

APPENDIX SCRAP–Criminal

Superior Court Rules of Appellate Procedure-Criminal

Rule 1. Scope; Definitions

- a.** These rules govern appeals in a criminal action taken to the Superior Court from a written order or final judgment signed by a justice or municipal court pursuant to [A.R.S. §§ 22-371, 13-4032, or 13-4033](#).

- b.** The Arizona Rules of Criminal Procedure governing appeals in criminal actions from the Superior Court to the Court of Appeals and Supreme Court govern appeals taken to the Superior Court in situations where no rule is specified herein, and insofar as such Rules are practicable. No appeal may be affirmed solely for failure to comply with the procedural requirements of these rules where a fair and just determination of the appeal can be made from the record.

- c.** The justice court or municipal court is referred to as the “trial court” and the Superior Court to which the appeal is taken is the “Superior Court.”

- d.** These rules do not apply to any juvenile court proceeding.

- e.** In computing time limits, the “last day” or “deadline” means that when the last day of any period of time, or the deadline for completing an act falls on a Saturday, Sunday, or day when the court is closed, the “last day” or “deadline” is the next day court is open. Exclude the day of the act or event that begins the period. Except as stated by these rules or by order of court in a particular case, the filing deadlines for motions, responses, and memoranda, are not enlarged when sent by mail.

f. For the purposes of these rules, an “authorized transcriber” has the same meaning as set forth in Supreme Court Rule 30(a)(2).

Rule 2. Record of Proceedings

a. A record in the trial court must be made by a certified reporter or other electronic means approved by the Supreme Court.

b. The condition of the record is subject to review by the Superior Court upon application of a party or upon the court’s own motion.

c. Unless the record is deemed insufficient, the appeal is not a retrial of the facts or a trial de novo and the Superior Court must determine the legal issues presented.

d. If the Superior Court determines the record insufficient to determine the issues, a trial de novo must be held on remand in the trial court.

Rule 3. Notice of Appeal

a. A party begins an appeal by filing a written notice of appeal with the trial court. A notice of appeal filed by mail must be received by the trial court within the time provided for in Rule 4 of these rules.

b. The notice of appeal must identify the written order, final judgment signed by the trial court, or sentence that is appealed.

c. When a party appeals, the trial court must send a copy of the notice of appeal to the opposing side and to any authorized transcribers responsible for preparing the transcript,

and must note such fact in the court records. The notice of appeal must state all parties' or counsels' current mailing addresses and phone numbers. The courts will use these addresses for all further notices or proceedings unless notified otherwise in writing.

Rule 4. Time for Taking Appeal

a. The notice of appeal must be filed with the trial court within 14 calendar days after the entry of the written order, , final judgment signed by the trial court, or sentence appealed from, except that a notice of delayed appeal must be filed within 14 calendar days after entry of an order granting a delayed appeal.

b. The date of receipt of the notice of appeal must be stamped or marked on its face when received.

c. The date of receipt of the notice of appeal by the trial court is the basis for computation of all time periods dependent on filing the notice of appeal.

Rule 5. Appeals by Indigents

a. A defendant who had appointed counsel at the determination of guilt or at sentencing may proceed on appeal as an indigent without further authorization, unless the trial court finds that the defendant is no longer indigent. If the punishment imposed did not result in a loss of liberty, a defendant may not be entitled to counsel on appeal. Counsel may nevertheless be appointed if the court concludes that the interests of justice so require. Requests for appointment of counsel are governed by Rule 6, Arizona Rules of Criminal Procedure. If counsel is not appointed on appeal, the trial court must determine indigency for purposes of waiver of fees or costs on appeal.

b. A request for appointment of counsel on appeal must be reviewed within 5 calendar days of its receipt by the trial court. Written notification of the granting or denying of the request must be sent to the defendant within 5 calendar days of that ruling. The trial court must provide written notification to any appointed counsel.

Rule 6. Bond on Appeal

a. The conditions of release and posting of bond during the pendency of the appeal are governed by [Rule 7.2, Arizona Rules of Criminal Procedure](#), provided that the posting of a bond must not be a condition of the right to file an appeal.

b. Any defendant in custody during the appeal must receive the same benefits and credits in the computation of the sentence as if no appeal had been taken.

c. Execution of sentence must be stayed pending appeal when defendant posts bond pursuant to [Rule 7.2, Arizona Rules of Criminal Procedure](#), or when the appeal is taken on defendant's own recognizance. "Sentence" includes any fine, jail term, or other penalty, including a term of probation, imposed by the court. Notwithstanding the foregoing, a written order requiring the payment of restitution may not be stayed, but during the pendency of the appeal restitution payments must be paid to, and held by, the clerk of court.

