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9 (STATE BAR NUMBER 003813)

10
11 IN THE SUPREME COURT OF THE STATE OF ARIZONA

12 IN THE MATTER OF:
13 PETITION TO AMEND RULE
14 92(a)(1) OF THE RULES OF THE
15 SUPREME COURT OF ARIZONA

R-09-

MARICOPA COUNTY ATTORNEY'S
PETITION TO AMEND RULE 92(a)(1)
OF THE RULES OF THE SUPREME
COURT OF ARIZONA

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17 This petition is brought under Rule 28(G) of the Rules of the Supreme Court. The
18 Petitioner seeks to modify Rule 92(a)(1) of the Rules of the Supreme Court.

19 Respectfully submitted this 12th day of January, 2009.

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21 ANDREW P. THOMAS
22 MARICOPA COUNTY ATTORNEY

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24 BY: 
25 PHILIP J. MACDONNELL
26 CHIEF DEPUTY COUNTY ATTORNEY
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1 MEMORANDUM OF POINTS AND AUTHORITIES

2 **I. Background and Purpose of the Proposed New Rule.**

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4 Under current Court Rules, the presiding judge of each county is empowered to,
5 among other duties, “[m]ake regular and special assignments of all judges, except as
6 otherwise provided by A.R.S. Section 8-202(B), and, unless otherwise directed by the
7 Chief Justice, assign judges within the county to other counties.” 17A A.R.S.
8 Sup.Ct.Rules, Rule 92(a)(1). The Court Administrator, under the direction of the
9 presiding judge, is to “[a]ssign all motions, pretrials, trials and other matters for
10 disposition, and maintain and publish all assignments and calendars...” 17A A.R.S.
11 Sup.Ct.Rules, Rule 93(a)(2).
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15 These rules do not restrict the presiding judge in individual case assignments. In
16 Maricopa County, for example, the process of assigning new cases to judges is further
17 specified by Maricopa County Superior Court Local Rule 4.3(a). This provision states
18 that “[c]riminal cases shall be assigned to trial divisions in a manner to be prescribed by
19 the presiding judge providing for as equal a distribution of cases to all divisions as
20 possible.”
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23 The effect of Supreme Court Rule 92(a)(1) is that a presiding judge may direct a
24 particular case to a specific judge, so long as judicial resources are divided relatively
25 evenly. While one or both parties can make a motion to strike a judge for bias thereafter,
26 this is a difficult burden to meet in actual practice. The current state of the law has
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1 insufficient safeguards to prevent actual assignment of a biased judge. In addition, the
2 current state of the law can give rise to an appearance of impropriety on the part of the
3 judiciary. This Petition to Amend seeks to address these issues of fairness and
4 appearances by requiring a random selection of judges to new cases.
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6 **II. Examples from Other Jurisdictions**

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8 Randomization of judicial case assignments is common practice in other
9 jurisdictions. Rules requiring this can be found in other Arizona counties, other States,
10 and in Federal court. Beginning at the local level, Arizona's second-largest county has
11 addressed this problem by implementing randomization. Pima County Local Rule 6.3
12 reads as follows:
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15 **Case Assignment.** All cases filed with the Clerk of Superior Court
16 shall be assigned a case number and shall be assigned forthwith by
17 the Clerk or the Court Administrator to a Civil Trial Division
18 which will thereafter process the case to conclusion unless the case
19 is otherwise assigned by the Presiding Judge, or by the Court
20 Administrator under Rules 6.4, 6.5, 6.6 or 6.11. **The assignment
21 of cases may be done by automated means, but in any event,
shall be accomplished in a random manner so as to be
unpredictable and provide an equal distribution of cases
among Civil Divisions.**

22 [Emphasis added.] While the Rule refers to "Civil Divisions," the system appears to
23 apply to criminal cases as well. A representative of the Pima County Superior Court
24 Research and Statistics Division informs a representative of the Maricopa County
25 Attorney's Office that all criminal cases are randomly assigned to criminal divisions
26 based on an AGAVE computer model. The only exception to this is first-degree murder
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1 cases, which are delegated by the presiding judge on a resource-formula basis (i.e., judges
2 are not “hand-picked” in this situation either, but a less-scientific method is utilized).

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4 The U.S. District Court for the District of Arizona has a Local Rule which requires
5 the randomization of all criminal case assignments. Local Rule 5.1 reads as follows:

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7 **(a) Assignment of Criminal Cases.**

8 (1) In General. **Within each division, the criminal cases, when**
9 **filed, shall be assigned among the District Judges of the**
10 **division by the Clerk (or by a deputy designated by the Clerk)**
11 **by automated random selection and in a manner so that**
12 **neither the Clerk nor any parties or their attorneys shall be**
13 **able to make a deliberate choice of a particular Judge for a**
14 **particular case.** At the conclusion of the preliminary hearing and
15 detention hearing in Tucson, or at the conclusion of the grand jury
16 return in Phoenix, the Clerk shall randomly refer the criminal case
17 to a Magistrate Judge. The cases so assigned or referred shall
18 remain with the Judges to whom assigned or referred unless
19 otherwise ordered by the Court. With the exception of defense
20 counsel, any officer of the Court who determines that a new charge
21 has been filed against a defendant who is under federal Court
22 supervision shall immediately notify the presiding judge before
23 whom the new case is pending.

