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10 (STATE BAR NUMBER 003813 AND 010471)

11
12 **IN THE SUPREME COURT OF THE STATE OF ARIZONA**

13 **IN THE MATTER OF:**

R-09-0005

14 **PETITION TO AMEND RULE 4.1(b)
15 OF THE ARIZONA RULES OF
16 CRIMINAL PROCEDURE.**

**MARICOPA COUNTY ATTORNEY'S
17 COMMENTS TO PETITION TO
18 AMEND RULE 4.1(B) OF THE
19 ARIZONA RULES OF CRIMINAL
20 PROCEDURE**

21 The Maricopa County Attorney hereby comments to, and opposes, the Petition to
22 Amend Rule 4.1(b) of the Arizona Rules of Criminal Procedure. The petition was filed
23 by the Coconino County Legal Defender (Petitioner).

24 Rule 4.1(b) requires that a complaint be filed within 48 hours from the time of an
25 individual's Initial Appearance when the person is arrested without a warrant. In
26 calculating the last day for filing a complaint, Rule 1.3(a) states that "the day of the act or
27 event (in this case the Initial Appearance) from which the designated period of time
28 begins to run is not to be included." Further, Rule 1.3(a) excludes Saturdays, Sundays
and legal holidays from the 48 hour computation period.

1 The Petitioner seeks to amend Rule 4.1 by requiring that a complaint be filed within
2 48 hours “from the actual time of the initial appearance and include Saturday, Sunday and
3 legal holidays” in the time computation. (Petition, p. 3) Such an amendment is legally
4 unnecessary, would create confusion when calculating a filing deadline and would create
5 a severe financial crisis. Eliminating the Saturday, Sunday and legal holidays and “the
6 day of the act or event” (Initial Appearance) exclusions from the method of computing the
7 time for filing a complaint pursuant to the existing Criminal Rules of Procedure would
8 place an extreme burden on prosecuting agencies and police agencies. It would also
9 severely inhibit effective law enforcement practices throughout the State of Arizona. The
10 end result would significantly conflict with the interests of justice. A number of specific
11 reasons exist for the Arizona Supreme Court to deny Petitioner’s request.

12 First and foremost, it is critical to recognize that the impact of Criminal Rules of
13 Procedure 1.3 and 4.1 fully comport with existing law. These two rules were
14 promulgated by the Arizona Supreme Court. The two rules have been in effect since
15 1975. The Petitioner does not cite to, nor is the State aware of, any state statutes or other
16 existing Rules of Court that are violated by the application of Rules 1.3 and 4.1.

17 The Petitioner complains about the existing rules because, depending on the day of
18 the week an arrest is made and where no complaint is filed, one suspect may remain in
19 custody three days more than another suspect because Rule 1.3 allows for excluded time.
20 Clearly, the rule does not create any Constitutional impediment to an arrested person’s
21 rights. The Petitioner does not cite to any federal or state case law that legally mandates

1 the proposed change to Rule 4.1. There is no known conflict between Rule 1.3 and any
2 decisional law from either the United States or Arizona Supreme Courts.

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4 The provision of Rule 1.3 that excludes Saturday, Sunday and legal holidays in
5 computing the time in which a complaint must be filed is clearly lawful, even when
6 considering Petitioner's hypothetical examples. An arrested person's liberty rights are
7 protected under the Constitution at the Initial Appearance before a magistrate. *See*
8 *County of Riverside v. McLaughlin*, 500 U.S. 44 (1991). At the Initial Appearance, the
9 magistrate must make a neutral and detached determination that probable cause exists to
10 hold a person in custody for further proceedings. Regardless of whether they can post
11 bond, all persons who are in custody at the time of their Initial Appearance are scheduled
12 a Preliminary Hearing within 10 days of the date of the Initial Appearance pursuant to
13 Rule 5.1, Rules of Criminal Procedure. The United States Supreme Court noted that the
14 probable cause finding made by the magistrate at the Initial Appearance represents a
15 necessary accommodation between competing interests of the individual's liberty rights
16 and the State's duty to protect society from individuals reasonably suspected of
17 committing crime. *County of Riverside, supra*, at 52-53 (1991), citing *Gerstein v. Pugh*,
18 420 U.S. 103, 112-114 (1975). That balance continues today with the application of Rule
19 1.3 that outlines when time starts and what time, if even applicable, is excluded in
20 determining when a complaint must be filed after an arrested person's Initial Appearance.
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27 Petitioner is misguided by asserting that "administrative expediency" cannot justify
28 the exclusion of time allowed by Rule 1.3. Petitioner's argument is incorrect in stating