Rule 7. Record on Appeal

a. Within 14 calendar days after the filing of the notice of appeal, when the defendant is the appellant, a defendant who is not proceeding as an indigent on appeal must arrange with all authorized transcribers to pay any record or transcript preparation fees. The authorized transcriber must promptly prepare the transcript after the defendant arranged payment.

b. In lieu of the record of proceedings or transcript in the trial court, the parties may submit a joint statement of the record on appeal, prepare and sign an agreed statement as to the

record on appeal, setting forth the issues and pertinent facts presented by the appeal. Notice that a joint statement will be used must be given to the trial court, and any authorized transcriber.

c. The record on appeal consists of originals or certified copies of these items:

(1) The notice of appeal;

(2) The docket or list of events;

(3) Documentation or record of payment of a fine, restitution, or posting of bond;

(4) The charging document and any amendments;

(5) Disposition or judgment or sentence; and

(6) The written order or final judgment signed by the trial court, that is the subject of the appeal.

Unless otherwise designated by a party, the record also includes:

(7) Any written motions, responses, and replies;

(8) Any exhibits (admitted or not);

(9) The recording or certified transcript of the trial, as the Superior Court may require (except that voir dire, opening and closing argument, and jury instructions are not included unless designated by a party as containing a legal issue on appeal);

(10) If designated for inclusion by a party, oral argument on motions, voluntariness, or suppression hearings; aggravation or mitigation hearings; probation violation proceedings; and the entry of judgment and sentence;

(11) Any other matter designated by a party.

d. Within the time allowed to appeal, the appellant must also file an original and copy of a designation of items to be included in the record on appeal. Both documents must be date stamped on the face thereof when received by the court. The trial court will send the copy to the opposing side. Within 14 calendar days of the date of filing, the opposing party may also file its designation of portions of the record to be included.

e. Correction or modification of the record on appeal. If anything material to either party is omitted from the record on appeal or is misstated therein, the parties by stipulation, the trial court before the record is transmitted to the Superior Court, or the Superior Court on motion of either party or on its own initiative after the record has been transmitted to the Superior Court, may direct that the omission or misstatement be corrected or that the record be augmented to reflect what took place, and if necessary, that a supplemental record be certified and transmitted to the Superior Court.

f. Unless designated by a party or requested by the Superior Court, the record on appeal must not include: determinations of release conditions, notices of appearance, discovery disclosures, notices of defenses, subpoenas, notices of pretrial or trial settings. MVD abstracts or other agency advisories, or general correspondence.

g. If it appears to the trial court that the record is insufficient for an appeal on the record, the trial court may, on its own motion or on motion of a party, reset the matter for a new trial or hearing in the trial court within 45 days from such determination. Upon such order

from the Superior Court, the trial court may modify the schedule for the new trial or hearing in its discretion or upon request of a party. In the event of a remand for a new trial or hearing, any appeal rights begin to run from the entry of a judgment or order following the new trial. The parties in a case remanded pursuant to this rule for a new trial in the trial court have the rights of appeal following the new trial or the entry of an appealable judgment or order.

Rule 8. Appellate Memoranda, Motions For More Time, Procedural Motions

a. Appellate Brief and Response.

(1) A defendant who is not represented by counsel must file an original and one copy of any brief required under this subsection (a). The trial court must send the copy of the brief to the opposing side. In all other cases, only original briefs must be filed with the court, and copies must be served pursuant to [Rule 1.7, Arizona Rules of Criminal Procedure](#).

(2) The appellant's brief must be filed with the trial court within 60 calendar days from the deadline to file the notice of appeal. The appellee's response must be filed within 30 calendar days of the filing date of the appellant's brief. No reply may be filed unless authorized by the Superior Court. If no appellee's response is filed, the matter is deemed submitted on the record and the appellant's brief. Non-filing of an appellee's response does not constitute confession of error.

(3) The brief and response must include a short statement of the facts with reference to the record, a concise argument setting forth the legal issues presented with citation of authority, and a conclusion stating the precise remedy sought on appeal.

(4) Exclusive of any appendices, memoranda shall not exceed 15 pages. Memoranda must comply with the format requirements of Rule 1.6 of the Rules of Criminal Procedure. Memoranda that are not legible may be stricken by the Superior Court.

(5) The Superior Court may modify or waive the requirements of this rule to insure a fair

and just determination of the appeal.

b. Motions for More Time. For good cause, a party may file a motion for more time to file the brief or response before the time to file the brief or response has expired. The non-filing party must not object or respond unless authorized by the trial court. The motion for more time must be filed with the trial court. A motion for more time filed after the deadline for filing the brief or response must be denied.

c. Procedural Motions.

