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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA  
IN AND FOR THE COUNTY OF PINAL

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DEPUTY

IN THE MATTER OF THE ESTABLISHMENT )  
OF A PILOT PROGRAM TO ADOPT A FORMAL )  
SCHEDULING PROCEDURE IN SUPERIOR )  
COURT CRIMINAL CASES )

ADMINISTRATIVE ORDER

No. 2020 - 000 U4

**WHEREAS**, the Presiding Judge of the Superior Court of Arizona in and for Pinal County is the chief judicial officer of the county and has administrative authority over all courts in Pinal County, pursuant to Article VI of the Arizona Constitution and Arizona Supreme Court Administrative Order No. 2017-79; and

**WHEREAS**, the Presiding Judge has delegated administrative responsibility and authority over the Criminal Bench of the Superior Court to a Criminal Presiding Judge;

**WHEREAS**, the Covid-19 Pandemic resulted in the temporary suspension of jury trials and speedy trial rights, and the continuing impact of social distancing and other necessary safety precautions reduce the capacity of the Superior Court Courthouse to accommodate simultaneous jury trials, such that the traditional practice of setting future criminal jury trials, and the uncertainty surrounding which cases are actually ready for trial or not, does not adequately allocate scarce jury trial resources;

**WHEREAS**, the formal scheduling procedure adopted by the Supreme Court for civil cases (Civil Rule 16), is an appropriate framework to more efficiently allocate jury trial resources in criminal cases.

**NOW, THEREFORE, IT IS ORDERED** to adopt as a pilot program the formal scheduling and management of criminal actions in the Superior Court, throughout the trial stage of proceedings, as set forth in the attached *Pilot Program for the Scheduling and Management of Criminal Actions in the Superior Court*, effective January 1, 2021.

In summary, implementation of this pilot program shall result in the following early deadlines and activities:

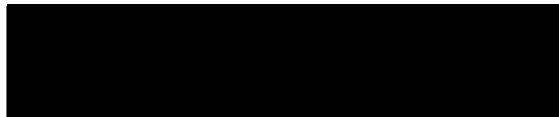
- As to cases that were arraigned prior to January 1, 2021, attorneys shall file a notice on or before January 15, 2021, if the case is set for trial on or between February 1 and April 30, 2021, stating whether any change is required to the existing schedule, including the trial date. If a change is required, a Proposed

Amended Scheduling Order must be filed on or before January 22, 2021. See sections (i)(1) and (k)(1).

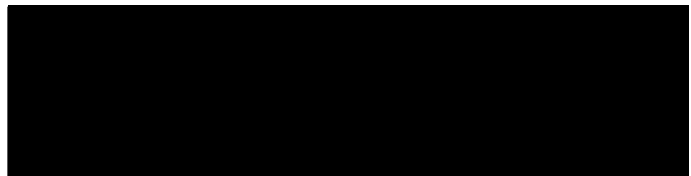
- As to cases that were arraigned prior to January 1, 2021, attorneys shall file a notice on or before February 15, 2021, if the case is NOT set for trial on or between February 1 and April 30, 2021, stating whether any change is required to any existing schedule, including any trial date. If a change is required, or if there is no Scheduling Order in the case, a Proposed Scheduling Order must be filed on or before March 2, 2021. See sections (i)(2) and (k)(1).
- As to cases that are arraigned after January 1, 2021, the arraignment judge shall set the case for a Scheduling Conference and Scheduling Hearing before the assigned trial judge in approximately 45 days after arraignment, which the lead attorneys and defendant shall attend, and the Court shall enter a Scheduling Order, a change of plea, or take other appropriate action. See section (d).

As set forth in section (j), standard forms for a Joint Report and Proposed Scheduling Order shall be available in Word format from judicial assistants to the Criminal Bench, on or before the effective date of this pilot program.

