which had different “mechanics, requirements and time limits.” (See general comment to Rule 32.1)

A Rule 32 petition for post-conviction relief is not a direct appeal from a judgment under Rule 31. Rather, it is a collateral attack on a judgment and is post-conviction relief other than an appeal. *Moreno v. Gonzalez*, 192 Ariz. 131, 962 P.2d 201 (1998). In many cases it is a defendant's one final opportunity to present issues to Arizona appellate courts in order to exhaust state court remedies.

Petitioner's reasons for requesting amendments to Rule 32 are valid and compelling. Unlike a direct appeal, where the 40 day time limit within which to file an opening brief imposed by Rule 31.14(a) does not begin to run until the record on appeal is complete, the 60 day time limit within which to file a petition for post-conviction relief imposed by Rule 32.4(c)(2) begins to run on the date the notice of post-conviction relief is filed. Unlike a direct appeal, where appellate counsel initially has a complete record to review and can reasonably expect to file an opening brief within 40 days, post-conviction relief counsel generally does not initially have a complete record to review and in many instances will spend a considerable amount of the 60 days attempting to obtain the contents of both trial and appellate counsel's files. In addition to securing the contents of these files for review, as Petitioner notes in the petition, Rule 32 counsel will often need to review the trial court proceedings of co-defendants, obtain medical records of the defendant, secure the services of expert witnesses to review these records and examine other trial evidence, interview potential defense witnesses not called to

testify at trial or in mitigation and, for the most part, undertake a complete review of the effectiveness of the performance of both trial and appellate counsel.

The scope of a review of a case for Rule 32 review, consequently, is considerably broader than the scope of a review of a case for a direct appeal. The current time limits set out in Rule 32, however, frustrate the ability of Rule 32 counsel to conduct an adequate investigation of the case before filing a petition. The rules should be amended to provide for more a more realistic time frame within which to file the petition and for greater judicial discretion in the granting of extension requests.

For the reasons set out herein, the Maricopa County Public Defender recommends that this Court grant the Pima County Public Defender's Petition to Amend Rules 32.4(c)(2), 32.6(a) and 32.6(b) of the Arizona Rules of Criminal Procedure.

RESPECTFULLY SUBMITTED this 16th day of May, 2008.

MARICOPA COUNTY PUBLIC DEFENDER

James J. Haas
Public Defender

ORIGINAL and six copies
Filed with the Court this
16th day of May, 2008.

Copy mailed this 16th day
of May, 2008, to:

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By _____