DECLARATION OF DANIEL D. MAYNARD

I, Daniel Dwight Maynard, declare as follows:

1. I am an Arizona attorney with more than 30 years of experience in commercial litigation and criminal defense, including numerous death penalty representations in state and federal court. I am currently a partner in the law firm Maynard Cronin Erickson Curran & Reiter, P.L.C., in Phoenix, Arizona. Previously, I was a member of the law firms of Winston & Strawn and Johnston Maynard Grant & Parker. After law school, I served as a law clerk from Justice Howard C. Ryan on the Illinois Supreme Court.

2. I am a member of the Arizona bar and am admitted to practice in the Seventh Circuit Court of Appeals, the Ninth Circuit Court of Appeals, and the United States Supreme Court, among other courts.

3. Since 1998, I have been appointed as capital postconviction counsel in six cases: *State of Arizona v. Bobby Tankersley* (appointed October 4, 1999), *State of Arizona v. Robert Towery* (appointed January 7, 1999), *State of Arizona v. Robert Glen Jones* (appointed August 29, 2001), *State of Arizona v. David Detrich* (appointed February 8, 1999); *State of Arizona v. Richard Bible* (appointed November 2005); and *State of Arizona v. Eric King* (appointed August 1998) In *Bible* and *King*, I was appointed to represent the prisoners in their successive postconviction relief proceedings.

4. In *State v. Detrich*, the Arizona Supreme Court appointed Conrad Baran as lead counsel under Arizona Rule of Criminal Procedure 6.8(d). My understanding is that because Mr. Baran did not meet the requirements of Rule 6.8(c), the Court appointed me as associated counsel, pursuant to the terms of Rule 6.8(d).

5. I had never acted as associated counsel before, and it was unclear to me exactly what the Arizona Supreme Court contemplated I should do in that role. Rule 6.8(d) does not specify the role of associated counsel, nor did the Supreme Court provide any guidance after my appointment. I assumed that my primary role was to identify viable claims to litigate in the state postconviction proceedings and to preserve for federal habeas review.

6. I did not know Mr. Baran before my appointment. His office was in Flagstaff, Arizona. Mine was in Phoenix, Arizona. The crime that Mr. Detrich was convicted of occurred in Tucson, Arizona.

7. The first conversation I had with Mr. Baran was in June 1999, when we had a brief call regarding a Special Action he had filed to challenge the trial court's denial of funding for an investigator. The call took place after Mr. Baran had already filed pleadings on the issue, which I was not given an opportunity to review. I was concerned that Mr. Baran had not consulted with me nor asked me to review the pleadings.

8. In a letter, I then expressed my interest in meeting in person, reviewing the complete case file, and discussing the issues that should be raised.

9. The following month, I travelled to Mr. Baran's office in Flagstaff to review the case file. It was the only time that Mr. Baran and I met in person to discuss the case. We met for 2.5 hours and part of that time was at lunch. The remainder of my time in Flagstaff I spent reviewing the file and working alone.

10. Based on my time in Flagstaff, I was concerned that Mr. Baran was not prepared and was not doing an effective job in representing Mr. Detrich. He had done very little to investigate the case and begin to prepare Mr. Detrich's petition, even though he had had the case for months. Also, I was particularly concerned that he had not met with Mr. Detrich. That made me nervous given my uncertainty as to my role on the case.

11. I decided the best way I could help was by identifying issues that I believed should be raised in the petition for postconviction relief, and helping Mr. Baran understand the critical importance of federalizing all issues for later federal review. To that end, I prepared a detailed memo that raised issues I believed should be investigated further. The memo recommended the testing of certain evidence, additional avenues of investigation to explore, and numerous federal constitutional claims to be

raised. I later came to understand from Mr. Detrich's habeas counsel that Mr. Baran did not seek appointment of experts to test the evidence that I had identified as in need of further testing.

12. I met with Mr. Detrich in prison to discuss his case. I recall that he was upset because I was not his primary lawyer and Mr. Baran had not met with him since he was appointed more than three months earlier.

13. Mr. Baran never reached out to me to discuss the issues that I identified in my memo. Nor did we ever sit down together to work on the case again. On the whole, Mr. Baran rarely kept me informed of the status of the litigation. Between 1999 and 2001, I sent at least seven letters to Mr. Baran asking about the status of the case, asking whether there were any new developments, and sending him impressions and legal research relevant to Mr. Detrich's case.

