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10 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

11 IN AND FOR COUNTY OF MOHAVE

11	STATE OF ARIZONA,	)	CR2014-01193
12		)	
13	PLAINTIFF,	)	
14		)	
15	v.	)	DEFENDANT JUSTIN RECTOR'S
16	JUSTIN JAMES RECTOR,	)	MEMORANDUM REGARDING
17		)	ADEQUATE PREPARATION
18	DEFENDANT.	)	TIME
		)	HONORABLE LEE JANTZEN

19 Pursuant to Arizona Rules of Criminal Procedure 8.2(a)(4), 8.2(d) and  
20 8.5(a) and (b), United States Constitution Amendments V, VI, VII, XIV, Arizona  
21 Constitution Article 2, §§ 4, 13, and 24, the American Bar Association Guidelines  
22 for the Appointment and Performance of Defense Counsel in Death Penalty  
23 Cases, *Strickland v. Washington*, 466 U.S. 668 (1984), and the interests of justice,  
24 Justin James Rector, through undersigned counsel, moves this Court to permit  
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1 counsel adequate time to comply with their ethical obligations to vigorously  
2 defend this capital case.  
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### 5 PROCEDURAL HISTORY

6 First chair counsel, Gerald Gavin, was appointed on this matter in March of  
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8 2015. Ron Gilleo was assigned as second chair counsel. A conflict of interest  
9 arose which required Mr. Gilleo to be relieved from further responsibility early in  
10  
11 2016. Julia Cassels was contacted regarding her availability to handle the case in  
12 his stead in February of 2016. Ms. Cassels agreed to accept the appointment and  
13 spoke with Mr. Blake Schritter to that effect on March 2, 2016.  
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15 In early March of 2016, Mr. Gavin conferred with the Court regarding Ms.  
16 Cassels' appointment, noting that Ms. Cassels was prepared to proceed and  
17 qualified to do so, but for completion of the hours of Continuing Legal Education  
18 required in the year just prior to appointment. Mr. Gavin informed the Court that  
19 said training is offered very sporadically during the year and that the next  
20 opportunity would be in late June of 2016 at the Arizona Public Defender's  
21 Association Conference held in Tempe, Arizona. Ms. Cassels submitted the  
22 required documents to Indigent Defense Services ("IDS") and enrolled in the  
23 training in March.  
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1 After attending the training, Ms. Cassels timely submitted the  
2 documentation of completion to the Contract Administrator, was appointed to the  
3 matter, and her Notice of Appearance was submitted to the Court on July 9, 2016.  
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5 Ms. Cassels received an electronic version of the file within a few days and  
6 began diligently reviewing its contents. There are in excess of twelve thousand  
7 (12,000) pages of documents as well as numerous recordings, both audio and  
8 video, that require her review. The sheer amount of material, as well as its  
9 complexity, requires repeated study.  
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12 Additionally, Ms. Cassels needed to begin developing a relationship with  
13 Mr. Rector via jail visitation which may only be done in Kingman, Arizona. Ms.  
14 Cassels has done so diligently and has developed an excellent rapport with Mr.  
15 Rector. Ms. Cassels also needed to develop relationships with the other team  
16 members and understand their roles and their progress to date. The assigned  
17 investigator, Mr. James Valdez, was appointed to the case near the same time as  
18 Ms. Cassels, so he was also challenged with developing rapport with the client  
19 and his family, reviewing the massive amount of documents, beginning his  
20 factual investigation nearly two years after the alleged date of offense, and  
21 assisting with mitigation tasks.  
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## ARGUMENT

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2 Due process embodies the fundamental notions of fairness and  
3 incorporates “safeguards which are fundamental rights and essential to a fair  
4 trial.” *Specht v. Patterson*, 386 U.S. 605, 609-610 (1967). In capital cases, the  
5 Eighth Amendment requires heightened reliability because death is a  
6 qualitatively different punishment. *E.g.*, *Lockett v. Ohio*, 438 U.S. 586 at 604  
7 (plurality opinion) (1978).  
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10 Thus the mere appearance or presence of counsel is not sufficient. *See*  
11 *Ake v. Oklahoma*, 470 U.S. 68, 77 (1985) (“mere access to the courthouse doors  
12 does not by itself assure a proper functioning of the adversary process, and that  
13 a criminal trial is fundamentally unfair if the [prosecution] proceeds against an  
14 indigent defendant without making certain that he has access to the raw  
15 materials integral to the building of an effective defense. Counsel must be able  
16 to safeguard their client’s rights. Death penalty cases require duties, functions,  
17 and knowledge “definably different from those of counsel in ordinary cases.”  
18 *American Bar Association 2003 Guidelines for the Appointment and*  
19 *Performance of Defense Counsel in Death Penalty Cases*, 31 Hofstra L. Rev.  
20 913 at 922 (“2003 ABA Guidelines”). And the United States Supreme Court has  
21 made clear that in order to render effective assistance, counsel must have  
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1 sufficient time to prepare competently for a case. *See Powell v. Alabama*, 287  
2 U.S. 45 (1932).

