

**ARIZONA SUPREME COURT  
CAPITAL CASE OVERSIGHT COMMITTEE  
MINUTES  
April 4, 2013**

Members Present:

Hon. Ronald Reinstein, Chair  
 Hon. Joseph Welty  
 Hon. Kent Cattani  
 James Belanger  
 Donna Hallam  
 Kellie Johnson  
 Dan Levey  
 Marty Lieberman, by proxy,  
     Michele Lawson  
 James Logan  
 William Montgomery, by proxy,  
     Anthony Novitsky  
 Daniel Patterson  
 Sheila Polk  
 Natman Schaye

Guests:

Kristine Fox  
 Lori Ash  
 John Todd  
 Bruce Peterson  
 Chris DuPont  
 Fernanda Santos  
 Jerry Landau  
 Scott O'Connell  
 Dale Baich  
 Jennifer Garcia  
 Diane Alessi  
 Carolyn Edlund  
 Robert Shutts  
 Jeff Zick  
 David Darby

Staff:

Mark Meltzer  
 Kymberly Lopez

By telephone:

Robert Hirsh  
 Paul Julien

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**1. Call to Order; approval of the meeting minutes.** The Chair called the meeting to order at 12:05 p.m. He congratulated Judge Cattani on his recent appointment to the Court of Appeals. He introduced new members on the Oversight Committee: Judge Welty, Ms. Johnson, Ms. Polk, Mr. Belanger, and Mr. Schaye. The Chair then reviewed Administrative Order 2013-15, and specifically noted that members outside Maricopa County are sitting on the Oversight Committee for the first time. This expanded membership is significant in assuring that the Oversight Committee identifies and addresses capital case issues of statewide concern. The Chair further noted that the Order directs this Committee to submit a report to the Arizona Judicial Council ("AJC") in December 2013; the Committee therefore needs to finalize the report by November.

The Chair then asked the members to review draft minutes of the September 24, 2012 meeting.

**Motion:** A member moved to approve those minutes, and following a second, the members unanimously approved the September 24, 2012 meeting minutes.

**2. Senate Bill 1413.** The Chair asked Judge Cattani, who helped draft this bill while he was in the Attorney General's office, and Mr. Landau, the AOC's government affairs director, to discuss SB 1413, which was introduced during the current session of the Legislature. Mr. Logan reminded the members that the subject matter of this legislation had been before the Oversight

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Committee previously, and for that reason, he suggested that this item was improvidently on today's meeting agenda. The Chair agreed that the members had discussed this topic at prior meetings; he added that although the bill failed this session, issues raised by the bill might be the subject of future legislation or rule petitions, and that it therefore remained timely.

Judge Cattani stated that SB 1413 had two objectives. The first objective was to address the 2012 U.S. Supreme Court decision in *Martinez v Ryan*, an Arizona non-capital case. In Arizona, a direct appeal may not raise issues of ineffective assistance of trial counsel. *Martinez* provided that the defendant could avoid a procedural default by showing that post-conviction counsel was deficient in failing to raise the trial lawyer's ineffectiveness. Judge Cattani noted that the pending Supreme Court case of *Trevino v Thaler* might address this issue in the context of a capital case. The second objective of SB 1413 was to require the post-conviction hearing closer in time to the trial; Judge Cattani believed that would result in witnesses having a fresher and more reliable recollection; he also anticipated that a consequence of an earlier PCR proceeding would be the loss of fewer records from counsels' files. Mr. Zick added that the Attorney General would consider filing a rule petition to accomplish objectives similar to SB 1413.

