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SUPREME COURT OF ARIZONA

STATE OF ARIZONA,

Appellee,

v.

AARON BRIAN GUNCHES,

Appellant.

Arizona Supreme Court No.
CR-13-0282-AP

Maricopa County
Superior Court
No. CR2003-038541

**STATE OF ARIZONA'S
MOTION TO STRIKE NON-
PARTY MARICOPA
COUNTY ATTORNEY'S
MOTION TO SET
BRIEFING SCHEDULE FOR
MOTION FOR WARRANT
OF EXECUTION**

INTRODUCTION

The Arizona Attorney General's Office represents the State of Arizona in this Court and in these proceedings. The Maricopa County Attorney's Office ("MCAO") does not. As the State's chief law enforcement officer and the legal representative for the Arizona Department of Corrections, Rehabilitation and Reentry ("ADCRR"), it is the Attorney General's responsibility to represent the State in all capital appellate and capital post-conviction proceedings. Thus, the authority to request a warrant of execution, which is an integral part of those post-conviction proceedings, rests exclusively with the Attorney General.

MCAO does not represent the State, is not a party to this case, and is not authorized to seek a warrant of execution. MCAO's Motion to Set Briefing Schedule for Motion for Warrant of Execution is not authorized, and therefore the State moves to strike it. At bottom, MCAO's request is contrary to statute and would invite chaos into legal proceedings before this Court and others in the capital context and beyond.

ARGUMENT

I. The Attorney General maintains exclusive authority to represent the State in this Court.

A. Only the Attorney General has express statutory authority to represent the State in this Court.

The Attorney General “serve[s] as chief legal officer of the state.”

A.R.S. § 41-192. Section 41-193 specifically delineates several responsibilities for the “department of law,” which “shall be composed of the attorney general and the subdivisions of the department created as provided in this article.” The very first responsibility on that list is that “the department shall . . . [p]rosecute and defend in the supreme court all proceedings in which this state or an officer of this state in the officer’s official capacity is a party.”

A.R.S. § 41-193(A)(1).

Looking at the Attorney General’s statutory grant of authority, this Court has previously concluded that “the Attorney General is the proper state official to institute [an] action” in the Supreme Court. *State ex rel. Morrison v. Thomas*, 80 Ariz. 327, 332 (Ariz. 1956); *see also Crosby-Garbotz v. Fell in & for Cnty. of Pima*, 246 Ariz. 54, 60 ¶ 24 (2019) (noting that Attorney General’s Office has supervisory authority over county attorneys and handles appeals from criminal cases tried by county attorneys). Other state

courts have interpreted similar statutory grants of authority the same way. In *State v. Market*, 302 N.E.2d 528 (1973), for example, the Indiana Court of Appeals surveyed 11 other state statutes which, like Arizona's, provided that the attorney general shall represent the state in the supreme court. *Id.* at 531-533. The Court found that "not a single State permits the county Prosecuting Attorney to take an appeal from the trial court in a criminal case to the State Supreme Court on his own initiative." *Id.* at 533. In each of the surveyed states, "[e]ither the Attorney General alone is authorized to prosecute such appeals, or the Prosecuting Attorneys with the consent of, and in conjunction with, the Attorney General have the right to appeal criminal cases[.]" *Id.*

So too in Arizona, where the Attorney General "[e]xercise[s] supervisory powers over county attorneys of the several counties in matters pertaining to that office." A.R.S. § 41-193(A)(4). If the Attorney General deems it necessary, she may "prosecute and defend any proceeding in a state court other than the supreme court in which this state or an officer of this state is a party or has an interest." A.R.S. § 41-193(A)(2). The Attorney General may also "assist the county attorney of any county in the discharge of the county attorney's duties." A.R.S. § 41-193(A)(5). While the Attorney

General, pursuant to her supervisory authority, can authorize a county attorney to appear on behalf of the State on appeal, only the Attorney General has statutory authority to represent the State in this Court.¹ *See also Westover v. State*, 66 Ariz. 145, 151-52 (1947) (adopting interpretation of similar Kansas statute and finding the “language of the statute indicates that the intention was to grant plenary power to the Attorney General [who] was invested with full authority to . . . protect the interests of the state”).

B. The County Attorney is acting in excess of her legal authority.

Like the Attorney General, a county attorney’s authority is defined by statute. *See* Ariz. Const. art. 5, § 9 (executive powers “shall be as prescribed by law”). The Maricopa County Attorney has no independent authority to represent the State in this Court.

The statute delineating the powers of the county attorneys provides limited authority, which in the criminal-law context is focused on

¹ The Attorney General has long permitted county attorneys to represent the State in this Court in limited circumstances. Through cooperative relationships, the State is typically represented by county attorneys in non-capital post-conviction review cases. So too in other limited circumstances, such as when the Attorney General has a conflict of interest. Nothing about these historical practices, however, suggests that a county attorney may represent the State in this Court over the Attorney General’s objection.

prosecuting cases in the superior court and other courts within a given county. See A.R.S. § 11-532 (providing, among other things, that county attorneys shall “[a]ttend the superior and other courts within the county and on behalf of the state, conduct all prosecutions for public offenses,” and “shall furnish the attorney general” with certain information upon “receipt of an appellant’s brief in a criminal appeal”). Section 11-532 does not provide any express or implied authority to represent the State in this Court over the objection of the Attorney General.

Nor does any other statute provide that authority. In an effort to legitimize its Motion, MCAO cites A.R.S. § 17-103, claiming (at 4) the statute directs “county attorneys to prosecute and defend ‘on behalf of the state.’” However, this statute appears in Title 17 (Game and Fish), and limits a county attorney’s representation to matters “in all courts of the county” and to actions “arising under this title.” This capital litigation does not arise under the statutes governing the Game and Fish Department. And it is telling that MCAO must reach this far in trying to demonstrate a basis for its position here.

MCAO similarly cites *State v. Payne*, 223 Ariz. 555, 562 ¶ 19 (2009), to support its position (at 4) that it “is entitled” to act on behalf of the State here.

But *Payne* invalidated a county's attempt to impose a prosecution fee through the county attorney's office because it was not authorized by an express or implied grant of power by the legislature. *Id.* at 568 ¶ 47. The case in no way authorized the county attorney to represent the State outside of superior court proceedings. And notably, the State was represented by the Attorney General's Office on appeal.

MCAO's reliance (at 5) on *State ex rel. Brnovich v. Ariz. Bd. of Regents*, 250 Ariz. 127 (2020), for its assertion that A.R.S. § 41-193(A)(1) does not "vest exclusive authority" with the Attorney General to represent the State in this Court is similarly unavailing. As this Court recognized in that case, A.R.S. § 41-193(A)(1) created specific, mandatory "duties of legal representation," including "prosecuting and defending all proceedings in this Court in which the state or an officer is a party." *Id.* at 132 ¶ 19. Where the Legislature has expressly delegated the duty of representation to the Attorney General, that representation cannot be asserted by others without authorization. *See Ariz. Dep't of Corr. v. Fenton*, 163 Ariz. 174, 176 (App. 1989) (outside legal counsel "are delegated the duty of defending the state" when employed by the attorney general). The County Attorney has not identified any legislative

grant of authority allowing her to represent the State in this Court and the Attorney General has not authorized her to do so here.²

C. MCAO has acknowledged it is not a party to this case.

The history of this case demonstrates the statutory division of responsibilities between the County Attorney and the Attorney General. As required by statute, at the conclusion of the superior court proceedings, the Attorney General assumed representation of the State in this matter. *See* A.R.S. § 11-532(B). Since then, MCAO has not appeared as a party in any facet of this litigation outside of Maricopa County Superior Court. Rather, MCAO has recognized its non-party status by filing multiple amicus briefs in this proceeding. *See* ARCAP 16(a) (“Amicus curiae is not a party to the appeal, and must be independent of any party to the appeal. Counsel for a party may not author an amicus curiae brief in whole or in part.”); MCAO’s Motion to Appear as Amicus Curiae filed Feb. 7, 2023 (recognizing “the Attorney General’s Office is currently prosecuting Gunches’ post-conviction claims” in this Court but seeking permission to appear as amicus as “the

² Indeed, in this case, the Attorney General previously notified MCAO and this Court that she would move to strike any filing like this one. State’s Response to Brief of Amici Curiae, filed Feb. 23, 2023 at 18 n.7.

original prosecuting agency”); MCAO Amicus Curiae Brief filed Feb. 16, 2023 (arguing that the State could not withdraw its motion for warrant of execution). MCAO now takes the remarkable position that it may convert itself from amicus to party on its own initiative.

