

1 Honorable Anna M. Baca
2 Presiding Judge Criminal Department
3 Superior Court in Maricopa County
4 101 W. Jefferson
5 Phoenix, AZ 85003
6 (602) 506-1810

7 In the Matter of PETITION TO AMEND
8 RULE 8.2(a) OF THE ARIZONA RULES
9 OF CRIMINAL PROCEDURE

Supreme Court No. R-05-0005
COMMENT OF THE CRIMINAL
DEPARTMENT OF THE SUPERIOR
COURT IN MARICOPA COUNTY IN
OPPOSITION TO THE PETITION TO
AMEND RULE 8.2(a)(4)

12 This comment is submitted on behalf of the Criminal Department of the Superior
13 Court of Maricopa County.

14 The proposed rule change has been reviewed by a number of judges, all of
15 whom having experience in handling capital cases as lawyers and/or as judges. In
16 addition, the proposed rule change and this comment were provided to all judicial
17 officers in the Criminal Department of the Superior Court of Maricopa County. This
18 comment was unanimously approved at a meeting of the Criminal Department on May
19 14, 2008.

20 The court does not support the proposed rule change. The court suggests that
21 the Supreme Court deny the petition and refer the issue to the existing Supreme Court
22 Capital Oversight Committee or a newly created committee where the thoughts of
23 representatives of all participants in capital case litigation can be considered. Also,
24 instead of a piece-meal approach to amending capital case rules, the court suggests
25 that a comprehensive review of the rules is needed because of the interplay of the
26 various rules. The committee could then make appropriate recommendations regarding
27 needed amendments to the capital case rules.
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1 The reasons for the requested rule change are understandable in view of the
2 current situation in Maricopa County. However, the proposed 30-month time limit is an
3 invitation for delay, particularly for cases that may be remanded for a new trial or for
4 resentencing. For example, if the reason for the new trial was jury misconduct, an
5 evidentiary ruling deemed reversible error or something similar, it should not take 30
6 months to get the case back to trial. Indeed, even if the new trial or new sentencing
7 was due to ineffective assistance of counsel, the time needed for new counsel to get
8 ready for the new proceeding would depend largely on the reasons for the finding of
9 ineffectiveness.

10 For new capital cases, the 30-month time frame may be entirely appropriate for
11 some cases in Maricopa County at this time because of the high number of pending
12 capital cases. However, in Pima and other counties not having the number of capital
13 cases as in Maricopa County and, therefore, not experiencing the same shortage of
14 qualified attorneys and mitigation specialists, 30 months to prepare may not be needed
15 and may result in prejudice to the case and a denial of the victim's right to a speedy
16 trial. Also, the current glut of capital cases in Maricopa County may be an anomaly that
17 may ease in a few years. Accordingly, the bases for the 30-month time limit (lack of
18 qualified attorneys and lack of mitigation specialists) may evaporate too.

19 Should the Supreme Court decide that the Rule 8.2 time limit for capital cases
20 should be amended, a more flexible and case specific approach is suggested. The time
21 limit should be based on a realistic assessment of each county's capital case situation
22 and resources for handling those cases along with the circumstances of each case. In
23 addition, if the time limit for processing capital cases is going to be extended, additional
24 amendments should be made to incorporate into the Criminal Rules of Procedure the
25 concept of the special mitigation master. The Superior Court of Maricopa County is
26 currently using mitigation special masters to assist in the timely processing of capital
27 cases. It is also suggested that any Rule 8.2 time limit modification should be
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1 accompanied by rules setting deadlines for disclosure of mitigation, expert witnesses
2 and rebuttal witnesses.

3 The Superior Court of Maricopa County recommends that the petition be denied.
4 The Superior Court of Maricopa County recommends that the Supreme Court refer the
5 issue to either the Supreme Court's Capital Case Oversight Committee or a newly
6 formed committee where a comprehensive review of the rules can be undertaken and, if
7 deemed necessary, where new rules can be drafted based on input from all interested
8 groups.

