

Joint Comment by the Directors of the Maricopa County Indigent Defense Agencies
In the matter of: Petition to amend the Superior Court Rules of Appellate Procedure—
Criminal

Supreme Court No. R-26-0022

Appendix B

Maricopa IR Proposed Revisions to SCRAP—Criminal

Rule 1. Scope; Definitions

a. **Scope.**

(1) These rules govern appeals in a criminal action taken to the Superior Court from a judgment of a justice or municipal court pursuant to A.R.S. §§ 22-371, 13-4032, or 13-4033.

(2) These rules do not apply to any juvenile court proceeding.

b. **Governing rules.** 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. “Judgment” is an appealable order, whether identified as a “judgment,” an “order,” a “pronouncement of sentence,” or another term.

e. **Computing time.** In computing time limits, the “last day” means that when the last day of any period of time prescribed herein falls on a Saturday, Sunday, or day when the court is closed, the “last day” shall be the next day the court is open. The day of the act or event from which the designated time period begins is not to be included. Except as stated by these rules or by order of court in a particular case, the filing deadlines for motions, responses, and briefs, 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).

g. **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 2. Record of Proceedings

- a. A record in the trial court must be made by a certified transcriber 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 in Superior Court.

Rule 3. Notice of Appeal

- a. A party begins an appeal by filing a written notice of appeal with the trial court.
- b. The notice of appeal must identify the order, judgment, sentence, or ruling that is being appealed. A notice of appeal of a judgment of conviction includes all appealable rulings made in the case before the imposition of sentence.
- c. **Amended notice.** If the trial court enters an order granting or denying relief under Arizona Rules of Criminal Procedure Rule 24 after a notice of appeal has been filed, a party seeking review of the order must file an amended notice no later than 20 days after entry of the order.
- d. A notice of appeal also must include:
 - (1) The defendant's name, phone number, email, and address;
 - (2) The name and address of defense counsel, if any;
 - (3) Whether the defendant was indigent when sentenced or when the appealable order was entered.
- e. Distribution of notices by the trial court clerk:
 - (1) No later than 10 days after a notice of appeal is filed, the trial court clerk must distribute a copy of the notice to:
 - (A) The prosecuting agency that tried the case;
 - (B) The defendant;
 - (C) Defense counsel of record, if any;

- (D) The appropriate certified reporter or reporters or, if the record was made by electronic or other means, to the court's designated transcript coordinator; and
- (E) The Superior Court Clerk.
- (2) The trial court clerk must enter in the docket the name and address of each party to whom the clerk distributed copies of the notice of appeal, and when each notice was distributed.
- f. Transmission to Superior Court and assignment of appellate case number.
 - (1) No later than 10 days after receiving a notice of appeal, the trial court must transmit the notice of appeal to the Superior Court.
 - (2) No later than 10 days after receiving a notice of appeal from the trial court, the Superior Court clerk must assign an appellate case number to the appeal.
 - (3) The Superior Court clerk must promptly notify each individual identified in Rule 3(e)(1) of the assignment of the appellate case number.

Rule 4. Time for Taking Appeal

- a. The notice of appeal shall be filed with the trial court within 20 calendar days of the entry of the order, ruling, judgment, or sentence appealed from, except that a notice of delayed appeal shall be filed within 20 calendar days after entry of an order granting a delayed appeal.
- b. A notice of appeal filed by mail must be postmarked before the expiration of the 20 days required by Rule 4(a).
- c. The date of receipt of the notice of appeal shall be stamped or marked on its face when received.
- d. The date of receipt of the notice of appeal by the trial court shall be 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 of the Arizona Rules of Criminal Procedure.

- 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.
- c. The trial court must provide written notification to any appointed counsel. The trial court clerk must enter in the docket the name and address of appointed counsel to whom the clerk distributed copies of the order appointing counsel and when the notice was distributed.
- d. If the trial court enters an order regarding the request for the appointment of counsel after the notice of appeal has been transmitted to the Superior Court, the trial court must transmit a copy of the order granting or denying the appointment of counsel to the Superior Court.
- e. If counsel is not appointed on appeal, the trial court must determine indigency for purposes of fees or costs on appeal.