Moreover, the Maricopa County Attorney has purported to personally represent one of the victims in this litigation. *See* Motion to Extend Warrant of Execution, filed March 31, 2023 (“Maricopa County Attorney Rachel H. Mitchell, on behalf of Victim Brittney Kay, move[s] this Court to extend the warrant by 25 additional days.”). In related superior court proceedings in April, MCAO announced its presence in court as “on behalf of Plaintiff/Victim Brittney Kay,” rather than on behalf of the State or even the County Attorney’s Office. Exhibit A (Excerpt from Return Hearing Transcript on April 6, 2023 at 3). This goes well beyond the statutory authority conferred by A.R.S. § 13-4437(C) and Ariz. R. Crim. P. 39.

“This Court has long held that victims are not ‘parties’ to a criminal prosecution.” *Fay v. Fox in and for Cnty. of Maricopa*, 251 Ariz. 537, 542, ¶ 32 (2021) (Timmer, V.C.J., dissenting) (citing *State v. Lamberton*, 183 Ariz. 47, 49-50 (1995)); *see also Lynn v. Reinstein*, 205 Ariz. 186, 191, ¶ 15 (2003) (“[V]ictims are not parties to a defendant’s criminal case.”). And because “the

prosecutor does not represent the victim,” to the extent the Maricopa County Attorney is (or has been) a legal representative of one of the non-party victims, she cannot simultaneously act as the current prosecutor for the State. *State ex rel. Montgomery v. Padilla*, 238 Ariz. 560, 565, ¶ 19 (App. 2015); *see also id.* (“Unlike a prosecutor, a victim’s personal counsel serves solely as an advocate for the victim.” (internal quotations and citation omitted)).

D. The County Attorney’s position would invite chaos into this Court and others in the capital context and beyond.

For reasons detailed below, permitting the County Attorney to provide dual representation of the State in this Court would create unique problems in capital proceedings. But the practical problems would not be limited to that context.

Permitting county attorneys to unilaterally insert themselves as “the State” where the State is already represented by the Attorney General would unnecessarily and inappropriately put courts (including this one) in the position of adjudicating disputes among multiple positions from “the State.” In non-capital criminal appeals, for example, may a county attorney who wants to argue an issue differently than the Attorney General insert herself on behalf of the State? More specifically, may a county attorney who wants

to present a particularly forceful defense of her office in the face of a prosecutorial misconduct allegation insert herself as a party in this Court?

If county attorneys may represent the State alongside the Attorney General (and over her objection) in this Court, why not in federal court, too? And setting aside disagreements with the Attorney General, Arizona's county attorneys often disagree with each other. State appellate courts and federal courts could thus soon be faced with wildly conflicting positions, all from "the State."

For good reason, the Legislature has enacted a statutory scheme that avoids these problems. Under a straightforward reading of the statutes, the Attorney General represents the State in this Court. As a non-party, neither the Maricopa County Attorney nor her office is authorized to act on behalf of the State in these proceedings, and the Court should strike MCAO's Motion.

II. Only the Attorney General is authorized to seek a warrant of execution from this Court.

Many of the issues discussed above become especially acute in the capital context. In addition to being the only state officer who is statutorily authorized to represent the State in this Court, the Attorney General is also,

and for separate reasons, the only officer who may seek a warrant of execution from this Court. This is demonstrated by the relevant statutes and procedural rules, along with the practicalities of capital litigation.

A. The statute and rule allowing the State to request a warrant of execution are part of the post-conviction process managed by the Attorney General.

Rule 31.23 provides for issuance of a warrant of execution upon the State's filing of "a notice" that the defendant has failed to timely initiate Rule 32 post-conviction relief proceedings, timely file a petition for review from the denial of post-conviction relief, or initiate federal habeas corpus proceedings within 15 days. Ariz. R. Crim. P. 31.23(a). The Rule also provides that a warrant must be issued on the State's motion after the defendant's federal habeas corpus proceedings have concluded. Ariz. R. Crim. P. 31.23(b). The Attorney General is responsible for representing the State in this Court and in federal habeas corpus proceedings. *See* A.R.S. § 41-193(A)(1) and (3). Because the Attorney General is the State's legal representative in those proceedings, it makes practical sense that the State, as contemplated in Rule 31.23, means the Attorney General's Office.

This understanding is also reflected in the 2015 amendment to Rule 31.17(c)(1) (now Rule 31.23). The Supreme Court staff attorney who

requested the rule change noted that under the prior version of the Rule, this Court's practice in capital cases was to automatically issue a warrant of execution after denying a defendant's PCR petition. Exhibit B (rule change petition) and Exhibit C (2014 order amending prior version of rule). However, defendants would then initiate federal habeas corpus proceedings and the warrant would be stayed, requiring notification to the Court and the Attorney General's Office. Exhibit B. The rule change altered this practice to conform to the clause in A.R.S. § 13-759(A) authorizing a warrant "upon motion by the state," to "avoid the unnecessary issuance of a warrant of execution for those petitioners who promptly initiate habeas corpus proceedings in federal district court." *Id.* Because the Attorney General's Office is responsible for representing the State in federal habeas proceedings, the Rule was amended so that an execution warrant would issue specifically upon the Attorney General's motion.

MCAO asserts (at 4) it "is entitled" to seek a warrant under A.R.S. § 13-759(A). But nothing in the statute supports that conclusion; in fact, the Legislature recently considered and rejected a proposal that would have provided the County Attorney some authority to seek execution warrants in this Court. H.R. Con. Res. 2030, 56th Leg., 2nd Reg. Sess. (as introduced, Jan.

23, 2024). Moreover, history dictates otherwise. In preparation for filing this Motion, the Attorney General reviewed capital cases in which the State sought a warrant of execution from this Court between 1994 and 2024.³ In every case, the warrant was sought by the Attorney General; there was not a single case in which the warrant was requested by a county attorney. *See* Appendix A. This Court should decline the County Attorney's invitation to allow a county attorney to make that request for the first time here.

Further, some of the practical problems noted above in § I(D) are particularly acute in the capital context. As the prosecutors at the trial court level, county attorneys may not have any non-public knowledge of the status of state and federal post-conviction proceedings. Put differently, they will not necessarily know anything that's not otherwise obvious to the Court from public dockets. Warrants could be requested and issued without regard for the State's constitutional, statutory, and administrative obligations with respect to carrying out executions, resulting in the need for

³ Prior to 1994, the trial court (and later the Supreme Court) would automatically issue a warrant of execution without a motion from the State. *See* Ariz. R. Crim. P. 343 (1956). In 1994, the Legislature added the language currently found in A.R.S. § 13-759(A), providing that the Court shall issue a warrant "upon motion by the state." Ariz. Sess. Laws 1994 Ch. 76, § 2.

multiple warrants in any given case.⁴ And if one or more of Arizona’s 15 county attorneys disagree as to whether or when to seek a warrant, this Court may have to hear from multiple county attorneys purporting to represent the State in the same proceeding. And even setting that possibility aside, the Court could be faced with radically different positions from “the State” from different county attorneys in different cases. Allowing anyone other than the Attorney General to seek a warrant of execution would waste judicial resources and subject the Court, the parties, and the victims to unnecessary confusion and chaos.

B. The allocation and expenditure of resources in capital post-conviction litigation further establishes the Attorney General’s complete authority to represent the State.

