APPENDIX

Comparison of the Existing and Proposed Amended Rules

The following pages contain tables that compare each rule in the current version of the Arizona Rules of Civil Appellate Procedure ("ARCAP") with every corresponding rule in the proposed amended rules. "Petitioner's notes concerning the proposed rule" follow each rule comparison. The notes explain how the proposed rule differs from the current version, and in some instances, the notes explain the reason for the difference. Although not explicitly stated in each note, every proposed rule restyles its current predecessor. The rule petition provides a general explanation of applicable restyling conventions. The proposed amended rules also include substantive changes, as noted in the rule petition and in the following pages.

The tables use the follow color legend:

Current rule
No corresponding rule
Proposed rule
Petitioner's notes concerning the proposed rule

Rule 1. Title and Scope of Rules

These rules shall be known and cited as the Arizona Rules of Civil Appellate Procedure (ARCAP). They shall govern the procedure in civil appeals to the Court of Appeals and the Supreme Court, which are jointly referred to herein as "the appellate court." An appeal may be taken by any party aggrieved by the judgment.

Rule 1. Title and Application

(a) Title. These are the Arizona Rules of Civil Appellate Procedure. A rule may be cited as "ARCAP 00."

(b) Scope. These rules govern procedures in civil appeals to the Arizona Court of Appeals and the Arizona Supreme Court.

(c) Construction. These Rules should be used and interpreted to achieve the just, speedy, and inexpensive resolution of civil appeals.

(d) Who may appeal. Any party aggrieved by a judgment may appeal as provided under Arizona law and by these Rules.

Comment to Rule 1:

For further guidance as to the jurisdiction and powers of the appellate courts, see A.R.S. § 12-120.21 (jurisdiction and venue of Court of Appeals); A.R.S. § 12-2102 (scope of appellate review); A.R.S. §§ 12-2101 and 12-2104 (powers of appellate court).

Petitioner's notes concerning the proposed rule:

Rule 1(a) ["title"] adds a form of citation to the rules.

Rule 1(b) ["scope"] makes stylistic changes.

Rule 1(c) ["construction"] adds a provision that is analogous to the second sentence of Rule 1 of the Arizona Rules of Civil Procedure and Supreme Court Rule 26.

Rule 1(d) ["who may appeal"] adds to the provision "as provided under Arizona law and by these rules**."**

The comment is based on a comment to current Rule 1.

Rule 2. Definitions

(a) Decision. When the word "decision" is used in these rules, it shall mean a written disposition of an appeal, including a disposition by opinion, memorandum decision, or order, pursuant to Rule 28.

(b) Upon Stipulation. "Upon stipulation," as used in these rules, shall mean a stipulation of the parties to the appeal, and an order of the superior court or appellate court (as the case may be) pursuant thereto.

(c) Upon Motion. "Upon motion," as used in these rules, shall mean a motion of a party to the appeal, in accordance with Rule 6(a), and an order of the superior court or appellate court (as the case may be) pursuant thereto. It shall also include an order of the superior court or appellate court upon its own motion.

(d) Judgment. "Judgment," as used in these rules, shall mean any appealable order, whether denominated an order, a judgment, a decree, or otherwise.

Rule 2. Definitions

Terms used in these Rules have the following meanings. A term defined in the singular includes the plural.

"Appeal" is a case in an appellate court, other than a special action, which challenges a judgment of the superior court as permitted by law and by these Rules.

"Appellate clerk" means the clerk of an appellate court in which a case is pending.

"Appellate court" refers to the Arizona Supreme Court and the Arizona Court of Appeals.

"Appellant" is a party who commences an appeal. An appellant also may be a cross-appellee.

"Appellee" is a party who responds to an appeal. An appellee also may be a cross-appellant.

"Decision" is a written disposition of an appeal, as provided in Rule 20.

"Judgment" is an appealable order. A judgment may have the title of judgment, or it may have the title of order, decree, or another term.

"Motion" is a written request made by a party, other than in an appellate brief, for entry of a court order or for other relief.

"Party" includes a person, other than amicus curiae, whose name is in the caption of an appeal.

"Person" includes an individual, a business organization, and any other private or public entity.

"Stipulation" means a signed, written agreement that parties file with the court.
Petitioner's notes concerning the proposed rule: Rule 2 ["definitions"] retains definitions of the four terms currently defined in Rule 2, but deletes the word "upon" before the definitions of "motion" and "stipulation." The proposed rule provides revised definitions of these four terms. The proposed rule adds several new definitions. Less experienced practitioners and self-represented litigants may find the additional definitions helpful. The proposed rule includes a definition of "person" because the definition of "party" includes the word "person." "Person" has a legal meaning and therefore requires its own definition**.**

Rule 3. Suspension of Rules

Except as otherwise provided in Rule 5(b), an appellate court may, upon motion, for good cause shown, suspend the requirements or provisions of any of these rules in a particular case, and may order proceedings in accordance with its direction. These rules shall be liberally construed in the furtherance of justice.

Rule 3. Suspension of These Rules; Suspension of an Appeal

(a) Suspension of Rules. On its own or on a party's motion, an appellate court -- to expedite its decision or for other good cause – may in a particular case suspend any provision of these Rules, except as otherwise provided in Rule 4(b), and may order proceedings as the court directs.

(b) Suspension of an Appeal. An appellate court for good cause may suspend an appeal and re-vest jurisdiction in the superior court to allow the superior court to consider and determine specified matters. The appellate court's order suspending an appeal may include other terms and conditions, such as a date certain for automatic reinstatement of the appeal.

Petitioner's notes concerning the proposed rule:

Rule 3(a) ["suspension of rules"] is identical to Rule 2 of the Federal Rules of Appellate Procedure. Rule 3(a) deletes the second sentence of current Rule 3 of ARCAP because the corresponding federal rule does not include this provision, and because proposed Rule 1(c) provides a general rule of construction.

Rule 3(b) ["suspension of appeal, etc."] was transferred from current Rule 9.1, a relatively new rule that became effective on January 1, 2014 [R-12-0024]. The provision applies when a party files a post-judgment motion under Rule 9(e), but it may also be useful in other situations, for example, when a "final" judgment fails to include "Rule 54(c)" language. Proposed Rule 9(b) has a shorter title than current Rule 9.1 ["suspension of appeal and revestment of jurisdiction in the superior court"].

Rule 3(b) deletes the last sentence of current Rule 9.1 ("the filing of a stipulation or motion under this rule does not extend any deadline in the appellate court or superior court") because the first sentence of proposed Rule 5(b) adequately sets forth that provision.

Rule 4. Filings and Service

(a) Filings; Number of Copies. All documents required or permitted to be filed in an appellate court shall be filed in person, electronically or by mail with the clerk and shall contain the state bar number of the counsel representing the party on whose behalf the document is filed and the firm state bar number, if any. All paper filings in the Court of Appeals, except for appellate briefs and special action petitions, responses and replies, and those filings provided by Rule 11, shall consist of an original and four copies. An original and six copies of paper briefs, special action petitions, responses and replies shall be filed in the Court of Appeals. All paper filings in or for the Supreme Court, including petitions for review and petitions for transfer to the Supreme Court, shall consist of an original and seven copies, except that, if appendices are bound separately from a petition for review or a response to a petition for review, an original plus two copies of the appendices shall be filed. Filing may be accomplished by mail addressed to the clerk, but filing shall not be timely unless the documents are received by the clerk within time fixed for filing, except in the case of briefs and appendices, which shall be governed by Rule 15(a) of these Rules. No documents received by the clerk in paper format or electronically within the time fixed for filing which if untimely filed would render the case, appeal or petition subject to dismissal by the appellate court for jurisdictional reasons, shall be refused by the clerk solely for the reason that they were not tendered for filing in the proper court or division. Rather, such documents shall be transmitted by the clerk to the proper court or division and shall be deemed timely filed. If a motion requests relief which may be granted by a single justice or judge, the justice or judge may permit the motion to be filed with that justice or judge, and shall note thereon the date of filing and thereafter transmit it to the clerk.

(b) Service of All Papers Required; Notice by the Court; Manner of Service. Copies of all papers filed by any party shall, at or before the time of filing, be served by a party or person acting for him on all other parties to the appeal. This rule shall not apply to the transcript filed pursuant to Rule 11(b). Service may be personal, by mail, or by delivering the paper by any other means, including electronic means, if the recipient consents in writing to that method of service or if the court orders service in that manner. Personal service includes delivery of the copy to a clerk or other responsible person at the office of counsel. Service by mail includes every type of service except same day hand delivery and is complete on mailing. Service by other means is complete upon transmission. Service of copies of notices and papers that the clerk of the court must serve on parties to the appeal shall also be made in accordance with the foregoing.

(c) Proof of Service. Papers presented for filing shall contain an acknowledgment of service by the person served, or proof of service in the form of a statement of the date and manner of service and of the name of the person served, signed by the person who made service. Proof of service may appear on or be affixed to the papers filed. The clerk may permit papers to be filed without acknowledgment or proof of service, but shall require the acknowledgment or proof of service to be filed promptly thereafter.

(d) Service on Attorney or Guardian Ad Litem; Substitution; Notice. Attorneys and guardians ad litem in superior court will be deemed attorneys and guardians ad litem of the same parties in the appellate court until a substitution is made or there has been an appropriate

withdrawal. Service of notices, briefs, and all papers shall be made, when appropriate under these rules, on such attorneys or guardians ad litem until a substitution is made and notice thereof given to all other parties.

Rule 4. Filing Documents with an Appellate Court; Service

(a) Caption. The first page of every document filed with an appellate court must contain a caption. The caption must contain the information shown in:

(1) Form 4, for briefs.

(2) Form 3, for other documents.

(b) Document Format. Unless an appellate court allows otherwise, every document that a party files with an appellate court, other than a document contained in an appendix to a brief or as an attachment to a motion, must be prepared as follows.

(1) Generally. The text of every document must be black on a white background. Each page of a document must be 8 ½ by 11 inches.

(2) Typeface. Text and quotations must be in a distinct and proportionately spaced typeface of 14 points. A proportionately spaced typeface has characters with different widths (for example, acceptable proportionately spaced typefaces are Book Antiqua and Times New Roman.)

(3) Line Spacing. Text must be double-spaced, but headings, quotations, and footnotes may be single-spaced. A single-spaced quotation must be indented.

(4) Handwritten Documents. Handwritten text must be printed and legible. It may not include cursive writing or script.

(5) Headings and Emphasis. Headings must have underline, or be in italics or bold font. Underline, italics, or bold font also may be used for emphasis.

(6) Case Names. Case names and citation signals must be in italicized typeface. If handwritten, case names and citation signals must be underlined.

(7) Margins and Page Numbers. All margins must be at least 1 inch, and, except for the first page, the bottom margin must include a page number.

(8) Footnotes. Footnotes must be in a proportionately spaced typeface of at least 13 points. Footnotes may not appear in the space required for the bottom margin.

(9) Page Word Limit. A document must average no more than 280 words per page, including footnotes and quotations.

(10) Paper Filings. Documents filed pursuant to Rule 4.1 must be on white, opaque and

unglazed paper; and text must appear on only one side of the paper.

(c) Document Signatures. The party filing a document must sign it, but if an attorney represents the party, the attorney must sign the document on behalf of the party. Rule 4.2(f) contains requirements for electronic signatures.

(d) Filing with the Appellate Clerk. Unless otherwise specified by these Rules, parties must file documents with the appellate clerk. The appellate clerk may not refuse to accept a document because it does not comply with these Rules, but in such circumstances an appellate court may enter an appropriate order, including one that requires corrective action or imposes a sanction. If a party timely submits a document for filing in an incorrect appellate court or appellate division, the appellate clerk must transmit that document to the proper court or division, and the appellate court will consider the filing timely.

(e) Methods of Filing. A party must file documents electronically as provided by Rule 4.2, unless permitted by Rule 4.1 to file paper documents.

(f) Service of All Documents Required; Manner of Service. Every person filing a document with an appellate court must serve a copy of the document on all other parties to the appeal. A party may serve documents by any means authorized by Rule 5(c) of the Arizona Rules of Civil Procedure.

(g) Certificate of Service. Every document filed with the appellate clerk must include a certificate of service that identifies the name or names of the person or persons served with the document, and the date and manner of service. The party, attorney for the party, or an agent of the party who served the document must sign the certificate of service, and may use an electronic signature as provided by Rule 4.2(f)(1). A certificate of service may appear at the end of the document or as an attachment, or the filing party may file the certificate as a separate document. The appellate clerk must permit a party to file a document without a certificate of service, but the party must file the certificate promptly thereafter.

(h) Service on Attorney or Guardian Ad Litem. Attorneys and guardians ad litem in the superior court will be deemed attorneys and guardians ad litem of the same parties in the appellate court until there has been a substitution or an authorized withdrawal. These attorneys or guardians ad litem must be served with notices, briefs, and all papers required by these Rules until there is a substitution or authorized withdrawal, and until all other parties are properly notified of this change.

(i) Service by the Clerk. Appellate and superior court clerks must serve all parties to the appeal with copies of court notices and other papers prepared by the courts in connection with the appeal. Under Rule 4.2(h), appellate clerks may serve these documents electronically.

Petitioner's notes concerning the proposed rule:

Rule 4(a) ["caption"] is new. It requires a caption on court filings and specifies what the caption must include. Some but not all of these requirements are in the first sentence of current Rule

4(a). Rule 4(a) distinguishes between a caption for a brief, which is included as Form 4, and a caption for other types of documents, which is included in Form 3.

Rule 4(b) ["document format"] is new. It collects requirements for the form of court filings that are currently spread among, and repeated in, multiple rules, such as current Rules 6(c), 14(a) and (b), 22(d), and 23(c). It also includes new requirements that are not currently mentioned anywhere in ARCAP, such as format requirements for handwritten documents.

Rule 4(c) ["document signatures"] is new. Currently, only Rule 8(e) ("forms for notice of appeal") contains a signature requirement. The proposed provision requires a signature on all appellate court filings.

Rule 4(d) ["filing with the clerk"] is the revised version of current Rule 4(a). The rule eliminates the last sentence of current Rule 4(a), which allows a party to file directly with a judge a motion that a single judge can grant. The proposed rule also eliminates requirements in current Rule 4(a) concerning the number of copies that a party must file with the appellate clerk, inasmuch as these requirements do not conform to current court practices. The proposed rule includes a provision that the appellate clerk must accept a filing even if it is non-compliant, but it adds that in such circumstances, the appellate court may order corrective action or impose a sanction. The proposed rule includes a provision currently in Rule 4(a) directing that the clerk must accept a document that a party files in the wrong court or division, but limits its application to instances when the filing was made in the wrong appellate court.

Rule 4(e) ["methods of filing"] is new. It provides that a party may file paper documents only as permitted by Rule 4.1, and must otherwise file documents electronically as required by Rule 4.2. Rules 4.1 and 4.2 are new, and provide by court rule what is currently in Administrative Order 2012-02 and elsewhere. See the notes following Rules 4.1 and 4.2 for a further discussion.

Rule 4(f) ["service of all documents required; manner of service"] is based on current Rule 4(b) and allows service of documents as provided in Ariz. R. Civ. P. 5(c). Note that a pending rule petition, R-14-0003, proposes to amend Ariz. R. Civ. P. Rule 5(c) to authorize electronic service of documents through a court's electronic filing system (e.g., TurboCourt). See also Administrative Order 2014-27.

Rule 4(g) ["certificate of service"] is the analog of current Rule 4(c) ["proof of service"], and the proposed provision includes similar but restyled language. The "acknowledgment of service" provision currently in Rule 4(c) was eliminated because acknowledgements are rarely, if ever, used.

Rule 4(h) ["service on attorney or GAL"] is a restyled version of current Rule 4(d).

Rule 4(i) ["service by the clerk"] is a restyled version of the last sentence of current Rule 4(b).

The current ARCAP has no corresponding rule.

Rule 4.1. Paper Filing

(a) When Required. A document, a portion of a document or an exhibit must be filed in paper with an appellate court if it:

(1) Is filed in the superior court under seal or in a sealed case, or is filed with a request that the appellate court seal the document;

(2) Is filed in a proceeding requesting an order under A.R.S. § 36-2152 (Parental Consent Waiver Proceedings) and Supreme Court Rule 102; or

(3) Constitutes an application or supplemental application for waiver or deferral of any court fee or court cost under A.R.S. § 12-302, including any document that accompanies an application or supplement.

