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13 IN THE SUPREME COURT OF THE STATE OF ARIZONA

14
15 In the Matter of

16 PETITION TO AMEND RULE 10.5,
17 ARIZONA RULES OF CRIMINAL
18 PROCEDURE

Supreme Court
No. R- _____

PETITION TO AMEND RULE 10.5 OF
THE ARIZONA RULES OF CRIMINAL
PROCEDURE

19
20 The Maricopa County Attorney and Arizona Voice for Crime Victims hereby move, pursuant to
21 Rule 28 of the Arizona Rules of the Supreme Court, to amend Rule 10.5 of the Arizona Rules of

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1 Criminal Procedure by creating a new paragraph "C", which addresses the transfer of cases already set
2 for trial due to the unavailability of the trial judge.

3 Respectfully submitted this 3 day of September, 2008.

4
5
6 BY: 
7 STEVE TWIST
8 PRESIDENT, ARIZONA VOICE FOR CRIME
9 VICTIMS

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1 **I. SUMMARY OF PROPOSED CHANGE**

2 In Maricopa County, the case transfer system was created by the Superior Court to address the
3 problem of having multiple criminal cases set for trial at the same time before the same judge. In this
4 system, if an assigned trial judge is not available on the day of the scheduled trial, the case is systematically
5 placed onto a list of cases awaiting trial. As judges become available for trial, they contact court
6 administration to accept a case from the case transfer list. A trial can be delayed for a day to weeks at a
7 time, waiting for a Superior Court judge to become available. This system leaves the parties, as well as
8 crime victims and witnesses, in limbo for an indefinite period of time. This can create enormous notice
9 problems for attorneys, witnesses and victims who suddenly find themselves in trial after being in a
10 “holding pattern” for weeks. The trial may then commence the day it is assigned to a new judge.

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12 The proposed amendment to Rule 10.5 addresses problems which arise when a criminal case is
13 transferred from one trial judge to another, based upon the unavailability of the assigned trial judge. If the
14 trial does not begin by the business day following the scheduled trial date, the amendment requires the
15 newly-assigned trial judge to provide the parties with at least five business days notice of when the trial
16 will actually commence. The purpose of the proposed rule change is to address the systematic problems
17 that occur when a trial judge has multiple cases ready for trial at one time, requiring a delay in the trial as
18 the matter is awaiting transfer to a new judge.

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21 The amendment is being jointly proposed by the Maricopa County Attorney’s Office and
22 Arizona Voice for Crimes Victims. The Maricopa County Attorney’s Office is responsible for the
23 prosecution of more than 40,000 felony criminal cases each year.

24
25 Arizona Voice for Crime Victims is an organization dedicated to ensuring that crime victims
26 receive their rights to justice, due process and dignified treatment throughout the criminal justice
27 process. The vision of Arizona Voice for Crime Victims is to establish a compassionate justice
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1 system in which crime victims are informed of their rights, fully understand those rights, know how
2 to assert their rights, have a meaningful way to enforce those rights, and know how to seek
3 immediate crisis intervention when they become victims of crime.

