

December 17, 2020

Hon. Robert Brutinel, Chair
Arizona Judicial Council
1501 West Washington
Phoenix Arizona 85007

Re: Interim Report of the Capital Case Oversight Committee

Dear Chief Justice Brutinel,

I am writing to you in my capacity as Chair of the Supreme Court's Capital Case Oversight Committee (the "Oversight Committee.")

Supreme Court Administrative Order No. 2019-29 extended the Oversight Committee's term until December 31, 2021. The Order requires the Oversight Committee to provide progress reports to the Arizona Judicial Council this year and next. This first report is short and informal because it is an interim report.

1. Background. The Oversight Committee has a long history. The Committee's predecessor was the Capital Case Task Force, which was established on February 12, 2007 by Administrative Order 2007-18. That Order noted an "unprecedented number of capital cases currently awaiting trial in Maricopa County." The Order directed the Capital Case Task Force "to examine the issues relevant to the availability of adequate resources for processing capital cases in Maricopa County and in the appellate courts of Arizona and make recommendations for rule and statutory amendments that would promote efficient resolution of these cases in light of the pending caseload...."

The Capital Case Task Force submitted a report and recommendations to the Arizona Judicial Council in September 2007. Its concluding recommendation was that the Arizona Supreme Court establish a committee to monitor capital caseload reduction efforts in Maricopa County. The Supreme Court accordingly established the Capital Case Oversight Committee on December 6, 2007, by the entry of Administrative Order 2007-92. Justice Ryan served as chair of the Oversight Committee until his passing in 2012, and I have served as the successor chair.

This Court has extended the term of the Capital Case Oversight Committee by a succession of administrative orders, one of which expanded the Committee's scope to statewide. Each extension has been preceded by a status report to the Arizona Judicial Council. The Oversight Committee most recently reported to the Council in December 2018.

2. **Data: Superior Court.** As of December 2018, 4 of Arizona's 15 counties had pending capital cases. As of September 2020, 5 counties had pending capital cases.

- Here are the counties in which there are currently no pending capital cases.

Apache, Cochise, Coconino, Graham, Greenlee, LaPaz, and Navajo Counties currently have no pending capital cases. Although Apache and Cochise Counties periodically had capital cases during the past 12 years, there were no resulting death sentences. The other 5 counties noted above have not had any capital cases since 2008, when the Oversight Committee first began tracking statewide data.

Mohave County had between zero and 3 capital cases pending between 2008 and 2017. Two defendants were sentenced to death during that period, but the cases were remanded. In 2018, the County Attorney filed a motion in each case to withdraw the death notice, citing, among other reasons, that "even if the State is successful in the death penalty phase, there is no reasonable likelihood of the death penalty actually being imposed." Since then, Mohave County has not initiated any new capital cases.

Santa Cruz County in 2019 filed its first notice of intent to seek the death penalty in more than a decade. The case involved the homicide of a law enforcement officer and concluded with a plea and a natural life sentence.

Yuma County had 5 pending capital cases in 2008, but the number steadily declined. In 2017, one defendant was sentenced to death, and now there are no pending capital cases in Yuma County.

- Here are the 5 counties where capital cases were pending as of the 2020 survey.

Gila County: After more than a decade of having no capital cases, a notice of intent to seek the death penalty was filed in Gila County in 2018. The case, which involves multiple homicides, is currently pending.

Maricopa County accounts for most of Arizona's capital cases. In 2008, when the Oversight Committee began collecting data, there were 127 pending capital cases in Maricopa County. (There were more than 140 pending cases during the term of Capital Case Task Force.) By 2011, following judicial implementation of new policies for capital case management, the number had dropped to 68 pending cases. The number stood at 48 cases in the fall of 2018 and 43 cases in the fall of 2019. The 2020 survey showed 38 pending capital cases in Maricopa County. This is about 30 percent of the number of cases that were pending in 2008. In FY 2020 (July 2019 to June 2020), 6 new notices to seek the death penalty were filed in Maricopa County. In FY 2019, there were 7 new notices, and in FY 2018 there were also 7 notices. By comparison, for FY 2008, 2009, 2010, and 2011, there were 32, 29, 23, and 27 new notices filed.

Pima County had 14 pending capital cases in 2008. By 2011, the number had dropped by 50 percent, to 7 cases. In 2015, there were 5 pending cases. There were no pending capital cases in Pima County in 2017. There was one case in 2018 and 3 cases in 2019. There are currently two pending cases.