14. In most of my letters to Mr. Baran, I invited him to contact me to discuss the issues contained therein and/or asked if there was anything else I could do to be of assistance to him. Mr. Baran wrote me a few letters between 1999 and 2000, but they were not substantive discussions of the merits of the case. The letters were only to schedule our first meeting and to send me copies of pleadings which had already been filed in the case, including trial and appellate documents, the State's Response to the PCR Petition, his Reply to the PCR petition, minute entries and other motions.

15. My bills reflect that between 1999 and 2001, Mr. Baran and I had only two phone calls totaling 2.2 hours. Any other conversations I may have had with Mr. Baran were insignificant enough that I did not bill for them. If I had left a phone message for him attempting to contact him, I likely would not have billed for that time. In total, as of February 2001, I had billed approximately 58 hours for my work on the case which primarily was for my travel to Flagstaff to review the file and the creation of the memo that I sent to Mr. Baran that I mentioned earlier.

16. Even though I offered to review Mr. Baran's pleading drafts before filing, I have no record or memory of Mr. Baran ever sending me those drafts. Had Mr. Baran accepted my offers of assistance, I could have edited and supplemented his work or provided him advice about the claims or potential avenues to investigate and research. I also offered to assist with any research he needed. My billing reflects that I did some research on *Apprendi v. New Jersey* prior to Mr. Baran filing a motion on the same, so it is possible that he utilized my research for that motion. I have no record or recall of any other research for which he requested assistance.

17. It is my understanding that in 2003, Mr. Baran accepted a position with the Navajo County public defender's office, and he withdrew from his representation of Mr. Detrich. When Mr. Baran withdrew, I

received no letter from the Arizona Supreme Court informing me of the development. I found out only from Mr. Baran.

18. The Arizona Supreme Court then appointed a new attorney to represent Mr. Detrich, and I stopped working on the case after sending the new attorney my files.

19. Based on my experience, I believe that Rule 6.8 cannot assure the provision of qualified, competent capital postconviction counsel. The requirement that an unqualified attorney associate with a qualified attorney cannot compensate for the lead attorney's inexperience when there are no standards to guide that association. I analogize the situation to that of having Michael Jordan stand on the sideline watching an amateur shoot free throws. He can offer advice, but he cannot make the shot. Capital litigation is not a training ground for the inexperienced.

20. Further, as my experience with Mr. Baran confirms, Rule 6.8(d) is particularly problematic because the inexperienced lawyer can simply ignore the advice of qualified counsel and make it impossible for qualified counsel to provide meaningful input in a case (for instance, by not providing pleadings for review in advance of filing and not keeping qualified counsel advised of all new developments in the case).

21. That failing of Arizona's appointment system is particularly disconcerting in light of the complexity of state postconviction litigation and

the diverse skills that a competent practitioner must possess. A postconviction attorney must literally start afresh at the very beginning of a case and ask what should have been done all the way along the line. Often, the relevant avenues of investigation will not be apparent from the trial record. An attorney must therefore look outside the record to understand what evidence was missed, what viable arguments were not raised, and what additional steps trial counsel should have taken. A competent postconviction lawyer must also have a strong background in constitutional law and stay abreast of all relevant cases in the Ninth Circuit and the United States Supreme Court. In short, having postconviction experience is essential to knowing what to look for and performing effectively.

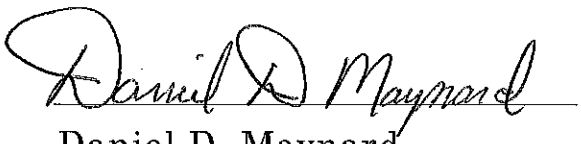
22. Arizona's appointment system is only further weakened by the amount the state pays postconviction lawyers. In my practice, I currently charge $490 per hour for retained cases, and in 2000, I was billing at approximately $300 an hour, so I lost money every time I accepted a postconviction appointment at the $100 per hour maximum rate. I accepted those appointments out of a sense of public service, not to make money.

23. For most sole practitioners, $100 per hour is absolutely not enough to sustain a practice if you have a secretary, need to pay rent, malpractice insurance and the other necessary amenities in a typical law

office in Phoenix, Arizona. I certainly could not have survived on that amount.

24. Further, appointed attorneys often do not get paid in a timely fashion, and counties can hold up payments for long periods. That provides a further disincentive for competent counsel to seek and accept a postconviction appointment.

I declare under penalty of perjury that the foregoing is true and correct. Executed on this 31 day of January, 2018.



Daniel D. Maynard