4 **II. PRACTICAL EFFECTS OF THE CURRENT SYSTEM**

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6 The case transfer system in Maricopa County leads to predictable miscarriages of justice as
7 attorneys are routinely forced to put their case together in as little as a day's notice of a new judge being
8 assigned to the case. This includes requiring attorneys to notify, and perhaps even re-subpoena, victims
9 and witnesses upon receiving notice that they have been assigned to a new judge for trial. This can be
10 especially difficult for victims or witnesses from lower socio-economic backgrounds, who are
11 unfortunately commonly involved in criminal prosecutions due to the locations and circumstances which
12 tend to produce crime. Often, these individuals do not have a phone number by which they can be easily
13 reached. That makes it very likely that the victim or witness will not find out that trial has been delayed
14 until they have actually appeared for trial at the scheduled time and location. Once the case is in the case
15 transfer system, if an attorney has less than a day's notice of a trial beginning before a new judge, ensuring
16 that the victim and witnesses are aware of when and where they will next be required to appear will be
17 difficult and time consuming. In-person contact may be necessary based on a number of variables outside
18 the control of the parties.
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21 The parties and witnesses must also make allowances in their daily schedules for whatever trial
22 schedule the newly-assigned judge intends to follow. This can be particularly demanding as some judges
23 only conduct trials on certain days of the week, and others may only conduct trial in the afternoons.
24 Victims and witnesses who have already had to made accommodations to their work and daily schedules
25 are then forced to make last minute changes which could result in having to take additional time off from
26 work or cancel important personal matters. Thus, they may have no choice but to use additional vacation
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1 time or take additional time off from work without pay. This can cause victims and witnesses to have to
2 reschedule or cancel vacations and personal appointments or find last minute daycare.

3 Additionally, a last minute change in the judge often results in a change in the location of the trial
4 which may present transportation issues for the parties, victims and witnesses. In Maricopa County the
5 two courthouses which handle criminal matters are approximately 20 miles apart, directly in the flow of
6 commuter traffic. Moreover, counsel (generally the prosecutor) often is forced to present his or her
7 witnesses out of order when a case in case transfer is suddenly set for trial. This results in a jury receiving
8 the evidence in an illogical or unorganized manner. Giving the parties at least five business days notice of
9 a new trial date will provide the parties with sufficient time to address all of these issues once a case has
10 been assigned to a new trial judge.
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12 A longer-term problem is that witnesses and victims conclude that the criminal justice system is
13 incompetent and arbitrary. An unfortunate yet foreseeable result is that they become reluctant to re-
14 involve themselves in the criminal justice system due to their prior negative experience. The case transfer
15 system in Maricopa County too often treats the participants as fungible pieces of evidence rather than those
16 who are doing a civic duty while sacrificing personal time and other priorities.
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19 **III. VICTIM'S RIGHTS**

20 The proposed amendment to Rule 10.5 is needed as the case transfer system currently does not
21 provide adequate notice to victims of sudden changes in trial date and location. The Victims' Bill of
22 Rights guarantees victims rights under the Arizona State Constitution to preserve and protect their rights
23 to justice and due process. Arizona Revised Statute § 13-4418 specifies that the victims' rights statutes
24 "shall be liberally construed to preserve and protect the rights to which victims are entitled."
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27 The Victims' Bill of Rights provides victims the rights to "justice and due process," to be treated
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1 with fairness,” and a “speedy trial or disposition and prompt and final conclusion of the case after the
2 conviction and sentence.” Ariz. Const. Art. II, § 2.1(A) (1), (10); These rights are further implemented
3 through both Statutes and Rules. See, e.g. A.R.S. §13-4409 (implementing the right the notice of all
4 criminal proceedings), Ariz. R. Crim. P., Rule 39(b)(15). Pursuant to Rule 39(b)(3)&(4) of the Arizona
5 Rules of Criminal Procedure, a victim has the “right to be given *reasonable notice* of the date, time and
6 place of any criminal proceeding” and “to be present at all criminal proceedings.” (emphasis added.)
7

8 Further, A.R.S. § 13-4409 specifically requires the prosecution to “give notice to the victim in a
9 timely manner of scheduled proceedings and any changes in that schedule.” To facilitate this, A.R.S. §
10 13-4409 provides that “the court shall provide notice of criminal proceedings ... to the prosecutor's
11 office at least *five days before* a scheduled proceeding to allow the prosecutor's office to provide notice
12 to the victim.” (emphasis added.) The statute requires the court to create a record on those occasions
13 when the court finds it is not reasonable to provide five days notice. Clearly, the case transfer system,
14 on its face, ignores victims’ rights and frequently violates the Constitutional rights of victims.
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16 17 **IV. EXAMPLE**

