

**ARIZONA SUPREME COURT
CAPITAL CASE TASK FORCE**

MINUTES

June 15, 2007

Supreme Court Building, Phoenix, AZ

MEMBERS PRESENT:

Hon. Anna Baca
James Beene
Kent Cattani
Donna Hallam
Dan Levey
Martin Lieberman
Paul Prato
Hon. Ron Reinstein
Hon. Michael Ryan, Chair
Bob Shutts
Hon. Ann Timmer

MEMBERS ABSENT:

Jim Belanger
Hon. James Keppel
Jim Logan
Hon. Stephen McNamee

GUESTS:

Phil MacDonnell
John Todd

STAFF:

Jennifer Greene
Lorraine Nevarez

I. Call to Order & Approval of the Minutes

Justice Ryan called the meeting to order at 10:10 AM. The Task Force approved the minutes of the May 18th meeting with modifications.

II. Subcommittee Updates & Proposals

Subcommittee chairs were asked to update the Task Force on their recent meetings and proposals.

A. Trial Subcommittee Proposals

Judge Reinstein, standing in for Judge Keppel, reviewed the June 11 Trial Court Subcommittee meeting notes attached hereto.

1. Stipulated extension of death notice filing deadline (Rule 15.1(i)) – Appendix B to subcommittee’s meeting notes

This proposal would give the attorneys an unspecified amount of time, to be determined based on the facts of the case, to identify mitigation early on. The prosecution would still be able to file the capital case notice at the 60-day point, but in a given case, perhaps ten percent, there are mitigating circumstances relatively easily gathered that would keep the case from being misguidedly labeled a capital case. Under the proposal, the filing of the stipulation would be equivalent to filing the notice of intent to seek death for purposes of committing resources to the

case. As they do now, the investigators and attorneys would undertake an immediate effort to secure mitigating evidence. The advantages to be gained from this proposal are:

- Faster resolution of those cases that might be mischaracterized as capital cases;
- Avoid committing the parties and victims' family members to believing the case to be a capital case;
- Facilitate working toward an agreed outcome short of trial.

The task force agreed to add language to the proposal to specify that:

- The stipulation be filed in writing and approved by the court or noticed for hearing;
- The prosecutor should consult with the victim's family; and
- The stipulation will trigger Rule 6.8 as well as the other administrative measures that normally follow upon the filing of the death notice.

2. Proposed statutory requirements for meeting speedy trial deadline (ARS §13-4435.01) – Appendix A to the subcommittee's meeting notes

This proposal, drafted by the Maricopa County Attorney's Office was originally part of SB1286. Judge Reinstein reviewed the concerns raised about the proposal at the subcommittee meeting. Judge Baca reminded the Task Force that the trial court's standards for pre-trial management of capital cases (Judge Mundell's Administrative Order No. 2007-023) will eliminate delays caused by prolonged mitigation investigations. Additionally real-time case monitoring by the trial court's new Capital Case Manager, combined with efforts by the County Attorney and the Defender agencies to limit the caseloads of capital attorneys, should alleviate delays caused by scheduling conflicts as much as is possible given the resources available to the court. The other commonly-cited reason for continuances involves forensic lab work; that obstacle may be overcome to some degree by closer judicial oversight envisioned by the new pre-trial management standards.

Pursuant to A.O. 2007-023, Judge Baca and Judge Tim Ryan now rule on all motions to continue a case beyond the 18-month deadline. The decision no longer rests with the trial judge. The consistency and efficiency sought by the proposed statute will be accomplished without involving the Supreme Court in motions to continue.

3. Amending the 18-months presumptive trial date (Rule 8.2(a)(4))

The Task Force discussed whether to recommend changing the 18-month deadline for capital trials. There was general recognition of the fact that, given available resources, a standard setting the presumptive trial date at 24-30 months better reflects current reality. Judge Baca explained that at least half the pending inventory in Maricopa County is more than 18 months old. The trial court has asked for six new judges, yet the county Office of Management and Budget is now indicating only one new judgeship will be added, despite its earlier representations that more would be made available. The Board of Supervisors has not yet been asked to vote on the issue. The court also lacks enough courtrooms to conduct the lengthy trials that will be required to keep pace with new case filings and dispose of the backlog – projections

range from 20 to 30 trials per year -- assuming retired judges can be persuaded to return to help deal with the backlog. The new downtown courthouse will not be built for another several years.

Members discussed changing the current standard to two years, or a range of 18 to 30 months, or deciding on a case-by-case basis. However, if the problem derives from a lack of resources, extending the 18-month deadline will not resolve the problem, although it could help to avoid raising unrealistic expectations on the part of victims' families. Other counties are able to comply with the 18-month standard, albeit for a lot fewer capital cases. Justice Ryan suggested the Task Force could recommend adoption of a longer time standard applicable only in Maricopa County and only while the current situation exists rather than changing the statewide policy. However, the consensus of the Task Force was to leave the current standard of 18 months in place. Extending the time would not address the problem of delay.

4. Modification to the judicial rotation policy in Maricopa County

There was general agreement that the trial court's policy of rotating criminal judges every two or three years complicates the timely disposition of capital cases. Among the options discussed were:

- Create a dedicated core of experienced judges to handle capital cases and/or capital trials who would rotate less frequently, perhaps only after five years.
- As judges rotate to new assignments, they would retain their capital cases rather than handing them off to in-coming criminal judges.
- Assign capital cases only to those judges who are not approaching the end of their criminal assignments.
- Rotate experienced criminal judges to a "special assignment" calendar, rather than a high volume department such as juvenile or family law so they can follow through on the capital cases they would be taking with them.

Judge Baca explained that six of the nine judges who will be rotating into the criminal department in July have enough experience to handle capital cases immediately. She may assign complex capital cases to the other three newer judges after they receive more training in September. Mr. Levey asked whether civil department judges could be enlisted to handle some capital cases. Judge Baca and Reinstein explained that the civil department traditionally has handled overflow criminal cases, but there are disadvantages to deferring too many civil trials in favor of criminal cases. Civil cases often have their own "victims;" and the court's ability to resolve civil disputes in a timely fashion is a fundamental feature of Arizona's business climate that can make a difference to corporate decision-makers who must choose where to locate their companies. Delays in civil case processing can negatively impact the economy.