Dated this 10 day of December 2020



Honorable Stephen F. McCarville,  
Presiding Judge



Honorable Robert Carter Olson,  
Criminal Presiding Judge

Original: Clerk of the Superior Court

Copies: Judges, Pinal County  
Kent Volkmer, Pinal County Attorney  
Rebecca Padilla, Clerk of the Court  
Leo Lew, Interim County Manager  
Catherine Whelan, Indigent Defense Services  
Kate Milewski, Public Defender  
Todd Zweig, Court Administration  
Rod McKone, Adult Probation Department  
David Rodriguez, Chief Criminal Deputy County Attorney  
Victims' Assistance Program  
Odette Apodaca, Chief Deputy  
Jackie McMurry, Office of Indigent Defense Services (to distribute to Attorneys on the Indigent Appointment lists)

## PILOT PROGRAM FOR THE SCHEDULING AND MANAGEMENT OF CRIMINAL ACTIONS IN SUPERIOR COURT

(a) **Application.** Unless otherwise ordered by the Court, this pilot program shall apply to all pretrial criminal cases in the superior court, prior to conviction, acquittal or dismissal of all charges, including cases that are pending on the effective date of this pilot program.

(b) **Objectives.** The superior court will manage a criminal action with the following objectives:

- (1) expediting a just disposition of the action;
- (2) establishing early and continuing control so that the action will not be protracted because of lack of management;
- (3) ensuring that discovery is proportional to the needs of the action;
- (4) discouraging wasteful, expensive, and duplicative pretrial activities;
- (5) improving the quality of case resolution through more thorough and timely preparation;
- (6) facilitating the appropriate use of alternative dispute resolution;
- (7) conserving parties' resources;
- (8) managing the court's calendar to eliminate unnecessary hearings, trial settings and continuances, while reserving adequate time for meaningful hearings; and
- (9) adhering to standards for timely resolution of criminal actions.

(c) **Definitions.**

(1) **"Ready for Trial"** means that a party or attorney, who asserts that a case is Ready for Trial, is thereby certifying and avowing that the person firmly and knowingly believes that the case will be Ready for Trial by a date certain, because:

(A) the person knows the availability and capability of their necessary witnesses and experts to complete any required tests, examinations, consultations, interviews, or depositions, and do so sufficiently in advance of the proposed trial date,

(B) the person knows that their witnesses, attorney(s), and necessary personnel will be available for the proposed trial date,

(C) the person reasonably believes that all ordered and appropriate good faith efforts to resolve the case through a negotiated settlement will be exhausted 30 days prior to the proposed trial date, and

(D) the proposed trial date complies with applicable time limitations or the defendant waives time for the proposed trial date.

(2) **"Firm Jury Trial"** means a trial date expressly set as a firm date by the court, after the effective date of this

order, due to the necessity of an applicable time limitation or in reliance on avowals that the case will be Ready for Trial, and such a setting will not be continued, except for extraordinary circumstances.

(3) **"Tentative Jury Trial"** means a future and aspirational trial date that is set as a result of a Scheduling Order but is not firm, because the parties cannot avow that the case will be Ready for Trial by that date; and unless there is a prompt objection by the defendant to setting a Tentative Jury Trial date, any time limitations are waived by Defendant, to the extent that a waiver is required, to reserve not less than 35 days between the date of the Tentative Jury Trial and the last date to set a Firm Jury Trial. A Tentative Trial Date is not calendared by the Clerk but is used by the parties and court to calculate other dates and deadlines.

(4) **"Scheduling Conference"** means a court setting that requires the attendance of the lead prosecutor and lead defense attorney (or advisory counsel, if self-represented) and defendant, who are meaningfully prepared to consult, plan, and negotiate the pending case. The conference shall occur without the court and shall provide an opportunity for negotiation between the parties, as well as private consultation between defense counsel and defendant, as needed, and the conference shall include the topics required for an Early Meeting, if not already completed, and shall result in the delivery to the court of a Joint Report and Proposed Scheduling Order or an agreement to conclude the case.