(b) When Allowed. The following persons may file in paper in the appellate court:

(1) A self-represented litigant;

(2) A party whom the court has determined is eligible for a deferral or waiver of court fees and costs under A.R.S. § 12-302, if the party provides a copy of the order granting the deferral or waiver of court fees to the appellate clerk at the time of filing a paper document;

(3) An attorney employed by an approved legal services organization representing a party who is unable to pay the applicable fee for electronic filing in a civil case. The Administrative Office of the Courts ("AOC") will provide the Chief Justice, the Chief Judges of the Court of Appeals, and the appellate clerks with a list of legal services organizations approved under Rule 38, Rules of the Supreme Court of Arizona, and it will provide an updated list upon the addition or removal or an organization; or

(4) A party who for good cause obtains an exception from the appellate court to file paper documents.

A party permitted to file in paper may file documents electronically, as provided by Rule 4.2, if the party pays the applicable fee for electronic filing.

(c) Filings; Number of Copies. A party must file an original and one copy of paper briefs, special action petitions, responses, replies, motions, and all other papers in the Court of Appeals. A party must file an original and one copy of all paper filings in, or for, the Supreme Court, including petitions for review and petitions for transfer to the Supreme Court. A party must file an original and one copy of any separate appendix.

(d) Method of Filing. A party may file a paper document by either delivering it or mailing it to the appellate clerk. Whether delivered or mailed, a document other than a brief is deemed filed

when it is actually received by the appellate clerk. Rule 15 governs filing briefs by mail.

Petitioner's notes concerning the proposed rule:

Current ARCAP Rule 4(a) includes a brief reference to electronic filing, but the current rules provide incomplete guidance as to when filings may (or must) be in paper rather than electronically. Administrative Order 2012-02 currently fills this gap, although neither the comments nor the applicability provisions following current Rule 4 mention the Order.

Rule 4.1 ["paper filing"] is a new rule that adopts by court rule the substantive provisions of Administrative Order 2012-02 concerning paper filing. See Administrative Order 2012-02, Section 3("applicability and exceptions to mandatory e-filing").

Rule 4.1(c) ["filings; number of copies"] adopts requirements that are consistent with current appellate court practices.

The current ARCAP has no corresponding rule.

Rule 4.2. Electronic Filing

(a) Generally. A party who files a document electronically must ensure that the document is properly filed, and that it is complete and readable.

(b) Portal. Rule 32 contains the web addresses of Arizona appellate portals for electronic filing. An attorney or party must properly register on the portal before electronically filing a document. The portal may require payment of a fee in conjunction with an electronic filing.

(c) Format. Text documents must be in searchable .pdf, .odt, or .docx format. A document may not exceed the size limits required by the portal, but it may be broken up into multiple filings to accommodate such a limit. A filer may scan and file a document that requires a notary if the scan contains the notary's original signature and seal. A party may file an official record of a court or government body if the scanned copy contains the court or body's official stamp or seal of authenticity. A party may satisfy a court rule that requires the attachment of a document or exhibit by electronically attaching within the same submission either a scanned image or an electronic copy in an approved format.

(d) Bookmarks. A document filed electronically with the appellate clerk may include bookmarks. A bookmark is a linked reference to another page within the same document. A document reference that is incapable of bookmarking may be made accessible by a hyperlink.

(e) Hyperlinks. A document filed electronically with the appellate clerk may include hyperlinks. A hyperlink is an electronic link in a document to another document, or to a website. Material that is not included with a filing, although made accessible by a hyperlink, is not part of the official court record.

(f) Signature and Authorization.

> **(1) Signature.** All electronic filings must be signed. A person may sign an electronic document by placing the symbol "/s/" on the signature line above the person's name. An electronic signature has the same force and effect as an ink signature on paper.
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> **(2) Authorization.** The appellate court will treat a filing that uses a person's registration information as a filing made or authorized by that person.
>
> **(3) Filings by Multiple Parties.** A person electronically filing a document containing more than one signature -- such as a stipulation -- may sign on behalf of other parties only if such person has actual authority to do so. The person may indicate such authority either by attaching a scanned document confirming that authority and containing the signatures of the other persons; or, after obtaining the other party's consent, inserting "/s/ (name) with permission" as the electronic signature of any non-filing party.

(g) Time of Filing. An electronically filed document will be deemed filed on the date and time that it is received by the appellate clerk, as shown on a later email notification from the portal or

as displayed within the portal. An electronically filed document will not be deemed filed if the portal fee or any filing fee is not paid.

(h) Electronic Service by the Appellate Clerk. An appellate clerk may electronically serve documents on a party's attorney of record. An appellate clerk may also electronically serve a self-represented party who has filed Form 5 providing an email address and written consent to electronic service at that email address. Electronic service of documents by the appellate clerk is complete upon transmission.

Petitioner's notes concerning the proposed rule:

Rule 4.2 ["electronic filing"] is new and governs electronic filing in appellate courts. Proposed Rule 4.2 is the companion to proposed Rule 4.1, which concerns paper filing. (See Petitioner's notes concerning proposed Rule 4.1.) Administrative Order 2012-02 requires attorneys to file documents electronically in the Arizona Supreme Court and Division One of the Court of Appeals.

The first sentence of proposed Rule 4.2(a) ["generally"] contains the general requirement to file documents electronically, unless there is an exception in Rule 4.1. The second sentence is drawn from paragraph 5(e) of Administrative Order 2012-02.

Rule 4.2(b) ["portal"] includes a reference to proposed Rule 32. Rule 32 provides website addresses for the electronic filing portals for the Arizona Supreme Court, and for Divisions One and Two of the Arizona Court of Appeals.

Rule 4.2(c) ["format"] includes format requirements for electronically filed documents. Paragraph 5(b) of Administrative Order 2012-02 currently allows text documents to be filed in .pdf, .odt, or .docx format, and proposed Rule 4.2(c) includes these formats. Rule 4.2(c) also includes requirements for notarized documents and exhibits, as specified in Administrative Order 2012-02.

Rule 4.2(d) ["bookmarks"] and Rule 4.2(e) ["hyperlinks"] incorporate the substantive aspects of paragraph 5(b) of Administrative Order 2012-02, but the language has been modified to enhance clarity. The rule also includes generic definitions of these two terms.

Rule 4.2(f) ["signature and authorization"] is adapted from paragraph 5(a) of Administrative Order 2012-02.

Rule 4.2(g) ["time of filing"] derives from paragraph 5(d) of Administrative Order 2012-02.

Rule 4.2(h) ["electronic service by the clerk"] is a combination of paragraph 5(d) of Administrative Order 2012-02, and the last sentence of current Rule 4(b). The appellate clerk may serve a self-represented litigant electronically, but only after the self-represented litigant files a written consent with the appellate clerk using Form 5.

Rule 5. Computation; Shortening or Extension of Time.

(a) Computation of Time. In computing any period of time prescribed by these rules, or by an order of court, or by any applicable statute, the provisions of Ariz. Rules Civ. Proc. 6(a) and (e), or Ariz. Rules Fam. L. Proc. 4(A) and (D), shall apply.

(b) Shortening or Extension of Time. The time for doing any of the acts provided for in these rules, by order of the court, or by any applicable statute, may be shortened or extended by the court upon stipulation or upon motion, for good cause shown, but the court may not shorten or extend the time for filing a notice of appeal.

Rule 5. Computing and Modifying Deadlines

(a) Computing Time. Rules 6(a) and 6(e) of the Arizona Rules of Civil Procedure govern the computation of any time period set by these Rules, a court order, or statute.

(b) Modifying Deadlines. A party seeking modification of a deadline in the appellate court must obtain a court order, and an appellate court for good cause may shorten or extend the time for doing any act required by these Rules, a court order, or an applicable statute. But a court may not shorten or extend the time for filing a notice of appeal, except as provided by Rule 9(f).

Comment to Rule 5:

Consistent with Rule 6(e) of the Arizona Rules of Civil Procedure, 5 calendar days are not added to the prescribed time when papers are served, distributed or delivered by the court.

Petitioner's notes concerning the proposed rule:

Rule 5(a) ["computing time"] deletes the current references to Rules 4(A) and 4(D) of the Arizona Rules of Family Law Procedure, which are essentially the same as Arizona Rules of Civil Procedure 6(a) and 6(e). A reference to one set of rules for computing time is sufficient, and will avoid confusion if differences arise in interpreting these two sets of provisions.

The first sentence of Rule 5(b) ["modifying deadlines"] is a revision of the current Rule 5(b) and clarifies that the parties cannot agree to change a date set by the court without the court's approval. This sentence allows a court to modify a deadline, but specifies that the provision applies to appellate courts and deadlines in appellate courts.

The second sentence of Rule 5(b) is based on the current rule but adds a specific reference to Rule 9(f), which is a provision that allows the superior court under limited circumstances to extend the time for filing a notice of appeal.

The comment is based on a comment to current Rule 5.

Rule 6. Motions

(a)(1) Content of Motions; Response; Reply. An application for an order or other relief shall be made by filing a motion. The motion shall contain or be accompanied by any matter required by a specific provision of these rules governing such a motion, shall state with particularity the grounds on which it is based, and shall set forth the order or relief sought. Any party may file a response to a motion within 10 days after service of the motion. The moving party may file a reply memorandum within 5 days after service of the response. The reply shall be confined strictly to rebuttal of points urged in the response to the motion.

(a)(2) Motion Papers Requiring Supporting Affidavits or Other Evidence. Motion papers which rely on facts not apparent in the record, and of which the court cannot take judicial notice, shall be supported by affidavit or other satisfactory evidence.

(b) Motions for Procedural Orders. Notwithstanding the provisions of the preceding subdivision, motions for procedural orders may be acted upon at any time, without awaiting a response thereto. Any such motion must contain an affidavit containing the following:

1. The reason why the motion constitutes a motion for procedural order and can be acted upon without a response; and

2. A description of all efforts to secure a stipulation from adverse counsel and the reasons why the stipulation could not be obtained.

A single judge or justice of the appellate court may grant a motion for a procedural order without awaiting a response thereto. The action of a single judge or justice may be reviewed by the appellate court, upon its own motion.

Any party adversely affected by the granting of a procedural order may file a motion requesting rehearing, vacation or modification of the order.

(c) Form of Motion Papers. All papers relating to motions may be produced by any process that results in a clear black image on white paper, including typing, printing, or photocopying. The paper must be white, opaque and unglazed, and only one side of the paper may be used. Motion papers shall be on paper 8 1/2 by 11 inches and shall contain a caption setting forth the name of the court, the title of the case, the case number and a brief descriptive title. Text shall be double-spaced; headings, quotations and footnotes may be indented and single-spaced. Either a proportionately spaced typeface of 14 points or more, or a monospaced typeface of no more than 10 1/2 characters per inch, shall be used for text, quotations, and footnotes. A proportionately spaced typeface has characters with different widths (e.g., an acceptable proportionately spaced typeface is Times New Roman, 14 point). A monospaced typeface has characters with the same advanced width (e.g., an acceptable monospaced typeface is Courier New, 12 point). All margins must be at least 1 inch. Page numbers shall be placed in the bottom margin, but no text or footnotes may appear there. Text shall be in roman, non-script text, although italics, underline, or bold may be used for emphasis. Case names and signals shall be underlined or in italics.

Headings shall be underlined, in italics, or in bold.

(d) Oral Argument. Motions shall be considered and decided without oral argument unless otherwise ordered.

Rule 6. Motions

(a) Generally. A party may apply for an order or other relief by filing a motion. The motion must be in the form required by Rule 5. A motion must state with particularity the basis for any requested order or other relief. Any party may file a response to a motion within 10 days after service of the motion. The moving party may file a reply memorandum within 5 days after service of a response. The reply must be strictly confined to the rebuttal of points made in the response. An affidavit, declaration or other satisfactory evidence must support a motion stating facts that are not in the record, or of which the appellate court may not take judicial notice.

(b) Motions for Procedural Orders.

(1) Availability and Content. A motion for a procedural order is one that does not substantially affect the rights of the parties or the ultimate disposition of the appeal. An appellate 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.

(2) Granting Motion and Later Review. A single judge of the appellate court may grant a motion for a procedural order. An appellate court may also authorize its clerk to act on specified types of procedural motions. A party adversely affected by the grant of a procedural motion may file a motion within 15 days of the entry of the order requesting rehearing, vacation or modification of the order. An appellate court on its own motion may review any action of a single judge or appellate clerk on a procedural motion.

Petitioner's notes concerning the proposed rule:

Rule 6 ["motions"] incorporates most of the requirements of current Rule 6 ["motions"], but the rule has been restyled.

Rule 6(a) ["generally"] adopts the principles of current Rule 6(a). Proposed Rule 6(a) consolidates paragraphs (1) and (2) of current Rule 6(a).

Rule 6(b) ["motion for procedural orders"] separates the requirements of current Rule 6(b) into two paragraphs with subheadings ["availability and content" and "granting motion and later review"]. This rule was the subject of considerable discussion. As noted by one commentator, every motion is in some sense a request for a "procedural order." Current Rule 6 does not explain what constitutes a procedural order. To correct that omission, the proposed rule includes an explanation that now appears within the comment to the current rule; that explanation, in turn, derives from an advisory committee's note to Federal Rule of Appellate Procedure 27, which uses the term "to describe motions which do not substantially affect the rights of the parties or the ultimate disposition of the appeal."

Rule 6(b) eliminates the requirements that a procedural motion be supported by an affidavit and that it specify the "efforts to secure a stipulation from adverse counsel." The most common procedural motion is one for an initial extension of time. As these motions are routinely granted, there appears to be minimal need for these requirements.

Rule 6(b) allows a procedural motion to be granted by a single appellate judge and permits an appellate court to authorize its clerk to act on specified types of procedural motions.

Note:

Proposed Rule 6 dispenses with current Rule 6(c) ["form of motion papers"] because the applicable requirements pertaining to form are included in proposed Rule 4.

Rule 7. Stay of Proceedings to Enforce a Judgment

(a) Stay Upon Appeal; Supersedeas Bond.

(1) *Filing the Bond*. Except in cases involving custody of children, whenever an appellant entitled thereto desires a stay on appeal, he may obtain a stay by filing a supersedeas bond in the superior court in accordance with any applicable statute and these rules. The bond may be filed before or after the filing of the notice of appeal. The amount of the bond may be determined upon stipulation or upon motion. A hearing on such motion shall be held forthwith. The court may make any further order, other than or in addition to the bond, appropriate to preserve the status quo or the effectiveness of the judgment. The stay is effective when the supersedeas bond, as stipulated or as ordered by the court, is filed, and when the appellant has complied with all other conditions imposed by the court.

The superior court, in its discretion, may determine the amount of the bond ex parte upon submission to the court of an affidavit stating:

(A) that appellant has made a good faith attempt to obtain a stipulation from the other parties; and

(B) the efforts, if any, which have been made to give notice, and the reasons why it is not feasible under the circumstances to give the other parties the opportunity to be heard before the setting of the bond.

(2) *Amount of the Bond*. The amount of the bond shall be set as the lesser of the following:

(A) The total amount of damages awarded, excluding punitive damages;

(B) Fifty per cent of the appellant's net worth;

(C) Twenty-five million dollars.

Notwithstanding the foregoing, the court may require an appellant to post a bond in an amount up to the full amount of the judgment if an appellee proves by clear and convincing evidence that the appellant is intentionally dissipating assets outside the ordinary course of business to avoid payment of a judgment. The trial court may also lower the bond amount to an amount that will not cause an appellant substantial economic harm if the appellant proves by clear and convincing evidence that the appellant is likely to suffer substantial economic harm if required to post a bond in the amount set pursuant to the provisions of (A), (B), or (C) above. In determining the amount of the bond, the court may consider whether there is other security for the judgment, or whether there is property in controversy which is in the custody of the sheriff or the court.

(3) *Objections to the Bond*. Not later than 10 days after the bond is served, any party may file objections to the bond, specifying the particulars in which it is claimed that the bond is erroneous or defective, or that the surety is insufficient. If the amount of the bond has been determined ex

parte, then the party may also object to the sufficiency of the amount of the bond. All errors, defects, or insufficiencies in a supersedeas bond not specified in the objections are waived. The superior court shall hold a hearing within 10 days after service of the objections.

(b) Effect of Stay. When a supersedeas bond, as stipulated or as ordered by the court, is filed, and all other conditions imposed by the court have been complied with, the execution of the judgment appealed from and all further proceedings thereon shall be stayed, except the provisions of any order or judgment establishing or changing the custody of children. If execution has been issued, the clerk shall forthwith give notice to the sheriff recalling the execution, and no further proceedings shall be had on the judgment. If a judgment lien has been obtained, the lien shall be released.

(c) Power of Appellate Court Not Limited. The provisions of Rule 7 do not limit any power of the appellate court or of a judge or justice thereof to stay proceedings during the pendency of an appeal, or to suspend, modify, restore, or grant an injunction during the pendency of an appeal, or to make any order appropriate to preserve the status quo or the effectiveness of the decision subsequently to be entered. However, an application for an order pursuant to this rule must be made in the first instance in the superior court.