The Attorney General’s Office spends “more than two decades at a cost that often exceeds three million dollars” handling appellate and post-

⁴ As this Court recognized, a warrant of execution simply authorizes ADCRR to carry out an execution. Order Denying Victim’s Petition for Special Action, filed March 22, 2023 (CV-23-0055-SA) at 1-2. Allowing a county attorney to request a warrant before ADCRR is prepared to carry out an execution could easily result in this Court issuing multiple warrants without any execution taking place. This is exactly the kind of resource-wasting that the Court sought to avoid when it amended Rule 31.23 in 2014. See Exhibits B, C.

conviction proceedings in each capital case.⁵ Kent E. Cattani, Paul J. McMurdie, *Death Penalty 101: The Death Penalty Charging Decision in Arizona. Is There A Better Way?*, 53 Ariz. St. L.J. 793, 795 (2021). Given the significant time and resources the Attorney General’s Office spends on capital appellate litigation, it makes sense that, upon the conclusion of that process, it is the Attorney General who seeks an execution warrant.

Moreover, once an execution warrant is issued, significant litigation often ensues regarding the manner of execution. That litigation may occur in this Court and in the federal courts; in both places, the Attorney General is authorized to represent the State, and the County Attorney is not. *Compare* A.R.S. § 41-193(A)(1), (3) *with* A.R.S. § 11-532. This post-warrant litigation is time sensitive and resource intensive. If any county attorney could seek an execution warrant, then the Attorney General would have no ability to manage the intense workload created by each warrant.

⁵ To help accomplish a portion of this work, the Legislature appropriates “Capital Postconviction Prosecution” funds directly to the Attorney General’s Office each year. Exhibit D (JLBC FY 2024 Appropriations Report).

C. As ADCRR’s legal representative, the Attorney General has exclusive authority to request a warrant of execution.

The Attorney General’s exclusive authority to request a warrant of execution makes particular practical sense given the Attorney General’s relationship with ADCRR. The Legislature has expressly put supervision of the execution process in the hands of ADCRR—a state agency represented by the Attorney General—and extensive coordination with ADCRR in managing executions is required. *See* A.R.S. §§ 13-757(A), 759(A); *see also* *Cook v. State*, 230 Ariz. 185, 188, ¶ 7 (App. 2012) (“It is both reasonable and constitutionally acceptable for the Legislature to delegate the details of implementing the death penalty to an agency that is ‘better equipped to undertake the task’ of ensuring it is implemented as uniformly and humanely as possible.”) (quoting *Griffith Energy, L.L.C. v. Ariz. Dep’t of Rev.*, 210 Ariz. 132, 137, ¶ 24 (App. 2005)).

As a practical and legal matter, an execution can proceed only if the executive branch is prepared to conduct the execution consistent with its constitutional, statutory, and administrative obligations. *See* U.S. Const. Amend. VIII; Ariz. Const. art. 2, § 15, art. 22, § 22; A.R.S. § 13-757(A), (B). Even if an inmate has exhausted all post-conviction relief, the State should

not seek an execution warrant when the State is not prepared to carry out an execution (e.g., if there has been recent turnover in the requisite personnel or an absence of the requisite supplies) in compliance with its own policies and procedures and state and federal law. Indeed, as this Court recognized in this case, “[b]y moving for issuance of the Warrant [], the State implicitly avow[s] it could carry out the sentence in compliance with state and federal law.” Order Issuing Warrant of Execution filed March 2, 2023 at 7. As ADCRR’s legal representative, only the Attorney General is in a position to make this avowal.

If a county attorney could request an execution warrant, warrants might frequently be issued at times when ADCRR is not prepared to carry them out. And allowing a county attorney to seek a warrant when no execution will occur would not only waste judicial resources, it would harm victims.

MCAO’s request exemplifies this problem. MCAO’s Motion states (at 5-6) “[u]pon information and belief,” ADCRR can carry out the requested execution using compounded pentobarbital because this method was used by ADCRR more than two years ago. MCAO similarly asserts (at 6) that the compounded pentobarbital has a specific beyond-use date based on

previous batch testing done by ADCRR's compounding pharmacist. MCAO's "information and belief" is stale and is entirely based on a motion filed by the Attorney General's Office in a different case in January 2022. *Cf.* MCAO's Motion to Set Briefing Schedule, Ex. F (containing statements by Assistant Attorney General about how ADCRR intended to carry out Frank Jarvis Atwood's execution and information about testing done by ADCRR's retained compound pharmacist in 2021). Up-to-date information from ADCRR is critical, and is not in any county attorney's possession.

As ADCRR's legal representative, the Attorney General is uniquely situated to ensure warrants are sought only when ADCRR can carry out an execution in compliance with its own policies and procedures and state and federal law.

CONCLUSION

MCAO has no independent authority to represent the State in this Court, has acknowledged it is not a party to this case, and is not authorized to seek a warrant of execution. This Court should strike the Maricopa County Attorney's Motion to Set Briefing Schedule for Motion for Warrant

of Execution without prejudice to the Attorney General filing a similar motion on behalf of the State at the appropriate time.⁶

RESPECTFULLY SUBMITTED this 19th day of June, 2024.

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⁶ The Attorney General notified the County Attorney on May 16, 2024, that she intended to resume seeking execution warrants in early 2025. See Exhibit E (letter from Attorney General Mayes to Maricopa County Attorney Mitchell).

Appendix A

Since 1994, this Court has issued warrants of execution upon motion by the State under A.R.S. § 13-759 (formerly A.R.S. § 13-706). In every case, the warrant of execution was sought by the Attorney General, as indicated below:

Year	Case Name	Case Number	Requesting Party
1995	<i>State v. Jeffers</i>	No. 4253	Attorney General
1996	<i>State v. Bolton</i>	CR-93-0086-AP	Attorney General
1996	<i>State v. Mata (Luis)</i>	CR-77-4104-AP	Attorney General
1997	<i>State v. Greenawalt</i>	No. 4616	Attorney General
1997	<i>State v. Woratzeck</i>	No. 5142	Attorney General
1998	<i>State v. Ceja</i>	No. 3102-2	Attorney General
1998	<i>State v. Gretzler</i>	No. 3750-2	Attorney General
1998	<i>State v. Villafuerte</i>	No. 6038	Attorney General
1998	<i>State v. Ross</i>	CR-91-0133-AP	Attorney General*
1999	<i>State v. Gillies</i>	No. 5424-2	Attorney General
1999	<i>State v. Gerlaugh</i>	No. 5216-2-PC	Attorney General
1999	<i>State v. LaGrand</i>	No. 6456	Attorney General
1999	<i>State v. Vickers</i>	CR-86-0147-AP	Attorney General*

1999	<i>State v. Poland</i>	No. 4969-2	Attorney General
1999	<i>State v. Ortiz</i>	No. 4818	Attorney General
2000	<i>State v. Chaney</i>	No. 5894	Attorney General
2000	<i>State v. Poland</i>	No. 4970-2	Attorney General
2000	<i>State v. Miller</i>	CR-93-0557-AP	Attorney General
2007	<i>State v. Comer</i>	CR-88-0136-AP	Attorney General
2010	<i>State v. Landrigan</i>	CR-90-0323-AP	Attorney General
2011	<i>State v. King</i>	CR-91-0084-AP	Attorney General
2011	<i>State v. Beaty</i>	No. 6643	Attorney General
2011	<i>State v. Bible</i>	CR-90-0167-AP	Attorney General
2011	<i>State v. West</i>	CR-88-0286-AP	Attorney General
2012	<i>State v. Moormann</i>	No. 6558	Attorney General
2012	<i>State v. Towery</i>	CR-92-0493-AP	Attorney General
2012	<i>State v. Kemp</i>	CR-93-0332-AP	Attorney General
2012	<i>State v. Lopez</i>	CR-90-0142-AP	Attorney General
2012	<i>State v. Cook</i>	CR-88-0301-AP	Attorney General
2012	<i>State v. Stokley</i>	CR-92-0278-AP	Attorney General
2013	<i>State v. Schad</i>	No. 4876	Attorney General

2013	<i>State v. Jones</i>	CR-98-0537-AP	Attorney General
2014	<i>State v. Wood</i>	CR-91-0233-AP	Attorney General
2022	<i>State v. Dixon</i>	CR-08-0025-AP	Attorney General
2022	<i>State v. Atwood</i>	CR-87-0135-AP	Attorney General
2022	<i>State v. Hooper</i>	No. 4810	Attorney General

* Indicates the motion for warrant of execution was missing from the Court’s file, but the Attorney General’s Office represented the State in this Court.