(1) Procedural motions are motions that determine whether the appeal should go forward. Procedural motions include motions to dismiss where there is no right to appeal, appeals from guilty pleas, appeals that are not timely filed, and motions to strike. Procedural motions may be made at any time after the filing of the notice of appeal, but may not be filed as part of the response. Procedural motions must be filed with the trial court and ruled upon by the Superior Court.

(2) A defendant who is not represented by counsel must file an original and two copies of any procedural motion or response thereto provided for in this subsection (c), which must be date stamped upon receipt by the trial court. The trial court must send one copy to the opposing side and retain the other copy for later transmittal to the Superior Court. In all other cases, only the original and one copy must be filed with the court, and copies must be served pursuant to [Rule 1.7, Arizona Rules of Criminal Procedure](#).

(3) The caption of such a motion must bear the notation “Procedural Motion--Refer to Superior Court.” The opposing side has 14 calendar days from the filing date to respond. The caption of the response must also bear the notation “Procedural Motion Response--Refer to Superior Court.” No reply may be filed unless authorized by the Superior Court. No oral argument is allowed unless ordered by the Superior Court. The parties must refer specifically to the record as needed and must attach such documents as support the motion or response, including any brief at issue in the motion.

(4) While a procedural motion is pending: (i) further preparation of any recording or transcript of the trial or hearings must be suspended; (ii) the deadline to file appellate brief or response must be suspended; (iii) and perfection of the appeal must follow the procedures of subsection (c)(5) of this rule.

(5) Upon the filing of a procedural motion, and after the time to file any response has expired, the trial court must send the motion and response to the Superior Court along with the notice of appeal. If the notice of appeal is untimely, the trial court must dismiss the appeal pursuant to Rule 9 of these rules rather than transmit the procedural motion for ruling. Upon disposition of the motion, the Superior Court must enter appropriate orders and instruct the trial court and the parties as to the disposition of the motion, transmittal of the record on appeal, and when any appellate brief or response is due. The trial court may modify these dates in its discretion once the case is remanded to the trial court. After ruling, the Superior Court must remand the case to the trial court to complete the requirements of perfection and transmit once compliant or dismiss the case if not perfected pursuant to these rules.

Rule 9. Perfection of the Appeal, Dismissal For Noncompliance

a. Perfection of Appeal. Perfection of the appeal is a precondition of transmitting the record to Superior Court. Perfection includes the timely filing of a notice of appeal and the filing of the appellant's brief.

b. Abandonment of Appeal; Dismissal. In the event an appeal is not fully perfected, it must be deemed abandoned and must be dismissed by order of the trial court with notice to the appellant. The trial court may not extend the deadlines to file a notice of appeal or cross-appeal and may only extend the deadlines to file a brief or response upon timely request to the trial court made prior to the deadline to file the brief or response.

c. Effect of Dismissal. In the event an appeal is dismissed, the disposition appealed from stands as if no appeal had been taken. If the defendant is the appellant, the trial court may enter an order declaring the appeal abandoned and requiring the defendant to re-appear in court on at least 14 calendar days' written notice. At such a proceeding, the trial court may apply any available bond to fines or restitution and otherwise complete the execution of

the sentence. The hearing may proceed in absentia if the defendant fails to appear or an arrest warrant may be issued.

Rule 10. Transmission of the Record; Notice of Summary Transfer

a. When the appeal has been perfected and the time for filing the appellee's memorandum has expired, the trial court must send the record on appeal and brief and response, if any, to the Superior Court within 30 calendar days.

b. If a sufficient record of the hearing or trial on which the appeal is based cannot be made available, the trial court must notify the parties and must set the matter for a trial de novo in the trial court, without transmittal to the Superior Court.

Rule 11. Oral Argument; Precedence of Criminal Appeals

a. At any time the Superior Court may order oral argument upon its own initiative and must do so upon the request of a party. If a party wishes oral argument, the request must be made in the caption of the appellate brief or response at the time it is filed. The Superior Court may limit the time for oral argument.

b. Precedence of Criminal Appeals. Appeals in criminal cases take precedence over all other appeals except for those from juvenile actions or where otherwise provided by law

Rule 12. Disposition of Appeals

a. Ancillary Orders. The Superior Court may issue such orders in aid of the proceedings as it deems necessary.

b. Disposition in General. After determination of an appeal pursuant to these rules, the Superior Court may:

(1) Reverse the trial court and remand the case to the trial court and direct a new trial.

