

Barbara Vidal Vaught
Staff Attorneys' Office
Arizona Court of Appeals, Division One
1501 West Washington Street
Phoenix, Arizona 85007-3231
(602) 452-6700
State Bar No. 020718

**IN THE SUPREME COURT
STATE OF ARIZONA**

In the Matter of)	Arizona Supreme Court No. R-____
)	
PETITION TO AMEND)	PETITION TO AMEND RULE
RULE 32.16(j) AND RULE 33.16(j),)	32.16(j) AND RULE 33.16(j),
ARIZONA RULES OF CRIMINAL)	ARIZONA RULES OF CRIMINAL
PROCEDURE)	PROCEDURE
_____)	

PETITION

Pursuant to Rule 28, Rules of the Supreme Court, this petition asks the Court to adopt amendments to Rules 32.16(j) and 33.16(j) of the Arizona Rules of Criminal Procedure as reflected in the accompanying attachment, effective as soon as possible but no later than January 1, 2024.

I. SUMMARY OF PROPOSED CHANGES

This petition seeks to resolve issues created by the current Rules 32.16(j) and 33.16(j). These identical rules address transmitting the trial court record to the appellate court after a petitioner files a petition for review of the trial

court's final decision in a post-conviction relief proceeding. The proposed amendments are necessitated by what appears to have been an unintended consequence of the 2020 restyling amendments to the Arizona Rules of Criminal Procedure. Prior to the 2020 changes, the rules made clear that the trial court clerk was required to transmit the entire trial court record to the appellate court in all non-capital cases; the restyled version can be read as requiring that only portions of the trial court record be transmitted. Because the entire record is needed to thoroughly evaluate claims raised in post-conviction proceedings, the proposed amendments clarify that the trial court clerk must transmit the entire record to the appellate court. This is not expected to create a significant burden on trial court clerks because the record is typically available in an electronic format, and the proposed changes are simply a return to pre-2020 transmittal requirements.

The current rules provide in relevant part that "the trial court clerk must transmit the record to the appellate court." Ariz. R. Crim. P. 32.16(j); 33.16(j). The rules further state, "The record includes copies of the notice requesting post-conviction relief, the petition for post-conviction relief, response and reply, all motions and responses, all minute entries and orders issued in the post-conviction proceedings, transcripts filed in the trial court,

any exhibits admitted by the trial court in the post-conviction proceedings, and any documents or transcripts designated [as additional items for the record].” *Id.* The pre-2020 rule did not have any such limiting language, except for capital cases, for which the rule specified that portions of the record would be transmitted, with additional portions made available if requested by the appellate court.

Despite the language in the current rule providing that “the trial court clerk must transmit the record to the appellate court[,]” some superior courts interpret the additional language regarding what the record includes as a limitation on what the trial court must transmit to the appellate court. Those courts have begun to provide the appellate courts *only* those portions of the record expressly identified in Rules 32.16(j) and 33.16(j) and no longer transmit the entire trial court record.

Including the entire trial court record in the record on review is essential for the appellate court’s consideration of a petition for review. When the superior court does not transmit a complete trial court record, the appellate court must enter an order directing the superior court to supplement the record on review with a complete trial court record, resulting in delay.

This Petition seeks to change Rule 32.16(j) and Rule 33.16(j) to clarify that the superior court must transmit the entire trial court record. This change will reduce delay in the appellate court's review of petitions for review of the trial court's final decision in a post-conviction relief proceeding.

In preparing this proposed change, Petitioner has consulted Division One and Division Two of the Arizona Court of Appeals. Petitioner understands that members of those groups individually support the proposed change.

II. TEXT OF PROPOSED CHANGES

It is therefore proposed that Arizona Rule of Criminal Procedure 32.16(j) be modified to provide as follows (with additions underlined and deletions in strikeout):

Rule 32.16(j). Transmitting the Record to the Appellate Court

No later than 45 days after receiving a notice of filing under section (b), the trial court clerk must transmit the record to the appellate court. The record includes the entire trial court record, ~~copies of the notice requesting post-conviction relief, the petition for post-conviction relief, response and reply, all motions and responses, all minute entries and orders issued in the post-conviction proceedings,~~ transcripts filed in the trial court, any exhibits admitted by the trial court in the post-conviction proceedings, and any documents or transcripts designated under section (b).

If it is further proposed that Arizona Rule of Criminal Procedure 33.16(j) be modified to provide as follows (with additions underlined and deletions in strikeout):

Rule 33.16(j). Transmitting the Record to the Appellate Court

No later than 45 days after receiving a notice of filing under section (b), the trial court clerk must transmit the record to the appellate court. The record includes the entire trial court record, ~~copies of the notice requesting post-conviction relief, the petition for post-conviction relief, response and reply, all motions and responses, all minute entries and orders issued in the post-conviction proceedings,~~ transcripts filed in the trial court, any exhibits admitted by the trial court in the post-conviction proceedings, and any documents or transcripts designated under section (b).

DATED this 6th day of January, 2023.

_____/s/_____
Barbara Vidal Vaught
Chief Staff Attorney
Arizona Court of Appeals, Division One