

IN THE SUPREME COURT  
STATE OF ARIZONA

PETITION TO ADD RULE 8.1, )  
ARIZONA RULES OF CIVIL ) Supreme Court No. R-06-\_\_\_\_\_  
APPELLATE PROCEDURE, )  
\_\_\_\_\_ )

Pursuant to Arizona Supreme Court Rule 28, Paula S. Bickett, Kimberly A. Demarchi, Jeffrey D. Gross, Lisa T. Hauser, and Diana Varela respectfully petition this Court to adopt the attached proposed Rule 8.1 of the Arizona Rules of Civil Appellate Procedure to govern appeals in election-related cases designated by statute for expedited appellate review.

**I. Purpose of the Proposed New Rule**

Some cases involving challenges to candidate nominating petitions, recall, and initiative and referendum are designated by statute for expedited appeals. *See* A.R.S. §§ 16-351(A) (candidate nomination petitions), 19-208.04 (recall), 19-122 (statewide initiative and referendum petitions), 19-141 (initiative and referendum in counties, cities, and towns). The statutes providing for expedited appeals in these cases prescribe a dramatically shortened period for filing a notice of appeal, usually five or ten days.

Expedited handling of these cases is necessary to ensure that the correct information is on the ballot in imminent elections. However, simply filing the

required notice of appeal in the designated time frame is not enough. Litigants in these cases must provide timely notice to the appellate court, arrange for preparation of necessary record materials, and be prepared to expedite briefing and argument to avoid having their case mooted by the printing of ballots or the conduct of the election in question.

The proposed new rule seeks to codify existing best practices for appellants in these cases. The proposed rule establishes procedures intended to ensure that the case moves quickly through the appellate process so that a timely decision may be obtained, and it provides needed guidance to counsel and litigants in these cases.

## **II. Contents of the Proposed Rule.**

The rule, by its terms, applies only to appeals in election matters designated by statute for expedited appellate review. Other election-related cases must proceed under the regular Rules of Civil Appellate Procedure or, as appropriate, under the Rules of Procedure for Special Actions. Section (a) and the associated comment make clear the scope of the rule and provide the necessary guidance to counsel and litigants in other cases.

Sections (b) through (g) of the rule set out procedures designed to ensure that expedited election appeals are brought to the attention of the appellate clerks immediately and that the parties are on notice that they must move more quickly

than in a normal appeal to obtain a timely decision. For each of the key steps of the appeal, including filing the notice of the appeal, paying filing fees, arranging for the record, and setting a briefing and argument schedule, these sections set forth specific expedited procedures. These sections also contemplate a scheduling conference at which the parties and the appellate court may discuss relevant deadlines and other topics such as the briefing and argument schedule and the format of submissions.

Section (h) of the rule codifies existing practice under the rule announced by the Supreme Court in *Perini Land & Development v. Pima County*, 170 Ariz. 380, 825 P.2d 1 (1992), under which county, city, and town initiative and referendum matters are filed in the Court of Appeals, while statewide initiative and referendum matters are filed in the Supreme Court. Recall appeals, which are usually less time-sensitive, should be filed in the Court of Appeals as well. Because this rule exists now as a matter of case law and custom, codifying it in the rules will provide notice to all litigants. Codifying this practice does not preclude motions to transfer cases pursuant to ARCAP 19 as appropriate.

Section (i) adds an expedited process for filing a petition for review from expedited election cases filed initially in the Court of Appeals, ensuring that cases initially decided by that court can be fully heard before any pending election-related deadlines.

RESPECTFULLY SUBMITTED this 1<sup>st</sup> of November, 2006:

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## ATTACHMENT A

### ARIZONA RULES OF CIVIL APPELLATE PROCEDURE

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#### **Rule 8.1. Appeals in Expedited Election Matters.**

**(a) Scope.** This rule governs appeals in election matters designated by statute for expedited appellate review. Other provisions of these rules apply to expedited election appeals to the extent they are not inconsistent with or expressly varied by this rule.

**(b) Time for Filing Notice of Appeal.** The notice of appeal in an expedited election matter shall be filed within the accelerated time period provided for by the applicable statute. A final order shall be in writing and signed by the judge before an appeal can be taken.

**(c) Copy of Notice of Appeal, Statement Identifying Case, and Listing of Counsel to Be Filed with Appellate Court.** Not later than the next business day after filing the notice of appeal in the superior court, the appellant shall file with the clerk of the appellate court: (1) a conformed copy of the notice of appeal, reflecting the date of filing in the superior court; (2) a statement designating the case as an “Expedited Election Matter” and providing the names and contact information, including e-mail addresses, of counsel for each party and of any litigants appearing pro se; and (3) a copy of the superior court’s final order from which the appeal is taken. Appellants in cases originating outside the county in which the appellate clerk’s office is located may satisfy this requirement by sending these materials by facsimile or electronic mail to the appellate clerk and transmitting a paper copy for receipt by the appellate clerk not later than the second business day after filing the notice of appeal.

**(d) Payment of Fees.** The appellant shall pay the docketing fee to the clerk of the appellate court simultaneously with the filing of a copy of the notice of appeal with the clerk of the appellate court. For cases originating outside the county in which the appellate clerk’s office is located, the docketing fee may be paid along with the paper copy transmitted pursuant to subsection (c). An appellee shall pay any required fees when the appellee first appears in the case.