Mr. Logan responded that the Supreme Court reverses some capital cases on direct appeal, and that requiring a post-conviction proceeding in those cases would be "like pouring money down the drain." He said that PCRs are incredibly expensive, and a petition that was required in a case that the Court would currently reverse on direct appeal would constitute an unnecessary expense of about half-a-million dollars. Although neither the Arizona Prosecuting Attorneys Advisory Council nor the Arizona Judicial Council took a position on SB 1413, county governments bear most of the cost of a PCR, and they generally opposed the legislation. Judge Cattani responded that when taking a longer-term view of a capital case, it is more expensive to incur a reversal ten or more years into the post-conviction process; having the PCR early may require additional costs sooner but avoid even greater costs later. He added that most states have a process where a defendant can raise ineffective assistance of trial counsel on direct appeal, and that the proposed changes would align Arizona's procedures with those used in a majority of death-penalty states.

Mr. Landau advised that the Arizona Judicial Council was unable to take a position on the bill because SB 1413 failed prior to an upcoming Council meeting. Although Mr. Landau took a neutral position on the legislation, he had recommended that it have a delayed effective date to allow for the adoption of appropriate procedural rules by the Supreme Court. He added that there remains a possibility of revival of the legislation during the current session, although he is not aware of any attempt to do so at this time. Mr. Landau also mentioned that HB 2307 is pending in the current session; that bill would streamline the process for court approval of attorney fee billings.

On the subject of statutes, Ms. Hallam brought up A.R.S. § 13-759, and noted that so-called "push warrants" designed to "push" a defendant's case into federal court for a habeas proceeding are no longer necessary in light of the provisions of the Anti-Terrorism and Effective Death Penalty Act. Federal stakeholders who were present at today's meeting shared this view, and they added that the process of issuing "push warrants" creates an administrative burden on the federal courts. Ms. Hallam is considering filing a petition to amend Rule 31.17(c) that would

allow the Supreme Court to issue an execution warrant some time after it has denied a petition for review, rather than contemporaneously with the denial.

**2a. Status reports: Maricopa County Superior Court.** The Chair asked for status reports.

Judge Welty reported that there are currently sixty-nine capital cases pending in the Maricopa County Superior Court. Five of these cases are pending non-capital sentencing. Two of the cases are in trial, and five more cases have firm dates for trials by June. There are also thirty-seven pending petitions for post-conviction relief, although several of the cases are stayed pending appointment of new counsel, determinations of competency, or waiver requests. Judge Welty added that the court makes early determinations to assure that appointed trial counsel will be able to get a new case to trial within two years. The presiding criminal judge hears all motions to continue a capital case, or for counsel to withdraw.

Mr. Novitsky advised that thirteen first-degree murder cases are currently under review by the Maricopa County Attorney for consideration of a death notice. He confirmed that the number of capital cases has been in the sixties for a couple years. Mr. Logan's number of pending cases is somewhat higher because he staffs cases in which the filing of a death notice is possible. Four cases are on extensions under Rule 15.1. Mr. Patterson noted that all county defender agencies are now at capacity, and new cases are referred to Mr. Logan for appointment of contract counsel. During the current fiscal year (since July 1, 2012), contract counsel have been appointed in four cases.

Ms. Johnson noted that Pima County has six pending cases. Two of these cases are set for trial, two have Rule 11 issues, and one is in the appellate court on special action. She added that after the Pima County Attorney files a death notice, the case likely goes to trial. She said that her office is very selective about its capital cases, and that it files few death notices. The defense is afforded an opportunity to present mitigating evidence prior to filing. Ms. Polk advised that Yavapai County currently has five capital cases. Her process is similar to that in Pima County; the defense is invited to provide mitigation prior to filing a notice, and she will agree to extend the time for filing a notice to allow the defendant to do so. The Chair noted Oversight Committee data for counties other than Maricopa and Pima that shows there have been more than a dozen death notices filed, but one death sentence, during the past five years. He also noted that in fewer than twenty percent of the cases in which the Maricopa County Attorney filed a notice over the past several years did the case terminate with a death sentence. Mr. Novitsky pointed out that a capital case can present a fluid situation, and what is seen at the beginning of a case can change over time. He stated that defense counsel might provide very little information to his office prior to the filing of a notice, and in addition, a new Maricopa County Attorney was elected in November 2010. One member added that elected county attorneys have discretion concerning which first-degree murder cases warrant the filing of a death notice, and that each county attorney is cognizant of his or her cost issues associated with the filing of a notice.

