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IN THE SUPREME COURT
STATE OF ARIZONA

In the Matter of:)	Supreme Court No. R-08-0005
)	
AMENDMENT OF RULES)	Comments of Pima County Attorney
32.4(c)(2) AND 32.6(a) AND (b))	Barbara LaWall Regarding Petition to
OF THE ARIZONA RULES OF)	Amend Rules 32.4(c)(2) and 32.6(a) &
CRIMINAL PROCEDURE)	(b) of the Arizona Rules of Criminal
)	Procedure
)	

Pima County Attorney Barbara LaWall respectfully requests that this Court decline to amend Rules 32.4(c)(2) and 32.6(a) and (b) of the Arizona Rules of Criminal Procedure as requested in Petition R-08-0005. The proposed changes to the Rules are unnecessary and would prejudice the administration of justice by virtually guaranteeing additional delay in the adjudication of Rule 32 petitions.

The proposal before the Court would: 1) delay the due date of a petition for post-conviction relief by thirty days, 2) delay the due date of the State=s response to

the petition by forty-five days, and 3) lower the standard for time extensions from extraordinary circumstances to good cause.

First, the proposed changes are not necessary. Defense counsel already has adequate time to investigate and prepare constitutionally adequate pleadings in most cases. And the Rules already allow for a thirty-day extension upon a showing of good cause. Ariz. R. Crim. P. 32.4(c)(2). These extensions are routinely given so routinely, in fact, that the effective due date in many cases is ninety days rather than sixty.

For exceptional cases, the current Rules allow the Superior Court the authority and flexibility it needs to extend due dates so that counsel may effectively perform their duties. If, as the petition mentions, counsel needs additional time to investigate and prepare constitutionally adequate pleadings, the court can grant an initial thirty-day extension for good cause. If counsel needs even more time, the court may extend the time again because of the extraordinary circumstances. The Superior Court can already deal with all cases, no matter how simple or complex, under the current Rules.

The change from extraordinary circumstances to good cause lowers the standard for extensions such that it may be difficult for a court to deny extensions. Many, if not most, ordinary occurrences, such as trial work, vacations, illnesses, etc.,

may constitute good cause but not extraordinary circumstances. By lowering the standard for additional extensions, the effective due date for even average cases could realistically become 150 days or even longer.

The petition argues that deleting the requirement for extraordinary circumstances from this rule promotes uniformity. This is true. But it would promote an unnecessary uniformity by building in additional delay in all cases, not just the cases that truly merit time extensions. The petition recognizes that post-conviction petitions vary widely in their complexity and difficulty. For those cases that involve time-intensive investigations, the Superior Court can already grant needed time. But for those many cases that are factually and legally unremarkable, the proposed changes would build in an additional seventy-five days of unnecessary delay. It is not necessary to build in additional delay in all cases to deal with the exceptional cases.

The petition also recognizes that delays in filing and litigating post-conviction claims have negative impacts. It may be bad for a defendant, who will have to wait longer to get relief. It is bad for crime victims, who have the constitutional right to a prompt and final conclusion of the case after the conviction and sentence. Ariz. Const. art. 2, ' 2.1(A)(10). It is bad for the Arizona justice system because later

deadlines mean bigger caseloads and staler claims. Because of this, I agree with the petition that these concerns are better dealt with by the Superior Court, who can consider the facts of the case, the reasons for delay, and any concerns voiced by the victim, than by the requirements of a rule. Indeed, they are better dealt with by the Superior Court, under the adequate framework that the current Rules provide.

For these reasons, I urge this Court to decline to amend the Rules as requested in the petition.

RESPECTFULLY SUBMITTED this 20th day of May, 2008.

BARBARA LAWALL
PIMA COUNTY ATTORNEY