(d) Judgment Against Surety. By entering into a supersedeas bond given pursuant to this rule, the surety submits himself to the jurisdiction of the superior court and irrevocably appoints the clerk of that court as his agent upon whom any papers affecting his liability on the bond may be served. His liability may be enforced on motion without the necessity of an independent action. The motion and such notice of the motion as the superior court prescribes may be served on the clerk of that court who shall forthwith mail copies to the surety if his address is known.

Rule 7. Stay of Proceedings to Enforce a Judgment

(a) Supersedeas Bond. A supersedeas bond is a bond filed in the superior court, as provided by this Rule and by applicable statutes, which stays enforcement of, or execution upon, a judgment while an appeal is pending. The appellant may file a supersedeas bond before or after filing a notice of appeal. An appellant may not obtain a supersedeas bond in a case involving the custody of children, or the payment of spousal maintenance or child support.

> **(1) Setting the Bond by Stipulation or Motion.** The amount of the bond may be determined by stipulation or motion. Filing a motion under this Rule temporarily stays enforcement of, or execution on, the judgment, with the same effect as described in Rule 7(b), until the superior court has set the bond amount and provided appropriate time for posting the bond. The superior court will promptly hold a hearing on a motion. The superior court may enter any further order, in lieu of or in addition to the bond, which may be appropriate to preserve the status quo or the effectiveness of the judgment.
>
> **(2) Setting the Amount of the Bond Ex Parte.** The superior court may determine the amount of the bond ex parte if the appellant submits a motion with an affidavit:

(A) Stating that the appellant has made a good faith attempt to obtain a stipulation from the other parties; and

(B) Describing the appellant's efforts, if any, to give notice, or the reasons why it is not feasible under the circumstances to give the other parties an opportunity to be heard before the setting of bond.

(3) Amount of the Bond. The amount of the bond must be the lowest of the following:

(A) The total amount of damages awarded, excluding punitive damages;

(B) Fifty per cent of the appellant's net worth; or

(C) Twenty-five million dollars.

The appellant must prove net worth by a preponderance of the evidence.

(**4) Exceptions.**

(A) Notwithstanding Rule 7(a)(3), the superior court may require an appellant to post a bond in an amount up to the full amount of the judgment if an appellee proves by clear and convincing evidence that the appellant is intentionally dissipating assets outside the ordinary course of business to avoid payment of a judgment.

(B) The superior court also may lower the bond amount to an amount that will not cause an appellant substantial economic harm if the appellant proves by clear and convincing evidence that the appellant is likely to suffer substantial economic harm if required to post a bond in the amount set under Rule 7(a)(3).

(C) In determining the amount of the bond, the superior court may consider whether there is other security for the judgment, or whether the sheriff or the court has custody of any property in controversy.

(5) Objections to the Bond. Any party may file objections within 10 days after the appellant serves notice of the bond, specifying reasons why the bond is erroneous or defective, or why the surety is unqualified. If the court made an ex parte determination of the bond amount, a party other than the appellant also may object to the sufficiency of the amount. A party waives any errors, defects, or insufficiencies in a supersedeas bond that are not timely specified in the objection. The superior court will hold a hearing within 10 days after service of objections.

(6) Notice of Filing. The superior court clerk will serve a notice on all other parties if the appellant files a supersedeas bond.

(b) Effect of a Stay. If an appellant files a supersedeas bond as stipulated or as ordered by the superior court, and if the appellant has complied with all other conditions imposed by the superior court, then this Rule automatically stays enforcement of, and execution on, the judgment and all proceedings related to the execution on the judgment. If the superior court has already issued execution upon the judgment, the superior court clerk will promptly give notice to the sheriff and will recall the execution, and there may not be any further execution on the judgment pending the appeal's resolution. If another party has recorded a judgment lien before the filing of a supersedeas bond, that party must record a release of the lien.

(c) Power of an Appellate Court to Enter a Stay. This Rule does not limit the power of an appellate court, or of an appellate judge or a justice, to stay proceedings during the pendency of an appeal. An appellate court or an appellate judge or justice may suspend, modify, restore, or grant an injunction during the pendency of an appeal; may enter any order appropriate to preserve the status quo; or may enter any order to preserve the effectiveness of the decision that the appellate court will enter. A party requesting an order under this Rule, however, must first request the order in the superior court.

(d) Judgment Against a Surety. A surety who provides a supersedeas bond under this Rule submits to the jurisdiction of the superior court. The surety irrevocably appoints the superior court clerk as the surety's agent on whom a party may serve any papers affecting the surety's liability on the bond. A party may enforce the surety's liability by motion and is not required to file an independent action against the surety. The party seeking enforcement must serve the superior court clerk with the motion and any notice of the motion required by the superior court, and the clerk must then promptly mail or otherwise deliver copies to the surety if the clerk knows the surety's address.

Petitioner's notes concerning the proposed rule:

Proposed Rule 7 ["stay of proceedings to enforce a judgment"] restyles the language of the current rule.

Rule 7(a) adds a description of a supersedeas bond (a bond "which stays enforcement of, or execution upon, a judgment while an appeal is pending.") Current Rule 7(a) excepts "cases involving custody of children." The proposed rule also excepts cases involving "the payment of spousal maintenance or child support." See A.R.S. § 25-325(A).

Rule 7(a)(1) provides that the filing of a motion under this rule temporarily stays enforcement of, or execution on, the judgment until the superior court has set the bond amount and provided the deadline for posting the bond. This provision intends to preserve the status quo pending the trial court's determination of the bond amount, and to allow appellant a reasonable time to post the bond after the court has set the amount.

Other provisions in Rule 7(a) are required by A.R.S. § 12-2108. Also noteworthy is that Rule 7(a)(3) includes a previously omitted provision by specifying that an appellant must prove net worth by a preponderance of the evidence. See a memorandum decision, *Stueber v Slayton*, 1 CA SA 13-0090, 5/21/13.

Rule 8. Appeal--How Taken

(a) Filing the Notice of Appeal. An appeal or cross-appeal permitted by law from a superior court to an appellate court shall be taken by filing a notice of appeal with the clerk of the superior court within the time allowed by Rule 9. If required by the appellate court division, an appellant shall file a civil appeals docketing statement in the superior court not later than 10 days after filing the notice of appeal. Failure of an appellant to take any step other than the timely filing of a notice of appeal does not affect the validity of the appeal, but is a ground only for such action as the appellate court deems appropriate, which may include dismissal of the appeal.

(b) Joint or Consolidated Appeals. If two or more persons are entitled to appeal from a judgment or order of the superior court and their interests are such as to make joinder practicable, they may file a joint notice of appeal, or may join in appeal after filing separate timely notices of appeal, and they may thereafter proceed on appeal as a single appellant. Appeals may be consolidated by order of the appellate court upon its own motion or upon motion of a party, or by stipulation of the parties to the several appeals.

(c) Content of the Notice of Appeal. The notice of appeal shall specify the party or parties taking the appeal, shall designate the judgment or part thereof appealed from, and shall name the court to which the appeal is taken.

(d) Service of the Notice of Appeal. The clerk of the superior court with whom the notice of appeal is filed, shall serve a copy of the notice of appeal upon all other parties. The clerk shall note on each copy served the date on which the notice of appeal was filed, and shall note in the civil docket the names of the parties served, and the date and manner of service. Service shall be sufficient notwithstanding the death of a party or his counsel.

(e) Forms for Notice of Appeal. The notice shall state the title of the court and of the action, shall be signed by the attorney, or, if the party is not represented by an attorney, then by the party, and shall be in substantially the form as provided in the appendix.

Rule 8. Appeal and Cross-Appeal – How Taken

(a) Filing a Notice of Appeal. A party to a judgment of the superior court may take an appeal by filing a notice of appeal with the clerk of the superior court that entered the judgment. The party must file the notice of appeal within the time provided by Rule 9(a).

(b) Filing a Notice of Cross-Appeal. A party to a judgment of the superior court may take a cross-appeal by filing a notice of cross-appeal with the clerk of the superior court that entered the judgment, but must do so within the time provided by Rule 9(b).

(c) Content of the Notice of Appeal or Cross-Appeal. The notice of appeal or cross-appeal must:

(1) Include the caption of the case, with the superior court case number;

(2) Identify the party or parties taking the appeal;

(3) Designate the judgment or portion of the judgment from which the party is appealing;

(4) Identify the court to which the party is appealing; and

(5) Be signed by the attorney for the party who is taking the appeal, or by the party if the party has no attorney.

Form 1 is a form for the notice of appeal or notice of cross-appeal.

(d) Payment of Filing Fee. An appealing party must pay the required statutory filing fee to the superior court clerk when filing a notice of appeal or a notice of cross-appeal, unless the party is exempt or a superior court judge has waived or deferred the fee.

(e) Judgment for Jury Fees. A notice of appeal from an appealable judgment also is an appeal from any related judgment for jury fees, regardless of whether the notice designates the judgment for jury fees.

(f) Joint or Consolidated Appeals or Cross-Appeals. Two or more parties may join in an appeal or cross-appeal from a judgment if they have similar interests and a joinder is practicable. They may join in an appeal or cross-appeal by filing a joint notice of appeal, and they may then proceed as a single appellant. On its own or upon motion or stipulation, an appellate court also may consolidate multiple appeals.

(g) Superior Court Clerk's Service of a Notice of Appeal or Cross-Appeal. Upon the filing of a notice of appeal or cross-appeal, the superior court clerk must promptly serve a copy of the notice on every party to the superior court judgment. The clerk's notice of service must include the filing date of the notice of appeal or cross-appeal, the names of the parties served with the clerk's notice, and the date and manner of service. The death of a party or of an attorney for a party will not affect the sufficiency of service of the clerk's notice.

(h) Appellate Court Jurisdiction. Failure of an appellant to perform an act other than timely filing a notice of appeal does not affect the appellate court's jurisdiction, but the failure may be grounds for other appropriate appellate court action, including dismissal of the appeal.

Petitioner's notes concerning the proposed rule:

Rule 8 adds "and cross-appeal" to the title of the rule.

Rule 8(a) ["filing a notice of appeal"] modifies the existing Rule 8(a) by referring only to appeals and not to cross-appeals. A new Rule 8(b) sets out the procedures for filing a cross-appeal. The second sentence of current Rule 8(a), which refers to a "docketing statement," is deleted. Proposed Rule 12 sets forth the requirements for a "case management statement," which is the equivalent of a "docketing statement." The third sentence of current Rule 8(a) is now restyled as

proposed Rule 8(h).

Rule 8(b) ["filing a notice of cross-appeal"] is new. It addresses the taking of a cross-appeal separately from the taking of an appeal under proposed Rule 8(a).

Rule 8(c) ["content of the notice of appeal or cross-appeal"] incorporates the requirements of current Rule 8(c) ["content of the notice of appeal"]. It restyles these requirements and sets out the requirements as a numerical list. The last part of the rule includes a reference to a form for a notice of appeal or cross-appeal, which currently appears in Rule 8(e).

Rule 8(d) ["payment of filing fee"] is new. It is intended to advise self-represented litigants and attorneys who infrequently file appeals that a fee generally must be paid to file a notice of appeal.

Rule 8(e) ["judgment for jury fees"] is the restyled version of current Rule 9(c) ["judgment for jury fees].

Rule 8(f) ["joint or consolidated appeals or cross-appeals"] is a restyling of current Rule 8(b) ["joint or consolidated appeals"]. The difference in the title of the proposed rule clarifies that the rule applies to cross-appeals as well as to appeals.

Rule 8(g) ["superior court clerk's service of the notice of appeal"] is based on current Rule 8(c) ["service of the notice of appeal"]. The proposed rule, however, provides that the clerk serves the notice "on every party to the superior court judgment;" in contrast, the existing rule requires service "upon all other parties" (which could be interpreted to include parties who did not appear, or who were defaulted, in the underlying action).

Rule 8(h) ["appellate court jurisdiction"] is based on the last sentence of existing Rule 8(a) concerning the "validity of an appeal". The proposed provision, however, refers to "jurisdiction" rather than the less clearly understood term "validity."

Rule 8.1. Appeals in Expedited Election Matters
Rule 8.1 is moved and renumbered as Rule 10, *infra.*

Rule 9. Appeal--When Taken

(a) Time; Personal Representatives; Cross-Appeal. A notice of appeal required by Rule 8 shall be filed with the clerk of the superior court not later than 30 days after the entry of the judgment from which the appeal is taken, unless a different time is provided by law. If the court finds that (1) a party entitled to notice of entry of judgment did not receive such notice from the clerk or any party within 21 days of its entry and (2) no party would be prejudiced, the court may upon motion filed not later than 30 days after the expiration of the time for appeal, or within 7 days of receipt of such notice, whichever is earlier, extend the time for appeal for a period not to exceed 14 days from the date of the order granting the motion. If a party dies during the time he is entitled to take an appeal, the appeal may be taken by his personal representative within 90 days after the death of the party. A notice of cross-appeal may be filed by an opposing party within 20 days from the date the notice of appeal is filed.

(b) Extension of Appeal Time.

(1) When any of the following motions are timely filed by any party, the time for appeal for all parties is extended, and the times set forth in Rule 9(a) shall be computed from the entry of any of the following orders:

(A) Granting or denying a motion for judgment as a matter of law pursuant to Arizona Rules of Civil Procedure 50(b);

(B) Granting or denying a motion to amend or make additional findings of fact pursuant to Arizona Rules of Civil Procedure 52(b) or Arizona Rules of Family Law Procedure 82(B), whether or not granting the motion would alter the judgment.

(C) Granting or denying a motion to alter or amend the judgment pursuant to Arizona Rules of Civil Procedure 59(1) or Arizona Rules of Family Law Procedure 84;

(D) Denying a motion for new trial pursuant to Arizona Rules of Civil Procedure 59(a) or Arizona Rules of Family Law Procedure 83(A).

(2)(A) If more than one of the foregoing motions is timely filed, the expiration of the time for appeal is to be computed from the entry of the order which disposes of the last remaining motion. When a motion to amend or make additional findings of fact is granted, the time does not start to run until the amendment or addition has been accomplished by court order. The same applies also to the granting of a motion to alter or amend the judgment. For the purposes of this subdivision, entry of an order occurs when a signed written order is filed with the clerk of the superior court.

(B) A notice of appeal filed after the court announces a decision or order--but before the entry of the judgment or order--is treated as filed on the date of and after the entry of the judgment or order. If a notice of appeal is filed before the timely filing of one of the foregoing motions or during the pendency of such a motion, the appellant shall notify the appellate court and the

appeal shall be suspended until the motion is decided. The appellant shall notify the appellate court when all such motions have been decided, and the notice of appeal shall be reinstated as of the date of the entry of the order disposing of the last remaining motion. A party intending to appeal a decision made by the lower court after the filing of a notice of appeal must file an amended notice of appeal in compliance with Rule 8 within the time prescribed by this rule measured from the entry of the order disposing of the last such remaining motion.

(c) Judgments for Jury Fees. A timely notice of appeal from an appealable judgment or order shall also be a timely appeal from any related judgment for jury fees, regardless of whether the notice designates the judgment for jury fees.

Rule 9. Appeal and Cross-Appeal – When Taken

(a) Time for Filing a Notice of Appeal. To appeal a judgment a party must file a notice of appeal under Rule 8 no later than 30 days after the entry of the judgment from which the appeal is taken, except as provided in this Rule 9 or unless the law provides a different time.

(b) Time for Filing a Notice of Cross-Appeal. To cross-appeal a judgment a party must file a notice of cross-appeal under Rule 8 no later than 20 days after appellant's filing of a notice of appeal.

(c) Filing Before Entry of Judgment. A notice of appeal filed after the superior court announces a decision or order—but before the entry of the judgment or order—is treated as filed on the date of and after the entry of the judgment or order.

(d) Extension of Time on Death of a Party. If a party dies during the time the party is entitled to take an appeal, the party's personal representative may file a notice of appeal within 90 days after the party's death.

