

**ARIZONA SUPREME COURT
CAPITAL CASE OVERSIGHT COMMITTEE
MINUTES**

January 16, 2008
Supreme Court Building, Phoenix, AZ

MEMBERS PRESENT:

Hon. Anna Baca
Kent Cattani
Donna Hallam
Phil MacDonnell
Dan Levey
Martin Lieberman
James Logan
Paul Prato
Hon. Michael Ryan, Chair

MEMBERS ABSENT:

Ronald Reinstein

GUESTS:

James Beene
Bob Shutts
Theresa Barrett
Cindy Cook
Melinda Hardman
Cari Gerchick

STAFF:

Lorraine Nevarez * Jennifer Greene

I. Call to Order, Introductions & Review of Administrative Order No. 2007-92

Justice Ryan called the meeting to order at 12:05 PM. The members reviewed the terms of the administrative order establishing the Oversight Committee.

II. Updates on the Status of Capital Case Processing in Maricopa County

a. Cases awaiting trial: Judge Baca reported that there are 126 pending cases including six *Ring* remands; Jim Logan has 128 cases on his list including nine remands.

b. Available defense attorneys: All pending cases have assigned counsel, and at least a few defense lawyers are available to handle new filings. Staffing at the Public Defenders Office is “in good shape,” although there is one mitigation specialist vacancy, which the County is expected to fill despite the recently-announced hiring freeze.

c. Judicial and administrative staffing: One criminal judge has been designated as the Capital Case Judge pursuant to the County’s allocation of one additional judge to handle capital cases. Three other Special Assignment Criminal Dept judges have also been assigned duties to include some concentrated assistance with capital cases, but they also continue to handle non-capital complex criminal matters. It appears the County will not be seeking additional judgeships from the Governor for the time being. The court has not been able to fill the capital case manager position and recently re-advertised it. The hiring freeze may impact the court’s ability to hire someone for this position. The Presiding and Associate Presiding Criminal Judges are sharing the responsibilities of the capital case manager position and are tracking and actively managing the progress of each case.

d. New case filings: From February to December, 2007, 27 new capital cases were filed. The rate at which new capital cases are being filed has slowed since the summer. Five new cases were filed in June, July, August, and September, one was filed in October, no new cases were filed in November, and one was filed in December. The County Attorney's Office reported that the decrease in new case filings is solely due to the facts underlying the recent homicide cases they have charged. Each case is considered on its merits; future filing rates cannot be predicted.

e. Case terminations: Four capital case trials began in January; in one case the defendant entered a guilty plea in the middle of the trial. Five more are scheduled to begin in February. From February to December, 2007, 39 cases were terminated (i.e. sentenced, acquitted or dismissed). In 32 of the cases that were terminated, 15 ended in a plea, in three cases, the prosecution withdrew its death notice, another three ended through some other type of dismissal, and 12 went to trial -- resulting in five life sentences, six death sentences, and one acquittal.

f. Resolution Management Conferences: The new resolution management conference process has avoided several trials in cases involving defendants who were reluctant to agree to take a plea offer. The success in resolving these cases may be partly a consequence of the court's policy of allowing the defendant's family members and doctors to attend these conferences and confer privately with the defendant during the conference.

g. Mitigation Special Masters: Each pending case has been assigned an experienced judge to act as a special master, with the exception of a few cases that are nearing trial. The special masters have been effective at moving some cases along that had been lagging. When feasible, these judges have been assigned to groups of cases to permit the judge to deal with the same attorneys or defender offices on multiple cases.

h. Length of trials: At or before the next meeting, the trial court will provide the committee with an analysis of how many trial days were needed in recent capital trials. All attorneys now use questionnaires to narrow the focus of voir dire, although this may not be shortening the length of the voir dire process significantly.

i. Judicial rotations: The court is currently working on its annual judicial rotations for June. At least one criminal judge will be taking a capital caseload to the judge's forthcoming special assignment duties in the civil department, but this may not be practical for some who are rotating to other types of assignments.

j. PCR cases awaiting appointment of counsel: There are 13 defendants in post-conviction relief status who are awaiting assignment of defense counsel over and above those that were transferred to the Office of the State Post-Conviction Public Defender. Only one or two private attorneys on the appointment list are still willing to handle these cases.

k. Other news: The County Attorney's Office is analyzing recent jury verdicts in capital cases to try to identify common features of those that ended in a life sentence as opposed to those in which the jury imposed a death sentence to inform the office's decision-making on charging homicides. Mr. MacDonnell noted that the trial court's efforts have had a very positive impact.

III. Status Report on Task Force Recommendations

Staff reviewed the status of the recommendations that came out of the Capital Case Task Force. In addition to establishing the Oversight Committee, the Chief Justice also issued the recommended policy on trial transcript management. The Judicial Council agreed to include in its legislative package the proposal to increase the hourly rate for PCR counsel. However, state budget concerns will mean this proposal will not be advanced this year. For the same reason, the proposal for an increase in the page rate for transcripts will reportedly not be advanced by the Arizona Court Reporters Association this year. Staff filed the recommended Rule 28 petition to amend Criminal Rule 15.1(i) dealing with a stipulated extension on the deadline for filing a notice of intent to seek death. The comment period for this proposal ends May 20th. If the Supreme Court adopts the change, the effective date will likely be set for January 1, 2009. The Superior Court in Maricopa County has applied for grant funding for more capital case training for judges and lawyers that will likely include a focus on Rule 32.

Mr. Lieberman explained that he has not tried to pursue a statutory amendment to A.R.S. § 41-4301 because the statute prohibits him from engaging in lobbying. However, he has submitted a budget request in the event someone else manages to amend the statute to permit him to hire more staff. He now has two lawyers working with him but will lose one on June 30, 2008. That position is funded with funds which are not available in FY09. Unless FY09 is funded at levels greater than FY08 (which is not anticipated), the office will have only one staff attorney after June 30th.

The Chair asked Mr. Cattani to explore with Mr. Lieberman whether the Attorney General's Office could assist in seeking a statutory amendment to § 41-4301 as the Task Force had originally recommended.

IV. Call to the Public and Adjournment

The Chair asked members to meet again before March 27th. Dates will be circulated. No response was heard from the call to the public.

The meeting was adjourned at 12:55 PM.