5. Reconsidering the statutory aggravators (A.R.S. §13-703)

The subcommittee asked the Task Force to consider recommending that the legislature reduce the number of aggravators to better identify the "worst of the worst" first degree murder cases, reduce the number of cases eligible for capital status, and alleviate jurors' confusion. Comparing Arizona's list of fourteen aggravators with six other Southwestern States showed that Arizona has fewer aggravators than four of those states, California, Colorado, Nevada, and Utah. It is

possible that inviting legislative review of the issue could backfire. It was generally recognized that this recommendation does not fall within the scope of the Task Force's assignment, but a review by the legislature may be appropriate.

B. Subcommittee on Appeals Report & Discussion

Judge Timmer reviewed the subcommittee report, attached hereto.

(1) Proposals relating to court reporting – Appendix A to the subcommittee report

The subcommittee drafted a proposed administrative order to address verbatim records and transcript production. The Committee on Superior Court has reviewed the draft and suggested it be circulated to the presiding superior court judges at their meeting on June 19.

The subcommittee also recommends an increase in the statutory per page rates for transcripts. Arizona currently pays \$2.50/page. Information on similar statutes from 15 other jurisdictions shows Arizona is among the lowest-paying jurisdictions, other than Oregon (\$2.50) and Colorado (\$2.35). In Seattle and Houston, reporters earn \$4.00/page. California is considering a statewide increase to \$3.57/page. The Superior Court in Maricopa County has only 65 reporters on staff, compared with the 80 it employed just a couple of years ago, and a number of those reporters are nearing retirement age. Filling vacancies has been difficult.

Appellate rules require reporters to file transcripts 45 days after the notice of appeal is filed. However in recent years, the average transcript preparation time in capital cases is five months. Unlike virtually all other case types, capital case appeals require that all trial court proceedings be transcribed. Paying more for transcripts would help ensure more court reporting resources and a more timely production of transcripts. It was noted that the counties can be expected to oppose an increase in the per page rate.

(2) Proposals relating to Post-Conviction Relief counsel (A.R.S. §§13-4041 & 41-4301)

Currently, post-conviction relief representation is conducted by private attorneys selected from the list maintained by the Supreme Court. The list contains 12 to 14 names, but some of those people are no longer actively taking these cases. There were 20 lawyers on the list a few years ago. Ten cases are awaiting assignment. The Public Defender agencies often have conflicts that prevent them from representing petitioners in PCR matters. They also do not have enough lawyers on staff to handle PCR's. The new State Capital Post-Conviction Defender's Office will alleviate some of the backlog.

(a) A.R.S. §13-4041- attorney fees in PCR

Private attorneys may be avoiding this area of practice because the fees established by A.R.S. § 13-4041 appear to limit what a lawyer can earn in a PCR case, even though the reality is that the statute has not been interpreted as placing a cap on attorneys' fees. A public education effort could help disabuse lawyers of the false perception that they cannot receive adequate compensation for their work in PCR cases. The subcommittee recommends this project be

undertaken by the Criminal Justice Section of the State Bar and that the hourly rate set by this statute should be increased from \$100 to \$125.

(b) §41-4301 State Capital Post-conviction Public Defender's Office – Appendix C to the subcommittee report

Given the expected caseload and lack of additional resources, the State Capital Post-Conviction Defender's Office will need more funding to employ more attorneys and support staff. This office can be expected to perform its function more efficiently than private contract lawyers. The subcommittee recommends the statute be amended to remove the cap on staffing, currently set at one director, three deputies and not more than four other employees. Also the subcommittee could find no basis for prohibiting members of the office from training lawyers with respect to issues that may arise in petitions for post-conviction relief, so long as they do not provide consulting services in trial or appellate cases. And the office should be allowed to consult in other PCR cases. General training and consulting are distinctly different types of activities, and the statutory proscription on training should be lifted.

(3) Proposed Rule 6.9 - defense file repository – Appendix B to the subcommittee report

Mr. Lieberman has revised his draft proposal based on comments received at the Task Force meeting in May. The draft will be circulated for comment during July.

(4) Case management conferences for PCR's

The 120-day deadline set by Rule 32.4 for filing the PCR petition is rarely met. An early case management conference would assist the parties to identify scheduling, discovery and other necessary orders. Kent Cattani and Jim Beene offered to draft a rule for the Task Force to review in August.

(5) Prosecutorial disclosure for PCR's - Appendix D to the subcommittee report

Both North Carolina and Mississippi require prosecutors to disclose certain portions of their case files early in the PCR case process. The subcommittee recommends a similar rule be adopted that would require bates-stamping of the entire County Attorney's file, including privileged documents, and opening the non-privileged material in the file for inspection and copying by defense counsel. Mr. Lieberman stated that disclosure issues are common in PCR cases, and delay could be reduced by adopting this practice. Other members questioned whether this issue in fact has led to delays. Mr. Beene opposed the proposal as unfair, pointing out that prosecutors do not receive any such disclosure from the defense in defending against ineffective assistance of counsel. In his view, disclosure challenges are best handled through the adversarial process. Mr. Cattani offered to contact North Carolina and Mississippi to see how their rules operate. Justice Ryan asked the Task Force to review this issue at the next meeting.

(6) Proposed Rule 32.8 - PCR discovery rule – Appendix E to the subcommittee report

Mr. Beene presented a proposed new rule that would establish disclosure deadlines in PCR proceedings. He explained the rule is intended to impose a structure and efficiencies for PCR cases similar to Rule 15 and applies only to “colorable” claims. Some questioned whether the proposal would address the underlying source of delay in PCR cases, which is the investigation that precedes the filing of the petition. Mr. Beene will work with Mr. Cattani and Mr. Lieberman to revise the proposal for August and also develop case management procedures for PCR cases in which a notice has been filed but more investigation is needed before a petition can be filed. All agreed that the longest delay in processing PCR cases occurs during the investigative phase of the case.

(7) Proposed revision to Rule 32.1(h) – “actual innocence”

Judge McNamee and Kristine Fox have suggested that state courts are applying the actual innocence exception inconsistently in PCR cases, which can create unnecessary delays in the federal courts. There was general agreement that more information is needed from the federal court before the Task Force could identify an approach to resolving the issue. Mr. Cattani will work with Judge McNamee on identifying how the rule could be amended to reduce delay. It was also agreed that the Judicial College should design a training segment for judges to clarify issue preclusion under Rule 32.2. The attorneys in the Arizona Death Penalty Judicial Assistance Program are very well informed and should be called upon for assistance in this area.