(e) Effect of Post-Judgment Motion on Notice of Appeal; Amended Notice of Appeal

(1) If a party timely files in the superior court any of the following motions, the time to file an appeal for all parties begins to run from the filing of a signed written order with the superior court clerk disposing of the last such remaining motion:

(A) For judgment under Rule 50(b) of the Arizona Rules of Civil Procedure;

(B) To amend or make additional factual findings under Rule 52(b) of the Arizona Rules of Civil Procedure or Rule 82(B) of the Arizona Rules of Family Law Procedure, whether or not granting the motion would alter the judgment;

(C) To alter or amend the judgment under Rule 59(l) of the Arizona Rules of Civil Procedure or Rule 84 of the Arizona Rules of Family Law Procedure;

(D) Denying a motion for new trial under Rule 59(a) of the Arizona Rules of

Civil Procedure 59(a) or Rule 83(A) of the Arizona Rules of Family Law Procedure; or

(E) For relief under Rule 60 of the Arizona Rules of Civil Procedure or Rule 85 of the Arizona Rules of Family Law Procedure, if the motion is filed no later than 15 days after entry of the judgment.

(2) If a party files notice of appeal before the timely filing of one of the motions identified in Rule 9(e) or if a notice of appeal is filed during the pendency of such a motion, the appellant must notify the appellate court and the appeal will be suspended until the motion is decided. The appellant must notify the appellate court when all such motions have been decided, and the notice of appeal will be reinstated as of the date of the entry of the order disposing of the last remaining motion.

(3) A party intending to appeal an order entered by the superior court after the filing of a notice of appeal must file a notice of appeal or an amended notice of appeal under Rule 8 within the time prescribed by Rule 9, measured from the entry of the order disposing of the last such remaining motion.

(f) Reopening the Time to File an Appeal for Lack of Notice of Entry of Judgment. The superior court may reopen the time for filing a notice of appeal for a period of 14 days after the date when its order to reopen is entered, but only if all of the following conditions are satisfied:

(1) The court finds that the moving party did not receive notice under Rule 58(e) of the Arizona Rules of Civil Procedure of the entry of judgment or order sought to be appealed within 21 days after entry;

(2) The motion is filed within 30 days after the expiration of the time for appeal, or within 7 days of receipt of the notice, whichever is earlier; and

(3) The court finds that no party would be prejudiced.

Petitioner's notes concerning the proposed rule:

Rule 9 adds "and cross-appeal" to the rule's title.

Rule 9(a) ["time for filing a notice of appeal"] has a different title than current Rule 9(a). First, the title adds words to highlight that this rule concerns the time for filing a notice of appeal. Second, the title removes the words "personal representatives" because that subject is now covered in Rule 9(d). Third, the title removes the words "cross-appeal" because the time for a filing a cross appeal is set forth in Rule 9(b). The first sentence of current Rule 9(a) is restyled, and focuses solely on the timing for filing a notice of appeal.

Rule 9(b) ["time for filing a notice of cross-appeal"] is a new rule derived from the last sentence of current Rule 9(a), and helps highlight the different deadline for filing a notice of cross-appeal.

Rule 9(c) ["filing before entry of judgment"] incorporates the first sentence of current Rule

9(b)(2)(B). Separating Rule 9(b)(2)(B) into its own section permits a descriptive title to be added, which introduces the rule's subject matter and makes it easier for a reader to readily find this provision.

Rule 9(d) ["extension of time upon death of a party"] is a restyling of the third sentence of current Rule 9(a).

Rule 9(e) ["extension of time upon filing a post-judgment motion"] is a restyling of current Rule 9(b). However, paragraph (2)(B) of Rule 9(b) is set out separately in Rule 9(c).

Rule 9(e) adds a new motion not included in the current rule: a motion for relief under Rule 60 of the Arizona Rules of Civil Procedure (and its equivalent, Rule 85 of the Arizona Rules of Family Law Procedure), provided that the motion is filed no later than 15 days after entry of the judgment.

Rule 9(f) ["reopening of the time to file an appeal for lack of notice of entry of judgment"] is a restyling of the second sentence of current Rule 9(a).

Rule 9.1. Suspension of Appeal and Revestment of Jurisdiction in the Superior Court

The appellate court may, upon its own initiative or upon stipulation or motion for good cause shown, suspend the appeal and revest jurisdiction in the superior court for the purpose of allowing it to consider and determine specified matters. The appellate court's order may include other terms and conditions, such as a date certain for automatic reinstatement of the appeal. The filing of a stipulation or motion under this rule does not extend any deadline in the appellate court or superior court.

Rule 9.1 is moved and renumbered as Rule 3(b), *supra.*

Rule 10. Bond For Costs on Appeal

(a) Amount; Form; Notice of Filing; Service. Unless an appellant or cross-appellant is exempted by law, or has filed a supersedeas bond or other undertaking which includes security for the payment of costs on appeal, a bond for costs on appeal shall be filed in the superior court with the notice of appeal. As used in this rule, "bond for costs on appeal" includes cash or surety bond. The bond shall be in the sum or value of $500.00 unless the superior court fixes a different amount. A bond for costs on appeal shall have sufficient surety, and it shall be conditioned to secure the payment of costs if the appeal is finally dismissed or the judgment affirmed, or of such costs as the appellate court may direct if the judgment is modified. If a bond in the sum or value of $500.00 is given, no approval thereof is necessary. Notice of filing the bond shall be served by the clerk of the superior court on all other parties.

(b) Objections. Not later than 10 days after the service of the bond, any other party may file objections to the bond, specifying the particulars in which it is claimed that the bond is erroneous, defective, or insufficient, or that the surety is insufficient. All errors, defects, or insufficiencies in a bond for costs on appeal not specified in the motion are waived.

The superior court shall hold a hearing on the objections within 10 days thereafter. If the superior court sustains the objections in whole or in part, the appellant shall file, within 10 days thereafter, a new bond which complies in all respects with the court's order.

(c) Affidavit in Lieu of Bond. If a party is unable to file a bond for costs on appeal, he shall file with the notice of appeal an affidavit stating that he is unable to give bond for costs on appeal and the reasons therefor. Within 10 days after the filing of the affidavit, any other party may file, in superior court, objections to the affidavit. The superior court shall hold a hearing on the affidavit and objections within 10 days thereafter. If the superior court sustains the objections the appellant shall file, within 10 days thereafter, a bond for costs on appeal as required by Rule 10(a), or in such lesser amount as ordered by the court.

(d) Exemptions. No bond shall be required for an appeal taken by the state, or a state board or commission, or by a county, school district, city, or town, or by an officer of any of the foregoing acting in his official capacity.

(e) Bond or Affidavit as Not Suspending Judgment. A cost bond or affidavit provided for in subdivisions (a) and (c) of this rule shall not suspend the judgment, but execution may issue thereon as if no appeal had been taken.

(f) Waiver of Bond for Costs on Appeal. The parties may, by stipulation filed with the clerk of the superior court, waive giving a bond for costs on appeal.

(g) Judgment Against Surety. The provisions of Rule 7(d) apply to the surety on a bond for costs on appeal given pursuant to this rule.

Rule 10 has been deleted.

Petitioner's notes concerning the proposed rule:

The proposed rules delete current Rule 10, which requires the appellant, unless exempted, to post a $500 bond for costs on appeal at the time of filing a notice of appeal. Some feel that the cost bond requirement imposes an unfair burden on appellants with limited financial resources, such as self-represented litigants in domestic relations cases. Others believe that taxable costs on appeal are usually a modest amount, and that most civil appellants can pay those costs without the need for a cost bond.

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.

Rule 10. 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 this Rule, or to the extent that this Rule does not expressly vary those other provisions.

(b) Filing a Notice of Appeal in the Superior Court. A party may appeal only from a signed

final order of a superior court judge, but a party may file a notice of appeal as provided in Rule 9(c). To appeal a judgment a party must file a notice of appeal of that judge's final order within the accelerated time provided by the applicable statute. The party must file the notice of appeal in the superior court in the county in which the proceeding occurred, and the notice must contain all of the information required by Rule 8(c).

(c) Filing a Copy of the Notice of Appeal with the Appellate Court. Within one business day after filing the notice of appeal in the superior court, the appellant must file with the appellate clerk:

> **(1)** A copy of the notice of appeal containing the stamped 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 self-represented litigants; and
>
> **(3)** A copy of the superior court's final order that the appellant is appealing.

If a case originates outside the county in which the appellate clerk's office is located, an appellant who is filing in paper pursuant to Rule 4.1 may satisfy this requirement by sending these documents by facsimile or electronic mail to the appellate clerk; and by filing a paper copy of the documents with the appellate clerk not later than the second business day after filing the notice of appeal.

(d) Filing in the Appellate Court. A party must appeal an expedited election case involving candidate nomination petitions directly to the Supreme Court. A party may appeal an expedited election case involving initiative and referendum directly to the Supreme Court if the issue on appeal is of substantial statewide importance, and if the issue would become moot before Supreme Court review if the party did not appeal directly to the Supreme Court. A party must appeal to the Court of Appeals any expedited election case involving recalls; county, city, or town initiatives or referenda; and appeals involving statewide initiatives and referenda that do not meet the criteria for appealing directly to the Supreme Court.

(e) Fees. The appellant must pay a docketing fee to the appellate clerk when filing a copy of the notice of appeal under Rule 10(c). If the case originates outside the county in which the appellate court is located, an appellant who is filing in paper pursuant to Rule 4.1 may pay the docketing fee when the appellant transmits the paper copy under Rule 10(c). The appellee must pay any required fees upon the appellee's first appearance in the appellate court.

(f) Preparation of Record on Appeal. The superior court clerk must prepare an index of the record and transmit it to the appellate court within 5 business days of the filing date of the notice of appeal.

The appellant must promptly ask the court reporter to expedite the preparation of any transcripts

necessary for determination of the appeal. No later than one business day after filing the notice of appeal, the appellant must notify the appellee of the parts of the transcript that the appellant intends to include in the record. If the appellee considers a transcript of other parts of the proceedings to be necessary, the appellee must 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 provisions here, the parties may agree on a stipulated record and submit copies of the stipulated record to the appellate court.

(g) Scheduling Conference. Simultaneously with filing the copy of the notice of appeal in the appellate court as required by Rule 10(c), the appellant must file a written request that the appellate court set an initial telephonic scheduling conference to determine the schedule for the expedited proceedings. The parties must be prepared to address the following topics at the initial scheduling conference:

(1) Any pending deadlines that might affect the schedule for briefing and disposition of the appeal, such as the deadline for printing ballots or a publicity pamphlet, or the date of the election;

(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 the parties' briefs;

(6) The format of pleadings and documents that the parties may file on appeal, including proposed word limits and whether briefing should be in the form prescribed by Rule 15; and

(7) Whether the court should schedule oral argument.

(h) Electronic Filing and Service Requirement. Parties to an expedited election appeal are required to file documents electronically, as provided by Rule 4.2, unless the party has an exception for filing a paper document under Rule 4.1. A party who serves documents on another party by mail in an expedited election appeal must also serve the documents 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 must be by hand delivery or as the appellate court otherwise directs.

(i) Motion for Reconsideration. A party who seeks reconsideration of an appellate court decision in any election matter under this Rule must file a motion for reconsideration within 5 calendar days after the filing of the decision.

(j) Petition for Review.

(1) Deadline for Filing. To file a petition for review in any election matter governed by this Rule, a party must file a petition with the Supreme Court clerk within 10 calendar days after either the filing of a decision, or the date of a notice of determination by the Court of Appeals of a motion for reconsideration.

(2) Cross-petition. A party may file a cross-petition for review with the Supreme Court clerk within 10 calendar days after service of a petition for review. The petitioner or cross-petitioner must serve a copy of the petition or cross-petition and any appendices on all parties who have appeared in the Court of Appeals.

(3) Response Deadline. Any party's response to a petition or cross-petition for review must be filed within 10 calendar days after service.

(4) Form. The form and content of the petition, cross-petition, and responses shall comply with Rule 23.

(5) Supplemental Briefs; Oral Argument. If the Supreme Court grants review but its order does not provide for filing supplemental briefs or for oral argument, a party may file a request to allow one or both of these within 5 calendar days after the filing date of the order.

(6) Modifying Deadlines. The Supreme Court may extend or shorten these time limits for good cause.

Comment to Rule 10:

(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*, 213 Ariz. 480, 143 P.3d 1021 (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) Appeals in election matters involving a county, city, or town initiative or referendum should be filed in the Court of Appeals. See *Fleischman v. Protect Our City*, 214 Ariz. 406, 407-08 ¶ 7, 153 P.3d 1035, 1036-37 (2007). 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.

Petitioner's notes concerning the proposed rule:

Rule 10, currently Rule 8.1, is re-numbered to fill the gap created by deletion of the cost bond rule. It is modestly restyled. It includes changes to accommodate electronic filing in election appeals, with specified exceptions for paper filers.

Rule 10(b) ["filing a notice of appeal in the superior court"] specifies that the notice of appeal in an expedited election appeal must be filed in the superior court. Although an appeal must be from a signed and final order of a superior court judge, Rule 10(b) allows the "premature" filing of a notice of appeal, as is allowed in other civil appeals under Rule 9(c).

Rule 10(d) ["filing in the appellate court"] clarifies by the use of "must" and "may" the court to which the appeal is taken. Rule 10(d) also avoids use of the word "filed," which is used in the current rule and creates a potential ambiguity concerning the court in which a notice of appeal must be filed.

Rule 10(e) ["fees"] is based on current Rule 8.1(d).

Rule 10(g) ["scheduling conference"] is based on current Rule 8.1(f). The proposed rule clarifies that the initial scheduling conference, consistent with the current practice, is conducted telephonically.

Rule 10(h) ["electronic filing and service requirement"] incorporates the requirements of proposed Rules 4.1 and 4.2. If a party who must be served does not have access to electronic mail or facsimile, the proposed rule requires hand-delivery (compared to "personal service" under the current rule) unless the appellate court directs otherwise.

Rule 10(i) ["motion for reconsideration"] is now separated from the provisions for petitions for review. The rule has been rephrased by deleting "shall," which may suggest that a motion for reconsideration is required in every case.

Rule 10(j) ["petition for review"] has been restyled in a list format.

Rule 10 retains verbatim the comments to current Rule 8.1.

Rule 11. Record on Appeal

(a) Composition of Record on Appeal; Transmission of Record.

(1) The record on appeal to the appellate court shall be the official documents, exhibits, minute entries, and other objects filed with the clerk of the superior court, and a certified transcript or narrative or agreed statement, or if authorized by the appellate court, the electronic recording of the proceeding.

(2) The clerk of the superior court shall number the items comprising the record, and shall transmit to the appellate court, within 40 days from the date of filing the notice of appeal, the index listing the contents of the record and the number thereof, together with copies of the final complaint, any minute entry or order waiving filing fees, the judgment from which the appeal lies, the notice of appeal and notice of any cross-appeal, and any civil appeals docketing statement. Upon request of the clerk of the appellate court, the clerk of the superior court shall transmit copies of any other item. The clerk of the superior court shall also serve a copy of the index upon all parties to the appeal. If an enlargement of time is desired, the appellant obtain an order from the superior court extending the time for transmitting the index to not more than 90 days from the date of filing the appeal if the order for extension is made before the expiration of the period for transmittal as originally prescribed or as extended by previous order. If a certified transcript or electronic recording if authorized by the court is not obtained by the date the appeal is docketed application by the appealing party shall be made to the appellate court for relief.

(3) The clerk of the appellate court shall notify the clerk of the superior court when the final brief on appeal has been filed. Within 15 days from the date of such notice, the clerk of the superior court shall transmit to the appellate court the pleadings, documents, minute entries, and electronic, paper and photographic exhibits of a manageable size filed with the clerk of the superior court, and any narrative or agreed statement.

(4) Either party may include copies of any of the papers making up the record on appeal as an appendix to any of the briefs.

(5) The court, or any party upon motion made to the appellate court, may request the transmission of exhibits not automatically transmitted under Rule 11(a)(3), when such are necessary to the determination of the appeal.

(6) The clerk of superior court, upon complying with Rules 11(a)(3), shall notify the parties to retrieve exhibits not transferred to the appellate court. The parties shall retain these exhibits for safekeeping in the same condition for the duration of the case.

(b) The Certified Transcript; Duty of Appellant to Order; Notice to Appellee if Partial Transcript is Ordered.

(1) No later than 10 days after filing the notice of appeal, the appellant shall order an original and one copy of a certified transcript, if any, of such parts of the proceedings as the appellant deems

necessary for inclusion in the record. If the appellant intends to urge on appeal that a finding or conclusion is unsupported by the evidence or is contrary to the evidence, the appellant shall include in the record a certified transcript of all evidence relevant to such finding or conclusion.

(2) If the proceedings to be transcribed were recorded by a certified court reporter, the appellant shall order the transcript directly from the court reporter.

(3) If the proceedings to be transcribed were electronically recorded and no certified court reporter was present, the appellant shall order the transcript from an authorized transcriber. The appellant shall promptly file with the superior court clerk and serve on the other parties a copy of the designation of record ordered from the transcriber.