24 [Emphasis added.] The exceptions that follow do not reduce the randomization, unless a
25 judge has a reason to handle a particular defendant. For example, a defendant that has
26 been placed on probation by a judge and is back in court on a new offense, or
27 consolidation of co-defendants to one judge. In no circumstance does it appear that a
28 judge can be “hand-selected” in the U.S. District Court for the District of Arizona absent
these appropriate exceptions.

1 Randomization of judicial case assignment has also been widely adopted
2 throughout other State jurisdictions. For example the State of New York has adopted
3 “Uniform Rules for Courts Exercising Criminal Jurisdiction.” Section 200.11(c) of these
4 Rules sets forth the following process:
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6 (c) **Assignment of actions to individual assignment judges.**
7 Except as provided in subdivision (b) of this section, upon
8 commencement of a criminal action in the superior court, **the**
9 **action shall be assigned to a judge by the clerk of the court in**
10 **which it is pending pursuant to a method of random selection**
11 **authorized by the Chief Administrator.** The judge thereby
12 assigned shall be known as the "assigned judge" with respect to
13 such action and, except as otherwise provided in subdivision
14 (d) of this section, shall conduct all further proceedings therein.

15 [Emphasis added.] The exceptions to this Rule deal with extraordinary circumstances
16 such as unavailability of an assigned judge or a particularly time-sensitive matter.

17 These three examples were chosen from among the many jurisdictions that have
18 instituted a randomized case assignment system.

19 **III. Proposed Rule Change**

20 The proposed amendment, attached as Exhibit A, modifies existing Rule 92(a)(1)
21 of the Rules of the Supreme Court to require the presiding judge in each county to
22 implement a randomized case assignment systems within each judicial division for cases
23 not previously handled by a judge. This proposed amendment would not reduce the
24 ability of presiding judges to appropriately rotate judges on a divisional basis to meet the
25 needs of a county’s legal system, but would ensure that a judge is not hand-picked to try a
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1 particular case. The rule will ensure that the selection of judges for particular cases is a
2 system that is fair and appears to be fair.

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4 **IV. Conclusion**

5 All litigants deserve a fair and impartial judge at every hearing and trial. Rule
6 92(a)(1) of the Rules of the Supreme Court is inadequate. The proposed amendment will
7 cure a defect in the current rules. Its adoption would promote the public interest and
8 protect important Constitution rights to a fair trial for all parties. Thus, the Petitioner
9 respectfully requests that this Court amend Rule 92(a)(1) as proposed in Exhibit A.
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12 Respectfully submitted this 12th day of January, 2009.

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MARICOPA COUNTY ATTORNEY

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1 EXHIBIT A

2 Proposed Amendment to Rule 92

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4 (a) **Powers and Duties of Presiding Judge.** The presiding judge in each county, in
5 addition to exercising general administrative supervision over the court and the judges
6 thereof, shall:

7 (1) Make regular and special division assignments of all judges, and create a
8 randomized case assignment system within each judicial division for all cases in
9 which a judge has not previously been involved, except as otherwise provided
10 by A.R.S. Section 8-202(B), and, unless otherwise directed by the Chief Justice,
assign judges within the county to other counties;

11 (2) Exercise general supervision over all court personnel;

12 (3) Prescribe the powers and duties of the clerk of the court, in addition to those
13 prescribed by law and the Supreme Court;

14 (4) Appoint with the approval of the Supreme Court an associate presiding
15 judge to serve as acting presiding judge during the presiding judge's absence or
16 unavailability;

17 (5) Determine the need for and approve (i) the allocation of space and
18 furnishings in the court building; (ii) the construction of new court buildings,
19 courtrooms and related physical facilities; and (iii) the modification of existing
20 court buildings, courtrooms and related physical facilities;

21 (6) Identify and develop programs that provide alternative methods for the
22 resolution of civil disputes to which actions may be referred pursuant to the
23 authority conferred by Rule 16(g) of the Arizona Rules of Civil Procedure, and
24 promulgate such local rules as a majority of the judges of the county may
25 approve establishing and governing such alternative dispute resolution
26 programs.
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1 In order to facilitate the business of the court the presiding judge or associate
2 presiding judge may delegate the duties prescribed in these rules to other judges.

3 **(b) Associate Presiding Judge.** The associate presiding judge shall serve at the
4 pleasure of the presiding judge and shall exercise and discharge all powers and duties
5 of the presiding judge, except the associate presiding judge may not appoint court
6 commissioners or appoint judges permanently to special assignments.

7 **(c) Assignment of Cases.** In counties with more than one judge, the presiding judge
8 may, upon the presiding judge's motion or upon the motion of any party, assign a case
9 permanently to one judge for all purposes.