(8) Staffing increase for the Supreme Court – Appendices F & G to the subcommittee report

Judge Timmer described the subcommittee’s recommendation to add two staff attorneys to the Supreme Court to assist with the expected increase in direct appeals from Maricopa County. This appears to be more cost-effective than the other options considered, such as adding two justices, adding a panel of judges to Division I, or creating a new criminal court of last resort. The case projections developed by the AOC indicate two staff attorneys will likely be sufficient to handle the anticipated increase in capital case volume, assuming the continued use of law clerks by the justices. Dedicated staff attorneys will provide expertise in capital case issues; and more continuity and efficiency than law clerks. The benefits of using staff attorneys in this manner have been proven in other jurisdictions, including the federal district court and the Texas Court of Criminal Appeals. Depending on the rate of direct appeal filings, the justices may need to enlist one or more members of the Court of Appeals to work with the staff attorneys from time to time.

The subcommittee also recommends adding a deputy attorney general and a public defender to handle direct appeals.

V. Adjournment

The meeting was adjourned at 2:00 PM.

NEXT MEETING

Friday, August 10, 2007

10:00 am – 12:00 pm
State Courts Building, Conference Room 230

**Capital Case Task Force
Trial Court Subcommittee
Notes of Meeting
June 11, 2007, 11:30 – 1:30PM**

Hon. Ron Reinstein, Acting Chair
James Logan
Dan Levey
Jim Belanger

Hon. Anna Baca
Paul Prato
Bob Shutts

Also present:
Mark Malone
Jennifer Greene

A. New Policy (Statute or Rule) Governing Processing Contested Motions for Continuance beyond the Presumptive Trial Date (18 months from arraignment)

Bob Shutts presented the County Attorney's proposal for a new A.R.S. §13-4435.01 governing time limits in capital cases, precedence of capital cases, extensions beyond the presumptive trial date and processing contested motions for continuance beyond the presumptive trial date. A copy is attached as **Appendix A**.

Mr. Shutts stated that the proposal is intended to govern only contested motions to continue and involves the Supreme Court -- or the Court's designated special master -- in making these rulings instead of the trial judge, to provide more oversight, consistency, and finality.

Objections to this proposal included:

- The proposal is framed as a statute rather than a rule, and as such appears to infringe on the Supreme Court's rule-making authority.
- Is it appropriate for the proposal to state that capital cases take precedence over "all other cases, both criminal and civil" when the Supreme Court has already rule that juvenile cases should have top priority?
- The proposal does not address the types of requests for continuance the trial court is currently seeing. The superior court is working out a new process whereby a special continuance panel will resolve these motions. Recently, the grounds cited in requests for continuance have not been related to mitigation investigation; instead the parties are citing either the need to await forensics lab results or a scheduling conflict, especially from prosecutors. The superior court committee in Maricopa County is considering whether it would be feasible to have another prosecutor step in with a 30-

day continuance if the assigned attorney has a trial conflict. When consulted, one victim's family objected to having the case re-assigned to another prosecutor because they felt the current prosecutor was their attorney and they didn't want to see him replaced. The court has also seen some OCAC defense lawyers ask for more time because of caseload pressures and some of these attorneys have asked to be relieved from a case because of their caseloads (OCAC lawyers are handling just over four cases each, on average, some Deputy County Attorneys are handling far more than that).

- Some of the practitioners suggested there is a need for more consistency by the criminal bench on what constitutes "extraordinary circumstances" justifying a continuance. There is an apparent need for judicial education on extending the time for trial even if a defendant refuses to waive time, if both counsel agree that extraordinary circumstances are present.
- Should victims have to file a notice of appearance to be eligible to weigh in on these continuances?
- The proposal lacks a provision for a hearing on these motions.
- The 60-day limit on granting a continuance provided by subsection (D) seems arbitrary; these issues need to be considered on a case-by-case basis.

B. Amendment to A.R.Crim.P. 15.1(i) to Give More Time for Defense Input into Death Notice Determination

The general consensus was that delaying the determination to proceed with a case as a capital case might lead to earlier resolution for perhaps 10 percent of what would otherwise be pursued as capital cases. The amendment could reduce the amount of anguish victims' family members may experience when a death notice is withdrawn because of mitigation evidence revealed relatively early in a case. As explained by Jim Logan, the key is that everyone proceeds from the beginning as if it were a capital case. Accordingly, the amendment needs to specify that the case be treated for administrative purposes as if the death notice had been filed. Mr. Logan's suggested amendment is attached as **Appendix B**.

C. Revise the Rule 8.2 18-Months Standard Applicable in Capital Cases.

Members debated whether 18 months is realistic given the competition for resources and the rate at which the County Attorney has filed capital cases in recent years. Half the capital case inventory in Maricopa County is more than 18 months from arraignment. To set an 18-months standard that the system cannot meet sends the wrong message to victims' families. If cases cannot reach trial in that time frame, it may be better to extend the time frame to something more realistic. The general consensus was

that 24 months may be too short as well under current circumstances, but a majority of the subcommittee wants the full Task Force to consider changing the 18-months standard of Rule 8.2 to two years. A comment could be added to the amended rule to put parties on notice that only truly extraordinary circumstances will qualify for any extensions beyond two years.

D. Reconsider Aggravators

The sheer volume of new cases is preventing the court from meeting the 18-months standard. Some members believe the County Attorney needs to do a better job of reserving the capital case designation for the truly meritorious cases. Given that the Task Force cannot directly influence the way the County Attorney exercises his discretion, it may be appropriate to recommend revisions to the list of aggravators that would reduce the number of cases filed as capital cases. Additionally, some aggravators could be narrowed to avoid overbreadth. It was noted that Arizona has fourteen aggravators while Texas has nine. The subcommittee will provide information on other states' aggravators for consideration by the full Task Force.

PROPOSAL FOR ADDRESSING PRE-TRIAL DISCOVERY DELAYS IN CAPITAL CASES

§ 13-4435.01. Speedy Trial Requirements in Capital Cases.¹

- A. Time limits in Capital Cases.** Subject to the provisions of this section, every person against whom a notice of intent to seek the death penalty has been filed, shall be tried by the court having jurisdiction of the offense within eighteen months from arraignment.² The date eighteen months from arraignment shall be the presumptive trial date, and all discovery, and disclosures thereof,³ shall take place within this eighteen month period.
- B. Precedence of Capital Cases.** Capital cases shall have precedence over all other cases, both criminal and civil, pending before the court having jurisdiction.
- C. Extensions Beyond the Presumptive Trial Date.** Any party seeking a contested extension of time for compliance with the discovery disclosure deadlines pursuant to Rule 15 of the Arizona Rules of Criminal Procedure, or any other reason, that will necessitate an exclusion of time resulting in an extension of the presumptive trial date, must promptly file a written application to the Chief Justice of the Arizona Supreme Court for an extension of the presumptive trial date. Upon filing of an application to extend the presumptive trial date, simultaneous notice of the application to extend the presumptive trial date must be provided to the superior court, the opposing party, and any victims who have entered a notice of appearance. The opposing party, and any victims who have

¹ The legislative history should be sure to include a reference to the Victim's Bill of Rights, and the legislature's power pursuant to Art. 2. § 2.1(12)(D) of the Arizona Constitution "to enact substantive and procedural laws to define, implement, preserve and protect the rights guaranteed to victims." Additionally, this proposed statute could alternatively, or even additionally, appear at A.R.S. § 13-114.01, following the statutory codification of a defendant's right to a speedy trial.

