

Honorable John S. Leonardo
Pima County Superior Court
110 West Congress Street
Tucson, AZ 85701
520-740-8005

IN THE SUPREME COURT STATE OF ARIZONA

In the Matter of PETITION	)	
TO AMEND RULE 32.4(c)(2),	)	
32.6(a) and 32.6(b),	)	Supreme Court No. <u>R-08-0010</u>
ARIZONA RULES OF CRIMINAL	)	
PROCEDURE	)	COMMENT ON PETITION
	)	
_____	)	

I oppose this petition to amend the criminal rules. Petitioner’s proposal would extend the time for the defense to file petitions for post conviction relief and the state to respond by 75 days, and allow any number of additional thirty day continuances based on a showing of “good cause” rather than “extraordinary circumstances”. The reasons cited for the proposed rule changes are the complexity of preparing petitions in cases resulting from trials rather than pleas, those alleging newly discovered evidence, those requiring the review of medical records, and those alleging ineffective assistance of counsel.

It is submitted that it would be premature to make these proposed rule changes, which would almost certainly delay the resolution of **all** Rule 32 cases, based on assertions concerning certain limited types of petitions without first determining if the alleged problem actually exists, and, if so, to what extent. It would behoove the court to delay action on this proposal until it can collect and review data from courts around the state on what percentage of Rule 32 petitions are now submitted within the current time frame; how many petitions result from trials rather than pleas; how many assert newly discovered evidence; how many assert ineffective assistance of counsel; how many require the search for and review of medical records; in what percentage of cases are motions to extend time filed and what percentage are granted; and the relationship, if any, between the these allegedly “complex” issue petitions and the number of continuances sought. If the data supports the need for the proposed amendments, then they should be adopted. However, the data may show that there is no problem, that the problem is not significant or widespread enough to justify the proposed rule changes, or that the rule changes should be more limited in nature and scope than proposed and apply only to those types of petitions raising certain issues shown to require more time to prepare than ordinarily necessary.

While experience shows that relatively few Rule 32 petitions are granted, it should not be forgotten that these proposed rule changes extending the time within which petitions must be filed and responded to will certainly serve to delay the release from custody of some defendants whose petitions are legitimate. For this reason, these changes should not be adopted unless there is clear evidence that they are necessary to serve the interests of justice.

DATED this _____ day of _____, 20____.

Hon. John S. Leonardo

A copy of this comment has been mailed this
_____ day of _____, 20____, to:

Petitioner:
Robert J. Hooker
Pima County Public Defender
33 North Stone Avenue, 21st Floor
Tucson, AZ 85701