9 **Alternative Proposal**

10 The court suggests that it would be preferable to have an existing Supreme Court
11 committee or a newly created committee with representatives of all interest groups to
12 capital cases – victims, defense lawyers, prosecution lawyers, the courts, the clerk's
13 office – study the existing rules and make recommendations for comprehensive rule
14 changes. However, should the Supreme Court decide that amendment of the Rule 8.2
15 time limits for capital cases is appropriate at this time, the following alternative
16 amendments are recommended for approval:

17 **Rule 8.2 Time limits**

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

21 **(1) Defendants in Custody.** 150 days from arraignment if the person is
22 held in custody, except as provided in subsection (a), paragraph (3) of this
23 section.

24 **(2) Defendants Released From Custody.** 180 days from arraignment if
25 the person is released under Rule 7, except as provided in subsection (a),
26 paragraph (3) of this section.

27 **(3). Complex Cases.** One year from arraignment for cases in which the
28 indictment, information or complaint is filed between December 1, 2002
and December 1, 2005, and for subsequent cases 270 days from
arraignment if the person is charged with any of the following:

(i) 1st Degree Murder, except as provided in paragraph (a)(4) of this rule,

1 (ii) Offenses that will require the court to consider evidence obtained as
2 the result of an order permitting the interception of wire, electronic or oral
3 communication,

4 (iii) Any complex cases as determined by a written factual finding by the
5 court.

6 **(4) Capital Cases. UNLESS OTHERWISE ESTABLISHED BY THE**
7 **TRIAL COURT, eEighteen months from arraignment, if the state files a**
8 **notice of intent to seek the death penalty: ON WRITTEN MOTION BY A**
9 **PARTY, THE TRIAL COURT MAY FOR GOOD CAUSE SHOWN, AFTER**
10 **CONSIDERING THE RESOURCES AVAILABLE TO HANDLE A CASE**
11 **AND ANY SPECIAL CIRCUMSTANCES OF THE CASE, EXTEND THE**
12 **TIME LIMIT NOT TO EXCEED AN ADDITIONAL TWELVE MONTHS.**
13 **THE REASONS FOR ANY EXTENSION SHALL BE STATED ON THE**
14 **RECORD. SHOULD A TRIAL COURT EXTEND THE TIME LIMIT**
15 **BEYOND THE PRESUMPTIVE EIGHTEEN-MONTH TIME LIMIT, THE**
16 **TRIAL COURT SHALL HOLD A STATUS CONFERENCE AT LEAST**
17 **EVERY FORTY-FIVE DAYS AND SHALL APPOINT A MITIGATION**
18 **SPECIAL MASTER IN ACCORDANCE WITH RULE 8.2.01.**

19 **UNLESS OTHERWISE ESTABLISHED BY THE TRIAL COURT, SIX**
20 **MONTHS FROM THE DATE OF THE ISSUANCE OF THE MANDATE**
21 **FOR A NEW TRIAL OR NEW SENTENCING PROCEEDING. ON**
22 **WRITTEN MOTION BY A PARTY, THE TRIAL COURT MAY FOR GOOD**
23 **CAUSE SHOWN, AFTER CONSIDERING THE RESOURCES**
24 **AVAILABLE TO HANDLE THE CASE, THE REASON FOR THE**
25 **GRANTING OF A NEW TRIAL OR NEW SENTENCING PROCEEDING**
26 **AND ANY SPECIAL CIRCUMSTANCES OF THE CASE, EXTEND THE**
27 **TIME LIMIT NOT TO EXCEED AN ADDITIONAL SIX MONTHS. THE**
28 **REASONS FOR ANY EXTENSION SHALL BE STATED ON THE**
RECORD. SHOULD A TRIAL COURT EXTEND THE TIME LIMIT
BEYOND THE PRESUMPTIVE SIX-MONTH TIME LIMIT, THE TRIAL
COURT SHALL HOLD A STATUS CONFERENCE AT LEAST EVERY
FORTY-FIVE DAYS AND, IN THE EVENT ADDITIONAL MITIGATION
WORK IS BEING DONE, SHALL APPOINT A MITIGATION SPECIAL
MASTER IN ACCORDANCE WITH RULE 8.2.01.