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4 Capital cases differ from other criminal cases in numerous ways. The  
5 possibility of death affects every phase of the litigation proceedings. It is  
6 beyond question that under the Sixth and Fourteenth Amendments trial counsel  
7 is obligated to conduct a reasonable investigation. *E.g., Strickland*, 466 U.S. at  
8 673; *Wiggins*, 539 U.S. at 521-22. One of the “well defined norms” of capital  
9 representation requires attorneys in a capital case to immediately put in place  
10 plans for a punishment phase defense. The duty to investigate includes the  
11 essential tasks of looking into known leads and possible avenues of mitigation,  
12 and gathering records. *E.g., Rompilla v. Beard*, 545 U.S. 374, 382-83 (2005).  
13 As the United States Supreme Court has explained, “the American Bar  
14 Association Standards for Criminal Justice . . . describe[] the obligation in terms  
15 no one could misunderstand”:  
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21 “It is the duty of the lawyer to conduct a prompt  
22 investigation of the circumstances of the case and to  
23 explore all avenues leading to facts relevant to the  
24 merits of the case and the penalty in the event of  
25 conviction. The investigation should always include  
26 efforts to secure information in the possession of the  
27 prosecution and law enforcement authorities.”  
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1 *Rompilla*, 545 U.S. at 387 (quoting ABA Standards for Criminal Justice 4-4.1  
2 (2d ed. 1982 Supp.)).

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4 The United States Supreme Court considers the ABA guidelines to be the  
5 “well-defined norms” established for defense counsel in capital cases. *Wiggins*  
6 *v. Smith*, 539 U.S. 510, 524 (2003). Because the sentencer in a capital case must  
7 consider in mitigation “anything in the life of a defendant which might militate  
8 against the appropriateness of the death penalty for that defendant,” “penalty  
9 phase preparation requires extensive and generally unparalleled investigation  
10 into personal and family history.” *American Bar Association 2003 Guidelines*  
11 *for the Appointment and Performance of Defense Counsel in Death Penalty*  
12 *Cases*, 31 Hofstra L. Rev. 913 at 1022 (“2003 ABA Guidelines”). According to  
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16 the ABA, counsel must explore:

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18 (1) Medical history (including hospitalizations, mental and physical  
19 illness or injury, alcohol and drug use, pre-natal and birth trauma,  
20 malnutrition, developmental delays, and neurological damage);

21 (2) Family and social history (including physical, sexual, or  
22 emotional abuse; family history of mental illness, cognitive  
23 impairments, substance abuse, or domestic violence; poverty,  
24 familial instability, neighborhood environment, and peer influence);  
25 other traumatic events such as exposure to criminal violence, the  
26 loss of a loved one, or a natural disaster; [and]

26 (3) experiences of racism or other social or ethnic bias; cultural or  
27 religious influences; failures of government or social intervention  
28 (e.g., failure to intervene or provide necessary services, placement

1 in poor quality foster care or juvenile detention facilities);  
2 Educational history (including achievement, performance, behavior,  
3 and activities), special educational needs (including cognitive  
4 limitations and learning disabilities) and opportunity or lack thereof,  
5 and activities;....

6 *Id.* at 1022-1023.

7 Effective assistance of counsel is ultimately concerned with the  
8 fundamental right to a fair trial, “a trial whose result is reliable.” *Id.* at 687.

9 An integral part of the penalty phase of a capital trial is the Eighth  
10 Amendment’s demand that all relevant evidence bearing on a defendant’s  
11 character, propensities, and background be considered by the sentencer in  
12 determining the appropriateness of the penalty. *Lockett*, at 605. Penalty phase  
13 investigations in capital cases should include inquiries into social background  
14 and evidence of family abuse, potential mental impairment, physical health  
15 history, and any history of drug and alcohol abuse. *Summerlin v. Schriro*, 427  
16 F.3d 623, 630 (9th Cir. 2005) (en banc).