(5) **"Scheduling Hearing"** means a hearing with the court that shall immediately follow the Scheduling Conference, for the court to consider the Joint Report and Proposed Scheduling Order, hear any arguments on scheduling disputes, and for the court to enter appropriate orders, typically including a Scheduling Order, Tentative Jury Trial Date and, as a next hearing, a Trial Setting Conference. The Scheduling Hearing may be utilized to enter a change of plea or dismiss the case.

(6) **"Scheduling Calendar"** means a regular calendar on the court's schedule that is used exclusively for Scheduling Conferences and Scheduling Hearings, which is of sufficient duration to permit meaningful completion of both.

(d) **Setting a Scheduling Conference and Hearing.** At arraignment, the court shall set a Scheduling Conference and Scheduling Hearing on the assigned judge's Scheduling Calendar, approximately 45 days after arraignment, unless the parties agree on an earlier or later date.

(1) If the parties complete an Early Meeting and file a Joint Report and Proposed Scheduling Order not less than 5 judicial days before the Scheduling Conference, and if the parties waive the Scheduling Conference and Hearing,

the parties are excused from appearing at the Scheduling Conference and Hearing, and the Court will enter its Scheduling Order at or before the Scheduling Hearing.

(2) The Scheduling Conference and Hearing may be reset due to a calendaring conflict to the earliest workable date for the participants, but the Scheduling Conference and Hearing will not typically be continued for the purpose of negotiation, since the Scheduling Conference has a central purpose of facilitating negotiation. If a participant requires a change of date, the party requesting the reset date must use best efforts to submit a stipulation.

**(e) Required Early Meeting About Expected Course of Case.**

(1) *Timing; Purpose.* At the earliest practicable time, but no later than the Scheduling Conference, the lead prosecutor and lead defense attorney (or defendant and any advisory counsel, if self-represented) must meet and meaningfully confer about the anticipated course of the case. The parties must discuss whether and how they can agree to streamline and reasonably limit or exclude any charges, affirmative defenses to be asserted, discovery to be taken, and motions to be brought. The purpose of the meeting is to plan cooperatively for the case. Each party is jointly responsible for timely and cooperatively arranging and participating in the Early Meeting.

(2) *Topics for Early Meeting.* The parties must discuss at least:

(A) their anticipated disclosures concerning witnesses, including the number of fact witnesses, whether they plan to seek and use expert witnesses, and whether deposition testimony will be necessary;

(B) their anticipated disclosures of documents, including any issues already known to them concerning electronically stored information;

(C) motions they reasonably expect to file, so that the parties can determine whether any of the motions can be avoided by stipulations, amendments, or other cooperative activity;

(D) any agreements that could aid in the just, speedy, and inexpensive resolution of the case; and,

(E) the subjects set forth in the Joint Report and Proposed Scheduling Order.

**(f) Filing of a Joint Report and Proposed Scheduling Order.**

(1) *Timing.* No later than the Scheduling Conference, the lead prosecutor and lead defense attorney (or

defendant and any advisory counsel, if self-represented) must file a Joint Report and a Proposed Scheduling Order. Each party is jointly and individually responsible for attempting in good faith to agree on a Proposed Scheduling Order, and for timely filing the Joint Report and the Proposed Scheduling Order with the court. The court must issue a Scheduling Order as soon as practicable, either after receiving the parties' Joint Report and Proposed Scheduling Order or during the Scheduling Hearing.

(2) *Content of Joint Report.* The Joint Report must state -- to the extent practicable -- the parties' positions on the subjects set forth below and must include a proposed Scheduling Order. The parties shall not describe the content of their Early Meeting in the Joint Report, except to certify that the parties met and meaningfully conferred about the required topics and anticipated course of the case, and the Joint Report must describe any agreements the parties have reached to streamline the case. The parties are not permitted to discuss or criticize the rejection of any proposed agreements or to argue that the other party has taken unreasonable positions.