This table was generated from a review of matters between 1994 and 2024 in which the State filed a motion for a warrant of execution in this Court after the conclusion of all appellate and post-conviction proceedings. This table does not reflect matters where a warrant of execution was issued automatically, either by this Court or a county superior court.

EXHIBIT A

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

KAREN PRICE, et al.,)
)
Plaintiffs,)
) CASE NO. CV2023-004976
v.)
)
KATIE HOBBS, et al.,)
)
Defendants.)
)
)
)

Phoenix, Arizona
April 6, 2023
1:30 a.m.

BEFORE THE HONORABLE FRANK W. MOSKOWITZ
SUPERIOR COURT JUDGE

TRANSCRIPT: RETURN HEARING

Transcript prepared by:
VERBATIM REPORTING & TRANSCRIPTION, LLC

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IN THE SUPREME COURT OF ARIZONA

In the Matter of)	
)	Arizona Supreme Court No. _____
THE ARIZONA RULES)	
OF CRIMINAL PROCEDURE)	PETITION TO AMEND RULE 31.17(c)(1),
)	ARIZONA RULES OF CRIMINAL
)	PROCEDURE
_____)	

PETITION TO AMEND THE ARIZONA RULES OF CRIMINAL PROCEDURE

Pursuant to Rule 28, Rules of the Supreme Court, the Arizona Supreme Court Staff Attorneys' Office petitions the Court to amend the Arizona Rules of Criminal Procedure, as reflected in the attachment hereto.

I. BACKGROUND

Arizona Revised Statutes § 13-759(A) provides:

A. After a conviction and sentence of death are affirmed and the first post-conviction relief proceedings have concluded, the supreme court shall issue a warrant of execution that authorizes the director of the state department of corrections to carry out the execution thirty-five days after the supreme court's mandate or order denying review or upon motion by the state. The supreme court shall grant subsequent warrants of execution on a motion by the state. The time for execution shall be fixed for thirty-five days after the state's motion is granted.

Rule 31.17(c)(1) and (2), Ariz. R. Crim. P., provides:

(1) *Initial Execution Warrant.* After a conviction and sentence of death are affirmed and the first post-conviction relief proceeding pursuant to Rule 32.4(a) has concluded by the denial of a petition for review filed pursuant to Rule 32.9(c) or, if no petition for review has been filed, upon the filing of a notice by the state that the time for filing such petition has expired,

the Supreme Court shall fix a twenty-four hour time period for execution of the sentence and shall issue a warrant of execution.

(2) *Subsequent Execution Warrant.* In the event the warrant is stayed by any court beyond the time period fixed for the execution of sentence, the Supreme Court shall issue subsequent warrants of execution upon motion by the state.

Pursuant to the statute and rule, if the superior court denies the first Rule 32 petition for post-conviction relief in a capital case and the Arizona Supreme Court denies review, the Court issues a warrant of execution. The Court's practice is to issue the warrant on the same date that it denies the petition for review. The Clerk of the Supreme Court sends a certified copy of the warrant to the Director of the Arizona Department of Corrections and the Warden of the Arizona State Prison at Florence, and sends e-mail copies to numerous other persons and agencies including counsel, superior court judges and staff, federal district court judges and staff, clerks of the superior court and federal courts, victims' representatives, the governor's general counsel and the Arizona Board of Executive Clemency. In addition, the Clerk of the Supreme Court gives notification by telephone calls to many of those persons and agencies.

Within a few days, the inmate under sentence of death ("petitioner") will initiate a habeas corpus proceeding in the United States District Court for the District of Arizona.¹ The District Court will then immediately issue an order staying the warrant of execution and directing its clerk to make telephone calls notifying the Director of the Arizona Department of Corrections, the Attorney General of the State of Arizona, the Clerk of the Arizona Supreme Court, and the Warden of the Arizona State Prison at Florence. The District Court also orders the United States Marshal to serve those individuals with a copy of the stay order, and a copy is sent to the petitioner. Shortly

¹ Typically, the petitioner will file in the District Court a Motion to Stay Execution, a Motion for Appointment of Counsel, an Application to Proceed In Forma Pauperis, and a Statement of Intent stating his or her intent to file an application for writ of habeas corpus pursuant to 28 U.S.C. § 2254.

thereafter, the District Court issues another order appointing habeas corpus counsel and scheduling a case management conference.

II. PROPOSED AMENDMENT TO RULE 31.17(c)(1), ARIZ. R. CRIM. P.

The first sentence of A.R.S. § 13-759(A) states: "After a conviction and sentence of death are affirmed and the first post-conviction relief proceedings have concluded, the supreme court shall issue a warrant of execution that authorizes the director of the state department of corrections to carry out the execution thirty-five days after the supreme court's mandate or order denying review *or upon motion by the state.*" (Emphasis added.) The proposed amendment would avoid the unnecessary issuance of a warrant of execution for those petitioners who promptly initiate habeas corpus proceedings in the federal district court. In light of the significant administrative costs associated with issuance of execution warrants, this will conserve judicial resources in both the state and federal courts. Therefore, the undersigned Staff Attorney respectfully requests that the Court adopt the proposed amendment as reflected in the attachment hereto.

DATED this ____ day of December, 2013.

Donna M. Hallam
Staff Attorney, Arizona Supreme Court

ATTACHMENT²

ARIZONA RULES OF CRIMINAL PROCEDURE

Rule 31.17. Disposition and ancillary orders

a. - b. [No change in text.]

c. Fixing the Date of Execution After a Death Sentence Is Affirmed.

(1) *Initial Execution Warrant.* ~~After a conviction and sentence of death are affirmed and the first post-conviction relief proceeding pursuant to Rule 32.4(a) has concluded by the denial of a petition for review filed pursuant to Rule 32.9(c) or, if no petition for review has been filed, upon the filing of a notice by the state that the time for filing such petition has expired, the Supreme Court shall fix a twenty four hour time period for execution of the sentence and shall issue a warrant of execution. Following affirmance of a sentence of death, and if the superior court denies the first Rule 32 petition for post-conviction relief and the Supreme Court denies the petition for review, the Supreme Court shall issue a warrant of execution upon the filing of a notice by the state that the defendant has not initiated habeas corpus proceedings in federal district court within fifteen days after review is denied. If no Rule 32 petition for post-conviction relief or petition for review is filed, the Supreme Court shall issue a warrant of execution upon the filing of a notice by the state that the time for filing such petition has expired.~~

(2) *Subsequent Execution Warrant.* ~~In the event the warrant is stayed by any court beyond the time period fixed for the execution of sentence, the~~ The Supreme Court shall issue subsequent warrants of execution upon motion by the state.

(3) *Date and Time of Execution.* [No change in text.]

(4) *Return on Warrant.* [No change in text.]

d. - e. [No change in text.]

² Additions in text are indicated by underscoring and deletions from text are indicated by strikeouts.

EXHIBIT C

SUPREME COURT OF ARIZONA

In the Matter of) Arizona Supreme Court
) No. R-13-0050
RULE 31.17(c)(1), RULES OF)
CRIMINAL PROCEDURE) FILED 9/2/2014
)
)
)
)
)
)
_____)

ORDER

AMENDING RULE 31.17(c)(1), ARIZONA RULES OF CRIMINAL PROCEDURE

A petition having been filed proposing to amend Rule 31.17(c)(1), Arizona Rules of Criminal Procedure, and comments having been received, upon consideration,

IT IS ORDERED that Rule 31.17(c)(1), Arizona Rules of Criminal Procedure, be amended in accordance with the attachment hereto, effective January 1, 2015.

DATED this 2nd day of September, 2014.

SCOTT BALES
Chief Justice

Arizona Supreme Court No. R-13-0050
Page 2 of 3

TO:
Rule 28 Distribution
SACRDOCS
John A Furlong
Jeffrey A Zick
John Pressley Todd
Ronald S Reinstein

ATTACHMENT*

Rule 31.17. Disposition and ancillary orders

a. - b. [No change in text.]

c. ~~Fixing the Date of Execution After a Death Sentence Is Affirmed.~~ Warrant of Execution.