(4) All parties to the appeal shall cooperate with the transcriber by providing such information as is necessary to facilitate transcription, including providing the transcriber with a copy of any designation made under subsection (b)(2) of this rule. The court will furnish the transcriber with a copy of the electronic recording to be transcribed upon receipt of a notice from the transcriber that satisfactory financial arrangements have been completed.

(5) Unless the entire certified transcript as limited in subparagraph (8) below is to be included, the appellant shall, within the time above provided, file a description of the parts of the certified transcript which the appellant intends to include in the record and a concise statement of the issues the appellant intends to present on the appeal, a copy of which shall be served by appellant on appellee. If the appellee deems a certified transcript of other parts of the proceedings to be necessary, the appellee shall, within 10 days after the service of the statement of the appellant, file a designation of additional parts to be included. If the appellant refuses to order such parts, the appellant shall, within 5 days, notify the appellee in writing of such refusal. The appellee may either order the parts or apply to the superior court for an order requiring the appellant to do so. At any time prior to submission to the appellate court for decision, a party may apply to the appellate court to include any additional part of the certified transcript.

(6) At the time of ordering, the party ordering must make satisfactory arrangements with the certified court reporter or authorized transcriber for payment of the cost of the certified transcript and file a notice to that effect. Failure or delay in making satisfactory arrangements shall be cause for such sanctions as the superior court deems proper.

(7) Unless otherwise ordered by the Court of Appeals, promptly upon the docketing of the appeal, the appellant shall file the certified transcript with the clerk of the appellate court and shall serve a copy of the certified transcript upon the appellee. Notice of service of the certified transcript shall be filed with the appellate court reflecting when and upon whom service was made. If there is more than one appellee, the appellees shall agree upon and shall promptly inform the appellant of the party upon whom the appellant shall serve the certified transcript copy, and that party shall make the copy available for use by the other appellees.

(8) The certified transcript shall not contain the testimony of jurors touching on their qualifications, any other matters preceding the impaneling of a jury, or the opening statements or

arguments of counsel to the jury, or any part thereof, unless specifically designated by one of the parties to be contained in the certified transcript.

(9) The parties shall not include in the certified transcript any matter not essential to the decision of questions presented by the appeal. For any infraction of this rule, the appellate court may impose sanctions pursuant to Rule 25.

(10) These rules shall apply to the electronic recording if such has been previously authorized by the court in accordance with section (a)(1) of this rule.

(c) Narrative Statement of the Evidence or Proceedings When the Certified Transcript is Unavailable. If a certified transcript is unavailable, the appellant may prepare and file a narrative statement of the evidence or proceedings from the best available means, including the appellant's recollection. The statement shall be filed within 30 days after filing the notice of appeal. The appellee may file objections or proposed amendments thereto within 10 days after service. If the appellant does not file such a statement within the specified time, the appellee may prepare and file such a statement, and the appellant may file objections or proposed amendments thereto within 10 days after service. Thereupon the statement of the appellant or the appellee and any objections or proposed amendments shall be submitted to the superior court for settlement and approval, and as settled and approved shall be transmitted to the appellate court.

(d) Agreed Statements in Lieu of Certified Transcript. In lieu of the certified transcript, the parties may stipulate as to and file an agreed statement, which sets forth such evidence or proceedings as are essential to a decision of the issues presented by the appeal. The agreed statement shall include a statement of the issues the appellant intends to present on the appeal. The agreed statement shall be filed within 30 days after filing the notice of appeal, and shall be submitted to the superior court for settlement and approval. The superior court may make such additions and corrections as it may consider necessary to the issues presented by the appeal. The agreed statement, as corrected and modified, shall thereupon be transmitted to the appellate court.

(e) Correction or Modification of the Record. If any controversy arises as to whether the record discloses what actually occurred in the superior court, the difference shall be submitted to and settled by that court and the record made to conform to the truth. If anything material is omitted from the record by error or accident or is misstated therein, the parties, upon stipulation, or the superior court upon motion (either before or after the record is transmitted to the appellate court), or the appellate court upon motion, may direct that the omission or misstatement be corrected. If appropriate, an amended record shall thereafter be transmitted to the appellate court. All other questions as to the form and content of the record shall be presented to the appellate court.

(f) Several Appeals. When more than one appeal is taken from the same judgment, a single certified transcript (or narrative statement of the evidence or agreed statement) shall be prepared containing all the matter designated or agreed upon by the parties, without duplication.

(g) Certification of Copies of Relevant Portions of Original Record for Preliminary Hearing in the Appellate Court. If prior to the time the record is transmitted, a party desires to urge in the appellate court a motion for dismissal, for a stay pending appeal, for additional security on the bond on appeal or on a supersedeas bond, or for any intermediate order, that party in filing such motion, or any party in responding to such motion, shall attach thereto a copy of those portions of the original record as that party deems relevant. The clerk of the superior court shall attach to said copy a certification stating that the attached portions of the record are accurate copies of the superior court record.

Rule 11. The Record on Appeal

(a) Composition. The record on appeal consists of:

> **(1) The official record,** which includes documents, exhibits, minute entries, transcripts filed prior to the notice of appeal, other items filed with the superior court clerk, and the index prepared under Rule 11.1(a).
>
> **(2) Transcripts or other narratives** of proceedings in the superior court ordered or prepared under this Rule.

(b) Transcript of Oral Proceedings. A transcript of oral proceedings in the superior court may be prepared by a certified court reporter or by an authorized transcriber. A party who wants the record on appeal to include a transcript of oral proceedings that is not already contained within the official record must order the transcript as follows:

> **(1) Certified Transcript.** If a certified court reporter attended a proceeding in the superior court, a party must order a certified transcript of proceedings directly from that reporter.
>
> **(2) Authorized Transcription.** If the superior court created only an audio or audio-video recording of the proceeding, a party must order a certified transcript of proceedings directly from an authorized transcriber. The superior court will furnish the transcriber with a copy of the designated electronic recording upon receipt of a notice from the transcriber that the transcriber has a satisfactory arrangement for payment. All parties to the appeal must cooperate with the transcriber by providing information that is necessary to facilitate transcription.

(c) Appellant's Duty to Order Transcripts.

> **(1) What to Order.** The appellant must order transcripts of superior court proceeding necessary for the proper consideration of the issues on appeal.
>
> **(2) When to Order.** The appellant must order transcripts directly from a certified court reporter or an authorized transcriber within 10 days after filing the notice of appeal or within 10 days after entry of an order disposing of the last timely remaining motion under

Rule 9(e), whichever date is later.

(3) Complete Transcript. If the appellant will contend on appeal that a judgment, finding, or conclusion, is unsupported by the evidence or is contrary to the evidence, the appellant must include in the record a transcript of all evidence relevant to that judgment, finding, or conclusion. Unless the appellant will raise an issue concerning juror qualification, jury impaneling, opening statements, or argument of counsel to the jury, the appellant does not need to include transcripts of those proceedings.

(4) Partial Transcript. If the appellant orders less than a complete transcript as provided in Rule 11(c)(3):

(A) The appellant must -- within the 10 days provided in Rule 11(c)(2) -- file in the superior court a statement of the issues that the appellant intends to present on the appeal. The appellant must serve on the appellee a copy of this statement and a complete and accurate description of appellant's partial transcript order.

(B) If the appellee considers it necessary to have a transcript of other parts of the proceedings, the appellee must, within 10 days after the service of appellant's statement of the issues and partial transcript order, file and serve on the appellant a designation of additional parts to order.

(C) If the appellant does not intend to order the additional parts designated under Rule 11(c)(4)(B), the appellant must so notify the appellee within 5 days after service of that designation. The appellee may then promptly order the additional transcripts, or may file a motion in the superior court for an order requiring the appellant to do so.

(5) No Transcripts Ordered. If no transcripts, other than those filed prior to the notice of appeal, are necessary for the appellate court to decide the issues on appeal, the appellant must file in the superior court a statement that appellant is not ordering transcripts.

(6) Payment. At the time of ordering transcripts, a party must make satisfactory arrangements with the certified court reporter or authorized transcriber for timely paying the cost of the transcripts the party has ordered.

(d) Narrative Statement. If no transcript of oral proceedings is available, the appellant may prepare and file a narrative statement of the evidence or proceedings from the best available means, including the appellant's recollection. The appellant must file the narrative statement in the superior court within 30 days after filing the notice of appeal, and must serve it on the other parties. Any other party may file objections or proposed amendments to the narrative statement within 10 days after service. If the appellant does not file such a narrative statement within the specified time, the appellee may prepare and file such a narrative statement, and the appellant may file objections or proposed amendments to that statement within 10 days after service. The

superior court will then consider the narrative statements of the appellant or the appellee, and any objections or proposed amendments, and it will settle and approve the narrative statement and will include it in the record transmitted to the appellate court under Rule 11.1.

(e) Agreed Statement. Instead of providing a transcript of oral proceedings to the appellate court, the parties may prepare an agreed statement that contains the evidence or proceedings that are essential to a decision of the issues presented by the appeal, and submit the statement to the superior court for settlement and approval. The agreed statement must include a statement of the issues the appellant intends to present on the appeal. The parties must file the agreed statement in the superior court within 30 days after filing the notice of appeal. The superior court judge may make such additions and corrections considered necessary to the issues presented by the appeal. The superior court clerk will then include the agreed statement, as corrected and modified by the judge, in the record transmitted to the appellate court under Rule 11.1.

(f) Video or Audio Recording. If the presentation of a superior court video or audio recording to the appellate court will serve the interests of expediency and economy, a party may file a recording with an appellate court under this Rule after obtaining an appellate court order allowing its filing. The party must file the recording in a format acceptable to the appellate court. The recording may include multiple proceedings, but the recording must appropriately identify each proceeding, and the duration of the recording may not exceed 30 minutes. The filing party is responsible for ordering and paying for the recording and copies, and must serve each opposing party with a copy of the recording.

(g) Correction or Modification of the Record.

(1) If anything material to either party is omitted from or misstated in the record by error or accident, the omission or misstatement may be corrected and a supplemental record may be certified and forwarded:

(A) On stipulation of the parties; or

(B) By the superior court before or after the record has been forwarded.

(2) If any difference arises about whether the record accurately discloses what occurred in the superior court, the difference must be submitted to and settled by that court and the record conformed accordingly.

(3) The parties must present all other questions as to the form and content of the record to the Court of Appeals.

(h) Multiple Appeals from the Same Judgment. If multiple parties take more than one appeal from the same judgment, the parties will prepare (or request the preparation of) a single certified transcript, authorized transcription, narrative statement or agreed-upon statement containing all the matter designated or agreed upon by the parties, without duplication.

Rule 11.1. Transmitting the Record to the Appellate Court

(a) Official Documents; Index. Within 10 days after a party files a notice of appeal, the superior court clerk must number the documents in the superior court file and prepare a numerical index of the documents (the *"index."*) The superior court clerk must supplement the index if documents are filed after the notice of appeal. The superior court clerk must serve a copy of the index on every party to the superior court judgment within 25 days of the filing of the notice of appeal, and within 10 days after the clerk supplements the index, as appropriate, because of additional filings. In appeals from judgments that do not include a reference to Rule 54(c) of the Arizona Rules of Civil Procedure, the appellant must, and the appellee may, notify the superior court clerk of additional items that are pertinent to the appeal and that require transmission to the appellate court after the clerk's initial transmission of the record.

(b) Transmission by Superior Court Clerk. Within 30 days after filing the notice of appeal, or within 10 days after entry of an order disposing of the last remaining timely motion under Rule 9(e), whichever is later, the superior court clerk must electronically transmit to the appellate clerk:

> **(1)** All documents filed in the superior court, including minute entries, notices of appeal and cross-appeal, and the index;
>
> **(2)** Every exhibit in paper, electronic, or photographic form, unless the size or bulk of an exhibit makes transmission cumbersome; and
>
> **(3)** Any other items requested by the appellate clerk.

If the superior court clerk is unable to transmit the items within the time set forth in Rule 11.1(b), the superior court clerk must notify the appellate court and the parties to the appealed judgment regarding when the clerk will transmit the record to the appellate court. The appellate court may order the superior court clerk to transmit the record, or a portion of the record, at an earlier time.

If the size or bulk of an exhibit makes transmission cumbersome, the superior court clerk must notify the appellate court and the parties to the appealed judgment of the exhibits not transmitted. The appellate court, or any party on motion to the appellate court, may request that the superior court clerk transmit specific exhibits in physical or other form, if those exhibits are necessary for a determination of issues raised in the appeal.

(c) Delivery and Filing of Transcripts.

> (**1) Filing.** If the ordering party has paid the reporter or transcriber charges, then within 30 days of the date of the party's order the court reporter or transcriber must file a certified electronic transcript with the superior court and notify the appellate court of the filing. At the same time as filing the transcript, the reporter or transcriber must provide the ordering party with a certified electronic copy of the filing, or with a certified paper copy if requested by the ordering party.

(2) Extension of Time. If the transcript cannot be completed within 30 days of the transcript order, the ordering party may request the appellate clerk to grant additional time to complete it.

(3) Service on Other Parties. Within 5 days after receipt of the transcript from the reporter or transcriber, the ordering party must serve a copy of the transcript on opposing parties. The ordering party must serve the transcript in either electronic or paper format, as requested by the opposing parties, and must make appropriate arrangements with the court reporter to facilitate an opposing party's request.

(4) Additional Transcripts. A party may file a motion with the appellate court at any time before the appeal is at issue under Rule 15(b) for inclusion of any additional transcripts of superior court proceedings in the record on appeal.

Petitioner's notes concerning the proposed rule:

Because of the length of current Rule 11, the proposed rules divide it into Rule 11 ["the record on appeal"] and Rule 11.1 ["transmitting the record to the appellate court."] This is similar to the approach taken by the Federal Rules of Appellate Procedure.

Rule 11: "The Record on Appeal"

Rule 11(a) ["composition"] specifies the components of the record on appeal: (1) the official record, which includes documents, exhibits, minute entries, and transcripts filed prior to the notice of appeal; and (2) transcripts or other narrative proceedings ordered or prepared under this rule.

Rule 11(b) ["transcript of oral proceedings"] provides for preparation of transcripts by a certified court reporter or by an authorized transcriber.

Rule 11(c) ["appellant's duty to order transcripts"] recognizes that the appellant has the responsibility for ordering transcripts of superior court proceedings "that are necessary for the proper consideration of issues on appeal." (Compare the language in current Rule 11(b)(1), which requires the appellant to order: "...such parts of the proceedings as the appellant deems necessary for inclusion in the record.") The proposed rule preserves the current rule's deadline that requires ordering of transcripts within 10 days after filing the notice of appeal, or 10 days after entry of an order disposing of a post-judgment motion. The proposed rule provides guidance for ordering a "complete transcript" or a "partial transcript." It also requires appellant to file in the superior court a notice of "no transcripts ordered" in that circumstance. As in the current rule, a party ordering transcripts must concurrently make satisfactory payment arrangements with the court reporter or transcriber.

Rule 11(d) ["narrative statement"] is based on current Rule 11(c).

Rule 11(e) ["agreed statement"] is based on current Rule 11(d).

Rule 11(f) ["video or audio recording"] allows the submission of a video or audio recording of superior court proceedings, not exceeding 30 minutes, if it "will serve the interests of expediency and economy," and only with permission of the court. Current Rule 11(a)(1) allows submission of an electronic recording if authorized by the appellate court, but provides no additional

guidance.

Rule 11(g) ["correction or modification of the record"] is based on current Rule 11(e). The proposed rule, however, eliminates the phrase "conform to the truth."

Rule 11(h) is based on current Rule 11(f).

Note:

Proposed Rule 11 eliminates current Rule 11(g) ["certification of copies of relevant portions of original record for preliminary hearing in the appellate court."] Prompt, electronic transmission of the record from the superior court to the appellate court should render this provision moot. In urgent circumstances requiring the attachment of documents, Rule 6(a) should provide sufficient guidance.

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Rule 11.1: "Transmitting the Record to the Appellate Court"

Rule 11.1(a) ["official documents; index"] is based in part on current Rule 11(a)(2). The proposed rule requires the superior court clerk to prepare an "index" within 10 days after the filing of a notice of appeal; the current rule does not specify a time. The proposed rule also requires the superior court clerk to supplement the index if additional documents are filed after the filing of the notice of appeal. The proposed rule requires the superior court clerk to serve the index on every party to the judgment within 25 days after filing the notice of appeal (this will allow for the filing of notices of cross-appeal), and within 25 days after supplementing the index, as appropriate. If an appeal is taken from a judgment that does not include "Rule 54(c)" language, the appellant must, and the appellee may, notify the clerk of additional items that are pertinent to the appeal and that require supplemental transmission to the appellate court.