(2) Reverse the trial court and direct a verdict of acquittal, discharge the defendant and exonerate any bond.

(3) Affirm the trial court and remand the case to the trial court for appropriate action.

(4) Affirm the judgment of conviction, but modify the sentence and remand the case to the trial court for action consistent with the modification.

c. The Superior Court ruling and the trial court record must be transmitted by the Clerk of the Superior Court to the trial court within 30 calendar days after the Superior Court enters its order finally disposing of the case, or within 30 calendar days of receipt of an order dismissing appeal or mandate if a notice of appeal of the Superior Court's ruling is filed.

Rule 13. Motion for Reconsideration

a. Any party desiring reconsideration of a decision or order of the Superior Court which finally disposes of the case, except for an order denying reconsideration, may file a motion for reconsideration within 14 calendar days after service of the decision or order. Accompanying the motion must be a brief with the points of law or fact which the party believes the court has decided wrongly. Within 14 calendar days thereafter the opposing party may file a response to such motion. On a motion for reconsideration there is no oral

argument unless requested by the court.

b. No further appeal may be taken from a final decision or order under these rules, except as provided by [A.R.S. §§ 22-375](#), pursuant to Rule 31, Arizona Rules of Criminal Procedure.

Rule 14. Manner of Filing and Service; Copies

Except as otherwise stated in these rules, a copy of each document must be served upon all other parties on the same day that the document is filed in the manner provided for in [Rule 1.7, Arizona Rules of Criminal Procedure](#).

Rule 15. Title

These Rules may be known and cited as Superior Court Rules of Appellate Procedure—Criminal (“SCRAP–Criminal”).

Rule 16. Forms

The following forms are approved for use and may be amended as needed by administrative order:

(1) Defendant’s Notice of Right to Appeal (Criminal)

(2) Defendant’s Notice of Appeal (Criminal)

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(3) Notice to Superior Court of Transmittal of Record (Criminal)

Form 1. Defendant's Notice of Right to Appeal (Criminal)

[CAPTION]

STATE OF ARIZONA

) No. ____

)

vs.

) DEFENDANT'S NOTICE

) OF RIGHT TO APPEAL

) (CRIMINAL)

)

This notice explains your rights and responsibilities to file an appeal to Superior Court from an order or final judgment signed by the trial court and your right to an attorney to represent you.

YOUR RIGHT TO A LAWYER DURING THE APPEAL STAGE.

You have a constitutional right to a lawyer to represent you during the appeal stage of your case. This means that: (a) you have the right to hire a private lawyer, and (b) in certain situations, you may be eligible for a court-appointed attorney to represent you. Normally, if you had a court appointed attorney for the trial, you will continue to have court appointed counsel for the appeal. If you are appealing a case where the trial court sentence included jail time or probation, and you cannot afford to hire a private lawyer, you may fill out a financial statement for a court-appointed attorney. Depending on your income and financial situation, an attorney may be appointed, your request may be declined, or you may have an attorney appointed with the requirement that you pay some amount in contribution to the cost of the attorney's services. The procedure to apply for a court-appointed attorney is set forth in Rules of Criminal Procedure, Rule 6. If you wish to look into this process, ask the clerk for further instructions.

THE APPEAL PROCESS IN GENERAL

There are two separate stages to the appeal process. The first stage begins in this court; the second stage takes place in the Superior Court. Remember, you must complete all steps at both stages, or you run the risk of having your appeal dismissed. This notice does not set forth all the rules on criminal appeals. To read them entirely, you may review the Arizona statutes, rules of criminal procedure, and in particular the "Superior Court Rules of Appellate Procedure--Criminal" at the library. It is recommended that you keep a copy of all your documents and receipts during the appeal.

STAGE ONE--THE TRIAL COURT

1. THE NOTICE OF APPEAL. To appeal, you must file a "Notice of Appeal" with the trial court clerk within 14 calendar days from the date of the appealable order or signed final judgment. If you do not file a "Notice of Appeal" within these 14 days, you lose the right to appeal. The notice of appeal must specifically state the judgment or ruling that is being appealed. Within the time to file your notice of appeal, you must also file an original and one copy of the "designation of the Record." This is your list of the items in the court record that you want to include in the appeal.

2. THE RECORD. Within 14 calendar days after you file your notice of appeal, you must

also arrange to pay for a copy of the proceedings at the hearing. The copy may be a recording or a certified transcript. The clerk will explain which type of record is required. Payment must be in cash or other method explained by the clerk. If you cannot afford to pay for the record, ask the clerk for information about a possible waiver or extension (“deferral”) to make payment later. If you fail to pay for the record or certified transcript, your appeal may be dismissed. Additional copies of the trial or proceeding record or certified transcript may be obtained for an additional charge.