**2b. Status reports: appeals and PCRs.** Ms. Hallam advised that there are seventeen pending capital appeals. Ten of these cases are still in the briefing or transcript-gathering stages. She noted a continuously decreasing number of notices of appeal that were filed annually over the past few years. She has worked diligently to appoint counsel for a PCR fairly soon after the

Court affirms a conviction on direct appeal. She added that counsel withdrew in a couple older PCRs and she is looking for new counsel on those cases now.

**3. Recruitment of capital PCR counsel.** Mr. Schaye and Mr. Hirsh reported limited success in Pima County in recruitment of attorneys for capital PCRs. The Chair advised that he is also reaching out to attorneys and judges to recruit PCR counsel, and at the same time he is awaiting information concerning Maricopa County's screening committee. Mr. Belanger noted that a few large national law firms do capital PCRs on a pro bono basis, and that these firms absorb the cost of mitigation and case investigations as well. Arizona's \$100 hourly rate of compensation may not even cover the cost of an attorney's office overhead. The Chair noted that the AJC tabled the Oversight Committee's recommendation that the hourly rate be increased to \$175 because of its concern with the impact this rate increase could have on the counties, which pay this cost. The Chair feels that an hourly increase to \$125 would not be sufficient incentive to attract new, qualified counsel to PCR work. Mr. Logan advised that the hourly rate for trial counsel is now \$125, that an increase in the PCR rate would probably result in trial counsel's rate also going up, and that the added cost to the counties could be millions of dollars. Mr. Belanger asked whether anyone has calculated the cost savings for counties if there were fewer death notices filed. He believes that the system will work better with fewer cases and with attorneys who are better qualified, and that financial issues concerning capital cases would be addressed best by cost savings from filing fewer of them.

Judge Welty provided an update on Maricopa County's screening committee. One-third of the trial lawyers are currently under review by the committee, and the committee is functioning as envisioned by the local administrative order that established it. Mr. Logan added that evaluations of the initial group of attorneys took longer than anticipated because the committee needed first to establish its policies and procedures, but that the process is moving faster now. The screening committee offered to review capital PCR attorneys who are residents of Maricopa County, regardless of where the case is pending, and while the offer is still open, it has not been accepted. The members also discussed the likelihood that attorneys in future PCRs may more likely be from staffed defender agencies, especially if the hourly rate for private counsel is increased. Mr. Logan added that while a statute sets counsel's hourly rate for a capital appeal, in very exceptional circumstances the court might increase the rate for trial counsel. The incentive for a higher-than-usual hourly rate typically relates to timeliness in getting the case to trial, rather than from issues involving complexity of the case.

**4. Rule petitions.** The Chair requested Judge Welty to summarize two rule petitions that he filed in the current rules cycle.

R-13-0010 would amend Rule 32.4 and extend the time to file a capital case petition for post-conviction relief from the current time of 120 days from the date of filing the notice, to eighteen months. Judge Welty explained that the current rule requires successive motions to extend time every sixty days, and with thirty-seven pending capital PCRs in Maricopa County, this results in a large volume of motions.

R-13-0014 was filed because of the 2012 Supreme Court decision of *Missouri v Frye*. The proposed amendment to Rule 17.4 would provide a record concerning claims of ineffective

assistance during the plea bargaining process. Members made the following comments concerning R-13-0014:

- Some jurisdictions do not put a plea offer in writing unless the defendant is considering the offer; but if defendant has no interest, the prosecutor does not reduce it to writing. Would the petition, if adopted, change this practice?
- Would this proposal duplicate *Donald* hearings? Judge Welty believes that it may in some but not all circumstances.
- Judge Welty added that he intends to file an amended petition excluding limited jurisdiction courts from this proposed requirement.

The Oversight Committee took no action on R-13-0014.