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(c)(2) of the Arizona Rules of Criminal Procedure. 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 of the Arizona Rules of Criminal Procedure, or when the appeal is taken on defendant's own recognizance.
- d. "Sentence" includes any fine, jail term, or other penalty, including a term of probation, imposed by the court.
- e. Notwithstanding the foregoing, a written order requiring the payment of restitution may not be stayed. 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. **Preparation of transcripts.** Within 20 calendar days of 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. Thereupon, each authorized transcriber shall promptly prepare the transcript.
- b. All parties to the appeal must cooperate with the authorized transcriber by providing information necessary to facilitate transcription.
- c. **Joint statement of the record.** 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 or prepare and sign an agreed statement of 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.
- d. **The record on appeal.** The record on appeal consists of:
 - (1) The notice of appeal;
 - (2) A certified index itemizing the documents and events comprising the record on appeal;
 - (3) Documentation or record of payment of a fine, restitution, or posting of bond;
 - (4) The charging document and any amendments;
 - (5) Disposition, judgment, or sentence; and
 - (6) The order, judgment, or ruling that is the subject of the appeal;
 - (7) All written motions, responses, and replies;
 - (8) All admitted exhibits;
 - (9) The recording or certified transcript of the trial, including voir dire, opening and closing argument, and jury instructions;
 - (10) Oral argument on motions, voluntariness, or suppression hearings; aggravation or mitigation hearings; probation violation proceedings; and the entry of judgment and sentence; and
 - (11) Any other matter designated by a party.
- e. **Designation of Record.** Within 10 days of the filing of the notice of appeal, the appellant may also file with the trial court a designation of items to be included in the

record on appeal. The document must be date stamped when received by the court. The trial court shall send a copy to the opposing side. Within 10 calendar days of the date of filing, the opposing party may also file its designation of portions of the record to be included.

- f. **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.
- g. **Items not included in record.** Unless designated by a party or requested by the Superior Court, the record on appeal shall not include: determinations of release conditions, notices of appearance, discovery disclosures, subpoenas, notices of pretrial or trial settings, MVD abstracts or other agency advisories, or general correspondence.
- h. **Insufficient record.** 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 within 45 days from such determination. In such event, any appeal rights shall begin to run from the entry of a judgment or order following the new trial.
 - (1) In cases where it appears that the record is insufficient, the preference is for a new trial at the trial court level.
 - (2) Notwithstanding the foregoing, cases summarily transferred to the Superior Court for trial de novo or determined by the Superior Court to have an insufficient record may be remanded to the original trial court for a new trial or hearing in lieu of a trial de novo in the Superior Court.
 - (3) Unlike the parties in a trial de novo held in the Superior Court, the parties in a case remanded pursuant to this rule for a new trial in the original trial court have the rights of appeal as provided by statute or rule for all litigants following a trial or the entry of an appealable judgment or order.

Rule 8. Appellate Briefs

- a. **Filing.** All appellate briefs must be filed with the Superior Court.
 - (1) *Unrepresented parties.* A party not represented by counsel must file an original and one copy of their brief. The Superior Court must then transmit the copy appellant's opening brief to the opposing side.
 - (2) *Represented parties.* When represented by counsel, the party files only the original brief with the Superior Court, and the party is responsible for serving the other side pursuant to Rule 14(b) of these Rules.
- b. **Opening Brief.**
 - (1) *Due Date.* The appellant must file an opening brief no later than 40 days after the clerk mails notice to the parties that the record is complete.
 - (2) *Content.* Opening briefs must include the following:
 - (A) A statement of the issue(s) presented for the Superior Court's review;
 - (B) A short statement of the facts with reference to the record that supports them;
 - (C) A concise argument on the issue(s) presented with citation to legal authority; and
 - (D) A conclusion that states the precise remedy sought on appeal.
 - (3) *Length.* Exclusive of any appendices, the opening brief must not exceed 4,500 words.
- c. **Answering Brief.**
 - (1) *Due Date.* The appellee's brief must be filed within 30 calendar days after the appellant's brief is served.
 - (2) *Content.* Answering briefs must include the following:
 - (A) A statement of the issue(s) presented for the Superior Court's review;
 - (B) A short statement of the facts with reference to the record that supports them;
 - (C) A concise argument on the issue(s) presented with citation to legal authority;
 - (D) A conclusion that states why the court should affirm the trial court.

- (3) *Length.* Exclusive of any appendices, the answering brief must not exceed 4,500 words.
 - (4) If no answering brief is filed, the matter is deemed submitted on the record and the appellant's opening brief. Non-filing of an answering brief is not a concession of error by the appellee.
- d. **Reply Briefs.** In general, no reply brief is permitted. Appellants wishing to file one must file a motion with the Superior Court and demonstrate good cause. Absent such a showing, no reply will be permitted. If the Superior Court grants a motion to file a reply, it must set a deadline. The reply must not exceed 2,250 words.
- e. **References to the Record.**
- (1) *In general.* References to evidence or other parts of the record must include a citation to the index prepared by the clerk, any exhibit, or page of a certified transcript.
 - (2) *Audio or video recordings.* If a party refers to a video or audio recording that was part of the record or an admitted exhibit, it must provide specific time-coded references to the relevant portions of the recording.
- f. **Waiver of Requirements.** The Superior Court may modify or waive the requirements of this rule to ensure a fair and just determination of the appeal.