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20 Given this wide array of areas that *must* be explored to protect a  
21 defendant’s fundamental due process rights, capital cases quite simply take time  
22 to be done right. “Studies have consistently found that defending capital cases  
23 requires vastly more time and effort by counsel than noncapital matters.” 2003  
24 *ABA Guidelines* at 967. One study found that defense attorneys in federal capital  
25 cases billed for over twelve times as many hours as in noncapital homicide  
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1 cases. In terms of actual hours invested in the defense of capital cases, recent  
2 studies indicate that several thousand hours are typically required to provide  
3 appropriate representation. For example, an in-depth examination of federal  
4 capital trials from 1990 to 1997 conducted on behalf of the Judicial Conference  
5 of the United States found that the total attorney hours per representation in  
6 capital cases that actually proceeded to trial averaged 1,889. (967-68). 2003  
7 ABA Guidelines at 967-68. In September of 2010, the Arizona Supreme Court  
8 amended Rule 8.2(a)(4), Arizona Rules of Criminal Procedure, and extended the  
9 time that capital cases were sought to be tried from 18 months from  
10 arraignment, to two years from the State's notice of intent to seek the death  
11 penalty. (R. 10-0012). This rule change expresses a tacit recognition that  
12 substantial time is required to adequately investigate, prepare, and try a capital  
13 case.  
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19 Because mitigation often covers difficult, and painful subjects, building a  
20 relationship of trust with the client is also integral to effective representation  
21 and cannot be created overnight. Effective representation requires client  
22 contact. "To the extent that jurisdictions impede such contact—whether by  
23 charging excessive fees for telephone calls, limiting mailings, failing to provide  
24 convenient and confidential arrangements for visits, restricting the access of  
25 non-attorney defense team members to clients, or otherwise—they jeopardize  
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1 the provision of high quality legal representation in accordance with these  
2 Guidelines.” *2003 ABA Guidelines* at 956. ABA Guideline 10.5 recognizes the  
3 importance of rapport to effective representation and requires that counsel must  
4 make every effort to maintain close contact with the client and build a  
5 relationship of trust. *2003 ABA Guidelines* at 1005. “Establishing a relationship  
6 of trust with the client is essential both to overcome the client’s natural  
7 resistance to disclosing the often personal and painful facts necessary to present  
8 an effective penalty phase defense, and to ensure that the client will listen to  
9 counsel’s advice on important matters.” *Id.* at 1008. The Court must allow  
10 counsel adequate time to build this relationship of trust. *See also ABA Standards*  
11 *for Criminal Justice: Defense Function Standard 4-5.2 & cmt., in ABA*  
12 *Standards for Criminal Justice: Prosecution Function and defense Function* (3d  
13 ed. 1993).

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19 Denial of adequate time to prepare a case for trial may deny the defendant  
20 a “substantial right.” *State v. Narten*, 99 Ariz. 116, 120, 407 P.2d 81, 83 (1965)  
21 (internal citations omitted). Given the circumstances of this case, if this court  
22 denies counsel adequate time to prepare this complex capital case, Mr. Rector  
23 will suffer prejudice and a denial of his state and federal constitutional rights.  
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26 *See State v. Amaya Ruiz*, 166, Ariz. 152, 164, 800 P.2d 1260, 1272 (1990); *State*  
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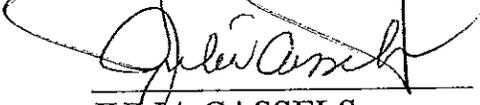
1 v. *Williams*, 144 Ariz. 433, 441, 698 P.2d 686 (1985); *State v. Sullivan*, 130  
2 Ariz. 213, 215, 635 P.2d 501, 503 (1981).

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5 **CONCLUSION**

6 “Death is a different kind of punishment from any other which may be  
7 imposed in this country.” *Gardner v. Florida*, 430 U.S. 349, 357 (1977), citing  
8 *Gregg v. Georgia*, 428 U.S. 153, 181-88 (1976). Further, representation in  
9 “capital cases requires enormous amounts of time, energy, and knowledge. The  
10 field is increasingly complex and ever-changing.” *2003 ABA Guidelines* at  
11 1083. Through no fault of Mr. Rector, he experienced a change in counsel.  
12 Counsel must have adequate time to build a relationship with her client, and to  
13 prepare for the strenuous obligations a capital case imposes. Without adequate  
14 time, counsel cannot meet their obligations and are rendered ineffective.  
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20 Respectfully submitted this 1<sup>st</sup> day of March, 2017.

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23   
24 GERALD GAVIN  
25 Counsel for Defendant

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27 JULIA CASSELS  
28 Counsel for Defendant

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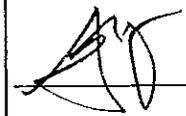
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Client File

  
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