Rule 11.1(b) ["transmission by superior court clerk"] requires electronic transmission of the record on appeal. The superior court clerk must transmit the record within 30 days after filing the notice of appeal (compared to 40 days under the current rule), or within 10 days after entry of an order disposing of the last remaining timely motion under Rule 9(e) (for which there is no corresponding provision in the current rule), whichever is later.

The superior court clerk must notify the appellate court and the parties to the appealed judgment if certain exhibits are not transmitted because they are bulky or cumbersome. However, the appellate court, or any party on motion to the appellate court, may request that the superior court clerk transmit specific exhibits in a physical or other form, if those exhibits are necessary for a determination of issues raised in the appeal.

Rule 11.1(c) [" delivery and filing of transcripts"] requires the court reporter or transcriber to file a certified electronic transcript of the ordered proceedings with the superior court within 30 days of being ordered (conditioned on payment of fees and charges), and to notify the appellate court of the filing. The court reporter or transcriber at the same time must provide the ordering party with the transcript. This process differs from current Rule 11(b)(7), which requires the appellant to file the transcript with the appellate court. Within 5 days of receipt of the transcript, the ordering party must serve a copy of the transcript on opposing parties, in either electronic or paper format as requested by an opposing party, and must make appropriate arrangements to

facilitate the requested format. An ordering party may request the appellate clerk for an extension of time if the reporter is unable to provide the transcript within 30 days. The proposed rule also allows a party to file a motion in the appellate court to permit inclusion of additional transcripts of proceedings in the record, as provided in current Rule 11(b)(5), but with the addition of the "at issue" time period.

Rule 12. Notice to Appellant to Pay Fee and File Opening Brief; Docketing the Appeal; Filing of the Record; Docketing Statement

(a) Notice to Appellant to Pay Fee and File Opening Brief. Upon receipt of the index of record and any docketing statement by the clerk of the appellate court, the clerk shall notify the appellant that the docketing fee shall be paid within 10 days and the opening brief shall be filed within 40 days.

(b) Docketing the Appeal. Unless exempted by law or waived by court order, the appellant shall pay to the clerk of the appellate court the docket fee fixed by law within the time provided. The clerk shall thereupon enter the appeal upon the docket. The appellate court may, upon motion for cause shown, enlarge the time for docketing the appeal or permit the appeal to be docketed out of time. An appeal shall be docketed under the title given to the action in the trial court with the appellant identified as such, but if the title does not contain the name of the appellant, his name, identified as appellant, should be added to the title.

(c) Filing of the Index of Record. Upon receipt of the index of record by the clerk of the appellate court and after the appeal has been timely docketed, the clerk shall file the index. The clerk shall immediately give notice to all parties of the date on which the index of record was filed.

(d) Dismissal for Failure of Appellant to Cause Timely Filing of the Certified Transcript or to Docket Appeal. If the appellant shall fail to cause timely filing of the certified transcript or to pay the docket fee if a docket fee is required, any appellee may file a motion in the appellate court to dismiss the appeal. The motion shall be supported pursuant to Rule 11(g) with copies of the relevant portions of the record. If the appeal has not been docketed, the clerk shall docket the appeal upon the payment of the appellee's fee. The appellant shall not be permitted to respond to the motion without payment of the docket fee unless he is otherwise exempt therefrom.

(e) Filing Docketing Statement. Appellant shall provide the information requested on the docketing statement form and file any required docketing statement in the superior court within 10 days after filing the notice of appeal. Appellant shall serve copies of the docketing statement on counsel of record for all other parties.

Rule 12. Notice Regarding Filing Fee and Deadlines; Case Management Statement

(a) Assignment of Appellate Case Number. The appellate clerk will assign the appeal an appellate case number no later than 10 days after the receipt of those items listed in Rule 11.1(b). The appellate clerk will enter the appeal under the title the case had in the superior court. If the title does not contain the name of the appellant, the appellate clerk will add the name. The appellate clerk will designate the parties as they appear in the appellate court.

(b) Notice of Appellant's Duties. The appellate clerk will notify the parties to the appeal when the clerk assigns an appellate case number under Rule 12(a). The appellate clerk's initial notice to the parties will direct the appellant to:

(1) Pay an appellate filing fee within 10 days of this initial notice;

(2) File a case management statement within 20 days of this initial notice, and

(3) File the opening brief within 60 days of this initial notice.

(c) Notice of Appellee's and Cross-Appellant's Duties. Upon receipt of the appellant's filing fee, the appellate clerk will notify the parties of payment and by a second notice will direct the appellee and any cross-appellant to:

(1) Pay the appropriate appellate filing fee within 10 days of the second notice; and

(**2)** File an answering brief or a combined answering brief and cross-appeal opening brief within 40 days of service of the opening brief.

A cross-appellant must file a case management statement within 30 days after service of the appellate clerk's second notice. An appellee who is not a cross-appellant is not required to file a case management statement, but may within 30 days after service of the appellate clerk's second notice file a statement to clarify, correct, or supplement an appellant's case management statement.

(d) Case Management Statement.

(1) Filing and Service. A party's case management statement must be completed and filed with the appellate clerk within the time provided by Rule 14(b) and (c). A party who files a case management statement must serve the statement on all other parties as provided by Rule 5.

(2) Forms. A case management statement must use the form provided by the appellate court division in which the appeal is pending. Forms of case management statements are available on the websites maintained by Division One and Division Two of the Court of Appeals, and in the office of the appellate clerk of each division. Rule 32 provides website addresses for Arizona appellate courts.

(e) Dismissal Based on a Failure to Pay Fees.

(1) Obligation to Pay. Parties must pay the appellate filing fee fixed by law to the appellate clerk within the time provided in Rules 12(b) and (c), unless the appellate court has extended the time for paying the filing fee, the party is exempt from paying the fee, or a court order has waived the fee.

(2) Sanctions for Nonpayment. If an appellant fails to timely pay a required appellate filing fee, the appellate court may dismiss the appeal after providing notice to the parties. If an appellee fails to timely pay a required appellate filing fee, the appellate court may deem the case submitted solely on the record and the appellant's opening brief.

(3) Cross-Appeal. If the appellate court dismisses an appeal under this Rule, or the court otherwise deems the appeal abandoned, and a cross-appellant fails to timely pay a required appellate filing fee, the appellate court may deem the entire appeal abandoned.

Petitioner's notes concerning the proposed rule:

Rule 12 adopts procedures for managing the initial stages of the appeal. The trigger for further appellate events under current Rule 12 is the "docketing" of the appeal, but the term "docketing" has no definition in the current rule. The proposed rule instead sets forth a modified process for organizing this stage of an appeal.

Rule 12(a) ["assignment of appellate case number"] is based partly on current Rule 12(b) ["docketing the appeal"], but, unlike the current rule, it identifies when the appellate court assigns the appellate case number (within 10 days of the appellate clerk's receipt of the electronic record from the superior court clerk.)

Rule 12(b) ["notice of appellant's duties"] differs from the current rule, which requires the appellate clerk to notify the parties upon receipt of the index from the trial court. In contrast, the proposed rule requires the clerk to notify the parties upon assigning the case an appellate case number. The appellate clerk sends out an "initial notice" that directs the appellant to pay a filing fee within 10 days of the notice, to file a case management statement within 20 days of the notice, and to file an opening brief within 60 days of the notice.

The phrase "filing fee" in the proposed rule replaces "docketing fee," to be consistent with the nomenclature used in Arizona statutes (A.R.S. §§ 12-119.01 and 12-120.31).

Rule 12(c) ["notice of appellee's and cross-appellant's duties"] provides that upon receipt of the appellant's filing fee, the clerk will send a second notice directing the appellee and any cross-appellant to pay a filing fee within 10 days of the notice, and to file an answering or combined brief within 40 days of service of the opening brief. A cross-appellant must file a case management statement within 30 days of the notice, and an appellee who is not a cross-appellant may, but is not required to, file a case management statement within that time.

Rule 12(d) ["case management statement"] corresponds with the requirement in the current rules requiring the preparation and filing of a "docketing statement." The requirement of a docketing statement is briefly mentioned in current Rule 8(a), Rule 11(a)(2), and Rule 12(a), but there is no coherent explanation in the current rules about its purpose or what it must contain.

Rule 12(d) renames the "docketing statement" with a title that reflects what it really is: a case management statement. In addition, current Rule 8(a) provides for parties to file a docketing statement in the superior court, but because the statement is for the appellate court's benefit, proposed Rule 12(d) requires parties to file it directly with the appellate court. The proposed rule advises that the forms for case management statements are available on-line or in the clerks' offices. The content of the statement may vary between divisions, but the forms likely will include information such as the basis of appellate jurisdiction, whether the case is amenable for appellate dispute resolution, and whether the parties will be providing a record of oral proceedings, and if so, how.

Rule 12(e) ["dismissal based on a failure to pay fees"] corresponds to current Rule 12(d), but has

restyled language.

Note:

The proposed rule deletes current Rule 12(c) ["filing of the index of record"]. Proposed Rule 11.1(b)(1) requires the superior court clerk to transmit the index to the appellate court along with other trial court documents. As such, there is no need for another rule requiring the index to be transmitted separately.

Rule 13. Briefs

(a) Brief of the Appellant. The brief of the appellant shall concisely and clearly set forth under the appropriate headings and in the order here indicated:

1. A table of contents with page references.

2. A table of citations, which shall alphabetically arrange and index the cases, statutes and other authorities cited, with references to the pages of the brief on which they are cited.

3. A statement of the case, indicating briefly the basis of the appellate court's jurisdiction, the nature of the case, the course of the proceedings and the disposition in the court below.

4. A statement of facts relevant to the issues presented for review, with appropriate references to the record. The statement shall not contain evidentiary matter unless material to a proper consideration of the issues presented, in which instance a reference shall be made to the record or page of the certified transcript where such evidence appears. The statement of facts may be combined with the statement of the case.

5. A statement of the issues presented for review. The statement of an issue presented for review will be deemed to include every subsidiary issue fairly comprised therein.

6. An argument which shall contain the contentions of the appellant with respect to the issues presented, and the reasons therefor, with citations to the authorities, statutes and parts of the record relied on. The argument may include a summary. With respect to each contention raised on appeal, the proper standard of review on appeal shall be identified, with citations to relevant authority, at the outset of the discussion of that contention. Citation of authorities shall be to the volume and page number of the official reports and also when possible to the unofficial reporters.

7. A short conclusion stating the precise relief sought, including, if applicable, a notice pursuant to Rule 21(a) that the party intends to claim attorneys' fees.

8. An appendix if desired.

(b) Brief of the Appellee. 1. The brief of the appellee shall conform to the requirements of the preceding subdivision, except that a statement of the case, a statement of the facts or a statement of the issues need not be included unless the appellee finds the statements of the appellant to be insufficient or incorrect.

2. If a cross-appeal has been filed, the brief of the appellee or the opening brief of the cross-appellant shall include in its statement of issues presented for review the issues presented in the cross-appeal.

3. The brief of the appellee may, without need for a cross-appeal, include in the statement of

issues presented for review and in the argument any issue properly presented in the superior court. The appellate court may affirm the judgment based on any such grounds. The appellate court may direct that the judgment be modified to enlarge the rights of the appellee or to lessen the rights of the appellant only if the appellee has cross-appealed seeking such relief.

(c) Reply Brief. The appellant may file a reply brief, but it shall be confined strictly to rebuttal of points urged in the appellee's brief. No further briefs may be filed except as provided in Rule 13(e) or by leave of court.

(d) Reproduction of Constitutional Provisions, Statutes, Rules, Regulations and Instructions: the Appendix.

1. If determination of the issues presented requires the study of constitutional provisions, rules, statutes, regulations or instructions given or refused, the relevant parts of any of the foregoing shall be reproduced in the brief or in an appendix to the brief. An appendix may include additional items of the record, as provided in Rule 11(a)(3). An appendix may include extended quotations from cases and authorities where such quotations are required for proper presentation of the issues.

2. If an appendix is included, it shall be separated from the main body of a brief filed in hard copy by a blank page of distinctive color. It shall be numbered with arabic numerals, and it shall not constitute a part of the brief for the purpose of determining length under Rule 14(b). If the brief is filed electronically, and if the appendix contains multiple documents, such documents shall be electronically bookmarked in the appendices' table of contents.

(e) Briefs in Cases Involving Cross-Appeals. A party who files a cross-appeal may combine in one brief his brief as appellee and his brief as cross-appellant. If the appellant wishes to file a further brief, he may combine in one brief his reply brief as appellant and his brief as cross-appellee. The cross-appellant may file a reply brief on the issues of the cross-appeal. The length of the separate portions in any combined brief filed by a party shall not exceed the aggregate number of pages which separate briefs can contain.

(f) Briefs Involving Multiple Appellants or Appellees. In cases involving more than one appellant or more than one appellee, including cases consolidated for the purposes of the appeal, any number of either may join in a single brief, and any appellant or appellee may adopt by reference any part of the brief of another. Parties having contentions in common shall make a good faith effort to join in a single brief and if a separate brief is filed which advances one or more contentions common to other parties, the filing party shall make a good faith effort to adopt by reference the pertinent part of any previously-filed brief of another party. In a joint appeal in accordance with Rule 8(b), the parties are required to file a joint brief.

Rule 13. Content of Briefs

(a) Appellant's Opening Brief. An appellant's opening brief must set forth under the following headings and in the following order all of the items listed below, except for items (3) and (10), which are optional.

(1) A **"table of contents**" with page references and, if the brief is filed electronically, with bookmarks to sections of the brief described in items (2) through (10) below.

(2) A **"table of citations"** that must alphabetically arrange and index the cases, statutes and other authorities cited in the brief, and which must reference the pages of the brief on which each citation appears.

(3) A short **"introduction."**

(4) A **"statement of the case"** that must concisely state the basis of the appellate court's jurisdiction, the nature of the case, the course of the proceedings, and the disposition in the court from which the appeal is taken.

(5) A **"statement of facts"** that is relevant to the issues presented for review, with appropriate references to the record. Evidentiary matter must be material to the appellate court's proper consideration of the issues presented, and must include a reference to the index, exhibit, or page of the certified transcript, authorized transcription, narrative statement, or agreed-upon statement where such evidence appears. A party may combine a statement of facts with the statement of the case.

(6) A **"statement of the issues"** presented for review. The statement of an issue presented for review includes every subsidiary issue fairly comprised within the statement.

(7) An **"argument"** that must contain all of the following:

(A) Appellant's contentions with supporting reasons for each contention, and with citations to legal authorities and portions of the record on which the appellant relies. The argument may include a summary.

(B) For each issue, locations in the record on appeal where the issue was raised and ruled on, and the applicable standard of appellate review. If a ruling complained of on appeal is one that required a party's objection at trial to preserve a right of review, for example, a failure to admit or to exclude evidence or the giving of or refusal to give a jury instruction, appellant must state where the objection and ruling are located in the record.

(8) A **notice under Rule 21(a)**, if applicable, that the party intends to claim attorneys' fees, which the party may include in the conclusion.

(9) A short **"conclusion"** stating the precise relief sought.

(10) An appendix, as provided in Rule 13.1.

(b) Appellee's Answering Brief.

(1) Generally. The appellee's answering brief must follow the requirements of Rule 13(a), except it does not need to include a statement of the case, a statement of facts, or a statement of the issues, unless the appellee finds the appellant's statements to be insufficient or incorrect.

(2) Scope of Issues. The appellee's brief may include in the statement of issues presented for review and in the argument any issue that was properly presented in the superior court without the need for a cross-appeal, and the appellate court may affirm the judgment based on any such grounds. An appellate court, however, may direct modification of a judgment that enlarges the rights of the appellee or lessens the rights of the appellant only if the appellee has filed a notice of cross-appeal.

(c) Reply Brief. If the appellant files a reply brief, it must be strictly confined to the rebuttal of points made in the appellee's brief. A party may file additional briefs only with permission of the appellate court.

(d) References to Parties. In briefs and at oral argument, parties should minimize use of the terms "appellant" and "appellee." For clarity, briefs should use the parties' actual names or the designations used in the superior court or agency proceeding, or such descriptive terms as "the employee," "the injured person," "the taxpayer," "the buyer."

(e) References to Case Law. Citation of Arizona case law must be to the volume and page number and, if available, the paragraph number, of the official Arizona reporters. Citation of non-Arizona case law must be to the volume and page number of appropriate regional and federal reporters.

(f) Briefs in Cases Involving Cross-Appeals. If a cross-appeal has been filed, the combined briefs under Rule 15(a)(4) must include in the statement of issues presented for review those issues that are presented in the cross-appeal.

