

1 To begin, two (2) unexpected, crucial witnesses have surfaced that change the
2 entire complexion of the Prosecution, and Defense, of this life-and-death case. The
3 information was apparently received by the State on February 16th, 2016.

- 4 1) After checking out the authenticity of this new information, the State, through
5 Deputy Greg McPhillips, provided material and alerted the defense to this new
6 information on the afternoon of Friday, February 19th, 2016. As a result of the
7 discovery of these witnesses, an ethical and legal conflict was created for the
8 assigned 2nd chair defense attorney, Mr. Ron Gilleo of the Mohave County Legal
9 Defenders office. This came as a complete surprise to the Parties;
- 10 2) Mr. Gilleo's continued involvement was made untenable because of the conflict;
11 that same conflict also tainted the assigned case investigator, Mr. Ralph Ruiz, of
12 the Mohave County Legal Defender's Office;
- 13 3) Mr. Rectors lead counsel, the undersigned...Gerald Gavin, was not affected by
14 the conflict. Undersigned counsel maintains a completely separate office in
15 Mesa, Arizona, approximately 185 miles from Mr. Gilleo's office. Additionally,
16 Gavin and Gilleo maintain completely separate clients, case management, file
17 retention, billing, administrative, and support staff. The conflict, and its
18 underlying details, affected Mr. Gilleo's office *solely* . The conflict or involved
19 people have never been discussed between Gavin and Gilleo, except to
20 acknowledge its existence, and immediately request an emergency meeting with
21 the Court. The Court, being in trial, set the emergency meeting at noon, on the
22 following Monday, February 22nd, 2016;
- 23 4) As a result of the meeting with the Court and parties, Mr. Gilleo and his office,
24 through no fault of his own, withdrew from representation of Mr. Rector, to protect
25 Mr. Rector and the integrity of his defense. The Court ordered an immediate
26 replacement for Mr. Gilleo be located by the Office of Indigent Services;
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1 5) Undersigned counsel immediately discussed the need to obtain a 2nd chair with
2 Indigent Defense Service Administrator Blake Schritter. Mr. Schritter worked
3 closely with undersigned counsel to procur, without delay, replacement counsel
4 as instructed.

5 6) Various reasons exist making a quick attorney replacement very difficult,
6 including

7 (A) the strict educational and experience requirements of certified capital
8 counsel;

9 (B) the lack of local counsel qualified for such appointment, made more
10 acute by several legal conflicts, from representation of other defendants,
11 for local counsel willing to try to assist;

12 (C) The logistical requirements of a nonlocal attorney, including numerous
13 travel requirements for court hearings, client meetings, defense team
14 meetings, witness interviews, evidence and case location investigation
15 and inspection, among others. The time requirement is extraordinary,
16 and many attorneys existing caseloads and obligations prevent capital
17 case involvement;

18 (D) The very real and necessary ability to integrate into the defense team,
19 and be able to work with Mr. Rector, present counsel, the Prosecutor,
20 and other contacts in a way that fascilitates the trial preparation, and
21 doesn't cause additional conflicts or problems, delaying proceedings
22 and endangering the defense. A replacement must be "a good fit", or
23 the likelihood of problems complicates the case for all parties;

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26 A suitable, experienced 2nd chair attorney candidate prefered by the defense,
27 who is able to make the time and logistical commitments to assume such a
28 representation, has been located. The defense anticipates, given prior commitments

1 being resolved in the next few weeks, that attorney filing a "Notice of Appearance" to
2 join the defense on or about June 25th, 2016. At that time, the attorney can begin to
3 acclimate to the extensive 1200 page plus discovery, numerous cd/dvds, photographs,
4 witness interviews, transcripts, motion practice and all other related materials.

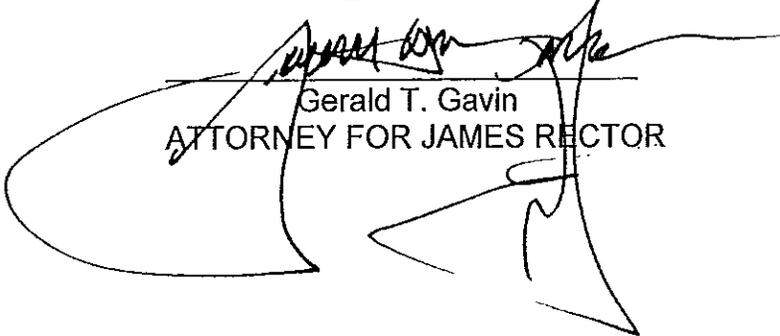
5 Mr. Rector, with his very life on the line, is entitled to have the *legally*
6 *required* defense team in place with sufficient time to absorb the voluminous discovery,
7 assist in the preparation for trial strategy, and be meaningful additions to the team, not
8 legal window dressing. New counsel must review over 1200 pages of discovery
9 documents, dozens of DVD's, witness interviews, transcripts, numerous photographs,
10 maps, inventory lists, as well as motion practice/ court rulings to date.

