

December 14, 2017

Hon. Scott Bales, Chair
Arizona Judicial Council
1501 West Washington
Phoenix Arizona 85007

Re: Interim Report of the Capital Case Oversight Committee

Dear Chief Justice Bales,

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. 2016-11 extended the Oversight Committee's term until December 31, 2018. 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. Administrative Order 2007-18 established the Capital Case Task Force on February 12, 2007. 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 Capital Case Task Force envisioned that committee would hold meetings and "assure interested parties that there will be a cooperative environment in which to share information, air concerns, and facilitate development of any formal policies deemed necessary." 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.

2. Overview. The Oversight Committee has in fact functioned as a "cooperative environment" since its creation and during multiple extensions of its term. Its meetings are relatively brief (they take place over the lunch hour) and infrequent

(recently, twice yearly), but its agendas are full and its meetings are well-attended by the members. A good number of guests also attend committee meetings. The guests customarily include prosecutors, defense counsel, and court administrators, as well as victim advocates and representatives from the Federal Public Defender. The Oversight Committee's agendas have included rule petitions, the qualifications of capital case counsel, and judicial training.

Rule petitions. The Oversight Committee has filed several rule petitions during its tenure that were adopted by the Court. More recently, three members of the Oversight Committee served on the Court's Task Force on the Arizona Rules of Criminal Procedure ("Task Force.") Those members presented to the Oversight Committee for review proposed Task Force rules that were relevant to capital litigation. The Task Force's rules were recently adopted by the Court in Order Number R-17-0002. Former Oversight Committee member Judge Joseph Welty served as chair of that Task Force.

Screening for qualified counsel. The Arizona Supreme Court appoints counsel for capital defendants in Rule 32 proceedings for post-conviction relief. The Oversight Committee has discussed various proposals for screening applications for those appointments. Although none of these proposals were adopted after consideration by the Court and presiding judges, I have worked closely with the Court's capital staff attorney to evaluate these applications. A small Oversight Committee cadre revised the Court's application form to make the information supplied by each attorney applicant more comprehensive and meaningful.

These recent actions by members of the Oversight Committee have contributed to there being an adequate number of counsel available for appointments on capital PCR proceedings. In 2009, there were 18 defendants awaiting the appointment of counsel on a capital PCR. By October 2013, this number had been reduced to 6. A year later, there was no backlog of defendants awaiting the appointment of counsel, and there is no backlog currently.

Meanwhile, in January 2012, the Maricopa County Superior Court entered Administrative Order 2012-008, which was superseded by Administrative Order 2014-101 entered in August 2014. The Orders require a Maricopa County Capital Defense Review Committee to formally review applications for appointment as a capital defendant's lead trial counsel, trial co-counsel, and appellate counsel. A.O. 2014-101 provides that each capital defense attorney who is eligible for appointment through the Maricopa County Office of Public Defense Services must receive an evaluation of his or her qualifications every three years, and have approval of the presiding criminal judge before their appointment on a capital case. The Committee has offered to review applications to the Supreme Court for appointment as post-conviction counsel. The Oversight Committee discussed this offer, but the Court declined it after due consideration.

Judicial training. On May 8-9, 2017, the AOC's Education Services Division in partnership with the Superior Court in Maricopa County conducted a two-day statewide training for judges on Processing Capital Cases. More than a dozen judges, including Chief Justice Scott Bales, Justice Andrew Gould, Judges Kent Cattani and Paul McMurdie, along with attorneys and subject matter experts, joined me as faculty. Topics at this program included case management, discovery and mitigation management, common mitigation issues, pretrial motions, jury selection, the three phases of a capital trial, settlement conferences, sentencing, media issues, appellate issues, and post-conviction relief. The approximately 30 judges who attended the program gave it an overall score of 4.69. Prosecutors and defense counsel customarily have separate training under the auspices of their respective organizations.

3. Data: Superior Court. The Oversight Committee has collected data since 2008 on the number of capital cases pending trial in Arizona. Please see the attached table for a compilation of that data. As of 2017, capital cases were pending in 4 of Arizona's 15 counties. Here is a summary:

Apache, Cochise, Coconino, Gila, Graham, Greenlee, LaPaz, Navajo, and Santa Cruz Counties currently have no pending capital cases. Although Apache and Cochise Counties periodically had capital cases during the past 9 years, there were no resulting death sentences. The other seven counties have not had any capital cases during the past 9 years.