(3) *Content of Proposed Scheduling Order.* The Proposed Scheduling Order must specify deadlines as dates certain, not in reference to another deadline, and no deadline relieves a party of their obligation to make prompt disclosures. The Proposed Scheduling Order shall include the following minimum subjects:

(A) deadline for initial disclosure by the State under Rule 15.1(a) and (b), if not already completed;

(B) deadline for disclosure by the State of any prior felony convictions for the State's anticipated witnesses and any prior felony convictions of the defendant that the State anticipates using for impeachment under Rule 15.1(d);

(C) last day for any additional disclosure by the State in a capital case under Rule 15.1(i);

(D) last day for a Notice of Defenses and Disclosure by the Defense under Rule 15.2(b) and (c);

(E) deadlines for expert witnesses and scientific testing, if applicable, including the sub-deadlines for disclosing any areas of expert testimony or scientific testing, disclosing the identity of expert witnesses, disclosing expert opinions and test results, and disclosing any rebuttal opinions;<sup>1</sup>

(F) last day for Defendant to make disclosure requests under Rule 15.1 (for disclosure that requires an affirmative defense request);

setting a deadline for disclosing areas of expert testimony or scientific testing.

<sup>1</sup> The setting of deadlines for expert witnesses and scientific testing disclosure may be deferred until a later date, except for

(G) last day for the State to make disclosure requests under Rule 15.2 (for disclosure that requires an affirmative request by the State);

(H) last day for disclosing nonexpert witnesses, documents, and potential trial exhibits;

(I) last day for completing interviews and, if applicable, depositions;

(J) last day for completing all disclosure and discovery other than interviews and depositions;

(K) last day for participating in any good faith settlement conference;<sup>2</sup>

(L) last day for filing dispositive or partially dispositive motions, motions to suppress evidence, and pretrial motions;

(M) last day to return a supervening indictment, or file a motion to amend, or charging instrument to allege prior convictions, sentencing allegations, or expand trial beyond the charges set forth in the arraigned charging instrument, within the meaning of Rule 13.5;

(N) last day for the state to certify that there is a record of the defendant's knowing, intelligent, and voluntary rejection of the state's most favorable plea offer(s), as well as any offer(s) tendered after the expiration of the most favorable plea offer(s);<sup>3</sup>

(O) proposed final pretrial conference date (14 to 28 days prior to a Firm Jury Trial date), or proposed trial setting conference (approximately 42 days prior to a Tentative Jury Trial date).

(P) with respect to a proposed trial date: specify whether the requested date is a Firm Jury Trial or Tentative Jury Trial, propose the date, identify and calculate any trial limitation (if not waived), and estimate the number of trial days (assuming six hours per trial day in front of the jury). Any Firm Jury Trial date must satisfy time limitations, and any Tentative Jury Trial date must reserve not less than 35 days before the time limitation, taking into account any excluded or waived time.

(Q) Any requested modifications to the court's standard jury trial order, including but not limited to

deadlines for marking exhibits, submitting preliminary and final jury instructions, submitting verdict forms, and proposed *voir dire* questions; and,

(R) inform the court whether the parties waive a Scheduling Conference and Hearing (if waived, the court will deem the prosecutor to avow to victim compliance and that the prosecutor has communicated any victim input in the Joint Report), and the Court may issue a Scheduling Order from Chambers.

(g) **Modification of Scheduling Order.** The parties may not modify the Scheduling Order without court approval, and good cause must be shown in a joint or separate motion to amend the Scheduling Order, setting forth the reasons for the proposed modifications and including a Proposed Amended Scheduling Order. The motion and any response must inform the court whether the parties request a Scheduling Hearing (if not requested, the court will deem that the prosecutor avows victim compliance and has communicated any victim input in the motion to amend or response). With respect to any request to modify the trial date:

(1) Any change to a Tentative Jury Trial date must waive any time limitation; so not less than 35 days remain after an amended Tentative Jury Trial date.

(2) If a Firm Jury Trial date is set, any proposed amendment to a Scheduling Order must not disturb the trial date, unless extraordinary circumstances are shown and sufficient time remains or limitations are waived.