11 In addition to losing his 2nd chair attorney, Mr. Rector also lost his primary
12 defense case investigator on February 22nd, 2016. Federal and State caselaw mandate
13 a capital defendant be appointed, not one, but two defense counsel, given the
14 enormous work needing to be done, and the draconian punishment awaiting a capital
15 client if convicted. In addition, he must have access to defense investigative
16 assistance, independent of the Police or Prosecutor, to obtain evidence and follow up
17 information.

18 The State, through Mr. McPhillips, has not joined the motion himself, but is not
19 opposing the defense motion. His noted concern is having the input of the new counsel
20 before any firm trial date is assigned, to avoid unnecessary delays and continuances
21 later. Defense counsel certify that he is submitting this Motion in good faith and not
22 merely for the purpose of delay; pursuant to Arizona Rule of Criminal Procedure Rule 8.
23 These matters have been discussed with Mr. Rector, who simply wants his case done
24 correctly, to avoid doing it over again in the future. He is willing to waive all time
25 attributed to the continuance. Granting this motion is necessary and legally proper, for
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1 the reasons contained above and in the Memorandum attached hereto and incorporated
2 herein.

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4 Dated this 6th day of May, 2016

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6 
7 Gerald T. Gavin
8 ATTORNEY FOR JAMES RECTOR
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10 **MEMORANDUM**

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13 **LAW SUPPORTING A TRIAL CONTINUANCE**

14 The party moving for a trial continuance must show that delay is indispensable to
15 the interests of justice. Arizona Rule of Criminal Procedure 8.5(b). Mr. Rector's
16 situation clearly does that.

17 **General Constitutional Requirements**

18 Every criminal defendant is guaranteed due process of law. U.S. Constitution
19 Amend. V, accord Arizona Constitution, Article 2, §4 ("No person shall be deprived of
20 life, liberty, or property without due process of law").

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22 Every criminal defendant is guaranteed "the Assistance of Counsel for his
23 defense." U.S. Constitution, Amendment VI, accord Arizona Constitution, Article 2, §24
24 ("In criminal prosecutions, the accused shall have the right to appear and defend in
25 person, and by counsel...") See also Arizona Rule of Criminal Procedure 6.1(a) ("Right
26 to be Represented by Counsel"). That entitlement is not hollow; it is "the right to the
27 effective assistance of counsel." McMann v. Richardson, 397 U.S. 759, 771, n.14
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1 (1970). The right to counsel includes the ability to meaningfully consult with counsel to
2 prepare for trial and to assist counsel during trial.

3 A pretrial detainee's due process rights are at least as great as a convicted
4 prisoner's Eighth Amendment rights. City of Revere v. Massachusetts General
5 Hospital, 463 U.S. 239, 244 (1983); Oregon Advocacy Center v. Mink, 322 F.2d 1101,
6 1120 (9th cir. 2003) ("[E]ven though the pretrial detainees' rights arise under the Due
7 Process Clause, the guarantees of the Eight Amendment provide a *minimum standard*
8 *of care* for determining their rights...") As a minimum standard, the Eighth Amendment
9 requires that prison officials ensure that inmates receive adequate medical care.
10 Farmer v. Brennan, 511 U.S. 825, 832 (1994); Hoptowit v. Ray, (Hoptowit I), 682 F.2d
11 1237, 1246 (9th cir. 1982).

12 The Fourteenth Amendment to the United States Constitution protects a pretrial
13 detainee from punishment prior to an adjudication of guilt in accordance with due
14 process of law, ensures that State Courts respect the Fifth Amendment's due process
15 standards, and also prohibits state from denying a criminal defendant equal protection
16 of the laws. *Accord* Arizona Constitution, Article 2, §13.

17 18 19 **The A.B.A. Guidelines**

20 Federal case law, Arizona case law and Arizona Court Rules¹ require capital
21 defense counsel to observe the *ABA Guidelines for the Appointment and Performance*
22 *of Defense Counsel in Death Penalty Cases* (Rev. Edition, February 2003). The United
23 States Supreme Court considers the *ABA Guidelines* to have established "well-defined
24 norms" for capital defense counsel, and to be "guides to determining what is
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1 Arizona Rule of Criminal Procedure 6.8(b)(1)(iii) and (b)(2) require capital defense counsel to be familiar with and guided by the ABA Guidelines performance standards.

1 reasonable". Wiggins v. Smith, 539 U.S. 510, 524 (2003). Appellate courts frequently
2 refer to the *ABA Guidelines* when reviewing and evaluating ineffective assistance of
3 counsel claims.

