



Supreme Court

STATE OF ARIZONA

402 ARIZONA STATE COURTS BUILDING
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NOËL K. DESSAINT
CLERK OF THE COURT

KATHLEEN E. KEMPLEY
CHIEF DEPUTY CLERK

September 18, 2006

RE: RULE 6.8, ARIZONA RULES OF CRIMINAL PROCEDURE
Arizona Supreme Court No. R-05-0031

GREETINGS:

The following action was taken by the Supreme Court of the State of Arizona on September 11, 2006, in regard to the above-referenced cause:

ORDERED: [Petition to Amend Rule 6.8, Arizona Rules of Criminal Procedure] = ADOPTED as modified, effective January 1, 2007.

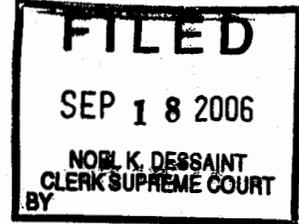
Noel K Dessaint, Clerk

TO:

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Hon Brian K Ishikawa, Judge, Maricopa County Superior Court
Hon Ronald S Reinstein, Judge, Maricopa County Superior Court
Hon David R Cole, Judge, Maricopa County Superior Court
Hon Karen L O'Connor, Judge, Maricopa County Superior Court
Hon Thomas W O'Toole, Judge, Maricopa County Superior Court
Final Rule Distribution List
cf

IN THE SUPREME COURT OF THE STATE OF ARIZONA

Supreme Court No. R-05-0031



**ORDER AMENDING
RULE 6.8, ARIZONA RULES OF CRIMINAL PROCEDURE**

IT IS ORDERED that Rule 6.8, Arizona Rules of Criminal Procedure, be amended in accordance with the attachment hereto,* effective as of January 1, 2007.

DATED in the City of Phoenix, Arizona at the Arizona Courts Building, this 18~~th~~ day of September, 2006.

For the Court:

A handwritten signature in cursive script, reading "Ruth V. McGregor".

RUTH V. MCGREGOR
Chief Justice

* Changes or additions in text are indicated by underscoring and deletions from text are indicated by ~~strikeouts~~.

ARIZONA RULES OF CRIMINAL PROCEDURE

Rule 6.8. Standards for appointment and performance of counsel in capital cases.

a. General. [No change in text.]

b. Trial Counsel.

(1) *Lead counsel.* To be eligible for appointment as lead counsel, an attorney must meet the qualifications set forth in section (a) of this rule and the following:

(i)-(ii) No change in text.

(iii) Shall be familiar with and guided by the performance standards in the 2003 American Bar Association Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases; and

(iv) [No change in text.]

(2) *Co-counsel.* To be eligible for appointment as co-counsel, an attorney must be a member in good standing of the State Bar of Arizona and shall have attended and successfully completed, within one year prior to the initial appointment, at least six hours of relevant training or educational programs in the area of capital defense, and within one year prior to any subsequent appointment, at least twelve hours of relevant training or educational programs in the area of criminal defense. Section (b)(1)(iii) applies to co-counsel.

c. Appellate and Post-conviction Counsel. To be eligible for appointment as appellate or post-conviction counsel, an attorney must meet the qualifications set forth in section (a) of this rule and the following:

(1)-(2) [No change in text.]

(3) Shall be familiar with and guided by the performance standards in the 2003 American Bar Association Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases.

d. Exceptional Circumstances. In exceptional circumstances and with the consent of the Supreme Court, an attorney may be appointed who does not meet the qualifications set forth in sections (a)(1) and (2), (b) and (c) of this rule,

providing that the attorney's experience, stature and record enable the Court to conclude that the attorney's ability significantly exceeds the standards set forth in this rule and that the attorney associates with himself or herself a lawyer who does meet the standards set forth in this rule. Section (b)(1)(iii) and (c)(3) shall apply to attorneys appointed under this section.

2006 Comment

The American Bar Association Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases (2003) is a compendium of best practices for representation in capital cases. Some guidelines may not be applicable to Arizona practice or to the circumstances of a particular case, but in exercising independent professional judgment, counsel should be guided by the performance standards when applicable.

A deviation from the guidelines, however, is not per se ineffective assistance of counsel. The standard for evaluating counsel's performance continues to be that set forth in *Strickland v. Washington*, 466 U.S. 668 (1984).