~~(1) *Initial Execution Warrant.* After a conviction and sentence of death are affirmed and the first post-conviction relief proceeding pursuant to Rule 32.4(a) has concluded by the denial of a petition for review filed pursuant to Rule 32.9(c) or, if no petition for review has been filed, upon the filing of a notice by the state that the time for filing such petition has expired, the Supreme Court shall fix a twenty-four hour time period for execution of the sentence and shall issue a warrant of execution.~~

~~(2) *Subsequent Execution Warrant.* In the event the warrant is stayed by any court beyond the time period fixed for the execution of sentence, the Supreme Court shall issue subsequent warrants of execution upon motion by the state.~~

(1) *Issuance of Warrant.* After affirmance of a death sentence, the Supreme Court shall issue a warrant of execution upon the filing of a notice by the state that:

(a) no first Rule 32 petition for post-conviction relief has been filed and the time for filing the petition has expired; or

(b) no petition for review has been filed after the superior court denied the first Rule 32 petition for post-conviction relief and the time for filing the petition for review has expired; or

(c) the defendant has not initiated habeas corpus proceedings in federal district court within fifteen days after the Supreme Court denied the petition for review of the denial of the first Rule 32 petition for post-conviction relief.

(2) *Post-Habeas Warrant.* After the conclusion of federal habeas corpus proceedings and habeas appellate review, the Supreme Court shall issue a warrant of execution upon motion by the state.

(3) *Date and Time of Execution.* [No change in text.]

(4) *Return on Warrant.* [No change in text.]

d. - e. [No change in text.]

* Additions to text are shown by underscoring; deletions by ~~strikeouts~~.

EXHIBIT D

Attorney General - Department of Law

	FY 2022 ACTUAL	FY 2023 ESTIMATE	FY 2024 APPROVED
OPERATING BUDGET			
<i>Full Time Equivalent Positions</i>	624.7	655.7	671.7 ^{1/}
Personal Services	30,765,000	37,171,000	37,372,100
Employee Related Expenditures	11,648,800	16,454,800	15,322,800
Professional and Outside Services	582,900	403,400	403,400
Travel - In State	198,400	257,200	257,200
Travel - Out of State	108,300	113,800	113,800
Other Operating Expenditures	7,806,800	10,401,000	13,615,000
Equipment	961,500	406,600	393,600
OPERATING SUBTOTAL	52,071,700	65,207,800	67,477,900 ^{2/3/}
SPECIAL LINE ITEMS			
Attorney Stipend/Retention Bonus	2,000,000	0	0
Employee Stipend/Retention Bonus	0	3,000,000	0
Capital Postconviction Prosecution	677,200	881,400	876,400
Child and Family Advocacy Centers	600,000	600,000	600,000 ^{4/5/}
Colorado City Radio Dispatch System	0	400,000	0
Criminal Division Major Fraud Unit	277,400	1,194,000	1,187,300
Internet Crimes Against Children Enforcement	17,700	1,271,500	1,271,500 ^{6/}
Expert Witness and Outside Counsel	1,166,500	2,000,000	0
Federalism Unit	767,700	1,318,700	0
Government Accountability and Special Litigation	1,140,800	1,334,200	1,287,500
Military Airport Planning	81,900	85,000	85,000 ^{7/}
Missing and Murdered Indigenous Persons Investigations	0	2,000,000	0
Opioid Abatement	0	5,000,000	12,000,000 ^{8/}
Organized Retail Theft Task Force	471,500	1,570,700	1,570,700 ^{9/}
Risk Management Interagency Service Agreement	9,091,200	10,703,900	10,655,300
State Grand Jury	171,900	194,100	193,000
Southern Arizona Law Enforcement	1,410,700	1,678,900	1,656,600
Technology Company Antitrust	702,300	0	0
Tobacco Enforcement	97,600	877,600	875,900
Victims' Rights	1,920,200	4,023,400	4,023,500
Victims' Rights Fund Deposit	0	1,400,000	0
Voter Fraud Unit	479,500	563,200	0
AGENCY TOTAL	73,145,800	105,304,400	103,760,600 ^{10/}
FUND SOURCES			
General Fund	23,762,600	29,522,900	27,749,200
<u>Other Appropriated Funds</u>			
Antitrust Enforcement Revolving Fund	781,200	161,400	160,900
Attorney General Legal Services Cost Allocation Fund	1,572,500	2,326,200	2,314,900
Collection Enforcement Revolving Fund	6,730,500	7,599,300	7,232,100
Consumer Protection - Consumer Fraud Revolving Fund	14,227,200	24,474,500	18,364,900
Consumer Remediation Subaccount of the Consumer Restitution and Remediation Revolving Fund	0	5,000,000	12,000,000
Interagency Service Agreements Fund	14,731,200	18,199,300	18,078,100 ^{11/}
Internet Crimes Against Children Enforcement Fund	0	900,000	900,000
Risk Management Revolving Fund	9,420,400	13,308,100	13,147,700
Victims' Rights Fund	1,920,200	3,812,700	3,812,800
SUBTOTAL - Other Appropriated Funds	49,383,200	75,781,500	76,011,400
SUBTOTAL - Appropriated Funds	73,145,800	105,304,400	103,760,600

	FY 2022 ACTUAL	FY 2023 ESTIMATE	FY 2024 APPROVED
Other Non-Appropriated Funds	56,896,500	63,869,800	63,869,800
Federal Funds	6,745,900	10,068,200	10,068,200
TOTAL - ALL SOURCES	136,788,200	179,242,400	177,698,600

AGENCY DESCRIPTION — The Attorney General is an elected constitutional officer. The office provides legal counsel to state agencies, represents the state in juvenile dependency matters, enforces civil rights, environmental, consumer protection and anti-trust laws, and investigates and prosecutes criminal cases, handles criminal appeals, and assists county attorneys.

FOOTNOTES

- 1/ Includes 24.2 GF and 134 OF FTE Positions funded from Special Line Items in FY 2024.
- 2/ Within ten days after receiving a complaint alleging a violation of section 15-511, Arizona Revised Statutes, the attorney general shall forward a copy of the complaint to the governor, the president of the senate and the speaker of the house of representatives. (General Appropriation Act footnote)
- 3/ The appropriated amount for the operating lump sum includes a onetime increase of \$3,000,000 from the consumer protection-consumer fraud revolving fund established by section 44-1531.01, Arizona Revised Statutes, in fiscal year 2023-2024 for operating expenses. This increase is exempt from the provisions of section 35-190, Arizona Revised Statutes, relating to lapsing of appropriations. (General Appropriation Act footnote)
- 4/ The amount appropriated for the child and family advocacy centers line item is allocated to the child and family advocacy center fund established by section 41-191.11, Arizona Revised Statutes. (General Appropriation Act footnote)
- 5/ Of the amount appropriated for the child and family advocacy centers line item in fiscal year 2023-2024, \$500,000 shall be used to support an entity that provides child victim advocacy and mental health services through a child advocacy center that is based in a county with a population of more than three million persons. (General Appropriation Act footnote)
- 6/ The \$900,000 appropriation from the internet crimes against children enforcement fund established by section 41-199, Arizona Revised Statutes, and the \$371,500 appropriation from the state general fund for the internet crimes against children enforcement line item are continuing appropriations and are exempt from the provisions of section 35-190, Arizona Revised Statutes, relating to lapsing of appropriations, until June 30, 2025. (General Appropriation Act footnote)
- 7/ A.R.S. § 26-263 annually appropriates \$85,000 from the General Fund for Military Airport Planning. Because this appropriation is in permanent statute, it is not included in the General Appropriation Act.
- 8/ The attorney general shall submit an expenditure plan for review by the joint legislative budget committee before spending any monies appropriated for the opioid abatement line item. Monies in the opioid abatement line item shall be used to treat opioid use disorders, to support persons who are in opioid treatment and recovery or for any other specified purposes that are included in a court order or a settlement or compromise that is entered into by this state and other parties to the opioid litigation. (General Appropriation Act footnote)
- 9/ The \$1,570,700 appropriation for the organized retail theft task force line item shall be used for operational expenses of the organized retail task force and for hiring one attorney, one paralegal, two investigators and one support staff person within the office of the attorney general and four peace officers who are assigned to the task force to focus specifically on investigating and prosecuting organized retail crime. (General Appropriation Act footnote)
- 10/ General Appropriation Act funds are appropriated as an Operating Lump Sum with Special Line Items by Agency.
- 11/ All monies appropriated to the attorney general legal services line item in the department of child safety budget do not count toward the attorney general's interagency service agreements fund appropriation in fiscal year 2023-2024. (General Appropriation Act footnote)

