

Mark Meltzer
Capital Case Oversight Committee Staff
Administrative Office of the Courts
1501 W. Washington, Suite 410
Phoenix AZ 85007
(602) 452-3242
MMeltzer@courts.az.gov

IN THE ARIZONA SUPREME COURT

PETITION TO AMEND RULE 32.7,) Supreme Court No.
ARIZONA RULES OF CRIMINAL) R-08- _____
PROCEDURE)
_____)

Pursuant to Rule 28 of the Rules of the Supreme Court, the Capital Case Oversight Committee respectfully petitions this Court to amend Rule 32.7 of the Arizona Rules of Criminal Procedure as set forth in the attached Appendix.

In December 2007, the Chief Justice issued Administrative Order No. 2007-92, establishing the Capital Case Oversight Committee. The order directed the Oversight Committee, among other things, to develop recommendations for any formal policies deemed necessary for the timely processing of capital case proceedings. In November 2008, the Oversight Committee submitted a report to the Arizona Judicial Council, which approved the Committee’s recommendations. This petition seeks adoption of one of the recommendations in that report

regarding mandatory informal conferences on petitions for post-conviction relief (“PCRs”) in capital cases.

Rule 32.7 of the Arizona Rules of Criminal Procedure pertains to informal conferences for petitions for post-conviction relief in any criminal case. The existing rule provides that “the court at any time may hold an informal conference to expedite the proceeding.” The amendment proposed by this petition would add a new sentence to the existing rule. This additional sentence states: “In a capital case, the court shall hold an informal conference within 90 days after the appointment of counsel on the first notice of a petition for post-conviction relief.”

The Capital Case Task Force, which preceded the Oversight Committee, had attempted to draft a rule regarding mandatory conferences on capital case PCRs, but the Task Force was unable to reach consensus on the language for a rule. This proposed rule was also the subject of considerable discussion by members of the Oversight Committee. The Oversight Committee considered, among others, the following aspects of a rule specifically for capital cases:

1) Whether a conference was necessary. The Capital Case Task Force believed generally that a rule for mandatory PCR conferences would expedite PCR proceedings. While a minority of the Oversight Committee believed that mandatory PCR conferences would lead to judicial micromanagement of the proceedings, a majority of the Committee believed that the superior court should

not only use informal conferences for capital case PCRs, but also, that an informal conference in capital cases should be mandatory on a first notice of a petition for post-conviction relief. The majority believed that if a conference was discretionary, certain judges might choose not to set one. The intent of the proposed amendment to Rule 32.7 is to have effective judicial management of capital case PCRs from their inception, so that the petitions would not languish.

2) When an initial, informal conference should be set. This issue is linked with the inquiry about what would be discussed at the initial, informal conference in a capital case PCR. The consensus of the members was that it would be unproductive to discuss matters such as discovery, or even a deadline for when the petition would be filed, at an initial conference. Every capital case is unique, and the initial informal conference was too early in the process for detailed timelines or discussions of particular issues. However, the initial informal conference would be an opportunity to discuss defense counsel's acquisition of the file, to obtain any preliminary assistance from the court that might be appropriate in securing records, and to establish, but only to the extent possible, a general schedule for future proceedings. The value of the initial informal conference is to have the parties and the court attempt to determine how long it would take to process the petition and attempt to identify the issues that would need to be resolved.

With that in mind, the majority of the Committee agreed that an initial informal conference should be held within 90 days after the appointment of counsel on a first notice of post-conviction relief. Subsequent informal conferences could be scheduled at the court's discretion.

3) Who should be present at the informal conference. Rule 32.7 currently provides that “the defendant need not be present [at the informal conference] if the defendant is represented by counsel who is present.” Defense counsel members of the Oversight Committee believed that if orders were entered at a mandatory informal conference, the defendant would have a right to be present. This raised concerns about costs and security in transporting death row inmates to the superior court for an informal conference. Another concern was that if a defendant had a right to be present, that would lead to a corresponding right of the victim's family to be present at the conference. Committee members observed that informal conferences are typically held in chambers, and the majority believed that there is no requirement that anyone other than counsel be present at an informal conference. Rule 32.7 currently addresses who should be present, and the Oversight Committee is not recommending any change to the existing language on this point.

For the foregoing reasons, the Oversight Committee respectfully requests that the Supreme Court amend Rule 32.7, Arizona Rules of Criminal Procedure, as set forth in the attached Appendix.

Respectfully submitted this 31st day of December, 2008.

Capital Case Oversight Committee:

By: /s/ Mark Meltzer

Mark Meltzer

Arizona Bar No. 004491

Capital Case Oversight Committee Staff

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APPENDIX

PROPOSED AMENDED RULE 32.7, ARIZONA RULES OF CRIMINAL PROCEDURE

(New language is underlined.)

Rule 32.7. Informal conference.

Informal conference. The court may at any time hold an informal conference to expedite the proceeding. In a capital case, the court shall hold an informal conference within 90 days after the appointment of counsel on the first notice of a petition for post-conviction relief. The defendant need not be present if the defendant is represented by counsel who is present.