(h) **Effect of Non-Compliance.** In addition to any other sanction that the court may impose for non-compliance with a lawful court order:

(1) if a party does not timely comply with the requirements of this pilot program, that party waives input into the resulting Scheduling Order and waives any applicable time limitations through the end of the period covered by the Scheduling Order.

(2) if all parties fail to timely comply with the requirements of this pilot program, all parties waive input

<sup>2</sup> All parties to a settlement conference are required to participate in good faith, which requires participating with an open mind, a willingness to negotiate, authority to negotiate, make, and accept offers, and generally be receptive to persuasion, if good cause is shown to be persuaded. If a party is not willing or able to participate in good faith, as described above, that party must disclose that position in the Joint Report and Proposed Scheduling Order.

<sup>3</sup> As a matter of judicial economy and to ensure that the defendant personally, knowingly, intelligently, and voluntarily made the decision to reject a plea offer from the state, this

deadline is the last day for the state to certify that a complete record is established for the defendant's decision to reject any plea offers from the state. This record may be satisfied by an in-court *Donald* hearing, by the defendant filing a notice, or by the preferred method of including a separate signature area on a plea agreement to indicate rejection. If the record is established and filed with the court in writing, rather than orally by a *Donald* hearing, the brief writing must include the principal elements of a *Donald* hearing and must be signed by the defendant and defense counsel.

into the Scheduling Order and waive any applicable time limitations through the end of the period covered by the resulting Scheduling Order.

(3) if a party fails to comply with a Scheduling Order, the court may preclude witnesses, opinions, exhibits, and areas of testimony, as appropriate in the discretion of the court; the Court may also postpone hearing dates and the trial date, impose financial sanctions for any costs attributable to a delay, and may find that any resulting delay is waived time for purposes of any time limitation.

(4) if a party later complies, the court may amend the Scheduling Order and may adjust any previous waiver of time for purposes of any time limitation.

(i) **Change of Counsel.** The lead prosecutor and lead defense attorney (or defendant and any advisory counsel, if self-represented) shall meet and confer following a change of lead counsel, as if for an Early Meeting, and the parties must jointly (or separately, if they disagree) file the following:

(1) if the case is set for trial within 30 to 120 days after change of counsel (measured from the earlier of the date of filing a notice of appearance or an order authorizing the substitution or withdrawal of counsel), the parties must file a notice within 14 days after change of counsel, indicating whether any change is required to the existing Scheduling Order; if any party files a notice that a change of schedule is required, the parties must file a Joint Report and Proposed Amended Scheduling Order within 21 days of change of counsel.

(2) for any case not set for trial or set for trial more than 120 days after the change of counsel, the parties must file a notice within 45 days after change of counsel, indicating whether any change is required to the existing Scheduling Order; and if any party files a notice indicating that a change is required to the Scheduling Order, or if there is no Scheduling Order, the parties shall file a Joint Report and Proposed Scheduling Order within 60 days of change of counsel.

(j) **Forms.** The standard forms for a Joint Report and Proposed Scheduling Order shall be provided and periodically updated by the Criminal Bench. These forms may be modified to include additional subjects and may provide more detailed deadlines for specific components within a subject. These forms may be obtained in an electronic format from a judicial assistant, and a Proposed Scheduling Order must be provided to the judicial division in Word format, as is required with electronic filing.

(k) **Effective Date and Application to Pending and New Cases.** This pilot program is effective on January 1, 2021; and all new and pending cases are subject to this pilot program, implemented as follows:

(1) all pending cases that were first arraigned prior to the effective date of this pilot program shall be treated as if a change of counsel occurred on January 1, 2021. See section (i) for the applicable requirements and deadlines, depending when or if a case is currently set for jury trial,

(2) all new cases (including any pending cases that are first arraigned on or after the effective date of this pilot program) shall be set, at arraignment, for a Scheduling Conference and Scheduling Hearing on the assigned judge's Scheduling Calendar, as provided in section (d).