18 There have been many cases which have shown the problems inherent in the Maricopa County
19 case transfer system. One example that exemplifies many of these problems is *State v. Ronnie James*
20 *Taft*, CR 2005-111795-001 DT . This case involved multiple delays resulting in a dismissal with
21 prejudice by the trial court. Ultimately, this dismissal was appealed and reversed by the Arizona Court
22 of Appeals, Division I.
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24 The defendant was charged with Burglary in the Second Degree, a class three felony, pursuant to
25 A.R.S. § 13-1507. Thus, the case had Victims’ Rights implications. The defendant’s original “last day”
26 pursuant to Rule 8 of the Arizona Rules of Criminal Procedure was calculated to be September 25,
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1 2005. Trial was initially set for July 25, 2005, two full months prior to the expiration of the defendant's
2 speedy trial rights.

3 On August 17, 2005, the trial was continued for the first time, to September 26, 2005, due to
4 scheduling conflicts for both counsel and defense counsel's need to complete two additional pre-trial
5 interviews. On September 26, 2005, a second defense motion to continue the trial was granted with a
6 Rule 8 time waiver. According to the pleading, defense counsel had just completed a trial on Friday,
7 September 23, 2005, and needed more time to prepare for this trial. The trial was continued for week to
8 October 3, 2005 and a new "last day" was set for November 4, 2005. State's counsel appeared to be
9 ready for trial on September 26, 2005, but did not object to the motion to continue out of professional
10 courtesy.
11

12 On October 3, 2005, the original trial judge Douglas Rayes was unavailable to proceed due to his
13 own scheduling conflicts. For this reason, he placed the case into the case transfer system. On October
14 6, the State filed a motion to continue because the trial did not start as scheduled and the prosecutor had
15 a long-planned vacation from October 11th to October 16th, 2005. She filed the motion because it was
16 not clear if the case would be picked up by a new judge while she was unavailable to try to the case.
17 Judge Rayes retained the case in his Division thereafter and reset the trial date to October 17, 2005,
18 indicating that the case would be placed back in case transfer on that date.
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20 Sometime after October 17, 2005 (no Minute Entry was filed), the case was taken out of case
21 transfer by Judge Gerald Porter. The prosecutor recalls that only a few days had passed before the case
22 was taken out of case transfer by Judge Porter. However, his Division was understaffed for the trial and
23 so the case languished further. During this interim period, a necessary witness for the State clarified
24 that he was unavailable from October 26th through November 11th, 2005, due to a pre-planned trip to
25 Michigan.
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1 Given this new information, the State filed a motion to continue on October 25th, 2005. The
2 motion stated that “the trial date was originally scheduled for August 17th and then September 26th; both
3 trial dates were continued by the defense without objection by the State. The parties originally entered
4 into case transfer on October 3, 2005 and then again on October 17, 2005. Both parties are prepared to
5 begin trial [after November 11th, 2005].” The motion also proposed, as an alternative, that a jury be
6 picked on October 27th and be brought back for the two-day trial in mid-November.
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8 The State subsequently learned that Judge Porter was not inclined to continue the trial. Thus,
9 given the witness issue, the State filed a motion to dismiss without prejudice and avowed that it was not
10 made for the purpose of avoiding Rule 8. On October 28, 2005, Judge Porter heard arguments on the
11 motion to continue and the motion to dismiss without prejudice. At this hearing, he not only denied the
12 motion to continue, but found there was no good cause to dismiss the case without prejudice.
13 Accordingly, he dismissed the case *with* prejudice. The Court noted that it was a victim case, but added
14 that “at the end of the day, we have specific rules in place that are for the benefit of the defendant...”
15 Transcript of hearing, 10/28/08. The defendant received this case dispositive ruling despite having six
16 prior felony convictions against him as alleged by the State in its pleadings. Moreover, the dismissal
17 occurred one week prior to the defendant’s “last day,” which in turn fell only one week prior to the
18 availability of the State’s main witness for trial. The State appealed this decision.
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21 On February 1, 2007, the Arizona Court of Appeals overturned the trial court’s dismissal with
22 prejudice in a Memorandum Decision, 1 CA-CR 1183¹. The Court took the opportunity to comment on
23 the practical effects of the Maricopa County case transfer system. The Court analyzed the series of
24 events in this particular case as follows:
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27 ¹ This memorandum decision is not being cited as precedent for any particular legal finding. Rather, the case is cited as a
28 factual analysis of the Maricopa County case transfer system as applied to an actual criminal case. 17A A.R.S. Sup.Ct.Rules,
Rule 111.

