

**ARIZONA SUPREME COURT**

STATE OF ARIZONA,

Appellee,

vs.

LEROY DEAN MCGILL,

Appellant.

No. CR-04-0405-AP

Maricopa County Superior Court No.  
CR-2003-005315-001

Ninth Circuit No. 19-99002

U.S. District Court No. 2:12–CV–  
01149–DGC

**RESPONSE TO STATE’S  
MOTION FOR BRIEFING  
SCHEDULE**

(Capital Case)

Leroy Dean McGill hereby responds to the State’s motion asking this Court to set a briefing schedule for a motion for warrant of execution. For the following reasons, Mr. McGill respectfully asks the Court to set the briefing schedule out as far as possible to allow his counsel time to reconstruct the file in his case and prepare for possible clemency proceedings.

As the Court is aware, the Office of the Federal Public Defender for the District of Arizona (“FPD”) suffered a cyberattack in the spring of 2025. Despite the best efforts of the FPD, the Administrative Office of the U.S. Courts, and the Federal Bureau of Investigation, all material stored on the office’s network was encrypted and unrecoverable. As a result, the vast majority of the office’s work product was lost, reflecting sometimes decades of work in individual cases.

Mr. McGill's case was affected by the cyberattack. FPD staff have worked tirelessly to rebuild case files but there is a tremendous amount of work still to be done. Since the time of the cyberattack, the FPD has had several cases with pending execution warrants in other states and one such case in Arizona. The office also has many cases with active briefing schedules or other deadlines, including evidentiary hearings. Accordingly, this case file has not yet been reconstructed.

Mr. McGill has a constitutional right to meaningful appellate review and to avoid arbitrary and irrational imposition of the death penalty. *Parker v. Dugger*, 498 U.S. 308, 321 (1991). He also has a life interest and a constitutional right to due process in any clemency proceedings. *Ohio Adult Parole Authority v. Woodard*, 523 U.S. 272, 288 (1998) (O'Connor, J., concurring). In addition, his counsel has ethical duties to Mr. McGill, including the duty of competence. *See* Arizona Rule of Pro. Conduct 1.1. Further, the 2003 ABA Guidelines for the Appointment and Performance of Counsel in Death Penalty Cases<sup>1</sup> require counsel to conduct additional investigation in support of any clemency request, Guideline 10.15.2.B, and "ensure that clemency is sought in as timely and persuasive a manner as possible, tailoring the presentation to the characteristics of the particular client, case and jurisdiction," Guideline 10.15.2.C. Compliance with these requirements is not possible in a constricted time frame due to the loss of FPD work product in Mr. McGill's case.

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<sup>1</sup> Arizona Rule of Criminal Procedure 6.8(a)(5) requires counsel in capital cases to be "familiar with and guided by" the 2003 ABA Guidelines.

Mr. McGill's legal team has been diligently working to prioritize their actions, obtain releases and those materials that might be necessary for end-stage litigation or clemency proceedings, and consult with Mr. McGill. Counsel is also mindful and appreciative of the State's efforts to comply with the lethal injection settlement and the beyond-use date of the drugs to be used in any execution. Because the time limits of concern do not start to run until a motion for warrant is filed, any additional time prior to the filing date of that motion should not affect the State's ability to carry out those actions.

For these reasons, Mr. McGill respectfully requests that the Court set the filing date for the State's motion for warrant of execution as far out as possible to allow his counsel time to prepare for any end-stage litigation or possible clemency proceedings. The cyberattack on the FPD's network constitutes extraordinary circumstances justifying this request.

RESPECTFULLY SUBMITTED this 29th day of December 2025.

Jon Sands  
Federal Public Defender  
Jennifer Y. Garcia (AZ Bar No. 021782)  
Assistant Federal Public Defender  
250 North Seventh Avenue, Suite 600  
Phoenix, Arizona 85007  
(602) 382-2816 (telephone)  
(602) 399-7397 (facsimile)  
jennifer\_garcia@fd.org

/s/Jennifer Y. Garica  
Counsel for Leroy Dean McGill