The members engaged in further discussion regarding R-13-0010, including these comments:

- Enlarging the time from 120 days to eighteen months is a long leap
- Eighteen months is still short of reality
- Victims will view an eighteen month period as further delay, and it is likely that defendants will request even further extensions thereafter
- It is easier to enforce a deadline when it is a realistic one; advising victims that a petition will be filed in 120 days is not realistic
- In cases where the issues are narrow, a petition can be filed in less than eighteen months
- A federal habeas petition can be filed in less than eighteen months
- The current time limit requires defendants to file multiple requests for extension, which wastes resources
- The 120-day limit may be a carryover from pre-*Ring* trials
- Should judges and practitioners consider eighteen months as the minimum time for filing a petition, or as the maximum time allowed?
- It is better to have a rule with a deadline everyone knows is unrealistic than to have one with a longer but firm deadline

The members had diverse views on what would be a realistic time requirement for filing a petition; members suggested one year, eighteen months, and two years as options. Because there was no agreement on a new time limit, victims, prosecutors, and defense counsel should file individual comments to R-13-0010 stating their respective views. A member then made the following motion:

**Motion:** That the Oversight Committee should file a formal comment in R-13-0010 to express that the 120-day time in the current rule is unrealistic, and that the Committee supports a change to Rule 32.4(c) for capital cases but that it does not support any new and specific time deadline. Further, that the Oversight Committee authorizes the Chair to draft and to file the comment. The motion passed: seven in favor and four opposed.

**5. Capital case training.** The Chair reminded the members that recommendation #3 of the Oversight Committee's 2012 Report to the Arizona Judicial Council was to encourage

continuing training and education for judges, prosecutors, defense attorneys, and others who handle capital cases. The Chair then invited remarks from Paul Julien, the Supreme Court's judicial education officer. Mr. Julien commented that the Education Services Division is ready to assist capital case judges and lawyers with additional training needs. The Education Services Division could meet those needs by in-person or on-line training, bench books, or other educational delivery methods. He recalled that the 170 participants who attended the May 2010 Capital Case Litigation Conference for judges, prosecutors, and defense counsel, which was facilitated by the Education Services Division, gave the two-day program a very high rating. The Chair then opened the topic for discussion. A number of members stated that they preferred targeted, separate training for defenders and prosecutors, rather than a combined session, and the Committee took no further action on Mr. Julien's offer of assistance.

**6. Next steps.** The Chair inquired if there were other areas that the Committee should explore and include in its report to the Arizona Judicial Council later this year. Mr. Schaye would like to see Pima County use a screening committee similar to the one established in Maricopa County. He will circulate a proposal prior to the next Committee meeting. The Chair requested that members send ideas concerning other areas to him or to staff. The Committee will meet next in autumn 2013.

**7. Call to the public; adjourn.** There was no response to a call to the public. The meeting adjourned at 2:00 p.m.

**ARIZONA SUPREME COURT  
CAPITAL CASE OVERSIGHT COMMITTEE  
DRAFT MINUTES  
October 30, 2013**

Members Present:

Hon. Ronald Reinstein, Chair  
 Hon. Joseph Welty  
 Hon. Kent Cattani  
 Donna Hallam  
 Kellie Johnson  
 Dan Levey  
 Marty Lieberman  
 James Logan, by proxy  
     Bruce Peterson  
 William Montgomery  
 Daniel Patterson  
 Sheila Polk, by proxy,  
     Dennis McGrane (telephonic)  
 Natman Schaye

Not present:

James Belanger

Guests:

John Todd  
 Dale Baich  
 Jennifer Garcia  
 Jeff Zick  
 Marcus Reinkensmeyer  
 Kristine Fox (telephonic)  
 Charles Babbitt  
 Robert Shutts  
 Anthony Novitsky  
 Diane Alessi  
 Carolyn Edlund  
 Amy Armstrong (telephonic)  
 Emily Skinner (telephonic)  
 Colleen Chase  
 Aaron Moskowitz  
 Theresa Barrett  
 Bob James