BEFORE GRANTING ANY EXTENSION, THE TRIAL COURT SHALL
ASSURE THAT THERE HAS BEEN COMPLIANCE WITH VICTIM'S
RIGHTS.

b. Waiver of Appearance at Arraignment. If a person has waived an
appearance at arraignment pursuant to Rule 14.2, the date of the
arraignment held without the defendant's presence shall be considered the
arraignment date for purposes of subsection (a), paragraphs (1), (2), (3),
and (4) of this rule.

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2 **c. New Trial.** A trial ordered after a mistrial or upon a motion for a new
3 trial shall commence within 60 days of the entry of the order of the court. A
4 trial ordered upon the reversal of a judgment by an appellate court shall
5 commence within 90 days of the service of the mandate of the Appellate
6 Court.

7 **d. Extension of Time Limits.** These time limits may be extended
8 pursuant to Rule 8.5.

9 **e. Trial Dates.** In all superior court cases except those in which Rule 8
10 has been suspended pursuant to Rule 8.1(e), the court shall, either at the
11 time of arraignment in superior court or at a pretrial conference, set a trial
12 date for a time certain.

13 **RULE 8.2.01 MITIGATION SPECIAL MASTER FOR CAPITAL CASES**

14 **(A) IN EACH CAPITAL CASE, THE PRESIDING JUDGE OR THE**
15 **PRESIDING JUDGE’S DESIGNEE SHALL APPOINT A JUDICIAL**
16 **OFFICER AS A MITIGATION SPECIAL MASTER TO MONITOR THE**
17 **PROGRESS OF THE MITIGATION WORK AND TO ACT AS A**
18 **RESOURCE FOR EXPEDITING REQUESTS FOR MATERIAL**
19 **RELEVANT TO MITIGATION. THE MITIGATION SPECIAL MASTER**
20 **SHALL BE A JUDICIAL OFFICER OTHER THAN THE JUDGE TO**
21 **WHOM THE CASE IS ASSIGNED FOR TRIAL.**

22 **(B) TO CARRY OUT THE MITIGATION SPECIAL MASTER’S DUTY TO**
23 **MONITOR THE MITIGATION WORK AND ASSIST THE ASSIGNED**
24 **TRIAL JUDGE IN ASSURING THAT THE MITIGATION WORK IS**
25 **TIMELY COMPLETED AND DOES NOT DELAY TRIAL OR**
26 **RESOLUTION OF THE CASE, THE MITIGATION SPECIAL MASTER**
27 **SHALL CONDUCT A MITIGATION STATUS CONFERENCE NOT LESS**
28 **THAN EVERY SIXTY DAYS. THE MITIGATION SPECIAL MASTER**
MAY EXTEND THE TIME FRAME FOR THE STATUS CONFERENCES
ONLY UPON A WRITTEN FINDING THAT THE MITIGATION WORK IS
PROGRESSING IN SUCH A MANNER THAT IT WILL NOT DELAY
RESOLUTION OF THE CASE OR CREATE A NEED TO EXTEND THE
RULE 8.2 TIME LIMIT.

(C) THE MITIGATION STATUS CONFERENCE SHALL BE AN *EX*
***PARTE* PROCEEDING WITH NO REPRESENTATIVE OF THE STATE**
PRESENT. THE DEFENDANT SHALL BE PRESENT UNLESS THE
DEFENDANT’S PRESENCE IS WAIVED BY THE MITIGATION
SPECIAL MASTER. THE MITIGATION STATUS CONFERENCE
SHALL BE RECORDED EITHER ELECTRONICALLY OR BY A COURT

1 REPORTER AND THE RECORD OF THE PROCEEDING SHALL BE
2 SEALED UNLESS DEFENSE COUNSEL OR THE DEFENDANT IF
3 SELF-REPRESENTED STIPULATE TO AN UNSEALED RECORD.