1 that it takes a mere hour or two to file a complaint. (Petition, p. 2.) That assertion might
2 be true for a simple drug possession charge, and when a prosecutor can immediately
3 review the submittal. However, that time estimate is completely unrealistic when a
4 prosecutor is addressing three or four separate departmental reports on a repeat offender
5 or a person arrested for multiple counts of identity theft, fraud schemes or sex offenses.
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7 The processing of these types of cases involve a substantial amount of time solely to
8 review police reports and not considering the ministerial time needed for just one
9 complex case.
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12 Even from a practical point of view, the proposed change to Rule 4.1 is extremely
13 imprudent. At the present time, and with no immediate relief in sight, a severe budget
14 crisis is affecting government at the state, county and municipal levels. In Maricopa
15 County, all parties (e.g. County Attorney, Public Defender, Clerk of the Court, courts, law
16 enforcement) involved in processing criminal cases are required to significantly reduce
17 their budgets. The Maricopa County Superior Court conducts Initial Appearance
18 calendars seven days a week at three hour intervals (5 am/pm, 8 am/pm, 11 am/pm, 2
19 am/pm). A change to Rule 4.1 would create an enormous impact on current operations
20 and only exacerbate the severe financial constraints that currently exist.
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24 Petitioner's amendment would require substantial additional office staff to provide
25 the necessary 24 hour coverage on Saturday, Sunday and legal holidays. Petitioner only
26 addresses the weekend and holiday time periods. (Petition, pp. 2-3) The amendment to
27 Rule 4.1 would also eliminate "the day of the act or event" exclusion provided by Rule
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1 1.3. No reason was given by Petitioner for excluding this precise time period in addition
2 to Saturday, Sunday and legal holidays. In essence, depending on how the actual start
3 time of the 48 hour period in which to file a complaint is calculated, the clock may start
4 before the arrested person's Initial Appearance Hearing even terminates.
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7 Moreover, it is important to recognize that the rule would apply every day of the
8 week, not just weekends, because of the around the clock Maricopa County Initial
9 Appearance court calendars. If Rule 4.1 is amended as proposed, deadlines in which to
10 file complaints would be occurring at any time within a 24-hour period, on any day of the
11 week. Eliminating what is now excluded time would significantly curtail the time
12 available for law enforcement to deliver a police report to the prosecutor, for the
13 prosecutor to review the case and for the support staff to process and deliver the
14 complaint to the Clerk of the Court for official filing. A substantial number of deputy
15 county attorneys and support staff would be needed to process cases for reviewing and
16 filing cases outside the typical Monday-through-Friday working hours. Similarly, deputy
17 Clerks of the Court would be required to process the cases filed. Law enforcement would
18 be hampered with officers hastily taken off the streets to conduct ministerial duties during
19 the time period in question.
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24 In Maricopa County, in-custody police reports are processed in Phoenix and Mesa
25 by the County Attorney's Office. Notwithstanding a current hiring freeze, the salaries and
26 benefits for an additional 8 attorneys and 8 support staff to cover both locations for the
27 weekdays between 5pm and 8am, along with around the clock coverage on Saturday,
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1 Sunday and legal holidays, would easily approach approximately \$1 million.

2 Building security presents another serious issue for employees working during
3 nighttime hours, especially on the weekend. A number of months ago, Court
4 Administration decreased the hours for manned security at the Southeast Facility court
5 building in Mesa, Arizona as a cost saving measure. Security officers for the entire
6 building are present only during the hours of 5:30am and 11:30pm on Monday through
7 Friday. There are no security officers in the building on Saturday, Sunday or legal
8 holidays. This places employees at risk when leaving or entering the building during the
9 nighttime hours.
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13 In summary, amending Rule 4.1(b) is legally unnecessary and overly broad in
14 eliminating time in which to file a criminal complaint. It would create confusion in
15 calculating a filing deadline, and it would create a severe financial hardship on
16 governmental entities. The Maricopa County Attorney's Office strongly urges this Court
17 to deny the Petitioner's request to amend Rule 4.1(b) of the Arizona Rules of Criminal
18 Procedure.
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22 Respectfully submitted this 19th day of May, 2009.

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27 BY: Philip J. MacDonnell
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