² As provided in Rule 8.2(a)(4) of the Arizona Rules of Criminal Procedure and Maricopa County Superior Court Administrative Order No. 2007-023.

³ As provided in Rules 15.1(i), 15.2(h) and 15.6 of the Arizona Rules of Criminal Procedure.

entered a notice of appearance, shall have five days from the filing of the application within which to file a response objecting to the application. A reply, if any, shall be filed within three days of the filing of any response.

D. Grounds for Extension of Presumptive Trial Date. An application to extend the presumptive trial date may only be granted if extraordinary circumstances exist and the delay is indispensable to the interests of justice. Within five days of the filing of a reply, or the expiration of the time within which to file a reply, the Chief Justice, or its designee, must issue a written ruling on the application. The ruling must contain a consideration of the rights of any victim and the defendant to a speedy disposition of the case and must state the specific reasons why the delay is indispensable to the interests of justice. The maximum amount of time that may be granted in a continuance is 60 days, however, multiple continuances may be granted if each request meets the required standards.

Rule 15. Disclosure

Rule 15.1. Disclosure by state.

* * *

i. Additional disclosure in a capital case.

(1) The prosecutor, no later than 60 days after the arraignment in superior court, shall provide to the defendant notice of whether the prosecutor intends to seek the death penalty. This period may be extended ~~for thirty days~~ upon stipulation of counsel. In the event such a stipulation is filed, the case shall be considered a capital case for all administrative purposes including, but not limited to, scheduling, assignment of counsel, and assignment of a mitigation specialist. ~~Additional extensions may be granted upon motion of the state and approval of the court.~~

Capital Case Task Force Subcommittee on Appeals

Final Report to the Task Force June 15, 2007

The Task Force's Subcommittee on Appeals held three meetings on May 25, June 1, and June 8, 2007. This report outlines the Subcommittee's final recommendations to the Task Force concerning issues in post-conviction and appellate proceedings.

A. Communication with court reporters

The subcommittee recommends issuance by the supreme court of an administrative order (attached as **Appendix A**) to address the problems with the delays in getting the transcripts from the court reporters. The order sets standards for superior courts in managing court reporters assigned to capital cases. The standards direct the courts to (1) provide for substitute records to guard against the impact of lost notes; (2) manage court reporter assignments in a manner that allows reporters time to transcribe proceedings; and (3) establish a repository for court reporter notes, which must be periodically deposited during the life of a case.

The subcommittee additionally recommends raising the minimum pay for court reporters for all cases in an amount that would attract court reporters to fill out pools of reporters. The statutory rate is currently \$2.50 per page and has not changed since 1987. The Board of Certified Court Reporters (the entity that regulates court reporters) has recently recommended an

increase to \$3.25 per page. Although the subcommittee is not currently in a position to recommend a particular raise, it suggests that the Task Force do so after consideration of recommendations from the various counties and other interested parties.

The committee on court reporters has approved the above-described recommendations. The committee on superior courts has reviewed the draft administrative order and suggested that we provide it to the presiding judges in order to receive their comments. Members of the group also provided some comment to the language used in the proposed order. In response, we revised the order slightly in order to clarify the language .

B. Defense attorney file repository

The subcommittee recommends filing a petition to add Arizona Rules of Criminal Procedure 6.9 to establish a Central Capital Case Repository for defense files. A form of the proposed rule is attached as **Appendix B**.

C. Assignment of PCR counsel

The subcommittee recommends that the legislature increase the funding for the Office of the State Capital Post Conviction Defender ("PCD") to permit it to hire the requisite number of attorneys and staff persons to enable it to handle an increased number of capital PCRs. As a corollary, the subcommittee recommends removing a prescribed number of attorneys from A.R.S. § 41-4301, which establishes that agency, in order to permit the PCD to increase the number of attorneys and staff persons the PCD can hire. Currently, the PCD can hire

3 attorneys, in addition to the Director of the PCD, and 4 staff persons.

The subcommittee additionally recommends eliminating the statutory limitation on training and assistance that the PCD can conduct.

A copy of § 41-4301 is attached as **Appendix C** with strikeouts showing the proposed changes.

The subcommittee additionally recommends increasing the hourly rate in A.R.S. section 13-4041(g) from \$100 to \$125 per hour to attract more private counsel. The subcommittee also recommends asking the Criminal Justice Section of the Arizona Bar Association to educate defense counsel that the 200-hour threshold amount of attorney time set forth in section 13-4041(g) is not an absolute bar to payment over that amount. Rather, PCR counsel must simply apply for additional funding from the court after expending 200 hours in representing the defendant. To accomplish this task, we should obtain historical data showing the amount capital PCR attorneys have been paid.

D. Counteracting delay in PCR proceedings

The subcommittee recommends creation of a rule stating that upon the filing of a notice of post-conviction relief in a capital case, the superior court shall conduct a case management conference to discuss scheduling, discovery, and other issues and to enter appropriate orders.

The subcommittee recommends consideration of a rule stating that upon the filing of a notice of post-conviction relief in a capital case, the prosecutor must make its file, excepting

privileged documents, available for inspection and copying by the defense. The entire file, including privileged documents, should be bate-stamped. Copies of authorities from North Carolina and Mississippi are attached herein as **Appendix D**.

E. Discovery in PCR proceedings

The subcommittee discussed whether a new rule is needed to govern discovery in post-conviction relief proceedings. The subcommittee is divided on whether the Task Force should involve itself in recommending such a rule. Specifically, many on the subcommittee do not believe that discovery issues contribute to the delay currently experienced in PCR proceedings. Others who support a rule acknowledge that any delay due to discovery is minimal.