Rule 10. Transmission of the Record to the Superior Court

- a. No later than 30 days after a notice of appeal is filed, the trial court must electronically transmit the record on appeal and any other items requested by the Superior Court to the Superior Court clerk and make the items available to all parties.
- b. **Extension and Reduction of Time.** For good cause and after considering the rights of the victim, the Superior Court may grant a 20-day extension to transmit the record on appeal. The Superior Court also may order the trial court to transmit the electronic record, or a portion of the record, at an earlier time, or it may order physical transmission of the entire record or portions of the record under (d). The Superior Court clerk must distribute a copy of any order entered under this rule to the parties, the trial court, and the authorized transcriber who made the request.
- c. **Supplementation.** At any time during the appeal, the Superior Court may direct the trial court by an order or written request to transmit portions of the record that were not included in previous transmissions.

- d. **Physical Transmission by the Trial Court.** The trial court clerk must notify the Superior Court clerk and the parties to the appeal of any items in the trial court's record of a size, bulk, or condition that makes their electronic transmission impractical. If any of those items are necessary for a determination of issues raised on appeal, the Superior Court, on motion or on its own, may order that the Superior Court clerk transmit to the Superior Court any or all of these items in physical form. Alternatively, the parties may stipulate to the method of transmitting the item.
- e. **Notice that the Record Was Received.** When the Superior Court clerk receives all of the record on appeal, the Superior Court clerk must promptly give all parties notice of that fact and the date on which the clerk received the complete record.
- f. **Insufficient record.** 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 summarily transfer the entire file to the Superior Court for a trial de novo. Where the entire case is transferred under this subparagraph, no appellate brief is required. Upon receipt of the file, the Superior Court must notify the parties with instructions as to further proceedings.

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.
- b. If a party wishes to have an oral argument, a party must file a separate request for oral argument no later than 5 days after the due date for the response brief.
- c. When the Superior Court orders oral argument, the Superior Court will notify the parties of the time and place for oral argument and the allocation of time for each side. The Superior Court will provide the notice at least 10 days before the date set for oral argument.

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 must be transmitted by the Superior Court clerk to the trial court within 30 calendar days of the Superior Court's final order disposing of the case.
 - d. If review is taken by special action from the Superior Court's ruling, the Superior Court's final order disposing of the case must be transmitted by the Superior Court Clerk to the trial court within 30 days of the issuance of the Court of Appeals decision on the petition for special action.
 - e. Within 10 days of receiving the Superior Court's final order disposing of the case, the trial court must issue an order declaring the appeal complete. The filing of this order will be used to determine the filing deadlines for a notice of post-conviction relief under Rule 32 of the Rules of Criminal Procedure.

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 of the Arizona Rules of Criminal Procedure.

Rule 14. Filing, Service, and Motion Practice

- a. **Filing.** All documents must be filed in compliance with Rule 1.7 (a) and (b) of the Arizona Rules of Criminal Procedure.
- b. **Service.** Unless otherwise provided, a party filing a document must serve a copy on all other parties on the same day as filing, as provided in Rule 1.7(c) of the Arizona Rules of Criminal Procedure.
- c. **Motions.** A party may apply for an order or other relief by filing a motion.
 - (1) *Content.* A motion must:
 - (A) State the relief requested;
 - (B) State with particularity the grounds for the motion;
 - (C) Include any necessary references to the record.
 - (2) *Response and Reply.* Unless otherwise ordered by the Superior Court, a party may file a response within 10 days after service of the motion. The moving party may file a reply within 5 days after service of the response.
 - (3) *Supporting materials.* A party may attach, if needed, relevant portions of the record or other supporting materials to their motion, response, or reply.
 - (4) *Disposition.* The Superior Court may decide the motion without oral argument unless otherwise ordered.
- d. **Motions for Procedural Orders.**
 - (1) *Availability and Content.* A motion for a procedural order is a motion that does not substantially affect the rights of the parties or the ultimate disposition of the appeal.
 - (A) **Timing.** While the Superior Court may require a response before ruling, it is not required to do so. The Superior Court may rule on a motion for a procedural order, including a motion for an extension of time, at any time, without awaiting a response from another party.
 - (B) **Statement.** A motion for a procedural order should state whether the other parties consent to, or object to, the requested relief, or explain why the moving party was unable to determine the other parties' position.
 - (C) **Form.** The caption should identify it as a "Motion for Procedural Order." The motion must state the relief requested and the reasons supporting it.

- (2) *Review.* Within 15 days after entry of a procedural order, a party adversely affected may file a request to vacate or modify the order. The Superior Court, on its own, may also reconsider the granting of a procedural order.

Rule 15. Title

These Rules may be known and cited as Superior Court Rules of Appellate Procedure—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)
- (3) Notice of Summary Transfer to Superior Court for Trial de Novo (Criminal)
- (4) Notice to Superior Court of Transmittal of Record (Criminal)