Pinal County is the sole county whose number of pending capital cases has increased since 2008. In 2008, it had 3 cases. In 2013, the number increased to 10 cases, and in 2014, it peaked at 17. At the time of the Oversight Committee's 2018 report, the number had dropped to 7, and there are currently 7 cases. Notwithstanding the number of pending capital cases since 2008, no death sentences have been imposed during the past 12 years.

Yavapai County had 3 capital cases in 2008, and as many as 7 cases during 2013-2014. As of September 2020, it had one pending capital case.

Statewide Summary: The number of capital cases pending trial in the superior court statewide has dropped from 155 in 2008 to 49 in 2020. The Oversight Committee's annual survey of pending capital cases statewide is attached to this report.

Death sentences: From the fall of 2008 to the fall of 2018, when the Oversight Committee submitted its most recent report, 59 defendants received death sentences in the superior court: 50 in Maricopa County, 6 in Pima, 2 in Mohave, and one in Yuma. In 2019, a defendant was sentenced to death in Yavapai County, and in 2020, a defendant was sentenced to death in Maricopa County, for a total of 61 death sentences since 2008. The last execution in Arizona was in July 2014.

3. Data: Supreme Court. Like the superior court, the Arizona Supreme Court has had surges and declines in the number of pending capital cases during the past 12 years.

As of November 2008, there were 17 direct appeals of capital convictions pending in the Arizona Supreme Court. By October 2009, that number had increased to 23 capital appeals. As of September 2018, that number had decreased to 12 pending direct appeals. There are currently 6 direct capital appeals pending in the Arizona Supreme Court.

The Department of Corrections website indicates that there are now 116 inmates on Arizona's death row. Many of these inmates have state post-conviction relief ("PCR") or federal habeas proceedings pending in state or federal court. In December 2019, there were approximately 30 capital cases requesting post-conviction relief that were pending at various stages of the PCR process in Maricopa County. There are 15 capital case PCR petitions for review currently pending in the Arizona Supreme Court, which is the same number of capital PCR petitions for review that were pending at the time of the Oversight Committee's 2018 report. The Arizona Attorney General indicated in August 2020 that 20 death row inmates have exhausted their appeals.

4. **Education.** On May 31 and June 1, 2019, the AOC's Education Services Division in conjunction with the Superior Court in Maricopa County presented an in-person capital case training program for judges statewide. The sessions were well-attended and received excellent evaluations.

5. **Impact of COVID-19.** For purposes of this report, the COVID pandemic has had a two-fold impact.

First, before the pandemic, assembling a jury panel for a capital case was a lengthy process and required venires of a hundred or more citizens. A jury trial of a three-phase capital case (guilt, aggravation, penalty) usually took months to conduct. The pandemic has made it impractical to summon a large panel and empanel a jury for a lengthy capital case, and since the onset of the pandemic, no capital case trials have commenced in Arizona. Second, the cessation of capital trials has led to a pause in Oversight Committee meetings. Additionally, the Oversight Committee had established a capital jury instructions workgroup in late 2019. Two experts, a professor of linguistics at Hofstra University and a capital jury researcher at the University of Miami, had agreed to participate as volunteer consultants. The workgroup anticipated that its members would meet in person, but it has not yet convened.

6. **Leadership.** Subsequent to the Oversight Committee's 2018 report, new County Attorneys in the two largest counties in Arizona have assumed office. Allister Adel was appointed by the Board of Supervisors in October 2019 to fill a vacancy in the office of the Maricopa County Attorney. She was elected as Maricopa County Attorney in November 2020. That same month, Laura Conover was elected as the Pima County Attorney. A county attorney's charging philosophy can have a significant impact on the filing of notices of intent to seek the death penalty. The Oversight Committee's next report, in December 2021, might discern whether the new leadership has had any effect on the number or disposition of capital cases.

7. **Conclusion.** Since the Oversight Committee's 2008 report, and even since its 2018 report, there have been substantial reductions in the number of pending death penalty cases in the superior court and pending direct appeals in the Arizona Supreme Court and. The number of pending capital PCR proceedings, however, remains high.

This interim report contains no recommendations.

For the Oversight Committee,

Hon. Ronald Reinstein (ret.)