4 (C) THE MITIGATION SPECIAL MASTER IS AUTHORIZED TO DO THE
5 FOLLOWING:

- 6 1) REQUIRE DEFENSE COUNSEL, THE MITIGATION SPECIALIST,
7 AND IF DEEMED NECESSARY, THE INVESTIGATOR
8 ASSISTING THE DEFENSE TEAM, TO ATTEND EACH
9 MITIGATION STATUS CONFERENCE.
- 10 2) REQUIRE DEFENSE COUNSEL AND THE MITIGATION
11 SPECIALIST TO PROVIDE DETAILED INFORMATION ABOUT
12 THE STATUS OF THE MITIGATION WORK AND THE PLAN FOR
13 FUTURE MITIGATION WORK.
- 14 3) ESTABLISH APPROPRIATE DEADLINES FOR MITIGATION
15 TASKS TO BE COMPLETED AND TO IMPOSE ANY OR ALL
16 SANCTIONS SPECIFIED IN RULE 15.7(A)(4) AND (5) FOR
17 FAILURE TO COMPLY WITH THE DEADLINES OR OTHER
18 DIRECTIVES OF THE MITIGATION SPECIAL MASTER.
- 19 4) SIGN APPROPRIATE ORDERS TO ASSIST DEFENSE
20 COUNSEL AND THE MITIGATION SPECIALIST IN OBTAINING
21 RELEVANT DOCUMENTS AND RECORDS NEEDED FOR THE
22 MITIGATION WORK.
- 23 5) HOLD ORDER TO SHOW CAUSE HEARINGS TO ENFORCE
24 COMPLIANCE WITH ORDERS SIGNED BY THE MITIGATION
25 SPECIAL MASTER OR TO RULE ON OBJECTIONS TO ANY
26 ORDER FOR PRODUCTION OF RECORDS OR SUBPOENA
27 FOR RECORDS. THE MITIGATION SPECIAL MASTER IN
28 CONDUCTING AN ORDER TO SHOW CAUSE HEARING OR
HEARING ON ANY OBJECTION MAY MAKE AN AWARD OF
ATTORNEY'S FEES AND IMPOSE ANY OR ALL SANCTIONS
SPECIFIED IN RULE 15.7(A)(4) AND (5).
- 6) MAKE WRITTEN REPORTS TO THE TRIAL JUDGE
FOLLOWING EACH MITIGATION STATUS CONFERENCE
REGARDING THE STATUS OF THE MITIGATION WORK. THE
REPORT ALSO MAY INCLUDE RECOMMENDATIONS TO THE
TRIAL JUDGE ABOUT MATTERS THAT THE TRIAL JUDGE
SHOULD ADDRESS IN ORDER TO ASSURE PROMPT
RESOLUTION OF THE CASE. THE WRITTEN REPORT TO THE

1 TRIAL JUDGE SHALL NOT DISCLOSE THE DETAILS OF THE
2 MITIGATION WORK OR CONTEMPLATED MITIGATION WORK.

3 7) IF DEEMED APPROPRIATE BY THE MITIGATION SPECIAL
4 MASTER, MAKE WRITTEN REPORTS CONTAINING THE
5 DETAILS OF THE INFORMATION DISCLOSED AT ANY
6 MITIGATION STATUS CONFERENCE. THIS REPORT SHALL
7 BE SEALED AND SHALL NOT BE DISCLOSED TO THE STATE.

8 The above proposed rules have the advantages of (1) establishing presumptive
9 time limits, (2) allowing each county's superior court judges to assess their particular
10 situation and the circumstances of each particular capital case and, if appropriate, to
11 adjust the presumptive time limit, (3) assuring proper case management by requiring
12 mandatory status conferences, and (4) allowing for the appointment of a mitigation
13 special master to monitor the mitigation work.

14 **Conclusion**

15 The petition is a fragmented approach to a set of rules that are interrelated and,
16 therefore, should be amended only after carefully considering the interplay of all the
17 rules. The petition suggests a state-wide rule change that will foster delay in resolution
18 of capital cases without consideration of each county's ability to process capital cases
19 and without consideration of the specifics of each capital case. For those reasons, the
20 petition should be denied.

21 Respectfully submitted this ____ day of May, 2008.

22 _____
23 Hon. Anna Baca
24 Presiding Criminal Department Judge
25 Superior Court in Maricopa County

26 Original and six (6) copies delivered this
27 ____ day of May 2008 to:

28 Clerk of the Arizona Supreme Court
1501 W. Washington, Suite 402
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1 Copy mailed this
2 8th day of April, 2008 to:

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