The subcommittee recommends that the Task Force consider whether it should recommend a rule for discovery issues and, if so, what the rule should provide. A draft rule proposed by Jim Beene is attached as **Appendix E**.

F. Amendment to ARCRP 32.1(h) - the "actual innocence" exception

The federal court representatives to the subcommittee report delays in habeas proceedings due to an inconsistent application of the actual innocence exception set forth in Rule 32.1. Rule 32.1(h) provides post-conviction relief for defendants who demonstrate facts by clear and convincing evidence that "would be sufficient to establish that no reasonable fact-finder would have found defendant guilty of the underlying offense beyond a reasonable doubt, or that the court would not have imposed the death penalty." Among the issues is whether the

defendant has the ability to return to state court to attempt to gain relief for newly discovered mitigation evidence or whether the claim is precluded.

A majority could not be reached on whether the rule needs clarification or, if so, how this should be accomplished. Thus, the subcommittee recommends that the Task Force consider the issue and decide whether and/or to what extent the rule should be clarified.

G. Training of Superior Court Judges

The subcommittee recommends that the Judicial College undertake a regular course of training for superior court judges assigned for the first time to conduct capital trials and capital post-conviction relief proceedings.

H. Supreme Court Review

The subcommittee reviewed statistical analysis under differing scenarios in order to project the number of capital case appeals from FY 2007 through FY 2012. Bert Cisneros from the AOC ran projections based on four scenarios, which are attached as **Appendix F**. Essentially, the four scenarios assumed (1) no change in the capital case filings or trial rate, (2) increased new case filing rate, (3) increased trial rate, and (4) increased new filing rate and increased trial rate. The range of anticipated direct appeals was 4 - 17 in varying years.

The subcommittee discussed the following alternatives for the processing of direct appeals: (1) hire two capital case staff attorneys for the supreme court to assist in these appeals; (2) use court of appeals judges to fill in on panels if the supreme

court experiences a heavier-than-usual volume of appeals in any given year; (3) create a new panel of three court of appeals judges in division one and send direct appeals of capital cases to that court in the first instance with discretionary review by the supreme court; (4) form a separate criminal court of appeals; (5) increase of the number of supreme court justices from 5 to 7.

The subcommittee asked Kevin Kluge, CFO for AOC, to provide projected annual costs for alternatives (1), (3), and (5). Mr. Kluge reported that the projected cost of adding two staff attorneys is \$228,800, the projected cost of adding a panel to the court of appeals, with attendant staff, is \$1,994,400, and the projected cost of adding two justices to the supreme court, with attendant staff, is \$905,400. Mr. Kluge's figures are attached as **Appendix G**.

The subcommittee recommends that the supreme court hire two capital case staff attorneys to assist in the consideration of capital case appeals. The federal district court representatives to the subcommittees reported that when they employed such attorneys it assisted greatly in the dispensation of the backlog of cases and has added to the continuity of capital case decisions. These attorneys have also been a good resource for judges and law clerks working on such cases. The subcommittee anticipates a similar result if such attorneys are employed by the supreme court. Additionally, the subcommittee anticipates that such a system would allow for quicker adjustment should the number of direct appeals spike in given years.

The subcommittee additionally recommends adding one attorney each in the capital case appeal divisions of the Attorneys General's Office and one public defender agency, which handles such appeals.

The subcommittee additionally recommends that the Capital Case Manager from the superior court work with the supreme court in monitoring the number of capital cases likely to complete trial and proceed to appeal in a given year. This way, the supreme court will be better equipped to anticipate staffing needs in advance of a direct appeal.

DRAFT

IN THE SUPREME COURT OF THE STATE OF ARIZONA

In the Matter of:)
)
ESTABLISHING STANDARDS FOR) Administrative Order
VERBATIM REPORTING IN) No. 2007 - _____
CAPITAL CASE PROCEEDINGS)
)
)
_____)

In capital cases, all pre-trial and trial proceedings shall be transcribed within 45 days after the filing of the notice of appeal pursuant to Rule 31.8(b)(3) and (d)(3), Arizona Rules of Criminal Procedure. Not uncommonly, appellate briefing is substantially delayed when transcripts are not promptly prepared due to the unavailability of the court reporter or the reporter's notes.

More reporters are moving to computer-assisted technology for note-taking and no longer produce paper notes. Business practices are needed to ensure these records are refreshed and continue to be readable despite changes in the technology required to read and retrieve such records, as required by ACJA §1-602(D)(6). Recently-enacted timelines for preserving reporters' notes appearing in ACJA §3-402(C)(2)(b)(1) require courts to maintain readable notes for 50 years after sentencing in capital cases.

NOW THEREFORE, IT IS ORDERED THAT superior courts establish standards to ensure reporters' notes in capital cases are available and can be transcribed by another party should the original reporter become unavailable. The standards shall provide at a minimum the following:

1. Providing for substitute records. In the event a court reporter's original notes are unavailable for transcription, an electronic audio or audio/video recording, if made by the court, may be used to reconstruct the verbatim record of the hearing. Accordingly, where practicable, courts shall schedule capital case hearings and trials in courtrooms equipped with an electronic recording system as a backup to the live court reporter.

2. Managing court reporter assignments. Courts shall assign reporters to capital case trials in a manner that will promote timely transcript preparation for capital case appeals, giving consideration to the volume of transcript orders outstanding for a particular reporter. Suggested methods for encouraging timely transcription of capital case hearings include:

- a. Assign two reporters to cover capital case trial proceedings, one in the morning and the other in the afternoon, and rotate these reporters to other types of hearings less likely to generate transcript orders for the remainder of the reporters' work day to reduce the likelihood that the reporters will be faced with competing transcript deadlines.
- b. Promote reporters' use of subcontractors, as permitted by A.R.S. §12-225(A).
- c. Require per diem reporters to file transcripts of any pretrial proceedings they report in capital cases within a specified time after the hearing.
- d. Avoid assigning any reporter to cover a capital case hearing who routinely seeks extensions of time to file appeal transcripts.

3. Record management considerations. Courts shall ensure that reporters who report capital case proceedings comply with the note storage standards as provided herein and as established by ACJA §1-602(D)(6)(a)&(b) (Digital Recording of Court Proceedings) and ensure that capital case notes are preserved in such a way as to permit the 50-year retention requirement set forth in ACJA §3-402 (C)(2)(b)(1)(Superior Court Records Retention and Disposition). These notes shall be segregated and stored so as to facilitate retrieval by case number.

(a). Labeling. Whether paper or electronic, the reporter shall label capital case notes with the reporter's name, the case number, the case name, and the date of the proceeding.

