

**IN THE SUPERIOR COURT OF THE STATE OF ARIZONA IN
AND FOR THE COUNTY OF MARICOPA**

IN THE MATTER OF CAPITAL)	ADMINISTRATIVE ORDER
CASE MANAGEMENT PLAN)	No. 2018 – 157
_____)	(Replaces No. 2012-173)

The Arizona Supreme Court has ordered that capital cases shall be tried within twenty-four (24) months from the date the state files a notice of intent to seek the death penalty pursuant to Rule 15.1(i). See Rule 8.2(a)(4), Arizona Rules of Criminal Procedure.

The just and speedy processing of capital cases requires a uniform and active case management policy. The following procedures shall be followed by the Superior Court in Maricopa County for the management of capital cases.

IT IS ORDERED:

1. All capital cases shall be managed pursuant to this Capital Case Management Plan.
2. Upon filing by the State of the Notice of Intent to Seek the Death Penalty, the Criminal Presiding Judge or his/her designee shall issue a capital case assignment and scheduling order similar in form to Attachment A. The capital case assignment and scheduling order shall at a minimum:
 - a. Set the last day twenty-four (24) months from the date the state files a notice of intent to seek the death penalty pursuant to Rule 15.1(i);
 - b. Set a firm trial date within the last day;
 - c. Set a date for a Final Trial Management Conference approximately thirty days before the firm trial date;
 - d. Assign the case to a capital case management judge;
 - e. Set the first capital case management conference (“case management conference”) before the assigned judge; and
 - f. Order that a Resolution Management Conference be conducted at least sixty (60) days before the Final Trial Management Conference.
3. Each capital case shall be assigned to a capital case management judge. That judge shall manage the case and, if available, preside over the trial. Should the capital case management judge be unavailable to try the case, the

Criminal Presiding Judge or his/her designee shall reassign the case as soon as possible after being advised of the assigned capital case management judge's unavailability.

4. At the first case management conference, the assigned judge shall set subsequent case management conferences not less than every 60 days. Before each case management conference, the assigned judge shall require counsel to submit a jointly agreed upon written Capital Case Management Report showing the progress made on the case since the last case management conference, and its readiness for trial.
5. Any motion to continue the firm trial date or to extend the last day shall be presented to and ruled on by the Criminal Presiding Judge or his/her designee.

IT IS FURTHER ORDERED terminating Administrative Order No. 2012-173.

DATED this 15th day of November, 2018.

/s/ Janet E. Barton

Janet Barton,
Presiding Judge

Original: Clerk of the Court

Copies: Hon. Sam Myers, Criminal Presiding Judge
All Criminal Court Judges and Commissioners
Hon. Mark Brnovich, Attorney General
Hon. Bill Montgomery, County Attorney
Hon. Paul Penzone, Sheriff
Hon. Chris DeRose, Clerk of Court
Christina Phillis, Public Defense Services
James J. Haas, Public Defender
Marty Lieberman, Legal Defender
Sabrina Ayers Fisher, Public Advocate
Rosemarie Pena-Lynch, Legal Advocate
Ray Billotte, Judicial Branch Administrator
Barbara Broderick, Chief Adult Probation Officer
Richard Woods, Deputy Court Administrator
Chris Bleuenstein, Criminal Court Administrator

Capital Case Assignment and Scheduling Order

The State has filed a notice seeking the death penalty pursuant to Rule 15.1(i), Arizona Rules of Criminal Procedure. Rule 8.2(a)(4), Ariz. R. Crim. P. requires capital cases to be resolved within twenty-four (24) months from the date the State files a notice of intent to seek the death penalty pursuant to Rule 15.1(i). The Notice of Intent to Seek the Death Penalty was filed on _____.

Article II, § 2.1(10), Constitution of the State of Arizona, guarantees each victim the right to a speedy trial.

Rule 1.2, Arizona Rules of Criminal Procedure, provides:

These rules are intended to provide for the just and speedy determination of every criminal proceeding. [They shall be construed] to secure simplicity in procedure, fairness in administration, the elimination of unnecessary delay and expense, and to protect the fundamental rights of the individual while preserving the public welfare.

The Arizona Rules of Criminal Procedure will be enforced to achieve those goals. Material facts and exhibits not disclosed may be precluded. Failure to timely disclose information required to be disclosed pursuant to Rules 15.1 and 15.2, Ariz. R. Crim. P., may result in sanctions being imposed. Counsel should assure that their respective disclosure statements and supplements are complete and comprehensive, and implement, and not to impede, the fair and speedy determination of the case.

Accordingly,

IT IS HEREBY ORDERED setting the last day as _____.