Staff: Mark Meltzer, Kymberly Lopez, Sabrina Nash

**1. Call to Order; approval of the meeting minutes.** The Chair called the meeting to order at 12:02 p.m. He announced that Ms. Johnson and Mr. Zick recently assumed leadership positions with the Association of Government Attorneys in Capital Litigation, and he congratulated them. The Chair also noted that the posthumous induction of Justice Michael Ryan into the Maricopa County Bar Association's Hall of Fame is occurring at the same time as this Oversight Committee meeting. The Chair spoke with Mrs. Ryan about this unavoidable calendar conflict, and Mrs. Ryan assured the Chair that he should go forward with the meeting.

The Chair then asked the members to review draft minutes of the April 4, 2013 meeting. Mr. Schaye clarified that Pima County has had "limited" success in recruiting attorneys for capital PCRs, and this one-word qualifier will be added in the first sentence of section 3 of those minutes. Mr. McGrane had a question concerning a sentence in the next paragraph of those minutes regarding staffed defender agencies, but the members agreed after discussion that this sentence was accurate and did not need correction.

**Motion:** A member then moved to approve the draft April 4, 2013 minutes, with the one change noted above, and following a second, the members unanimously approved those meeting minutes.

**2a. Status reports.** The Chair asked for status reports.

Judge Welty reported that there are currently sixty-seven capital cases pending in the Maricopa County Superior Court. Two of these cases are pending non-capital sentencing. Two of the cases are in trial. There are also thirty-seven proceedings for post-conviction relief. Twenty-four of these post-conviction cases are pending the filing of a petition, three are pending the filing of a response or reply, nine are pending an evidentiary hearing, and one is pending the appointment of counsel.

Mr. Montgomery reported that three cases are currently under consideration by his capital case review committee. If the review committee recommends not filing a death notice in any of these three cases, it would mark the third consecutive month that his office has had no new capital filings. Mr. Patterson noted that the defender agencies are at or near their capital case capacities; he agreed that there has been a decline in the number of death notices and that the prosecutor is more circumspect about filing death notices than prior administrations. Mr. Montgomery responded that even though the number of filings has dropped, the analysis remains the same: is there sufficient evidence to show guilt and aggravating factors beyond a reasonable doubt, and do the totality of circumstances justify death as a just punishment. He believes that filings will continue to be relatively stable as long as the population and homicide rate remain stable. He added that he is not compelled to file any “magic number” of death notices.

Ms. Johnson reported that there are five pending cases in Pima County; one is in trial and another is pending on a special action concerning an intellectual disability, and yet another is a remand pending resentencing. Her office resolved a capital case last month with a plea to a natural life sentence. Ms. Johnson anticipates that there will be new filings in Pima County next month. Mr. McGrane said that Yavapai County has seven pending cases, most of which are pending trial; another is on an interlocutory appeal to the Arizona Supreme Court. The Chair noted that ten capital cases are pending in Pinal County.

Ms. Hallam advised that there are twelve pending capital appeals. Six capital defendants are awaiting the appointment of counsel on post-conviction proceedings.

**3. Draft petition regarding amendments to Rule 31.17(c).** At the April 4, 2013 meeting, Ms. Hallam explained the desirability of a rule petition concerning amendments to Rule 31.17(c), Ariz. R. Crim. P. She presented a draft rule petition to the members and indicated that she anticipates filing the petition for consideration during the Court’s 2014 rules cycle. The current rule requires the Court to issue an execution warrant on the same day as its denial of a petition for review regarding a petition for post-conviction relief. The defendant usually initiates a federal habeas proceeding within a matter of days of the denial, which results in a federal court stay of the execution and immediate cancellation of the notices concerning the pending execution previously sent to multiple agencies, organizations, and officials. Members of the Oversight Committee and attending guests from the federal court agreed that the issuance of an execution

warrant contemporaneously with the denial of the petition for review is unnecessary and causes significant administrative costs. The Chair asked for a formal vote on the draft rule petition to reflect the sense of the Oversight Committee.