(b). Segregation and storage format for original notes. Reporters shall provide the court with a copy of the reporter's dictionary not less than once a year. Reporters shall ensure the notes of any capital case hearing are filed with the court clerk or designee in a timely fashion, but not later than ten days after the date of the proceeding reported. Paper notes shall be stored in a manner approved by the court separate from the reporter's notes in other case types. Electronic notes shall be stored along with the reporter's translated version of the proceeding on approved storage media or saved to an approved server.

(c). Notice to court reporter. When the prosecutor files a notice of intent to pursue the death penalty, the court shall provide prompt notice to any reporter

who has reported any proceeding in the capital case prior to or after the filing of the prosecutor's notice. When a notice of appeal has been filed in a capital case, the court shall provide prompt notice to all court reporters who have reported proceedings in the capital case.

(d). Per diem reporters. Reporters working in courts on a contract basis who report capital case proceedings shall deposit their capital case notes and a copy of their dictionaries with the clerk or a designee in the manner required by subsection (3)(b), not later than ten business days following the proceeding.

Dated this _____ day of _____, 2007.

RUTH V. MCGREGOR
Chief Justice

Rule 6.9 Central Capital Case Repository

a. Definitions. For purposes of this section:

(1) “Original Records” means the entirety of the file maintained by counsel for the defendant concerning the representation, including records in the court file.

(2) “Imaged Records” means an electronically reproduced copy of Original Records, except any records filed with the Court.

(3) “Privileged Records” means those records that are part of the Original Records and determined by counsel for the defendant to be privileged.

(4) “Counsel for the Defendant” means any attorney representing the defendant in a capital case except attorneys employed by a public agency during the representation, and includes attorneys who have contracted with a public agency to provide representation.

b. Initial Deposit. At the conclusion of the representation of any person sentenced to death, Counsel for the Defendant shall cause the Original Records to be electronically imaged. The Original Records and the Imaged Records shall be separately sealed by Counsel for the Defendant and deposited with the Office of the State Capital Post Conviction Defender.

Privileged Records. Privileged Records shall be separately sealed and denominated as such before they are deposited with the Office of the State Capital Post Conviction Defender. Privileged Records shall not be released or unsealed except upon either:

(i) written waiver of the defendant, to the extent authorized by the waiver, or

(ii) an order of a court of competent jurisdiction, to the extent specifically required by court order, after all parties have had an opportunity to be heard.

c. Subsequent Counsel. Upon appointment or retention of new counsel, the Office of the State Capital Post Conviction Defender shall release the sealed Original Records to new counsel who, unless employed by a public agency during the representation, shall, upon the conclusion of the representation, comply with subsection (b) should the defendant still be under sentence of death. Privileged Records shall not be released or unsealed except as provided in subsection (b).

d. Preservation. All records received and maintained by the Office of the State Capital Post Conviction Defender pursuant to this Rule shall be preserved as long as the defendant is under a sentence of death.

Public Agencies. All Original Records maintained by a public agency and not deposited with the Office of the State Capital Post Conviction Defender pursuant to this Rule shall be preserved by the agency as long as the defendant is under a sentence of death.

e. Federal Counsel. Upon appointment or retention of counsel in federal court, the Office of the State Capital Post Conviction Defender shall release the sealed Original Records to such counsel. Privileged Records shall not be released or unsealed except as provided in subsection (b).

f. Imaged Records. Imaged Records deposited in the Office of the State Capital Post Conviction Defender shall not be released or unsealed except upon Order of a Court of competent jurisdiction, and then only to the extent specifically required by court order, after all parties have had an opportunity to be heard.

COMMENT

Each counsel representing capital defendants shall make every effort to ensure that successor counsel is provided with a complete copy of the file consistent with the ABA Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases, Guideline 10.13 (2003). The purpose of this rule is to provide a mechanism for the transfer of files and to ensure, to the extent possible, the integrity of the files. Because public agencies have their own retention mechanisms, the depository only applies to private counsel, whether appointed or retained. The entirety of the attorney's files, including, but not limited to, notes shall be deposited although privileged materials shall be segregated.

In the event of a need to review Imaged Records, the Court shall make orders appropriate to resolving the dispute. This rule shall apply to all counsel representing the defendant at any stage of the proceedings.

In the event of a dispute regarding Privileged Records, any party may petition the Court for an order to unseal the records. The Court shall hear from all parties and may inspect the materials *in camera*.

ARS Sec. 41-4301:

.....

F. The state capital postconviction public defender shall:

1. Represent any person who is not financially able to employ counsel in postconviction relief proceedings in state court after a judgment of death has been rendered. Notwithstanding section 11-584, subsection A, paragraph 1, subdivision (g), after a judgment of death has been rendered, a county employed indigent defense counsel shall not handle postconviction relief proceedings in state court unless a conflict exists with the state capital postconviction public defender and a county employed indigent defense counsel is appointed.

2. Supervise the operation, activities, policies and procedures of the state capital postconviction public defender office.

3. Beginning in fiscal year 2007-2008, submit an annual budget for the operation of the office to the legislature.

4. Not engage in the private practice of law ~~or provide outside counsel to any other attorney outside of the state capital postconviction public defender office.~~

~~5. Not sponsor or fund training for any other attorney outside of the state capital postconviction public defender office.~~

6 5. Not provide trial or direct appeal assistance to attorneys outside of the state capital postconviction public defender office OTHER THAN GENERAL TRAINING.

~~7.~~ 6. Not lobby, during working hours, the state legislature or the Congress of the United States, except as provided by paragraph 3 of this subsection.

~~8.~~ 7. Allocate personnel and resources to postconviction relief proceedings so long as there are no conflicts of interest in representation and all state capital postconviction public defender attorneys are appointed to postconviction relief cases that are eligible for appointment of counsel under section 13-4041.

G. The state capital postconviction public defender may:

1. Accept and spend public and private gifts and grants for use in improving and enhancing the ability to perform the responsibilities of the state capital postconviction public defender office pursuant to this chapter.
2. Employ ~~not more than three deputies and not more than four other employees~~ SUFFICIENT DEPUTIES AND EMPLOYEES and establish and operate any offices as needed for the proper performance of the duties of the office.

PCR Disclosure Policies – North Carolina & Mississippi

North Carolina General Statutes

§ 15A-1415. Grounds for appropriate relief which may be asserted by defendant after verdict; limitation as to time.