**(e) Preparation of Record on Appeal.** The clerk of the superior court shall prepare the record and transmit it to the appellate court within five business days after the filing of the notice of appeal. In the notice of appeal, the appellant shall identify the appellate court in which the appellant has filed the appeal. The appellant shall request the reporter to expedite the preparation of any transcripts

necessary for determination of the appeal. Not later than one business day after filing the notice of appeal, the appellant shall notify the appellee of the parts of the transcript that appellant intends to include in the record. If the appellee deems a transcript of other parts of the proceedings to be necessary, appellee shall notify the appellant and the reporter within one business day of the additional portions of the transcripts to be included. If necessary, the appellant may request the appellate court to order expedited preparation of the record. In lieu of the foregoing, the parties may agree upon a stipulated record and submit copies of the stipulated record to the appellate court.

**(f) Scheduling Conference.** Simultaneously with filing the copy of the notice of appeal required by subsection (c) of this rule, the appellant shall file a written request that the appellate court set an initial scheduling conference to determine the schedule for the expedited proceedings. The parties shall be prepared to address the following topics at the initial scheduling conference: (1) any pending deadlines, such as the date that the ballots or publicity pamphlet will be printed or the date of the election, that might affect the schedule for briefing and disposition of the appeal; (2) any request for a court order to facilitate the timely preparation of the record on appeal; (3) any request to transfer the case to the Court of Appeals or to the Supreme Court; (4) the nature and number of issues on appeal; (5) deadlines for the submission of briefs by the parties; (6) the format of pleadings to be filed, including proposed word limits and whether briefing should be in the form prescribed by Rule 13; and (7) whether oral argument should be scheduled.

**(g) Requirement of Electronic or Facsimile Service.** Any papers served by mail pursuant to Rule 4(b) shall also be served at the same time by electronic means, including e-mail or facsimile, or as agreed to by the parties. If the party on whom service is to be made does not have access to electronic mail or facsimile, then service shall be personal service as defined by Rule 4(b).

**(h) Filing in the Supreme Court.** Expedited election appeals involving candidate nomination petitions shall be filed directly in the Supreme Court. Expedited election appeals involving initiatives and referenda may be filed directly in the Supreme Court if the issue on appeal is of substantial statewide importance and would become moot before Supreme Court review unless the appeal is filed directly in the Supreme Court. Expedited election appeals involving recalls; county, city, or town initiatives or referenda; and those involving statewide initiatives and referenda that do not meet the criteria for filing directly in the Supreme Court shall be filed in the Court of Appeals.

**(i) Motion for Reconsideration; Petition for Review.** A motion for reconsideration in election matters governed by this rule shall be filed within five calendar days after the filing of a decision. A petition for review in election matters governed by this rule shall be filed with the clerk of the Supreme Court

within ten calendar days after the filing of a decision or the date of a notice of determination of a motion for reconsideration. A cross-petition for review may be filed with the clerk of the Supreme Court within ten calendar days after service of a petition for review. The petitioner or cross-petitioner shall serve a copy of the petition or cross-petition and any appendices on all parties who have appeared in the Court of Appeals. Any party wishing to oppose the petition or cross-petition shall file a response within ten calendar days of service. The form and content of the petition, cross-petition, and responses shall comply with Rule 23(c). If the Supreme Court grants review but does not provide for supplementation of briefs or for oral argument, any request to do so must be filed within five calendar days from the date of the order granting review. The Supreme Court may extend or contract these time limits for good cause.

### Comments

[1] This rule applies only to election-related cases designated by statute for expedited consideration on appeal, such as those arising under A.R.S. § 16-351(A) (candidate nomination petitions); A.R.S. § 19-208.04 (recall); A.R.S. § 19-122 (initiative and referendum petitions); and A.R.S. § 19-141 (initiative and referendum in counties, cities, and towns).

Cases that do not involve a specific statutory provision requiring expedited proceedings are governed by other ARCAP provisions or the Rules of Procedure for Special Actions. Any effort to expedite an appeal in such cases requires a motion for expedited consideration under ARCAP Rule 6 or an appellate special action under Rule 7 of the Rules of Procedure for Special Action. In such cases, counsel are encouraged to consider the practices codified by subsections (c), (d) and (f) of this rule, which may be advisable.

[2] Under A.R.S. § 16-351(A), a notice of appeal in a nomination petition case must be filed not later than five calendar days after the superior court enters final judgment. *See Bohart v. Hanna*, \_\_\_ Ariz. \_\_\_, --- P.3d ----, 2006 WL 2060642 (Ariz.), 483 Ariz. Adv. Rep. 28 (2006) (party appealing a decision concerning a nomination petition must file the notice of appeal within five calendar days); *Klebba v. Carpenter*, 213 Ariz. 91, 139 P.3d 609 (2006) (party appealing a decision concerning a nomination petition must obtain a written, signed judgment from the superior court within the ten-day period imposed by A.R.S. § 16-351(A)). Under A.R.S. § 19-122, a notice of appeal in mandamus cases involving initiatives and referenda must be filed not later than ten days after the superior court enters final judgment. Under A.R.S. § 19-208.04, a notice of appeal in a recall case must be filed not later than ten days after the superior court enters final judgment.

[3] Under *Perini Land & Dev. v. Pima County*, 170 Ariz. 380, 825 P.2d 1 (1992), appeals in election matters involving a county, city, or town initiative or referendum should be filed in the Court of Appeals. A party to the appeal may move pursuant to Rule 19 to transfer the case to the Supreme Court. Any such motion should be accompanied by a request for expedited consideration and should explain why transfer is appropriate.

This rule provides for expedited motions for reconsideration and petitions for review, but litigants remain responsible for requesting more expedited handling of their case if necessary to have the motion or petition considered before any election, ballot printing, or other deadline. Such requests should be made by motion under ARCAP Rule 6 or under Rule 7 of the Rules of Procedure for Special Actions.