(g) Briefs Involving Multiple Appellants or Appellees. In cases involving more than one appellant or more than one appellee, including consolidated cases, multiple parties may join in a single brief, or an appellant or appellee may adopt by reference any part of the brief of another. Parties having contentions in common must make a good faith effort to join in a single brief. If there is a contention common to other parties, the filing party must make a good faith effort to adopt by reference the pertinent part of the previously filed brief of another party. The parties in a joint appeal under Rule 8(f) must file a joint brief.

(h) Briefs of Amicus Curiae or Intervenor. An intervenor is a person not a party to a judgment

who the appellate court allows to participate in an appeal under Rule 24 of the Arizona Rules of Civil Procedure. A brief of amicus curiae or an intervenor must comply with Rule 13(a)(1), (2), (6), (7), and (9). A brief of amicus curiae must also comply with the requirements of Rule 16.

Petitioner's notes concerning the proposed rule:

Rule 13 ["content of briefs"] generally follows current Rule 13 ["briefs"], although with restyled language.

Rule 13(a) ["appellant's opening brief"] incorporates the provisions of current Rule 13(a). The phrase "brief of the appellant" in the current rule is replaced with "appellant's opening brief." The current requirement that a brief "concisely and clearly" set forth certain items is akin to a rule requiring "good legal writing," and it is deleted because it is unenforceable. Formatting changes include the use of bold font in the rule to emphasize the ten components of an opening brief.

An "introduction" [item #3] and an appendix [item #10] are optional. Item #7 ["argument"] still requires inclusion of a standard for review, but it no longer requires a citation to relevant authority for the standard because the authority often is well known by the judges. Item #10 [the appendix] is more fully detailed in Rule 13.1.

Rule 13(b) [appellee's answering brief] adds the term "answering" to the paragraph's title. A provision in current Rule 13(b)(2) concerning cross-appeals is now stated separately in proposed Rule 13(f).

Rule 13(c) ["reply brief"] is substantially the same as Rule 13(c), but restyled.

Rule 13(d) ["references to parties"] is new. It is based on Rule 28(d) of the Federal Rules of Appellate Procedure.

Rule 13(e) ["references to case law"] is new and provides a citation protocol for case law, including references to the paragraph number (if available) where a cited proposition appears in an Arizona case.

Rule 13(f) ["briefs in cases involving cross-appeals"] is based on current Rule 13(b)(2).

Rule 13(g) ["briefs involving multiple appellants or appellees"] is based on current Rule 13(f).

Rule 13(h) ["briefs of amicus curiae or intervenor"] is new. This provision defines "intervenor," and it specifies requirements for an amicus or intervenor's brief.

The current ARCAP has no corresponding rule.

Rule 13.1. Appendix

(a) Applicability. A party may file an appendix with the party's brief in the Arizona Supreme Court and in Division One of the Court of Appeals. A party's appendix in the Arizona Supreme Court or Division One must be filed by the same method – paper or electronic – as the party's brief. An electronically filed brief in Division Two of the Court of Appeals must include electronic links to the record on appeal rather than an appendix, as provided in Division Two's policy and as set forth on its website. A party may file a paper appendix in Division Two only when filing a paper brief.

(b) Content of the Appendix. The appendix may include portions of the record cited in the briefs that are necessary to decide an issue on appeal. The appendix may include any decision, judgment, findings of fact or conclusions of law challenged on appeal, or portions of the record or transcripts. If the appellate court's determination of issues on appeal requires the interpretation of constitutional provisions, statutes, rules, regulations, contracts, etc., relevant portions that are not contained in the brief may be included in the appendix.

(c) Table of Contents. If there is more than a single item in the appendix, the appendix must begin with a table of contents that identifies each document, transcript, or exhibit included in the appendix. The table of contents must identify items in both of the following ways.

> **(1)** The table of contents must identify where each item is located in the record—by item number in the clerk's index (see Rule 11.1(a)), by transcript date, or by exhibit number, as appropriate.
>
> **(2)** The table of contents also must identify the item's location in the appendix by page number or tab number.

A party's brief that complies with these two requirements—instead of citing to the record— may refer to the appendix by page number, by volume number and page number, or by tab number and page number, as appropriate.

(d) Appendix Filed Electronically. A party who files a brief electronically may file as a single document a combined brief and appendix, with the appendix following the brief, but a combined filing cannot exceed the size limits of the filing portal. Otherwise, a party may electronically file a separate appendix.

> **(1) Page Numbering.** The pages in an appendix must include sequential numbers. An appendix page number should match the electronic page number of the viewing software. If a party files a combined brief and appendix, the first page of the appendix must include a number sequential to the last page of the brief. For a separately filed appendix, the numbers should start with the first page of the appendix table of contents.

(2) Multiple Volumes: If a separate appendix is more than one volume, numbering should restart for each volume and include an identifier that distinguishes each volume (e.g., APPV1-001, APPV2-001).

(3) Bookmarks and Hyperlinks. Each item in the appendix table of contents must include a bookmark or hyperlink to the item in the appendix.

(e) Appendix Filed in Paper.

(1) Page numbering: Pages of the appendix must include sequential numbers, beginning with the appendix table of contents. Alternatively, a paper appendix may use tabs that are numbered or labeled to correspond to the record number, exhibit number, or transcript date of each item described in the appendix table of contents.

(2) Combined filing: A party who files a brief in paper form may combine and file an appendix as part of the brief, if the appendix does not exceed 15 pages. If combined, the appendix must be located after the brief, and a blank page of distinctive color must separate the last page of the brief from the first page of the appendix.

(3) Separate filing: A party who files a paper appendix exceeding 15 pages must file it separately from the brief. A party must securely bind an appendix that is filed separately from the brief (for example, the pages of the appendix may be clipped or banded), but the binding must not perforate the pages of the appendix using devices such as staples or two-pronged fasteners. A party must file an original and one copy of any separately bound appendix at the time of filing the brief.

Petitioner's notes concerning the proposed rule:

Rule 13.1 ["appendix"] is new. The current rules refer in places to appendices, but afford incomplete guidance about their format or what they should contain. Rule 13.1 provides guidance for use of an appendix to a brief under Rule 13, or for an appendix to a petition or cross-petition for review under Rule 23.

As stated in Rule 13.1(a) ["applicability"], Division Two requires electronic links to the record in lieu of an appendix, except when a brief is filed in paper format.

Rule 13.1(d)(3) ["bookmarks and hyperlinks"] includes the requirement currently in paragraph 5(c)(iv) of Administrative Order 2012-02 pertaining to bookmarks in the appendix of an electronically filed brief.

Rule 14. Form, Size and Length of Briefs

(a) Form and Size of Briefs.

(1) A brief shall comply with Rule 6(c), except that the brief's covers and the components of the brief excluded from the word count computation are exempt from the 14 point or 10 1/2 characters per inch typeface requirement.

(2) Briefs shall be in pamphlet form and shall have covers. The front cover shall contain (1) the name of the court, (2) the number of the case, (3) the title of the case, (4) the title of the brief (e.g., appellant's brief), and (5) the name and address and state bar number of counsel representing the party on which behalf the brief is filed.

(3) The covers of briefs shall be colored as follows: the appellant's opening brief, blue; the appellee's answering brief, red; any reply brief, gray; the brief of an intervenor or amicus curiae, green.

(b) Length of Briefs. Except by permission of the court, (i) a principal brief prepared in a proportionately spaced typeface may not exceed 14,000 words, and a reply brief may not exceed 7,000 words, and neither may have an average of more than 280 words per page, including footnotes and quotations; and (ii) a principal brief prepared in a monospaced typeface may not exceed 40 pages, and a reply brief may not exceed 20 pages. The above word and page limits do not include the table of contents, table of citations, certificate of service, certificate of compliance, and any addendum containing statutes, rules, regulations, etc. The original and each copy of the brief must contain a completed certificate of compliance as found in the Appendix to the rules under Form II. A party preparing this certificate may rely on the word count of the processing system used to prepare the brief.

(c) Cross-Appeals. If the parties file combined briefs in cross-appeals as permitted by Rule 13(e) of these rules, the covers of briefs shall be as follows: (1) opening brief, blue; (2) combined answering brief on appeal/opening brief on cross-appeal, red; (3) combined reply brief on appeal/answering brief on cross-appeal, gray; and (4) reply brief on cross-appeal, gray.

Rule 14. Length and Form of Briefs

(a) Length of Briefs.

(1) Opening Briefs and Answering Briefs must not exceed 14,000 words, or 40 pages if handwritten.

(2) Reply Briefs must not exceed 7,000 words, or 20 pages if handwritten.

(3) Combined Briefs Involving a Cross-Appeal. The length of each separate portion in combined briefs involving a cross-appeal must not exceed the number of words or pages that each of the separate briefs may contain.

(4) Amicus Curiae Briefs must not exceed 12,000 words. A response to an amicus brief must not exceed 12,000 words.

(5) Exclusions from Limits. The above word and page limits do not include the cover page, the caption, the table of contents, the table of citations, the date and signature block, a certificate of service, a certificate of compliance, or any appendix.

(6) Certificate of Compliance. Every brief must include a certificate that confirms compliance with the above word or page limit. Form 2 is a template certificate of compliance. A party preparing a certificate of compliance may rely on the word count of the word processing system used to prepare the brief if it counts the required words including any footnotes.

(b) Form. Paper and electronic briefs must comply with the format requirements of Rule 5(b) and (c). The first page of a brief must include a caption that is substantially the same as shown in Form 5.

(c) Briefs Filed in Paper. A party permitted to file a brief in paper must adhere to the following requirements:

(1) A party must securely bind the brief (for example, the pages of the brief may be clipped or banded), but the binding must not perforate the pages of the brief using devices such as staples or two-pronged fasteners.

(2) The brief must have a separate cover page that contains the caption.

Petitioner's notes concerning the proposed rule:

Rule 14(a) ["length of briefs"] aggregates in a single rule the length limits for briefs. (Current Rule 14(a) ["form, size and length of briefs"] sets forth the limitations on length that generally apply, but current Rule 17(b) also contains a separate limitation on the length of amicus briefs.) Rule 14(a) deletes current references to monospaced typeface, which is archaic and rarely if ever used. The proposed rule, however, adds a limitation on length for handwritten briefs, a subject not explicitly addressed in the current rules. The proposed rule also includes a separate sub-part concerning certificates of compliance, which is similar to the last two sentences of current Rule 17(b).

Rule 14(b) ["form"] replaces current Rule 14(a) ["form and size of briefs"]. This proposed rule requires both paper and electronic briefs to comply with Rule 5's formatting requirements. A form in the appendix illustrates the acceptable form for a caption to a brief.

Rule 14(c) ["briefs filed in paper"] includes requirements if a party files a paper brief. Because the appellate clerk scans and stores paper briefs electronically, there are no longer requirements for color brief covers, or for bindings that perforate the pages.

Rule 15. Filing of Briefs

(a) Time for Filing Briefs. The appellant shall file his brief within 40 days after the clerk of the appellate court mails the notice required by Rule 12 (a). The appellee shall file his brief within 40 days after service of the appellant's brief. The appellant may file a reply brief within 20 days after service of the appellee's brief, or the appellant may file a notice to the effect that no reply brief will be filed, at which time the appeal will be deemed to be "at issue." Otherwise, the appeal will be deemed to be "at issue" upon the filing of the reply brief or 20 days after service of the appellee's brief, whichever first occurs. Briefs and appendices may be filed in person, electronically, or by mail. Service by mail shall include every type of delivery service except same day hand delivery. Briefs and appendices shall be deemed timely filed if, within the time allowed for filing, they are either (i) received by the Clerk of the Court, or (ii) they are addressed to the Clerk of the Court and picked up by or delivered either to a third party commercial carrier for delivery within three calendar days or to the United States Postal Service.

(b) Number of Copies to be Served. Two copies of each brief shall be served on each party separately represented and proof of service shall be filed with the clerk of the appellate court. When the state, a county, or a state officer, is the appellee, appellant shall serve upon the county attorney of the county wherein the judgment was rendered and upon the attorney general, 2 copies of his brief.

(c) Consequences of Failure to Timely File Briefs. If an appellant does not timely file his brief, the court, upon motion, may dismiss his appeal. If the appellee does not timely file his brief, the appeal may be submitted for decision upon motion.

(d) Except in the case of same day hand delivery, filing by third-party commercial carrier or by mail must be accompanied by the party's or attorney's separate signed certification indicating the date of delivery to or pick up by either the carrier or the United States Postal Service.

(e) Filing of Briefs in Cross-Appeals. If the appellee/cross-appellant files a combined answering brief on appeal/opening brief on cross-appeal as permitted by Rule 13(e) of these rules, such brief shall be filed within 40 days after service of the appellant's opening brief. In such a case, if the appellant/cross-appellee files a combined reply brief on appeal/answering brief on cross-appeal, such brief shall be filed within 40 days after service of the combined answering brief on appeal/opening brief on cross-appeal.

Rule 15. Due Dates; Filing and Service of Briefs

(a) Time for Filing a Brief.

> **(1) Opening Brief.** The appellant must file an opening brief within 60 days after the appellate clerk mails an initial notice under Rule 12(b). If an appellant does not timely file an opening brief, the appellate court on motion of a party or on its own motion may dismiss the appeal.
>
> **(2) Answering Brief.** The appellee must file an answering brief within 40 days after

service of the appellant's brief. If the appellee does not timely file an answering brief, the appellate court may deem the appeal submitted for decision based on the opening brief and the record.

(3) Reply Brief. The appellant may file a reply brief within 20 days after service of the answering brief. In lieu of filing a reply brief, the appellant may file a notice that the appellant will not be filing a reply brief.

(4) Combined Brief on Cross-Appeal. A cross-appealing party must file a combined answering brief on appeal and opening brief on cross-appeal within 40 days after service of the appellant's opening brief. The appellant/cross-appellee must then file a combined reply brief on appeal and answering brief on cross-appeal within 40 days after service of the combined answering brief on appeal/opening brief on cross-appeal.

(5) Reply Brief on Cross-Appeal. The cross-appellant may file a reply brief within 20 days after service of the cross-appellee's combined brief. The reply brief must address only the issues raised by the cross-appeal. In lieu of filing a reply brief, the cross-appellant may file a notice that the cross-appellant will not be filing a reply brief.

(6) Amicus Curiae Brief. An amicus curiae must file its brief in the time provided by Rule 16.

(7) Response to Amicus Curiae Brief. A party's response to an amicus curiae brief is optional. If the amicus curiae files a brief with the consent of the parties, or if a government entity or agency files the amicus brief, a party has 20 days after service of the amicus brief to file a response. If the appellate court grants a motion for leave to file an amicus brief that has been lodged with the appellate court, a party has 20 days from entry of that order to file a response.

(8) Intervenor's Brief. An intervenor must file a brief within the time specified in the appellate court's order permitting intervention.

(b) "At Issue." The appeal will be deemed to be "at issue" upon the filing deadline for a final reply brief.

(c) Manner of Filing Briefs.

(1) Electronic Filing. A party must file a brief electronically unless there is an exception under Rule 6. Electronic filing of a brief is timely only if the appellate clerk actually receives it within the time allowed for filing.

(2) Paper Filing. A party may file a paper brief only if Rule 6 permits it. The filing of a paper brief is timely if:

(A) The filing party mails the brief to the appellate clerk and places the brief in the

mail within the time allowed for filing;

(B) The filing party gives the brief to a third-party commercial carrier (other than a same-day delivery service) within the time allowed for filing, for the carrier's delivery to the appellate clerk within 3 calendar days;

(C) The filing party hand-delivers the brief to the appellate clerk within the time allowed for filing and the clerk files it.

If a brief is filed under Rule 15(c)(2)(A) or (B), it must be accompanied by a separate signed certification indicating the date of delivery to, or pick up by, either the carrier or the United States Postal Service.

(d) Service of Briefs. A party must serve a brief on other parties to the appeal, as provided by Rule 4(f). The party serving the brief must file a certificate of service with the appellate clerk, as provided by Rule 4(g). A party who files a paper brief must serve two copies of the brief on every separately represented party. If a party files an electronic brief that includes bookmarks or hyperlinks, the party must serve on the other parties to the appeal an electronic copy of the brief in a reasonably usable format, such as a CD-ROM, that contains functional bookmarks or hyperlinks.

(e) Extension of Time to File a Brief.

(1) Transcript Unavailability. If a party moves to extend the time for filing a brief based on unavailability of a transcript, the party's motion must:

(A) Certify that the party timely ordered and made payment arrangements for a transcript under Rule 11;

(B) Provide the reason for the reporter's or transcriber's inability to have the transcript completed; and

(C) State the reporter's or transcriber's estimated date of completing and filing the transcript.