* * *

(e) Where a defendant alleges ineffective assistance of prior trial or appellate counsel as a ground for the illegality of his conviction or sentence, he shall be deemed to waive the attorney-client privilege with respect to both oral and written communications between such counsel and the defendant to the extent the defendant's prior counsel reasonably believes such communications are necessary to defend against the allegations of ineffectiveness. This waiver of the attorney-client privilege shall be automatic upon the filing of the motion for appropriate relief alleging ineffective assistance of prior counsel, and the superior court need not enter an order waiving the privilege.

(f) In the case of a defendant who has been convicted of a capital offense and sentenced to death, the defendant's prior trial or appellate counsel shall make available to the capital defendant's counsel their complete files relating to the case of the defendant. The State, to the extent allowed by law, shall make available to the capital defendant's counsel the complete files of all law enforcement and prosecutorial agencies involved in the investigation of the crimes committed or the prosecution of the defendant. If the State has a reasonable belief that allowing inspection of any portion of the files by counsel for the capital defendant would not be in the interest of justice, the State may submit for inspection by the court those portions of the files so identified. If upon examination of the files, the court finds that the files could not assist the capital defendant in investigating, preparing, or presenting a motion for appropriate relief, the court in its discretion may allow the State to withhold that portion of the files.

* * *

Mississippi Rules of Appellate Procedure

RULE 22. APPLICATION FOR POST-CONVICTION COLLATERAL RELIEF IN CRIMINAL CASES

(C)(4)(ii) Upon appointment of counsel, or the determination that the petitioner is represented by private counsel the petitioner's prior trial and appellate counsel shall make available to the petitioner's post-conviction counsel their complete files relating to the conviction and sentence. The State, to the extent allowed by law, shall make available to post-conviction counsel the complete files of all law enforcement and prosecutorial agencies involved in the investigation of the crimes committed and the prosecution of the petitioner. If the State has a reasonable belief that allowing inspection of any portion of the files by post-conviction counsel for the petitioner would not be in the interest of justice, the State may submit for inspection by the convicting court those portions of the files so identified. If upon examination of the files, the court finds that such portions of the files could not assist the capital petitioner in investigating, preparing, or presenting a motion for post-conviction relief, the court in its discretion may allow the State to withhold that portion of the files. Discovery and compulsory process may be allowed the petitioner from and after the appointment of post-conviction counsel or the determination that the petitioner is represented by private counselor or is proceeding pro se, but only upon motion indicating the purpose of such discovery and that such discovery is not frivolous and is likely to be helpful in the investigation, preparation or presentation of specific issues which the petitioner in good faith believes to be in question and proper for post-conviction relief, and order entered in the sound discretion of the court. Upon determination that the petitioner has elected to proceed pro se, such files and discovery shall be made available as provided in subsection (2)(iii) above.

* * *

**PROPOSED AMENDMENT TO RULE 32.8, ARIZONA RULES OF
CRIMINAL PROCEDURE – DISCOVERY/DISCLOSURE IN CAPITAL
PCR EVIDENTIARY HEARING**

Rule 32.8. Evidentiary hearing

* * *

f. Disclosure in capital evidentiary hearing.

- i. Discovery.** Discovery shall be limited to any matter relevant to one or more of the grounds specified in Rule 32.1 and A.R.S. § 13-4231 that the trial court has found to be colorable. Any victim who has entered a notice of appearance as specified in A.R.S. § 13-4234.01 must be noticed on all discovery requests.
- ii. Disclosure by Defendant.** Within 10 days of the trial court finding any claims that present a material issue of fact pursuant to Rule 32.6(c) and A.R.S. § 13-4236(C), the defendant shall provide to the prosecutor:

 - (1)** The names and addresses of all persons whom the defendant intends to call as witnesses in any post-conviction relief hearing, together with their relevant written or recorded statements,
 - (2)** The names and addresses of experts whom the defendant intends to call as a witness in any post-conviction relief hearing who have personally examined the defendant subsequent to trial and imposition of the death penalty, together with the results of physical and/or mental examinations and of scientific tests, experiments or comparisons that have been completed,
 - (3)** A list of all papers, documents, photographs or tangible objects that the defendant intends to use at any post-conviction hearing or which were obtained from or purportedly belong to the defendant.
- ii. Disclosure by the State.** Within 10 days of the filing of disclosure by the defendant, the prosecutor shall provide to the defendant:

 - (1)** The names and address of all persons whom the prosecutor intends to call as witnesses at any post-conviction relief hearing together with their written or recorded statements,
 - (2)** The names and addresses of experts who have personally examined the defendant subsequent to trial and imposition

of the death penalty, together with the results of physical and/or mental examinations and of scientific tests, experiments or comparisons that have been completed,

- (3) A list of all papers, documents, photographs or tangible objects that the prosecutor intends to use at any post-conviction hearing or which were obtained from or purportedly belong to the defendant, including any electronic surveillance of any conversations to which the defendant was a party.

- iii. **Continuing Duties.** The duties prescribed in this rule shall be continuing duties and each party shall make additional disclosure, seasonably, whenever new or different information subject to disclosure is discovered. All disclosure required by this rule shall be completed at least seven days prior to any hearing. A party seeking to use material and information not disclosed at least ten days prior to any hearing shall obtain leave of court by motion, supported by affidavit, to extend the time for disclosure and use the material or information. If the court finds that the material or information could not have been discovered or disclosed earlier even with due diligence and the material or information was disclosed immediately upon its discovery, the court shall grant a reasonable extension to complete the disclosure and grant leave to use the material or information. Absent such a finding, the court may either deny leave or grant a reasonable extension to complete the disclosure and leave to use the material or information, and if granted the court may impose any sanction other than preclusion or dismissal listed in Rule 15.7.
- iv. **Extensions of Disclosure Deadlines.** Either party may request one 30-day extension of time within which to comply with the disclosure requirements of this rule. Additional 30-day extensions may only be granted if the prosecutor and the defendant agree to an additional 30-day extension of time.

Note: In order to give both parties adequate time in which to interview witnesses prior to the evidentiary hearing, Rule 32.6(c) should also be amended. Pursuant to Rule 32.6(c), the trial court must set a hearing date “within thirty days on those claims that present a material issue of fact or law.” With the proposed disclosure deadlines in contained in Rule 32.8(f), Rule 32.6(c) should be amended allowing the trial court to set a hearing date within sixty days on those claims that present a material issue of fact or law.

Scenario 1.