4 It is essential that Mr. Rector have, at all times during the pendency of his
5 representation, two qualified attorneys to assist him with his case, an investigator and a
6 Mitigation Specialist. Guideline 4.1(a)(1) indicates:

- 7 1. The defense team **should consist of no fewer**
8 **than two attorneys qualified** in accordance
9 with Guideline 5.1, **an investigator and a**
10 **Mitigation Specialist.**

(ABA Guidelines, Page 952, *emphasis added*)

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12 ABA Guideline 5.1 states, in relevant part, "...These standards should be
13 construed and applied in such a way as to further the overriding goal of providing each
14 client with high quality legal representation. (ABA Guidelines, Page 961)

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16 Lead counsel has located replacements for both the 2nd chair attorney and
17 investigator. In that regard:

- 18 1) 2nd chair counsel - as directed by the court, a replacement attorney search
19 immediately began on February 22nd, 2016. Despite the difficulty enlisting
20 suitable qualified counsel, to practice in this rural county, an attorney has
21 been located that is willing to accept appointment, and would meet the
22 requirements to assume 2nd chair representation. The absolute earliest date
23 a "Notice of Appearance" can be filed by that attorney is June 25th, 2016.
24 In the interim period, lead counsel will assemble a complete copy of all
25 materials to tender immediately to the attorney that date.
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1 2) Investigator - via separate motion, counsel and the Indigent Defense Service
2 Office have secured the services of a private investigator operating out of
3 Prescott, Arizona....James Valdez, who is currently the assigned Investigator
4 on another local capital case, St. v. Darrell Ketchner. Mr. Valdez is available
5 for immediate appointment, is familiar with local appointment and billing
6 practice, and has experience on capital cases and Mohave County. He is on
7 standby at this point awaiting final word from this court.

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9 Given the complications caused by the new witnesses, the defense has been
10 without an adequate defense team since February 22nd to present. Once the new
11 investigator, and later the 2nd chair attorney, join the team...they need time to review the
12 incredibly voluminous file before they can speak intelligently to enhancing Mr. Rector's
13 defense.

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15 These complications have made an October 2016 trial completely unrealistic.
16 To force a trial at that date guarantees ineffective assistance, and later Federal Habeus
17 review and relief....either of which will require this county to do this entire trial over from
18 the beginning, doubling or more the price of litigating a Capital Case. It will result in
19 untold millions of dollars spent by State and Federal Prosecutors and Defense Counsel,
20 as well as Judicial time, all wasted and requiring the process to begin anew. It will
21 impact local taxpayers, and impose emotional distress on the victim's family, the
22 defendant and his family, and the community. It is an unacceptable waste of Judicial
23 resources, and not in the interests of justice.

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25 *These delays are not caused by the defense. They are caused by the*
26 *unanticipated addition of critical witnesses that alter the Prosecution and Defense of this*
27 *case at a late date. Mr. Rector should not suffer, and have his life potentially taken*

1 away, because the appearance of these witnesses require the people assigned to help
2 him be removed as his legal lifeline, through no fault of Mr. Rector's.

3 Justice demands the defense be given adequate time to prepare. It is
4 absolutely necessary the current trial date be continued. If it is not, counsel will
5 not announce ready for trial, and wil file notice he cannot avoid being ineffective
6 as counsel. There is no more serious case than a capital case; death is different. If
7 Mr. Rector is wrongfully convicted, and executed, there is no undoing that mistake.

8 9 CONCLUSION

10 This is a capital case, and "[d]eath is a different kind of punishment from any
11 other which may be imposed in this country." Gardner v. Florida, 430 U.S. 349, 357
12 (1977), *citing* Gregg v. Georgia, 428 U.S. 153, 181-88 (1976); Furman v. Georgia, 408
13 U.S. 238, 286-91, 306-310 (1972).

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15 From the point of view of the defendant, it is different in both its
16 severity and its finality. From the point of view of society, the
17 action of the sovereign in taking the life of one of its citizens also
18 differs dramatically from any other legitimate state action. It is of
19 vital importance to the defendant and to the community that any
20 decision to impose the death sentence be, and appear to be,
21 based on reason rather than caprice or emotion.

22 Gardner v. Florida, 430 U.S. at 357-58. And since the sea change in Arizona's capital
23 sentencing scheme created by the Supreme Courts decision in Ring v. Arizona, 536
24 U.S. 584 (2002), the vast majority of Statewide capital defendants convicted of a death-
25 eligible offense have received a death sentence.

26 Mr. Rector and his team were preparing for trial in October. Because of
27 unforeseen critical complications, the defense team and strategy have been obliterated.
28 Additional time is needed to put on a proper defense. Without it...defense counsel will
not announce ready for trial, and any trial will be over his strong objection. To proceed
like nothing has happened and keep the present schedule...when the defense is still in

1 flux, is the definition of ineffective assistance of counsel. It will result in a retrial of this
2 matter and astronomical wasted money at the local, state and federal level. It would be
3 an injustice to all.

4 Counsel, with greatest respect, requests the current trial date be vacated, and a
5 new firm trial date be reset in a future hearing, approximately 6 months after new
6 counsel is given time to acclimate to the case, and assist in saving Mr. Rector's life, and
7 after new counsel can provide input regarding scheduling issues and complications,
8 before a firm trial date is actually put in place.

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1 Original filed directly with the Court
This 6th day of May, 2016

2 Copies of the same
3 Hand delivered by
4 Counsel to:

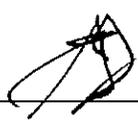
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16 Client

17 File

18 By:  _____

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