Operating Budget

The budget includes \$67,477,900 and 513.5 FTE Positions in FY 2024 for the operating budget. These amounts consist of:

	FY 2024
General Fund	\$24,487,600
Antitrust Enforcement Revolving Fund	160,900
Attorney General Legal Services Cost Allocation Fund (LSCAF)	2,314,900

Collection Enforcement Revolving Fund (CERF)	7,232,100
Consumer Protection - Consumer Fraud (CPCF) Revolving Fund	12,711,900
Interagency Service Agreements (ISA) Fund	18,078,100
Risk Management Revolving Fund	2,492,400

Adjustments are as follows:

One-Time Funding Increase

The budget includes a one-time increase of \$3,000,000 from the CPCF Revolving Fund in FY 2024 for increased operating costs. A General Appropriation Act footnote makes this appropriation non-lapsing.

Additional Civil Rights Division FTE Positions

The budget includes an increase of \$287,300 and 3 FTE Positions from the CPCF Revolving Fund for the Civil Rights Division to address increased caseloads in the division and to reduce the time to complete investigations.

Additional FTE Positions

The budget includes an increase of 13 FTE Positions from the General Fund in FY 2024 to appropriate FTE Positions that were previously funded from the non-appropriated National Mortgage Settlement. This increase does not include a corresponding funding increase. *(Please see the FY 2017 Appropriations Report for more information.)*

Shift Appropriated FTE Positions

The budget includes an increase of 12 FTE Positions from the CPCF Revolving Fund in FY 2024. The budget removes funding for the Federalism Unit and Voter Fraud Unit line items but shifts the 12 FTE Positions previously funded by these line items to the operating budget for no net change in FTE Position authority.

Criminal Division Resources

The budget continues \$2,350,000 from the CPCF Revolving Fund in FY 2024 for funding originally appropriated in the FY 2020 General Appropriation Act for the Criminal Division.

An FY 2020 General Appropriation Act footnote appropriated \$950,000 in FY 2021, \$2,350,000 in FY 2022, and \$2,350,000 in FY 2023 from the CPCF Revolving Fund for Criminal Division resources. *(Please see the FY 2023 Appropriations Report for more information.)*

Remove One-Time Medicaid Fraud Unit Funding

The budget includes a decrease of \$(76,000) from the CPCF Revolving Fund in FY 2024 to remove one-time funding for newly-purchased vehicles and equipment for new investigator positions in the Medicaid Fraud Control Unit (MFCU) added in FY 2023.

The MFCU investigates and prosecutes cases involving Medicaid fraud.

Remove One-Time Equipment Funding

The budget includes a decrease of \$(110,500) from the Risk Management Revolving Fund in FY 2024 to remove one-time funding for equipment to support new FTE

Positions added to the Liability Management Section (LMS) in FY 2023.

The LMS provides legal representation for Arizona Department of Administration (ADOA) Risk Management cases. ADOA pays the LMS for outside counsel services related to these cases. *(Please see the Arizona Department of Administration narrative for more information.)*

Statewide Adjustments

The budget includes a decrease of \$(830,700) in FY 2024 for statewide adjustments. This amount consists of:

General Fund	241,900
Antitrust Enforcement Revolving Fund	(500)
Attorney General Legal Services Cost Allocation Fund (LSCAF)	(11,300)
Collection Enforcement Revolving Fund (CERF)	(367,200)
Consumer Protection - Consumer Fraud (CPCF) Revolving Fund	(571,100)
Interagency Service Agreements (ISA) Fund	(121,200)
Risk Management Revolving Fund	(1,300)

(Please see the Agency Detail and Allocations section.)

Employee Stipend/Retention Bonus

The budget includes no funding in FY 2024 for the Employee Stipend/Retention Bonus line item. Adjustments are as follows:

Remove One-Time Funding

The budget includes a decrease of \$(3,000,000) from the CPCF Revolving Fund in FY 2024 to remove one-time funding for employee stipends and retention bonuses.

Monies in this line item provide funding for stipend and retention bonuses for employees of the Attorney General's Office.

Capital Postconviction Prosecution

The budget includes \$876,400 and 6 FTE Positions from the General Fund in FY 2024 for Capital Postconviction Prosecution. Adjustments are as follows:

Statewide Adjustments

The budget includes a decrease of \$(5,000) from the General Fund in FY 2024 for statewide adjustments.

This line item funds costs associated with prosecuting capital cases after the initial conviction.

Child and Family Advocacy Centers

The budget includes \$600,000 in FY 2024 for the Child and Family Advocacy Centers line item. This amount consists of:

General Fund	100,000
CPCF Revolving Fund	500,000

Adjustments are as follows:

Continue One-Time Funding

The budget continues one-time funding of \$500,000 from the CPCF Revolving Fund in FY 2024 to fund another one-time distribution to child and family advocacy centers originally made in FY 2022, then continued in FY 2023.

These monies are deposited into the Child and Family Advocacy Centers Fund. Monies in the fund are for distribution to child and family advocacy centers. Child and family advocacy centers provide victim advocacy, case management, and counseling services to primary and secondary victims of child abuse, domestic violence, sexual assault, elder abuse and homicide.

A General Appropriation Act footnote specifies that the \$500,000 increase in FY 2024 is to be allocated to an entity that supports victim advocacy and mental health services through a Child Advocacy Center based in Maricopa County.

Colorado City Radio Dispatch System

The budget includes no funding in FY 2024 for the Colorado City Radio Dispatch System line item. Adjustments are as follows:

Remove One-Time Funding

The budget includes a decrease of \$(400,000) from the CPCF Revolving Fund in FY 2024 to remove one-time funding for a radio dispatch system in Colorado City.

Monies in this line item provide funding for the costs to start-up and maintain a digital radio dispatch system in Colorado City.

Criminal Division Major Fraud Unit

The budget includes \$1,187,300 and 7 FTE Positions from the CPCF Revolving Fund in FY 2024 for the Criminal Division Major Fraud Unit. Adjustments are as follows:

Statewide Adjustments

The budget includes a decrease of \$(6,700) from the CPCF Revolving Fund in FY 2024 for statewide adjustments.

This line item provides funding for increased caseload demand for the Major Fraud Unit. The Criminal Division Major Fraud Unit investigates complaints submitted by Arizona citizens and referred by other law enforcement agencies.

Internet Crimes Against Children Enforcement

The budget includes \$1,271,500 in FY 2024 for the Internet Crimes Against Children (ICAC) Enforcement line item. This amount consists of:

General Fund	371,500
ICAC Enforcement Fund	900,000

These amounts are unchanged from FY 2023.

A.R.S. § 41-199 requires the Attorney General to enter into 1 or more intergovernmental agreements to operate the Arizona Internet Crimes Against Children Task Force (AZICAC), led by the Phoenix Police Department. AZICAC is a joint federal/local law enforcement task force that investigates child pornography.

A General Appropriation Act footnote makes the FY 2024 amount non-lapsing until the end of FY 2025.

Expert Witness and Outside Counsel

The budget includes no funding in FY 2024 for the Expert Witness and Outside Counsel line item. Adjustments are as follows:

Remove One-Time Funding

The budget includes a decrease of \$(2,000,000) from the CPCF Revolving Fund in FY 2024 to remove one-time funding for expert witnesses and outside counsel.

Monies in this line item are used for expert witness and litigation expenses.

Federalism Unit

The budget includes no funding in FY 2024 for the Federalism Unit line item. Adjustments are as follows:

Remove Federalism Unit Funding

The budget includes a decrease of \$(1,318,700) and (8) FTE Positions from the CPCF Revolving Fund in FY 2024 to remove funding for the Federalism Unit.