1 The State was forced to move for a dismissal of the case because the
2 Superior Court was unable to procure a trial judge during the time that
3 the case was in case transfer. As a result of that delay, a necessary
4 witness became unavailable. Consequently, the State found itself in a
5 position of not being able to go forward with the case on October 28,
2005 because of Maricopa County's case transfer system and the lack of
any judicial officer available to try the case during the time that the case
was in case transfer.

6 *Id.* at 8-9. The Court found that a dismissal with prejudice was inappropriate because the defendant
7 failed to show actual prejudice. It also found that the various delays were caused by the "inefficiency
8 and ineffectiveness" of Maricopa County's case transfer system. *Id.* at 9.

9 The Court of Appeals did not do a strict "victims' rights" analysis in coming to its conclusion.
10 Clearly, however, the Court was able to conclude that Maricopa County's case transfer system is flawed.
11 As a result of the delays, the case could not be tried and was dismissed. Even if the dismissal had been
12 without prejudice, as would have been appropriate, the defendant would have been released absent the
13 immediate re-filing of the case. That issue has implications on not only the victim involved in the case
14 that is dismissed, but also potential victims.

15 Upon the apprehension of the defendant on multiple new offenses², the victim was re-contacted
16 by the prosecutor who handled the case. The victim expressed that he was still extremely frustrated
17 with the entire process he had been through. When he learned that the defendant was in prison on new
18 offenses, the victim indicated that he did not want to go through the process again. Given the passage of
19 time, there may have been other witness issues with the case as well.

20 ² Ronnie Taft is presently in the Arizona Department of Corrections. The Court of Appeals was unable to correct the trial
21 court's decision until its opinion was published on February 1, 2007. The State was, of course, unable to refile the Burglary
22 case in the interim period due to the prejudice attached to the dismissal. He had been in jail pending trial in this case and was
23 released upon its dismissal. The defendant was arrested again multiple times after his release and ultimately charged in four
24 separate complaints. He was charged with crimes occurring on March 19, 2006 (CR 2006-114890-001 DT); June 14, 2006
25 (CR 2006-011459-002 DT); August 21, 2006 (CR 2006-011396-001 DT); and September 6, 2006 (CR 2006-155174-001
26 DT). The defendant ultimately pled guilty to Burglary in the Third Degree, Possession of Narcotic Drugs for Sale, and
27 Armed Robbery - each committed on a separate occasion. The fourth complaint was dismissed in conjunction with the plea
28 agreement. The defendant was imprisoned for ten years (having received concurrent terms) only due to committing these new
crimes involving new victims.

1 *State v. Ronnie Taft* is but one example of the problems inherent in the Maricopa County case
2 transfer system. Constant uncertainty in the availability of a trial judge is especially prejudicial to the
3 State because the entire burden of proof rests on its shoulders. With this burden comes the necessity of
4 having most or all of the witnesses lined up and available for trial. It is simply unrealistic to expect all
5 of the State's witnesses to be available on short notice over an extended period of time given the hectic
6 daily schedules of attorneys, witnesses and victims who are people from all walks of life. The result of
7 this is predictable: many cases do not hold together, resulting in dismissal or last-minute plea
8 agreements that do not reflect the severity of the charges. These many people end up justifiably feeling
9 abused by the criminal justice system because they are, in fact, taken for granted and relegated to the
10 sidelines during the process. A cursory survey will reflect that similar injustice is rampant due to
11 Maricopa County's case transfer system.³