3. THE CONDITIONS OF RELEASE PENDING APPEAL. You cannot be forced to post an appeal bond in order to exercise your right to appeal. If you have been released on your own recognizance during the trial stage of your case, this will be your status during the appeal also. If the trial court required a bond during the trial stage, however, you may still be required to post this bond during the appeal to ensure your appearance at further court proceedings and to make sure you prosecute the appeal diligently.

4. THE WRITTEN APPELLANT’S BRIEF. If you appeal, you are called the “Appellant.” After the record or transcript is prepared, the court will contact you to pick up your record. You will need the record for this next step--the “Appellant’s Brief.” The Appellant’s Brief is your written explanation of why the trial court ruling was legally wrong. Normally, the brief will refer to specific portions of the record of the hearing to point out where there was error by the court. (That is why a party who appeals pays for a copy of the record.) The Brief should be typed or printed on letter-sized white paper, double spaced, and not exceed 15 pages in length, not counting any exhibits from the trial or proceeding you want to attach to the Brief.

5. FILING THE APPELLANT’S BRIEF WITHIN 60 CALENDAR DAYS. The Appellant’s Brief must be filed with the court within 60 calendar days of the deadline to file the notice of appeal. Type the words “Appellant’s Brief” below the caption of the case so the court can identify it. You must file the original and one copy of the Brief with the court. (The copy you file is sent to the other side. The other side then has 30 days to file an “Appellee’s Response (If you are represented by an attorney, you file only the original brief; your attorney will send copies as necessary.)

6. WAIT FOR FURTHER INSTRUCTIONS. Once the Brief has been filed, you should await further instructions from the trial court as outlined in the next stage. To keep you informed, remember that the trial court must have your current mailing address at all times.

Even if you hire an attorney, your address is still required for legal notifications.

STAGE TWO--THE SUPERIOR COURT

7. NOTIFICATION FROM THE SUPERIOR COURT. If you have completed all of the first stage, your case moves to Superior Court where an appeals judge will look at the case. About 60 days after the opposing side files its Response, or the time to do so expires, you will receive notification that your case has been sent to Superior Court. Next, you will receive a second notice from the Superior Court assigning a Superior Court case number to use in all further correspondence and telling you what will happen next.

8. SUPERIOR COURT ACTION ON THE APPEAL. If you have now completed all these steps, you will receive a ruling from the Superior Court. The Superior Court has the right to affirm the trial court, overrule the trial court, modify some of the trial court decision, or, if record is not clear, order a new trial in the trial court. If the final outcome of your case is that the ruling stands, or if your appeal is dismissed for any other reason, remember that the court may apply any bond, deposit, or payments already made and that you may have to return to the trial court to be given other instructions in person.

Dated: _____ Copy of this Notice received

Defendant

Form 2. Defendant’s Notice of Appeal (Criminal)

[CAPTION]

STATE OF ARIZONA) No. _____

)

vs.

) DEFENDANT’S NOTICE

) OF APPEAL

) (CRIMINAL)

)

)

The undersigned appeals from the final order or signed final judgment in the above case as follows: _____.

Appellant understands: (1) the instructions set forth in the “Notice of Right to Appeal,” including payment for a copy of the record or certified transcript; (2) the need to post bond to stay enforcement of the judgment unless released on “own recognizance”; (3) filing an original and copy of the Appellant’s Brief with the trial court; and (4) that failure to complete all stages in the appeal may result in the dismissal of the appeal and reinstatement of the trial court judgment.

The following address may be used for all court notices. The court will be notified IN WRITING of any change of address. Defendant’s current mailing address must be PRINTED here, even if defendant is represented by counsel:

Street _____ Apt./Unit No. ____

City, State _____ ZIP _____

(Daytime Phone) () ____

Dated:

Defendant

Form 3. Notice to Superior Court of Transmittal of Record on Appeal (Criminal)

[CAPTION]

STATE OF ARIZONA

) No.

)

vs.

) NOTICE TO SUPERIOR

) COURT AND

) APPELLANT OF

) TRANSMITTAL OF

) RECORD ON APPEAL

) (CRIMINAL)

To the Clerk of Superior Court and Appellant in the above matter, please be advised as follows:

1. The notice of appeal, record on appeal, and any memoranda are provided herewith.
2. Please assign a case number and contact the Appellant with further instructions.
3. Defendant's address is:

Street _____ Apt./Unit No. ____

City, State _____ ZIP _____

(Daytime Phone) () ____

Dated:Clerk