Maricopa County has the greatest number of Arizona's capital cases. In 2008, when the Oversight Committee began collecting data, there were 127 pending capital cases in Maricopa County. Three years later, following implementation of new policies for capital case management, the number had dropped to 68 pending cases. The number stayed in the 60's for the next five years, but as of August 2017, there were 57 pending capital cases in Maricopa County. There were 53 pending cases at the end of September 2017, and 56 pending cases at the end of October. The Maricopa County Office of Public Defense Services has provided a full capital defense team for about two dozen other cases pending decisions by the County Attorney concerning the filing of death notices. (Stakeholders refer to these as "potential" cases.)

Mohave County during the past 10 years has had between zero and 3 capital cases. Mohave currently has two pending cases.

Pima County had 14 pending capital cases in 2008. In 2011, the number of pending cases had dropped by fifty percent, to 7 cases. In 2015, there were 5 pending cases. Last year there were two, and now the number is zero. But it also has one case where the County Attorney is currently considering the filing of a death notice.

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 spiked to 10 cases, and

in 2014, it peaked at 17. At the time of the Oversight Committee's 2015 report, the number had dropped to 14. Last year it was 12. It now has 8 capital cases. Because of conflicts, two of those 8 cases are being prosecuted by the Navajo County Attorney. Notwithstanding the number of pending capital cases since 2008, no death sentences have been imposed in Pinal County during the past 9 years.

Yavapai County had 3 capital cases in 2008, and as many as 7 during 2013-2014, but it now has two pending cases.

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

Statewide Summary: The number of capital cases pending trial in Arizona's superior court has dropped from 155 in 2008 to 69 at the end of August 2017.

Death sentences: From the fall of 2008 to the fall of 2015 (when the Oversight Committee submitted its most recent report to the Arizona Judicial Council), there were 51 death sentences in the superior court: 43 in Maricopa County, 6 in Pima, and 2 in Mohave. After the Oversight Committee's 2015 report and up to the present time, there have been 5 additional death sentences, 4 in Maricopa County and another in Yuma County. The 9-year figures (2008 to 2017) are therefore 47 death sentences in Maricopa County; 6 in Pima County; 2 in Mohave County; and 1 in Yuma County.

4. Data: Supreme Court. As in the superior court, the Arizona Supreme Court has also had surges and declines in the number of pending capital cases during the past 9 years. As of November 2008, there were 17 direct appeals of capital convictions pending before the Arizona Supreme Court. By October 2009, that number had increased to 23 capital appeals. But as of September 2015, that number had decreased to 10 pending direct appeals, and it currently stands at 12 direct capital appeals.

It's noteworthy that (a) there have been no executions in Arizona since 2014, and (b) there are about 50 Arizona death penalty cases pending in the federal court system on collateral review.

5. Conclusion. During the past 9 years, there has been a reduction in the number of pending capital cases in Maricopa County and statewide of about 55 percent.

This report contains no recommendations. The Oversight Committee defers its recommendations until next year's report.

For the Oversight Committee,

Hon. Ronald Reinstein (ret.)

Capital Cases Pending Trial in Arizona by County: 2008 to 2017

Each of these annual surveys was conducted in September, except for 2008, which was conducted in July.

Counties shown with gray shading had no pending capital cases during the 2017 survey.

| | 2008 | 2009 | 2010 | 2011 | 2012 | 2013 | 2014 | 2015 | 2016 | 2017 |
|-------------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|
| Apache | 1 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Cochise | 0 | 0 | 1 | 3 | 3 | 2 | 1 | 0 | 0 | 0 |
| Coconino | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Gila | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Graham | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Greenlee | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| LaPaz | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Maricopa | 127 | 109 | 79 | 68 | 63 | 68 | 68 | 67 | 64 | 57* |
| Mohave | 2 | 3 | 2 | 1 | 1 | 0 | 0 | 2 | 2 | 2 |
| Navajo | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Pima | 14 | 13 | 10 | 7 | 5 | 6 | 6 | 5 | 2 | 0 |
| Pinal | 3 | 4 | 5 | 5 | 5 | 10 | 17 | 14 | 12 | 8 |
| Santa Cruz | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Yavapai | 3 | 2 | 2 | 2 | 5 | 7 | 7 | 3 | 2 | 2 |
| Yuma | 5 | 4 | 3 | 3 | 1 | 1 | 1 | 1 | 1 | 0 |
| TOTAL | 155 | 136 | 102 | 89 | 83 | 94 | 100 | 92 | 83 | 69 |

*Maricopa had 57 cases pending at the end of August 2017, and 53 cases pending at the end of September 2017.