This line item provides funding for the Attorney General to defend the state in cases related to federal issues. Some of these legal expenses had previously been borne by the Governor's Office.

Government Accountability and Special Litigation

The budget includes \$1,287,500 and 10 FTE Positions from the CPCF Revolving Fund in FY 2024 for the Government Accountability and Special Litigation (GASL) line item. Adjustments are as follows:

Statewide Adjustments

The budget includes a decrease of \$(46,700) from the CPCF Revolving Fund in FY 2024 for statewide adjustments.

A.R.S. § 41-194.01 requires that, at the request of a member of the Legislature, the AG investigate local government ordinances that potentially violate state law. The statute also requires the AG to make a written report of its findings within 30 days of receiving the request. If the local ordinance is found to violate state law, the local governing body has 30 days to resolve the violation. After 30 days, the State Treasurer is instructed to withhold state shared monies from the locality.

Military Airport Planning

The budget includes \$85,000 and 1 FTE Position from the General Fund in FY 2024 for Military Airport Planning. These amounts are unchanged from FY 2023.

A.R.S. § 26-263 appropriates \$85,000 annually from the General Fund to the Attorney General's Office. Therefore, funding for this line item does not appear in the General Appropriation Act although the 1 FTE Position authority does appear there. Monies in this line item pay for the review and determination of compliance with land use plans.

Missing and Murdered Indigenous People Investigations

The budget includes no funding in FY 2024 for the Missing and Murdered Indigenous People Investigations line item. Adjustments are as follows:

Remove One-Time Funding

The budget includes a decrease of \$(2,000,000) from the General Fund in FY 2024 to remove one-time funding for missing and murdered indigenous people investigations.

Monies in this line item provide funding for investigations regarding missing and murdered indigenous people. The FY 2023 appropriation is non-lapsing.

Opioid Abatement

The budget includes \$12,000,000 in FY 2024 for the Opioid Abatement line item. Adjustments are as follows:

Remove One-Time Funding

The budget includes a decrease of \$(5,000,000) from the Consumer Remediation Subaccount of the Consumer Restitution and Remediation Revolving Fund in FY 2024 to remove one-time opioid abatement funding that was included in the FY 2023 budget.

One-Time Funding Increase

The budget includes a one-time increase of \$12,000,000 from the Consumer Remediation Subaccount of the Consumer Restitution and Remediation Revolving Fund in FY 2024 for opioid abatement funding.

Monies in this line item come from a portion of monies deposited into the Consumer Remediation Subaccount of the Consumer Restitution and Remediation Revolving Fund pursuant to a settlement with opioid distributors.

These settlement monies may only be used for opioid treatment and prevention programs and in accordance with approved, nationally recognized strategies to address the opioid epidemic as outlined in the One Arizona Opioid Settlement Memorandum of Understanding. These include treatment of opioid addiction, support for individuals in treatment or at risk of addiction, prevention, education, prison and jail opioid use and opioid interdiction and abatement on the southern border.

In accordance with the settlement agreement, a General Appropriation Act footnote requires monies in this line item to be used to treat opioid use disorders and support persons in treatment and recovery. The Attorney General is required to submit an expenditure plan to the JLBC for review prior to the expenditure of any monies in this line item.

A.R.S. § 44-1531.02C also requires the Attorney General to submit an expenditure plan to the JLBC for review prior to spending any monies from the Consumer Remediation Subaccount of the Consumer Restitution and Remediation Revolving Fund.

(Please see the Other Issues – Statutory Changes and Opioid Settlements sections for more information.)

Organized Retail Theft Task Force

The budget includes \$1,570,700 and 9 FTE Positions from the CPCF Revolving Fund in FY 2024 for the Organized Retail Theft Task Force line item. These amounts are unchanged from FY 2023.

The Organized Retail Theft Task Force combats crimes that relate to the stealing, embezzling, or obtaining of retail merchandise by illegal means for the purpose of reselling the items. The task force ends on July 1, 2029. A General Appropriation Act footnote also requires this funding be used for 9 FTE Positions, including 1 attorney, 1 paralegal, 2 investigators, 1 support person, and 4 peace officers assigned to the task force. *(Please see the FY 2022 Appropriations Report for a more detailed history.)*

Risk Management Interagency Service Agreement

The budget includes \$10,655,300 and 93 FTE Positions from the Risk Management Revolving Fund in FY 2024 for the Risk Management Interagency Service Agreement. Adjustments are as follows:

Statewide Adjustments

The budget includes a decrease of \$(48,600) from the Risk Management Revolving Fund in FY 2024 for statewide adjustments.

This line item provides funding for the Attorney General’s contract with the Risk Management Division of the Arizona Department of Administration. Attorneys from the Attorney General’s Office defend the state in most risk management cases regarding agency liability.

State Grand Jury

The budget includes \$193,000 and 1.6 FTE Positions from the General Fund in FY 2024 for the State Grand Jury. Adjustments are as follows:

Statewide Adjustments

The budget includes a decrease of \$(1,100) from the General Fund in FY 2024 for statewide adjustments.

This line item funds expenses incurred by the Attorney General to investigate and try matters that are under the jurisdiction of the State Grand Jury.

Southern Arizona Law Enforcement

The budget includes \$1,656,600 and 16 FTE Positions in FY 2024 for Southern Arizona Law Enforcement. These amounts consist of:

General Fund	1,331,800
CPCF Revolving Fund	324,800

Adjustments are as follows:

Statewide Adjustments

The budget includes a decrease of \$(22,300) in FY 2024 for statewide adjustments. This amount consists of:

General Fund	(8,800)
CPCF Revolving Fund	(13,500)

This line item provides funding for the Criminal Division’s investigations and prosecutions of fraud, corruption, criminal enterprise, drug trafficking, and money laundering cases in Southern Arizona.

Tobacco Enforcement

The budget includes \$875,900 and 6.6 FTE Positions in FY 2024 for Tobacco Enforcement. These amounts consist of:

General Fund	93,200
CPCF Revolving Fund	782,700

Adjustments are as follows:

Statewide Adjustments

The budget includes a decrease of \$(1,700) in FY 2024 for statewide adjustments. This amount consists of:

General Fund	(700)
CPCF Revolving Fund	(1,000)

This line item funds the Attorney General’s enforcement of the Master Settlement Agreement (MSA). The MSA is a settlement reached by major tobacco companies and 46 states in 1998 that requires these companies to compensate states annually for Medicaid costs associated with tobacco use. In exchange for annual payments from the tobacco companies, states agree to diligently enforce tobacco tax laws. The AG has stated that it also plans to spend these monies on consumer fraud investigations into tobacco products, including e-cigarettes and alternative nicotine products.

In addition to the monies provided in this line item, the budget continues to require AHCCCS to transfer up to \$1,200,000 to the Attorney General for MSA and e-cigarette enforcement. As a result, the budget includes a total of up to \$2,077,600 for the Attorney General to enforce the MSA in FY 2024.

Victims' Rights

The budget includes \$4,023,500 and 8 FTE Positions in FY 2024 for Victims' Rights. These amounts consist of:

General Fund	210,700
Victims' Rights Fund	3,812,800

Adjustments are as follows:

Statewide Adjustments

The budget includes an increase of \$100 from the Victims' Rights Fund in FY 2024 for statewide adjustments.

This line item provides monies to state and local agencies that are required to notify victims during various steps in the criminal justice process. The program is funded by a \$9 penalty on civil and criminal violations.

Victims' Rights Fund Deposit

The budget includes a no funding in FY 2024 for additional funding to support the Victims' Rights Fund. Adjustments are as follows:

Remove One-Time Funding

The budget includes a decrease of \$(1,400,000) from the CPCF Revolving Fund in FY 2024 to remove one-time funding to support the Victims' Rights Fund.

Laws 2022, Chapter 333 appropriated \$1,400,000 from the CPCF Revolving Fund in FY 2023 for deposit into the Victims' Rights Fund to address declining revenues and a structural deficit in the Victims' Rights Fund. The FY 2023 appropriation is non-lapsing.

Voter Fraud Unit

The budget includes no funding in FY 2024 for the Voter Fraud Unit line item. Adjustments are as follows:

Remove Voter Fraud Unit Funding

The budget includes a decrease of \$(563,200) and (4) FTE Positions from the CPCF Revolving Fund in FY 2024 to remove funding for the Voter Fraud Unit.

