

**ARIZONA SUPREME COURT
CAPITAL CASE OVERSIGHT COMMITTEE
MINUTES
JUNE 26, 2008**

Members Present:

Hon. Michael D. Ryan, Chair
Hon. Anna Baca
Kent Cattani
Donna Hallam
Marty Lieberman
James Logan
Phil MacDonnell
Paul Prato

Members not Present:

Hon. Ronald Reinstein
Dan Levey

Guests:

James Beene
Robert Shutts
Theresa Barrett

Staff: Mark Meltzer, Lorraine Nevarez

1. Call to Order and Approval of the Meeting Minutes. The meeting was called to order at 12:25 p.m. The minutes of the March 13, 2008, committee meeting were unanimously approved.

2. Status reports. Members of the committee provided case volume and other updates as follows:

A. Mr. Logan. Mr. Logan provided the following information regarding the number of capital cases in Maricopa County:

Active cases:	119
Potential cases:	17
Pled, not sentenced:	11
Remands:	7
Total:	154

These numbers are accurate as of June 25, 2008.

Mr. Logan acknowledged that the number of cases in the Maricopa County Superior Court approximates the number from a year-and-a-half ago, with three distinctions. First, the number of potential capital cases noted above is probably overstated. Second, all actual and potential capital defendants are now being provided “first chair” counsel promptly after their arrest. Third, every capital defendant has an assigned mitigation specialist, or is the process of getting one. An exception involves an eight-defendant case, six of whom are capital defendants; and given that complexity, it may take longer to see which mitigation specialist is going to be working with each individual defense counsel.

Mr. Logan also noted that the appointed contract attorneys select their mitigation specialists; he does not assign them. The rate for the contract specialists is \$55/hour. These contracts are for

three years. Mr. Logan estimated that roughly 35% of the capital case defendants have privately appointed counsel; the balance have counsel from one of the three public defense agencies.

B. Judge Baca. Judge Baca provided her numbers on pending capital cases in Maricopa County:

Total:	127
<u>Ring</u> :	5 of the total
Other remands:	2 of the total

Judge Baca's number of cases, excluding the Ring and other remands, totals 120. Mr. Logan and Judge Baca discussed how their totals were substantially equivalent. In particular, each total represents a snapshot at a certain point in time. They could each derive their data at different times, resulting in a nominal difference, in this instance, of one case.

Judge Baca noted that so far in 2008, there have been 15 cases which have had resolution management conferences. She emphasized that this is not the number of conferences, but rather the number of cases having conferences, because some cases require multiple conferences.

Judge Baca also shared her computations of capital case filings. Her figures showed that 26 cases were filed in calendar year 2007; that is, on average, 2.2 cases per month. For the first six months of 2008, there have been 17 filings, or about 2.8 cases per month.

Judge Baca also provided the following disposition data comparing 2007 versus the first half of 2008:

Pleas:	18 in 2007 vs 7 in 2008
Trial, life:	4 in 2007 vs 2 in 2008
Trial, death:	7 in 2007 vs 5 in 2008
Acquittals:	1 in 2007 vs 0 in 2008
Dismissals:	3 in 2007 vs 2 in 2008
Notice w/d:	3 in 2007 vs 1 in 2008

Total case terminations:	36 in 2007 vs 17 in 2008
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C. Mr. MacDonnell. Mr. MacDonnell provided these numbers:

Between 2001 and 2005, the average time to resolution of a capital case was 43 months. More recently, the time to get to trial has been about 30 months (this figure includes projected or estimated trial dates.) He believes that the processing time for capital cases is speeding up.

The last eleven jury verdicts, going back to November, 2007, have been 8 death verdicts and 3 life verdicts, i.e., about 72% death verdicts.

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D. Ms. Hallam. Ms. Hallam gave the following numbers and update:

There are 21 capital appeals pending in her office. This is an increase of a few cases over prior years. She stated that there is greater cooperation of the managing court reporter in Maricopa County concerning transcript preparation. Also, some contract attorneys are handling multiple capital case direct appeals. Ms. Hallam reported that the justices are available for the pending cases, but that a portion of these cases are still in the briefing stage and are not yet ready to go to the judicial chambers. There have been some additional requests for extensions of time by appellate counsel on both sides.

There are 15 capital cases without PCR counsel. This represents no change since her last report. She has received no new applications from attorneys for placement on her list of available counsel.

E. Mr. Lieberman. Mr. Lieberman reported that his office has three capital PCR matters. None of them have yet reached the point where he has been able to file a petition in the Superior Court. He noted that the pre-petition stage in the Superior Court is the most labor intensive part of the process. He is hopeful that after a petition has been filed, or even after one of these matters has reached the stage in which a petition for review has been filed, that he will be able to take on additional cases.

Mr. Lieberman also advised the committee that the budget bill now pending in the Legislature and likely to be adopted will permit him to maintain the size of his office. With this budget, his office will not expand, but it will not decrease in size either.

3. Discussions on specific issues.

A. Transfer of case files. Mr. Lieberman stated that he has a problem in every case in getting the file of prior counsel. He has one case in particular which he believes he will probably never get the complete file. He believes that while this is a problem in all cases, it is more of a problem with private counsel that it is with public agency counsel. Specific difficulties include:

- Individuals working on a case not placing their work product in the defendant's file;
- Collecting electronic information, including emails, from the computers of individuals who worked on the case; and
- The unwillingness of certain defendants to waive the attorney-client privilege.

The committee members recalled that these or similar issues were discussed by the Capital Case Task Force, and that a proposed rule to address these matters was rejected. The rejection was premised in large measure on a cost analysis, including the cost of secured storage and backup.

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Action item. Mr. Lieberman, with the assistance of Mr. Cattani, will attempt to have an outline of a new proposal to address the issues arising from transfer of case files by the next meeting of this committee.

B. Rotation of judges with capital cases. An inquiry was raised about the proposal of the Capital Case Task Force that judges with capital cases retain those cases after they were rotated off the criminal bench. A number of rotations took place earlier this month.

Judge Baca responded. She noted that a criminal judge rotated to a family law or juvenile assignment cannot keep a capital case because the domestic and juvenile courtrooms are not adapted for jury trials. A judge who rotates to a civil assignment can keep a capital case, and she tries to have the judge in this circumstance keep the capital case.

Judge Baca also noted that she is using the special assignment judges, including Judge Granville, extensively for capital cases. She is attempting to keep these judges on longer assignments. Judge Baca also advised that she has a weekly committee meeting of her judges with capital case assignments. This committee reviews which cases are ready to go to trial, and if the assigned judge is unavailable, they find another qualified and available judge to conduct the trial. Judges who are new to a criminal calendar do not immediately get capital case assignments, so not all of the judges on the criminal bench are taking capital cases.

4. Call to the Public; Adjournment.

There was no response to the call to the public.

The committee agreed to meet next in September.

The meeting was adjourned at 1:10 p.m.