

SUPREME COURT OF ARIZONA

In the Matter of) Arizona Supreme Court
) No. R-09-0037
PETITION TO AMEND RULE 10.2,)
ARIZONA RULES OF CRIMINAL)
) **FILED 09/02/2010**
)
_____)

ORDER

**RE-OPENING PROPOSED AMENDMENT OF RULE 10.2, ARIZONA RULES OF CRIMINAL
PROCEDURE, FOR COMMENT**

A petition has been filed proposing to amend Rule 10.2, Arizona Rules of Criminal Procedure, and comments have been received. Upon consideration,

The Court is inclined to adopt the attached amendment of Rule 10.2, Arizona Rules of Criminal, but believes it would benefit from an extended comment period.

IT IS THEREFORE ORDERED that this matter shall be re-opened for comment in accordance with Rule 28(G)(2), Rules of the Supreme Court, until December 3, 2010.

DATED this _____ day of September, 2010.

REBECCA WHITE BERCH
Chief Justice

TO:
Rule 28 Distribution
Daniel B Patterson
John A Furlong
Norman Davis
mwa

ATTACHMENT¹

Arizona Rules of Criminal Procedure

Rule 10.2. Change of judge upon request

a. Entitlement. ~~In any death penalty case, any party shall be entitled to request a change of judge as a matter of right no later than ten (10) days after the state files a notice of intention to seek the death penalty.~~ In any criminal case ~~other than a death penalty case,~~ each side is entitled as a matter of right to a change of judge. Each ~~non-death penalty~~ case, whether single or consolidated, shall be treated as having only two sides; except that, whenever two or more parties on a side have adverse or hostile interests, the presiding judge or that judge's designee may allow additional changes of judge as a matter of right. Notwithstanding the foregoing provision, the right to a change of judge shall be inapplicable to Rule 32 petitions for post-conviction relief or remands for resentencing.

b. Procedure. A party may exercise his or her right to a change of judge by filing a pleading entitled “Notice of Change of Judge” signed by counsel, if any, stating the name of the judge to be changed. The notice shall also include an avowal that the request is made in good faith and not:

1. For the purpose of delay;
2. To obtain a severance;
3. To interfere with the reasonable case management practices of a judge;
4. To remove a judge for reasons of race, gender or religious affiliation;
5. For the purpose of using the rule against a particular judge in a blanket fashion by a prosecuting agency, defender group or law firm (*State v. City Court of Tucson*, 150 Ariz. 99, 722 P.2d 267 (1986));
6. To obtain a more convenient geographical location; or
7. To obtain advantage or avoid disadvantage in connection with a plea bargain or at sentencing, except as permitted under Rule 17.4(g).

The avowal shall be made in the attorney's capacity as an officer of the court.

¹ Changes or additions in rule text are indicated by underscoring and deletions from text are indicated by ~~strikeouts~~.

c. Time for Filing. A notice of change of judge ~~in a non-death penalty case~~ shall be filed within ten days after any of the following:

- (1) Arraignment, if the case is assigned to a judge and the parties are given actual notice of such assignment at or prior to the arraignment;
- (2) Filing of the mandate from an Appellate Court with the clerk of the Superior Court;
- (3) In all other cases, actual notice to the requesting party of the assignment of the case to a judge.

Notwithstanding the foregoing provision, if a new judge is assigned to a ~~non-death penalty~~ case fewer than ten (10) days before trial (inclusive of the date of assignment), a notice of change of judge shall be filed, with appropriate actual notice to the other party or parties, by 5:00 p.m. on the next business day following actual receipt of notice of the assignment, or by the start of trial, whichever occurs sooner.

d. At the time of the filing of a notice of change of judge, the parties shall inform the court in writing if they have agreed upon a judge or judges who are available and are willing to have the action assigned to that judge. An agreement of all parties upon such judge may be honored and, if so, shall preclude further changes of judge as a matter of right unless the agreed-upon judge becomes unavailable. If no judge has been agreed upon, then the presiding judge shall immediately reassign the action.

If a judge to whom the action has been assigned by agreement later becomes unavailable because of a change of calendar assignment, death, illness, or other legal incapacity, the parties shall be restored to their rights under this rule as they existed immediately before the assignment of the action to such judge.