**Motion:** A member then moved to support the draft petition to amend Rule 31.17(c) as presented, and following a second, the members passed the motion unanimously.

**4. Revised application for appointment on a capital PCR proceeding.** Ms. Hallam suggested that the current application for capital PCR appointments could benefit from a thorough revision, and that it should request more information. Accordingly, she and staff prepared a revised application that was included in the meeting materials. A discussion of the revised application ensued. In Section C, following question 5, Judge Cattani suggested adding a question asking whether the applicant, if not qualified under Rule 6.8(c), is nonetheless qualified under the “exceptional circumstances” provision of Rule 6.8(d). If so, the applicant should describe those circumstances. There was consensus among the members concerning this suggestion.

**5. Screening non-Maricopa attorneys for capital cases.** At prior meetings the members discussed Maricopa County Superior Court Administrative Order 2012-118 (August 10, 2012), a plan for reviewing the qualifications of private defense counsel for appointment on, among other things, capital trials and appeals. The Maricopa County A.O. is applicable only to attorneys in Maricopa County. Mr. Schaye has requested the members to consider a proposal for screening private attorneys for appointment on capital cases in other counties. This proposal was included in the meeting materials.

Mr. Schaye prepared this proposal following consultation with lawyers in Maricopa and Pima counties. The Maricopa plan was the model for his proposal, although unlike A.O. 2012-118, his proposal would expressly include PCRs. The proposal would apply to all counties other than Maricopa. He noted that it would not be practical for a small county with a limited number of capital cases to establish its own screening system. He also cited the benefit of having a consistent mechanism for appointments statewide.

Ms. Hallam noted that the Supreme Court appoints capital PCR counsel, but it is not involved in the appointment of trial or appellate counsel, although Mr. Schaye’s proposal includes such provisions. Judge Welty added that county presiding judges are responsible for appointing trial and appellate counsel. Mr. Schaye agreed to modify his proposal accordingly. The Chair noted that the Supreme Court has statutory responsibility to appoint counsel for capital PCRs, who for the most part appear before superior court judges, and the superior court has a corresponding duty to appoint appellate attorneys, who appear before the Supreme Court. He asked parenthetically whether the reverse would be more appropriate. Mr. Schaye said that his objective was assuring the highest quality of defender representation as early in the process as possible. In response to a question, Mr. Montgomery, Ms. Johnson, Mr. Levey, and Mr. Zick, each affirmed the desirability of having highly qualified defense counsel. Mr. Montgomery added that if this new proposal went to a vote before the Oversight Committee, he nevertheless would recuse himself because he did not believe it would be appropriate for him to set the qualifications of his adversaries. The Oversight Committee took no vote on the proposal.

The Chair concluded this discussion by noting that a decision to adopt the proposal rests with the Supreme Court, although the Chief Justice may first request input from presiding judges and others as deemed appropriate. The Chair will also speak with court officials about Maricopa County's request to screen capital PCR counsel under the mechanism established by AO 2012-118. The Chair noted that he and Ms. Hallam currently do that screening.

**6. Rule proposal regarding the timing of petitions for post-conviction relief.** Mr. Zick advised that the Arizona Attorney General was considering a rule petition as an alternate approach to SB 1413, which failed in the Legislature earlier this year. This rule proposal, like SB 1413, would require that a capital PCR petition precede briefing on a direct appeal. The proposal, which is not yet available as a document, envisions the simultaneous filing of notices of appeal and for post-conviction relief. During preparation of the trial court record, which Mr. Zick estimated would take about six to nine months, PCR counsel could investigate extra-judicial facts. At a designated time following completion of the trial court record, counsel would then file a petition for PCR. If the trial court denied the PCR petition, the proposed rule would consolidate the direct appeal with the PCR petition for review. The benefits and drawbacks cited during a discussion of the proposal included the following:

- The evidentiary hearing would be closer in time to the trial; therefore, witnesses' memories would not have faded as much, and would be more reliable.
- There is less likelihood that defense counsel's records would be lost or become unavailable.
- If a defendant's mental health at the time of trial is at issue in the PCR proceeding, it is preferable to make that determination sooner rather than later.
- The rules prefer that the sentencing judge consider the post-conviction evidence. Because there is a considerable length of time following conviction until a PCR petition is ready for an evidentiary hearing, the sentencing judge may be retired or otherwise unavailable for the PCR hearing. This rule proposal would facilitate the original trial court judge conducting more post-conviction hearings.
- The proposal is a way for Arizona to address the issues raised by *Martinez v Ryan* and *Trevino v Thaler*.
- Preparation of a petition for post-conviction relief, and especially a comprehensive mitigation investigation, requires substantially more time than suggested by this rule proposal.
- For those cases that would be reversed on direct appeal, a PCR before the appeal would add an immediate and substantial expense for the county (although there is a contrary view that ultimately this expense would be less than the cost of a federal court remand ten or twenty years later.)
- It would be difficult to make a transition from the current system to the one proposed.

- The proposal would extend PCR proceedings by requiring a second PCR petition to litigate the effectiveness of appellate counsel.

One member suggested that the appointment of two defense attorneys on a capital PCR would be more effective than this rule proposal. Another individual recommended that the issue of lost or misplaced files would be better resolved by establishing an official repository for capital case files.

Mr. Zick indicated that he would file the rule petition by the January 2014 rules cycle deadline.

**7. 2013 Report to the Arizona Judicial Council.** The Chair will present a progress report from the Oversight Committee at the December 12, 2013 meeting of the Arizona Judicial Council. The Chair noted two corrections to the draft report, which was included in the meeting materials:

(1) The Court issued twenty-seven opinions in the thirty month period between April 2011 [not August] and September 2013; and

(2) Add in the body of recommendation #2, or in a footnote, this update: The most recent regulations published by the United States Attorney are the subject of a temporary restraining order issued by a federal district court on October 18, 2013, in Habeas Corpus Resource Center and the Office of the Federal Public Defender for the District of Arizona, Plaintiffs, versus the United States Department of Justice and Eric H. Holder, Defendants (N.D. Cal., C-13-4517-CW). A hearing on the TRO is set for November 14, 2013.

On the issue of compensation for capital PCR counsel, the consensus of the members was to recommend an increase in the rate, as stated in recommendation #1. The rate of attorney compensation is higher in the Maricopa County Superior Court and in federal court than the rate currently set by Arizona statute for capital PCR attorneys. A member described the PCR work as “gut-wrenching.” The member added that there are not a substantial number of attorneys qualified to do capital PCRs; increasing the rate may attract those who are qualified and who are suited to do this work. Another member observed that an increase in the rate of compensation would be an incentive for counties to establish departments in public defender agencies to do these proceedings in-house in lieu of appointing more highly compensated private counsel. Public agencies would also have the benefits of better management and supervision, and a support network, and these agencies would develop a cadre of attorneys who consistently practice in this area and who are well qualified under Rule 6.8(c).

Concerning an extension of the term, the members considered future goals and purposes of the Oversight Committee. Although the members agreed that data collection and monitoring the number of capital cases should continue, one member cautioned against a discussion by this committee of decisions to file death notices. County attorneys have the prerogative of differing charging philosophies, and filing a death notice is an executive branch decision. The members agreed that the Oversight Committee should continue to discuss capital case procedures,

including improvements in procedures, and the committee should continue its consideration of the effects of new court opinions, legislation, regulations, and rules on capital cases.

The Chair at this time asked for a motion authorizing him to finalize the report.

**Motion:** A member then moved to authorize the Chair to finalize the Oversight Committee's report to the AJC, in his discretion and consistently with the meeting's discussions, and to make additional revisions as appropriate to update the status of the HCRC v DOJ case. Following a second, the members unanimously passed this motion.

**8. Call to the public; adjourn.** There was no response to a call to the public. The meeting adjourned at 1:35 p.m.