14 **V. CONCLUSION**

15 The proposed amendment requires a court to provide the parties with at least five business days
16 notice of the date a trial will actually begin. This would ensure that the parties have sufficient time to
17 notify and schedule the victims or witnesses that will need to appear. The proposed amendment also
18 allows the court to begin trial in less than five business days in those cases in which both parties are
19 ready and consent to starting the trial sooner. Having this kind of flexibility in the Rule will ensure the
20 parties have sufficient time to notify all victims and witnesses, while taking into account that, in some
21 situations, the parties may not need or desire five business days to make those arrangements.

23 Additionally, the proposed amendment recognizes that finding a new judge to preside over the
24 trial the very same day that the trial is scheduled to begin may not be realistic. This proposed
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27 ³The Maricopa County Attorney's Office has interviewed many attorneys regarding these issues and has found them to
28 be systemic. Due to the nuance involved in each case, only one has been specifically cited for the purpose of brevity and
because it was subject to appellate review.

1 amendment will only apply to those cases in which the delay in starting the trial is more than one
2 business day after the scheduled trial date, giving the court one business day to find another trial judge.
3 Delaying the start of a trial two or more business days after the scheduled trial date is likely to cause the
4 parties to have difficulty in rescheduling the appearance of the victim and witnesses.

5 Most importantly, in Arizona, crime victims have Constitutional rights to justice and due
6 process, to be treated with fairness, and to fair notice of hearings that involve or affect them. The
7 Maricopa County case transfer system does not adequately safeguard this right. The proposed Rule
8 change would conform Rule 10.5 of the Rules of Criminal Procedure with the Victims' Bill of Rights
9 and Arizona Revised Statutes. This new Rule would ensure that on those occasions when a scheduled
10 trial is delayed by more than one business day, adequate notice of the new date will be provided to the
11 parties so that they can make any necessary arrangements to ensure their appearance and the appearance
12 of all necessary witnesses.
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16 VI. EXPEDITED CONSIDERATION

17 Pursuant to Rule 28(G) of the Rules of the Supreme Court, the Petitioner submits this request for
18 expedited consideration by the Court, as the compelling circumstances presented in the petition render the
19 annual processing cycle inadequate to timely address this urgent matter.
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EXHIBIT A

Text of Proposed Rule Change

(Rule 10.5 (A) & (B) remain unchanged, language for a new paragraph C is capitalized.)

C. UNLESS BY CONSENT OF ALL PARTIES AND AFTER GOOD FAITH ATTEMPT BY THE PROSECUTOR TO CONSULT WITH THE VICTIM, IF A CASE IS TRANSFERRED FROM THE ASSIGNED TRIAL JUDGE TO A NEW TRIAL JUDGE FOR TRIAL AND THE TRIAL DOES NOT COMMENCE BY THE BUSINESS DAY FOLLOWING THE SCHEDULED TRIAL DATE, THE NEW TRIAL JUDGE SHALL PROVIDE THE PARTIES AND ANY ATTORNEY WHO HAS FILED A NOTICE OF APPEARANCE ON BEHALF OF A VICTIM WITH AT LEAST 5 BUSINESS DAYS NOTICE OF THE ACTUAL DATE THE TRIAL WILL COMMENCE BEFORE THE NEW JUDGE. ALL TIME BETWEEN THE DATE OF THE TRANSFER AND THE COMMENCEMENT OF THE TRIAL BEFORE THE NEW TRIAL JUDGE SHALL BE EXCLUDED FROM RULE 8.2 TIME COMPUTATION. BEFORE ANY TRANSFER OF A CASE, THE COURT SHALL CONSIDER THE IMPACT OF THE TRANSFER ON THE RIGHTS OF THE VICTIM TO JUSTICE AND DUE PROCESS, TO NOTICE OF PROCEEDINGS, AND TO A SPEEDY TRIAL.