IT IS FURTHER ORDERED pursuant to A.R.S. §§ 13-753 and 13-754, that Defendant undergo intelligent quotient (IQ), competency, and sanity prescreening evaluations. In the event an objection to the testing is not filed by Defendant within thirty (30) days, of this Capital Case Assignment and Scheduling Order the assigned judge will appoint one or more experts to conduct the prescreening evaluations regarding Defendant's intelligence quotient, competency to stand trial, and whether Defendant was sane at the time Defendant allegedly committed the charged crime(s). The assigned judge may, for good cause, grant one 60-day extension in which to file the objection. The assigned judge, after considering the rights of the victim, may grant additional 30-day extensions only upon a showing that extraordinary circumstances exist. After considering the rights of the victim, the assigned judge may grant longer extensions only on a showing that extraordinary circumstances exist and that delay is indispensable to the interests of justice.

IT IS FURTHER ORDERED setting trial on _____ at _____ a.m.

This is a firm trial date and will not be continued absent a “showing that extraordinary circumstances exist and that delay is indispensable to the interests of justice.” See Rules 8.2(d) and 8.5(b), Arizona Rules of Criminal Procedure. The Court is setting the trial date early in the case to assist assigned counsel in resolving any personal or trial calendar scheduling conflicts.

Each retained expert shall be informed of the trial date to confirm his/her availability in the event that the expert becomes a testifying witness. If an expert witness is not available at the time of trial, counsel shall work with and impress upon the expert witness that the current trial date is a firm trial date and/or arrange with opposing counsel to take a videotape deposition for presentation of that expert witness’ testimony to the jury.

IT IS FURTHER ORDERED that the assigned judge shall not grant a continuance to the trial date beyond the current last day. Any motion to continue the trial date beyond the current last day must be submitted to the Criminal Presiding Judge or his/her designee.

IT IS FURTHER ORDERED assigning this case to Judge _____. The assigned judge will handle all pretrial matters except those reserved to the Criminal Presiding Judge. In the event the assigned judge is in trial or otherwise unavailable on the trial date, another judge will try the case.

The Court has an obligation to facilitate timely trials in capital cases by prepared counsel meeting qualifications set by the Arizona Supreme Court,

IT IS THEREFORE ORDERED setting a Rule 6.2/6.8 hearing on _____ at _____ a.m. before the Criminal Presiding Judge, Judge _____, to determine defense counsel. At the hearing, proposed counsel shall provide the Court with verification of counsel’s certification to defend a capital case and be prepared to discuss the number of cases, capital and non-capital, in which they are currently counsel of record, and whether counsel’s current schedule and trial calendar are conducive to meeting the existing trial date and last day.

IT IS FURTHER ORDERED that the following disclosure schedule shall apply:

1. The State shall abide by the time limits set forth in Rule 15.1, and in particular, Rule 15.1(i), Arizona Rules of Criminal Procedure.
2. The Defendant shall abide by the time limits set forth in Rule 15.2, and in particular, Rule 15.2(h), Arizona Rules of Criminal Procedure. All mitigation evidence shall be disclosed in accordance with the requirements of Rule 15.2(h).

3. Alternatively, the Court may impose or counsel may personally confer and present to the court at the first case management conference a case management plan including a discovery and disclosure schedule which, if adopted by the Court, will be the controlling schedule for the case. The case management plan proposed by counsel must accommodate the existing trial date and last day.
4. In the Court's discretion the disclosure of each expert witness shall be accompanied by at least three (3) dates on which the expert and the disclosing party's counsel are available for opposing counsel to conduct an interview of the expert witness.

The schedule established by the Arizona Rules of Criminal Procedure or adopted by the Court may be deviated from by written agreement between counsel and approval of the assigned judge, but any deviation from the time limits prescribed by the Arizona Rules of Criminal Procedure or the adopted case management plan shall not affect the existing last day or trial date.

Evidence, material facts, or exhibits not timely disclosed, pursuant to the disclosure schedule set by the Arizona Rules of Criminal Procedure or adopted by the Court may be precluded from use at any phase of the trial.

IT IS FURTHER ORDERED that before the first case management conference, counsel who will try the case shall personally meet and decide on a date by which all witness interviews shall be completed. The judge shall include that date in the case management conference minute entry.

IT IS FURTHER ORDERED that counsel schedule and participate in a resolution management conference at least 60 days before the Final Trial Management Conference. All counsel shall attend the resolution management conference including those with authority to settle the case. If the trial attorney must consult with someone to obtain authority to settle the case, the person with whom consultation is required shall personally attend the resolution management conference.

IT IS FURTHER ORDERED affirming the first Capital Case Management Conference before the assigned judge on _____ at _____ a.m. The assigned judge shall set subsequent case management conferences not less than every 60 days.