Capital Case Filings/Dispositions Projections

	FY* 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
Cases Pending						
At beginning of fiscal year						
*Number of pending cases in July FY07 was estimated	115	123	102	84	69	70
New Case Filings						
Based on last 4 fiscal years & MCAO projections for future case filings	30	35	38	41	45	49
Total Cases on File						
Cases pending plus new case filings	145	158	140	125	114	119
Terminations						
(A) Termination rate based on average rate of terminations for the last 40 months	22	24	24	24	24	24
(B) Additional cases that need to be adjudicated to reduce 60-case backlog by 20 per year plus keep pace with new filings	0	32	32	32	20	25
Total Cases Terminated (A+B)	22	56	56	56	44	49
Cases Pending						
On-going inventory at end of fiscal year (70=optimal #)	123	102	84	69	70	70
Cases Requiring Trial – 30%						
Assumption is based on last 40 months	7	17	17	17	13	15
Direct Appeals						
Results of last 40 months - 17% of all terminations or 57% of all trials resulted in death sentence	4	10	10	10	7	9

Scenario 2.

Capital Case Filings/Dispositions Projections w/ Increased New Case Filing Rate

	FY* 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
Cases Pending At beginning of fiscal year *number of pending cases in July FY07 was estimated	115	123	105	87	69	69
New Case Filings Based on MCAO projections for future case filings	30	45	45	45	45	45
Total Cases on File Cases pending plus new case filings	145	168	150	132	114	114
Terminations (A) Termination rate based on average rate of terminations for the last 40 months	22	24	24	24	24	24
(B) Additional cases that need to be adjudicated to reduce 60-case backlog by 20 per year plus keep pace with new filings	0	39	39	39	21	21
Total Cases Terminated (A+B)	22	63	63	63	45	45
Cases Pending On-going inventory at end of fiscal year (70 = optimal #)	123	105	87	69	69	69
Cases Requiring Trial – 30% Assumption is based on last 40 months	7	19	19	19	14	14
Direct Appeals Results of last 40 months - 17% of all terminations or 57% of all trials resulted in death sentence	4	11	11	11	8	8

Scenario 3.

Capital Case Filings/Dispositions Projections w/ Increased Number of Cases Requiring Trial

	FY* 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
Cases Pending At beginning of fiscal year *number of pending cases in July FY07 was estimated	115	123	102	84	69	70
New Case Filings Based on last 40 months & MCAO projections for future case filings	30	35	38	41	45	49
Total Cases on File Cases pending plus new case filings	145	158	140	125	114	119
Terminations (A) Termination rate based on average rate of terminations for the last 40 months	22	24	24	24	24	24
(B) Additional cases that need to be adjudicated to reduce 60-case backlog by 20 per year plus keep pace with new filings	0	32	32	32	20	25
Total Cases Terminated (A+B)	22	56	56	56	44	49
Cases Pending On-going inventory at end of fiscal year (70 = optimal #)	123	102	84	69	70	70
Cases Requiring Trial – 47% Assumption is based on 1995-1999 experience	10	26	26	26	21	23
Direct Appeals Results of last 40 months - 17% of all terminations or 57% of all trials resulted in death sentence	6	15	15	15	12	13

Scenario 4.

Capital Case Filings/Dispositions Projections w/ Increased New Case Filing Rate and Trial Rate

	FY* 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
Cases Pending At beginning of fiscal year *number of pending cases in July FY07 was estimated	115	123	105	87	69	69
New Case Filings Version 2 Based on MCAO projections for future case filings	30	45	45	45	45	45
Total Cases on File Cases pending plus new case filings	145	168	150	132	114	114
Terminations (A) Termination rate based on average rate of terminations for the last 40 months	22	24	24	24	24	24
(B) Additional cases that need to be adjudicated to reduce 60-case backlog by 20 per year plus keep pace with new filings	0	39	39	39	21	21
Total Cases Terminated (A+B)	22	63	63	63	45	45
Cases Pending On-going inventory at end of fiscal year (70 = optimal #)	123	105	87	69	69	69
Cases Requiring Trial – 47% Assumption is based on 1995-1999 experience	10	30	30	30	21	21
Direct Appeals Results of last 40 months - 17% of all terminations or 57% of all trials resulted in death sentence	6	17	17	17	12	12

Costs Associated with Additional Resources for Capital Appeals

Source: CFO, Administrative Office of the Courts

#1. Add two Supreme Court staff attorneys

FTE's	2
Salary	\$166,700
ERE	\$46,700
Total Salary/ERE	\$213,400
Travel	\$3,000
Operating Expenses	
On-Going	\$4,400
One-Time	\$8,000
Total Operating	\$12,400
Total Projected Cost	\$228,800

#2. Add two Supreme Court Justices w/ supporting staff (two JA's, four law clerks and two deputy clerks)

	Justices	Jud. Assistants	Law Clerks	Deputy Clerk	Total
FTE's	2	2	4	2	10
Salary	\$310,000	\$101,400	\$207,900	\$78,600	\$697,900
ERE	\$55,800	\$28,400	\$37,400	\$22,000	\$143,600
Total Salary/ERE	\$365,800	\$129,800	\$245,300	\$100,600	\$841,500
Travel	\$7,300				\$7,300
Operating Expenses					
On-Going	\$10,900	\$4,100	\$6,000	\$3,600	\$24,600
One-Time	\$16,000	\$4,000	\$8,000	\$4,000	\$32,000
Total Operating	\$26,900	\$8,100	\$14,000	\$7,600	\$56,600
Total Projected Cost	\$400,000	\$137,900	\$259,300	\$108,200	\$905,400

#3. Add a new panel of three judges to the Court of Appeals with supporting staff (three JA's, six law clerks, three staff attorneys, and three deputy clerks (that is the full complement of staff within existing panels).

	Judges	Jud. Assistants	Law Clerks	Deputy Clerk	Staff Attorneys	Total
FTE's	3	3	6	3	3	18
Salary	450,000	152,200	311,800	117,900	250,000	\$1,281,900
ERE	81,000	42,600	56,100	33,000	70,000	\$282,700
Total Salary/ERE	531,000	194,800	367,900	150,900	320,000	\$1,564,600
Travel	29,300		-		3,000	\$32,300
Operating Expenses						
On-Going	16,400	6,100	9,000	5,400	6,600	\$43,500
One-Time (Build Out)						\$300,000
One-Time	8,000	6,000	12,000	6,000	12,000	\$54,000
Total Operating	34,400	2,100	21,000	11,400	18,600	\$397,500
Total Projected Cost	594,700	206,900	388,900	162,300	341,600	\$1,994,400