This line item provides funding for the development of a public complaint process for allegations of voter fraud and for the investigation of those allegations by the Attorney General's office.

Other Issues

Statutory Changes

The Criminal Justice Budget Reconciliation Bill makes the following statutory changes:

- As permanent law, require that all monies deposited into the Consumer Remediation Subaccount of the Consumer Restitution and Remediation Revolving Fund from opioid litigation be appropriated by the legislature. The bill also requires the Attorney General, in its quarterly report, to separately delineate the receipts and disbursements from opioid litigation.

Google Settlement Fund Distribution

In 2020, Arizona sued Google LLC (Google) for deceptive and unfair practices related to obtaining and profiting from user location data. After 2 years of litigation, Arizona received an \$85,000,000 settlement. Based on the terms of the settlement, \$77,250,000 would go to the General Fund and the remaining \$7,750,000 to state's counsel on October 24, 2022. In terms of the latter, that dollar amount has been disbursed to the outside counsel that represented the state in this litigation.

The settlement also allows for unreimbursed litigation costs to also be spent out of the \$77,250,000. The Attorney General reported that it expended \$1,787,900 on these unreimbursed costs.

After that adjustment, that leaves \$75,462,100 which the Attorney General has deposited into the General Fund.

According to the terms of the settlement, of the monies deposited into the General Fund, the Attorney General is to spend or direct \$5,000,000 for educational institutes. These can include an accredited law school that maintains programs for the education of Attorney General staff and judges regarding consumer protection issues and/or a bipartisan association or forum of state Attorneys General that provides programming to current Attorneys General regarding consumer protection issues to develop programs to rectify alleged violations of consumer protection laws and to educate and assist state Attorneys General regarding Consumer Fraud Act cases and digital privacy.

The Legislature is to spend or direct any remaining General Fund monies towards education, broadband, and Internet privacy efforts and purposes. The settlement does not define those 3 spending initiatives any further.

While the settlement outlines the uses of these monies, the settlement also requires the Legislature to appropriate these monies for them to be expended. The settlement states that "the failure to comply (with the specified purposes) shall not be a breach by the State."

The FY 2024 General Appropriations Act did not appropriate any General Fund monies for the educational institutes.

Opioid Settlements

The Attorney General has reported that they estimate the following \$501.9 million would be distributed to the state over the lifetime of the settlements listed below. These figures do not include the total settlement amounts which would include distributions to counties/cities.

- \$198.5 million from Distributors’ Settlement (Cardinal Health, McKesson, and Amerisource Bergen) distributed through FY 2039
- \$54.3 million from Walgreens distributed through FY 2037
- \$49.9 million from CVS Health Corporation distributed through FY 2032
- \$45.4 from Janssen/Johnson & Johnson distributed through FY 2032
- \$44.7 million from the Purdue Pharma bankruptcy distributed through FY 2033 (final amount to be determined as case is on appeal)
- \$40.9 million from Teva Pharmaceutical Industries distributed through FY 2035
- \$28.2 million from Walmart distributed through FY 2028
- \$22.5 million from Allergan plc distributed through FY 2029
- \$11.3 million from the Mallinckrodt Pharmaceuticals bankruptcy distributed through FY 2031 (effective June 2022)
- \$6.2 million from Endo Pharmaceuticals distributed through FY 2033 (awaiting plan confirmation)

Attorney General Legal Services Cost Allocation Fund

A.R.S. § 41-191.09 requires agencies to pay annually a flat fee to the Attorney General for general legal counsel as specified by the General Appropriation Act each year. See *Table 1* for a list of agencies and their corresponding FY 2024 Attorney General Legal Services charge. These amounts are unchanged from FY 2023.

(Please see the FY 2022 and FY 2015 Appropriations Reports for a more detailed history on legal services charges and the FY 2018 Appropriations Report for changes that occurred after FY 2015.)

**Table 1
FY 2024 Attorney General Legal Services Charges**

<u>Agency</u>	<u>Charge</u>
Arizona Department of Administration	\$ 127,700
Office of Administrative Hearings	3,000
Arizona Commission on the Arts	3,100
Citizens Clean Elections Commission	2,700
State Department of Corrections	2,000
Arizona Criminal Justice Commission	8,700
Arizona State Schools for the Deaf and the Blind	100,200
Commission for the Deaf and the Hard of Hearing	4,100
Arizona Early Childhood Development and Health Board	47,100
Department of Education	132,000
Department of Emergency and Military Affairs	30,000
Department of Environmental Quality	135,600
Arizona Exposition and State Fair Board	20,900
Arizona Department of Forestry and Fire Management	13,400
Department of Gaming	37,300
Department of Health Services	173,800
Arizona Historical Society	700
Arizona Department of Housing	19,300
Department of Insurance and Financial Institutions	13,800
Department of Juvenile Corrections	9,400
State Land Department	2,100
Department of Liquor Licenses and Control	11,400
Arizona State Lottery Commission	24,800
Arizona State Parks Board	45,800
State Personnel Board	600
Arizona Pioneers’ Home	12,100
Department of Public Safety	677,400
Arizona Board of Regents	1,800
Arizona State Retirement System	69,100
Department of Revenue	4,900
Department of State - Secretary of State	1,800
State Treasurer	9,200
Department of Veterans’ Services	<u>52,700</u>
Total Legal Services Charges	\$ 1,798,500

EXHIBIT E



KRIS MAYES
ATTORNEY GENERAL

OFFICE OF THE ARIZONA ATTORNEY GENERAL
STATE OF ARIZONA

May 16, 2024

VIA EMAIL

The Honorable Rachel Mitchell
County Attorney
Maricopa County Attorney's Office
225 West Madison Street
Phoenix, Arizona 85003

Re: Death penalty

Dear County Attorney Mitchell:

Thank you for the ongoing dialogue we have had about the death penalty over the last 17 months. I write this letter to ensure that you understand my position and plans regarding death sentences in Arizona.

First, I wish to reiterate that my office continues to defend death sentences obtained by county attorneys in Maricopa County and elsewhere. Lawyers in my office continue to defend more than 100 death sentences through the appellate, post-conviction, and habeas corpus processes in state and federal court. Indeed, earlier this year, my Section Chief for Capital Litigation argued *Thornell v. Jones* in the United States Supreme Court. This is a case in which the Ninth Circuit vacated a death sentence and I made the discretionary decision to request that the Supreme Court overturn that decision and reinstate Jones's death sentence.

As I have conveyed to you multiple times now, including when we met in January of this year, I respect the role of the death penalty in Arizona's laws. And I understand that many family members of victims continue to await closure in these (often decades-old) cases. As the chief law enforcement officer of the State, it is my intent to enforce Arizona law, whether that be through the defense of lawfully imposed death sentences on appeal or the seeking of warrants in a timely manner once a defendant has exhausted his appeals and ADCRR is prepared to carry out the warrant lawfully.

To that end, I intend to begin seeking warrants no later than the first quarter of 2025, so long as ADCRR is capable of carrying out a lawful execution at that time. By then, I anticipate that Judge Duncan will have completed his independent review and that ADCRR will have had

Hon. Rachel Mitchell
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sufficient time to make any appropriate improvements to their procedures for carrying out the death penalty.

In the interim, my office will continue to defend death sentences in appellate proceedings, as we did in the United States Supreme Court this April, and prepare for the warrant process, which as you know has historically required significant preparation and entailed significant litigation.

If you have any questions or would like to discuss these issues further, please let me know, and I will do my utmost to meet with you promptly. I would also be happy to discuss with you other issues of great importance to Arizonans, including women's access to reproductive health care and the importance of equal treatment under the law, regardless of a defendant's wealth, prominence, or political connections.¹

Sincerely,



Kris Mayes
Attorney General

¹ On that front, I have concerns about your Office's recent prosecution of former ADCRR Director Charles Ryan. See, e.g., <https://www.azcentral.com/story/news/local/tempe/2024/02/26/tempe-police-detectives-say-charles-ryan-got-preferential-treatment-after-standoff/72704243007/>.