IT IS FURTHER ORDERED that before each case management conference, counsel **shall** submit, a jointly agreed upon written Capital Case Management Report showing the progress made on the case since the last case management conference and its readiness for trial. At a minimum, the report **shall** set forth the status of ongoing investigations, all forensic testing, and the number of interviews. Failure to submit a written report may result in the imposition of sanctions.

Upon request by Defendant's counsel an Order for Production of Mitigation Documents pertaining to acquisition of Defendant's records will be signed by the Criminal Presiding Judge and will be available for pickup at the Criminal Presiding Judge's chambers by Defendant's counsel, Defendant's mitigation specialist, or an authorized representative of Defendant.

IT IS FURTHER ORDERED that all *ex parte* motions requesting additional orders for acquisition of mitigation evidence shall be submitted to the assigned judge. Should an *ex parte* meeting with the assigned judge to discuss the details of the mitigation work be deemed necessary, defense counsel may make that request pursuant to Rule 6.7(b), Ariz. R. Crim. P.; see also, *Morehart v. Barton*, 226 Ariz. 510, ¶22, 250 P.3d 1130 (2011); see, Local Rule 2.19 (Sealing or Redacting Court Records).

IT IS FURTHER ORDERED setting a Final Trial Management Conference on _____ at _____ a.m. before _____ (the assigned judge).

IT IS FURTHER ORDERED that all materials needing language translation and that any interpreter needs shall be addressed in accordance with Administrative Order 2016-034. An untimely request for translation services will not be considered as a ground for a trial continuance.

IT IS FURTHER ORDERED, unless otherwise ordered by the assigned judge:

1. **No less than ten (10) judicial days before the Final Trial Management Conference**, counsel shall file:
 - A. Any trial memoranda (optional), which will be in lieu of post-trial briefs unless otherwise requested by the Court at the conclusion of the trial.
 - B. Motions *in limine*, which must meet the test of *State v. Superior Court*, 108 Ariz. 396, 499 P.2d 152 (1972): "The primary purpose of a motion *in limine* is to avoid disclosing to the jury prejudicial matters which may compel a mistrial." Each motion shall be limited to one issue.
 - C. A Joint Pretrial Statement (the JPTS **IS NOT optional**). **Objections to exhibits and deposition testimony may be waived if not set forth in the Joint Pretrial Statement.**
 - D. An agreed-upon jury questionnaire. Counsel **shall** personally consult for the purpose of preparing and submitting a joint set of agreed-upon questions. Counsel shall also jointly submit a separate list of questions not agreed-upon to the Court to resolve.
 - E. Proposed jury instructions. Counsel **shall** personally consult for the purpose of preparing and submitting a joint set of agreed-upon preliminary

and final jury instructions for each phase of the trial (guilt, aggravation, and penalty). Counsel shall submit any instructions not agreed upon to the Court to resolve.

2. Any written response to a motion *in limine* must be filed no later than noon on the Friday before the Final Trial Management Conference.
3. At least three (3) judicial days before the trial date, Counsel shall deliver to the Clerk for the trial division all trial exhibits, along with a joint LIST OF EXHIBITS in accordance with current Clerk of Court policies. The exhibits will be marked serially as they are listed in the LIST OF EXHIBITS. The parties shall advise the trial Division, referring specifically to the Joint Pretrial Statement, which exhibits may be marked directly in evidence. **Counsel are directed to meet in person to exchange the exhibits before providing the exhibits to the Court's Clerk. Counsel will make sure that they do not bring to the Clerk a set of exhibits that includes duplicate exhibits.** Counsel should not reserve exhibit numbers for additional exhibits, miscellaneous demonstrative exhibits, and the like. Counsel shall also present original depositions for filing at that time. Written stipulations to admit specified exhibits in evidence are encouraged. If an objection to an exhibit is not stated in the Joint Pretrial Statement that objection is deemed waived and the trial judge will assume the exhibit may be marked directly in evidence.
4. All documents and pleadings described above shall be hand-delivered, emailed, or faxed to opposing counsel on the date they are delivered to the Court.
5. All motions other than motions *in limine* shall be filed at least **60 days before the Final Trial Management Conference** to allow sufficient time for briefing and oral argument, notwithstanding Rule 16.1(b), Ariz. R. Crim. P. (which provides "no later than 20 days before trial"). The trial will not be continued because a motion is pending.
6. All witnesses should be scheduled to testify to allow sufficient time to complete direct, cross and redirect examinations by 4:30 p.m. If a doctor or other expert witness is scheduled to appear in the afternoon on any trial day, the party calling the witness shall have the witness plan on returning to court the next trial day unless all counsel have agreed to a time allocation for completing their questioning by 4:30 p.m. The trial judge will likely not keep the jury later than 4:30 p.m. to accommodate a witness' unavailability to testify on the next trial date.