If the appellate court grants the motion to extend time based on the unavailability of a transcript, it will extend the time for filing the brief to 30 days after the estimated filing date of the transcript.

(2) Extensions for Other Reasons. A party's motion or the parties' stipulation to extend the time for filing a brief for any reason other than the unavailability of a transcript must comply with Rule 5(b).

Petitioner's notes concerning the proposed rule:

Rule 15(a) ["time for filing briefs"] collects in one rule, in the form of a list, the due dates for

filing appellate briefs. (These dates are currently found in Rules 15(a), 15(e), 16(a), and 16(b).)

Paragraph 1 sets the due date for the opening brief at 60 days from the clerk's initial notice under Rule 12(b). (Current Rule 15(a) sets the time for the opening brief as 40 days after the clerk's notice under Rule 12(a).) Extending the time for the opening brief from 40 days to 60 days should help to reduce the number of motions to extend this deadline.

Paragraph 4 requires the filing of a "combined" brief on a cross-appeal; current Rule 15(e) appears to make the filing of a "combined" brief permissive.

Paragraph 8 ["intervenor's brief"] is included in the unlikely event of intervention. *See* 1-A, Arizona Appellate Handbook, § 3.3.3.4 (5th ed. 2010).

The proposed rule also eliminates a gender reference in current Rule 15(a).

Rule 15(b) ["at issue"] separates when an appeal becomes "at issue" from the due dates of briefs. It does this by removing "at issue" from current Rule 15(a) and placing it in proposed Rule 15(b).

Rule 15(c) ["manner of filing briefs"] places the key requirements into separate sub-parts, which are currently included with the deadline requirements of Rule 15(a). The rule clarifies that a party must file briefs electronically, unless there is an exception under Rule 6. It provides that an electronic brief is timely if the appellate clerk actually receives it within the time allowed. The rule also lists three ways of filing a paper brief; in contrast, current Rule 15(a) lists only two methods because it does not clearly differentiate mailing from delivery by a commercial carrier. Rule 15(c) adds a requirement concerning a signed certification for filing by mail or a commercial carrier that is currently in a separate rule, Rule 15(d).

Rule 15(d) ["service of briefs"] corresponds with current Rule 15(b). The rule requires service of two copies of a paper brief on a party, but there is no need to require service of multiple copies of an electronic brief. The proposed rule deletes language in the current rule requiring service on the county attorney or the attorney general when the state or a county is the appellee, as this is a requirement that applies when any party, including these governmental bodies, is an appellee. If a party files an electronic brief that includes bookmarks or hyperlinks, the party must serve on the other parties to the appeal an electronic copy of the brief in a reasonably usable format, such as a CD-ROM, that contains functional bookmarks or hyperlinks.

Rule 15(e) ["extension of time to file a brief"] is new. If a party is seeking an extension because the transcript is not yet available, the proposed rule requires the party to certify that a transcript was timely ordered, and to provide an estimated due date for completion. If the party does so, the court will extend the brief's due date until 30 days after the transcript's estimated filing date. An extension for any other reason, including a party's first request for an extension, must meet the "good cause" standard set out in Rule 5(b).

Rule 16. Amicus Curiae

(a) Filing and Form of Brief; Participation in Oral Argument. A brief of an amicus curiae may be filed only if accompanied by written consent of all parties or by leave of court granted upon motion, except that leave or written consent shall not be required when the brief is presented by the State of Arizona or an officer or agency thereof, or by a county, city, or town. The brief shall be lodged with the motion, if any. The motion for leave shall identify the interest of the applicant, state that the applicant has read the relevant brief, petition or motion and shall state the reasons accepting applicant's amicus curiae brief would be desirable. A party desiring to respond to the amicus brief shall file the response within 20 days of service of a brief filed with consent or by a governmental entity or agency, or within 20 days of the Court's order granting a motion for leave to file an amicus brief. Rules 13 and 14 shall govern the form of an amicus brief, except that it shall not exceed 12,000 words in length if done in proportionately spaced typeface, or 35 pages if done in monospaced typeface, unless otherwise permitted by the court. An amicus curiae may participate in the oral argument only by leave of the appellate court.

(b) Time and Length Limits Applicable to Amicus Curiae Briefs in the Supreme Court. Parties desiring to file an amicus curiae brief shall file such briefs as provided by this rule, except that an amicus curiae brief relating to a special action petition shall be filed as expeditiously as possible after the special action petition is filed, as provided for in Rule 7(g), Rules of Procedure for Special Actions.

(1) *Briefs Filed Prior to a Decision by the Court to Grant Review.* Unless otherwise ordered by the Court, an amicus brief filed in support of a petition for review or a response to a petition for review by the State, a county, city, or town, or an amicus brief accompanied by written consent of all parties, or a motion for leave to file the brief, shall be filed no later than 21 days after the filing of the response to the petition for review. Such briefs shall comply with the form and length requirements of Rules 6(c) and 23(c) exclusive of any appendix.

(2) *Briefs filed after the Court has granted review*. After the Court has granted review, and unless otherwise ordered, an amicus brief filed by the State, a county, city, or town, or an amicus brief accompanied by written consent of all parties or a motion for leave to file an amicus brief, shall be filed no later than 10 days after the date ordered by the Court at the time review was granted for filing supplemental briefing by the parties in the particular case. Such briefs shall comply with Rule 6(c) and shall not exceed the page limitation imposed for the parties' supplemental briefs.

(3) *Responses to amicus curiae briefs*. A party wishing to respond to an amicus brief shall file the response within 20 days of service of a brief filed with consent or by a governmental entity or agency, or within 20 days of the Court's order granting a motion for leave to file an amicus brief. The response shall comply with the page and formatting requirements imposed on the particular amicus brief to which it relates.

(4) *Late-filed briefs and responses*. Leave for filing a late amicus or response brief shall be granted only for good cause shown.

Rule 16: Amicus Curiae

(a) Purpose of Amicus Curiae. An amicus curiae is not a party to the appeal. The amicus curiae brief should not advocate a particular party's case, but the brief should assist the appellate court. An appellate court normally allows amicus curiae briefs if:

(1) A party has incompetent representation or no representation at all;

(2) The amicus curiae has an interest in another case that the decision in the present case may affect; or

(3) The amicus curiae can provide information, perspective, or argument that can help the appellate court beyond the help that the parties' lawyers provide.

(b) Requirements for Filing.

(1) Allowance. An applicant may file an amicus curiae brief only if:

(A) The brief is filed with the written consent of the parties and states that on the cover; or

(B) The applicant is the State of Arizona or an officer or agency thereof, or is a county, city, or town; or

(C) The applicant submits the brief with permission of the appellate court granted by motion.

(2) Motion to File. If an applicant seeks to file an amicus curiae brief by motion, the applicant must lodge the brief with the motion. The motion must identify the interest of the applicant, state that the applicant has read the relevant brief, petition or motion, and state the reasons why the appellate court's acceptance of applicant's amicus curiae brief would be desirable.

(3) Disclosure of Sponsor. An amicus curiae brief must clearly identify the group or organization sponsoring the brief, and the interests of the sponsoring entity in the outcome of the appeal. The brief must also identify persons or entities, other than members of the sponsoring group or organization, who provided financial resources for the preparation of the brief.

(4) Other Requirements. Briefs filed by amicus curiae, and other documents filed by amicus curiae, must comply with the form, formatting, filing, certification of compliance, and service requirements applicable to briefs and other documents filed by the parties.

(c) Time to File or Submit an Amicus Brief in the Court of Appeals. A party filing an amicus curiae brief in the Court of Appeals in a case that is not a special action must file the brief, or

lodge the brief with a motion, within 21 days of the deadline for filing the final reply brief.

(d) Time to File an Amicus Brief in the Supreme Court. An applicant seeking to file an amicus curiae brief in the Supreme Court must file the brief as provided by this Rule.

> **(1) Briefs Filed Before a Decision by the Supreme Court to Grant Review.** Unless otherwise ordered by the Supreme Court, an applicant may file (or, if by motion, lodge) an amicus curiae brief in support of a petition for review or a response to a petition for review no later than 21 days after the filing of the response to the petition for review. An amicus curiae brief must comply with the form and length requirements of Rules 4(b) and 23(d) exclusive of any appendix.
>
> **(2) Briefs Filed After the Supreme Court Grants Review.** After the Supreme Court has granted review, and unless otherwise ordered, amicus curiae may file (or, if by motion, lodge) a brief no later than 10 days after the date ordered by the Court for the parties to file supplemental briefs in its order granting review. An amicus curiae brief must not exceed the page limitation imposed for the parties' supplemental briefs.

(e) Time to File an Amicus Curiae Brief in a Special Action. An applicant seeking to file an amicus curiae brief relating to a special action petition must file the brief as expeditiously as possible after the filing of the special action petition, as provided in Rule 7(g) of the Rules of Procedure for Special Actions.

(f) Petitions for Review. Amicus curiae may participate in a petition for review as provided by this Rule and by Rule 23.

Petitioner's notes concerning the proposed rule:

Rule 16(a) ["purpose of amicus curiae"] is new, and incorporates some of the language appearing in the first paragraph of the comment to the 1998 amendments to current Rule 16.

Rule 16(b) ["requirements for filing"], paragraphs (1) ["allowance"] and (2) ["motion to file"] restyle and re-format the first three sentences of current Rule 16(a).

Paragraph 3 ["disclosure of sponsor"] includes slightly modified language now appearing in the second paragraph of the comment to the 1998 amendments to current Rule 16.

Paragraph 4 ["other requirements"], rather than incorporating the format requirements that are currently in Rule 16, specifies that amicus briefs and filings must comply with the form, formatting, filing, certification of compliance, and service requirements applicable to the briefs and filings of the parties to the appeal. No reason exists to have separate formatting requirements for amicus briefs.

Rule 16(c) ["time to file an amicus brief in the court or appeals"] is included because Rule 16 currently does not provide a deadline for filing an amicus brief in the Court of Appeals. The proposed rule provides a 21-day deadline comparable to the 21-day deadline for filing amicus briefs in the Supreme Court when a petition for review has been filed but review has not yet been granted.

Rule 16(d) ["time to file an amicus brief in the supreme court"] incorporates the requirements now found in paragraphs (1) and (2) of current Rule 16(b).

Rule 16(e) ["time to file an amicus brief in a special action"] incorporates the requirements now found in the first sentence of current Rule 16(b).

Rule 16(f) ["petitions for review"] is based on current Rule 23(j) ["amicus curiae"].

Rule 17. Supplemental Citation of Legal Authority

When pertinent and significant authorities come to the attention of a party after the party's brief has been filed, or after oral argument but before decision, a party may supplement the citation of legal authority previously presented in that party's appeal brief or briefs by filing with the appellate court a list of supplemental citations of legal authority. If filed less than 5 days before oral argument, a list shall not be assured of consideration by the court at oral argument unless good cause is shown for a later filing; provided, however, that no supplemental citation of legal authority shall be rejected for filing on the grounds that it was filed less than 5 days before oral argument. The list of supplemental citations shall clearly identify by page number which portion or portions of the party's appeal brief is intended to be supplemented thereby, and the relevant page or pages of the supplemental authority, and shall further state concisely and without argument the legal proposition for which each supplemental authority is cited. The form of such list of supplemental citations shall be governed by Rule 6(c).

Rule 17. Supplemental Citation of Legal Authority

(a) When Appropriate. Pertinent and significant legal authority may come to the attention of a party after the party has filed a brief, or after the appellate court has heard oral argument but before its decision. Under these circumstances, the party may supplement legal authority that the party previously presented in the party's briefing by filing with the appellate court a list of supplemental citations of legal authority.

(b) Form. The list of supplemental citations must clearly identify the page numbers of the party's brief that the party intends to supplement, and the relevant pages of the supplemental authorities. The party must further state concisely, and without argument, the legal proposition supported by a supplemental citation.

Petitioner's notes concerning the proposed rule:

Rule 17 ["supplemental citation of legal authority"] is based on current Rule 17. The substance is the same, but the rule's language is restyled and it breaks the rule into sub-parts. Given the efficiency of electronic filing, as well as the expressed preference in Rule 1 for deciding cases justly, proposed Rule 17 eliminates the current provision, which states that a filing less than 5 days before oral argument may not be considered by the court.

Rule 18. Oral Argument

An appeal may be scheduled for oral argument if, on or before the earlier of the ten (10) days after the date the reply brief is due or filed, a party files with the Court of Appeals a separate instrument requesting oral argument. If any party believes that extended oral argument should be permitted, the reasons therefore should be filed as part of the request for oral argument, or in a separate instrument, no later than 10 days after the request for oral argument is filed. The clerk of the appellate court shall notify the parties of the specific time and place at which oral argument will be heard, at least 20 days prior to the date fixed for oral argument. The notice shall inform the parties as to the appellate court's allocation of time to each side at oral argument. An appeal may be considered and decided without oral argument if the appellate court determines that (1) the appeal is frivolous; (2) the dispositive issue or set of issues presented has been recently authoritatively decided; or (3) the facts and legal arguments are adequately presented in the briefs and record and the decisional process would not be significantly aided by oral argument. When such a determination is made that a case is to be submitted without oral argument, the clerk of the appellate court shall give the parties prompt written notice of such determination, and any party shall have 10 days from the date of such notice from the clerk in which to file a statement setting forth the reasons why, in the opinion of that party, oral argument should be heard.

Rule 18: Oral Argument

(a) Request for Oral Argument. An appellate court may schedule a case for oral argument if a party files a separate request for oral argument within 10 days after the final reply brief's due date, or within 10 days after the date when the appellant actually files the reply brief, whichever is later. A party who believes that the court should allow extended oral argument must state the reasons as part of the request. If the court appellate grants a request for oral argument, or if the court orders oral argument on its own initiative, the appellate clerk will notify the parties of the time and place for oral argument, and the allocation of time for each side. The appellate clerk will provide the notice at least 20 days before the date set for oral argument.

(b) Factors. Notwithstanding a party's request under Rule 18, an appellate court may decide an appeal without oral argument if the court determines that:

(1) The appeal is frivolous;

(2) The court has recently decided in another case the dispositive issues presented; or

(3) The briefs and record adequately present the facts and legal arguments, and oral argument would not significantly aid the decisional process.

The appellate clerk must give the parties prompt written notice if the appellate court determines that submission of a case will occur without the requested oral argument.

(c) Amicus Curiae. Amicus curiae may participate in the oral argument only on motion and

with the appellate court's permission.

Petitioner's notes concerning the proposed rule:

Rule 18 ["oral argument"] incorporates the substance of the current rule. The proposed rule, however, separates the current rule's provisions into two separate sub-parts (a) and (b), and adds a new third sub-part (c).

Rule 18(a) ["request for oral argument"] contains the substance of the first four sentences of current Rule 18.

Rule 18(b) ["factors"] contains the substance of the fifth sentence of current Rule 18. It deletes the sixth and final sentence of current Rule 18; that provision, which is rarely used, allows a party to file a request for the court to reconsider its denial of oral argument.

Rule 18(c) ["amicus curiae"] is a transposition of the last sentence of current Rule 16(a), with restyling.

Rule 19. Petition for Transfer to Supreme Court

(a) Grounds for Transfer. An appeal pending in the Court of Appeals may be transferred to the Supreme Court under the following circumstances:

1. Where the issue on appeal involves a claim that a decision of the Supreme Court should be overruled or qualified.

2. Where the issue on appeal is one on which conflicting decisions have been rendered by the Court of Appeals.

3. Any other extraordinary circumstance justifying transfer.

(b) Time for Filing. On or before the date the appeal is at issue, any party to an appeal pending before the Court of Appeals may petition the Supreme Court to order the transfer of the case to the Supreme Court.

(c) Transfer by the Court of Appeals. At any time after the appeal is at issue but before oral argument or submission of the appeal, the chief judge of the division of the Court of Appeals in which the appeal is pending may petition the Supreme Court to order the transfer of the case to the Supreme Court.

(d) Form of Petition. A petition filed pursuant to subdivision (b) or (c) of this rule shall consist of no more than four pages whether done in proportionately spaced or monospaced typeface and shall be in the form set forth in Rule 6(c). The petition shall set forth in concise language why the petitioner believes the Supreme Court should take jurisdiction of the case. A copy of the petition shall be served by the petitioner upon each of the parties. The clerk of the Supreme Court shall forthwith transmit a copy to the clerk of the appropriate division of the Court of Appeals.

(e) Response to Petition. A response to the petition may be filed within five days after service of the petition, shall consist of no more than four pages whether done in proportionately spaced or monospaced typeface, and shall be in the form set forth in Rule 6(c).

(f) Transfer on Motion of Supreme Court. The Supreme Court, upon its own motion, may order the transfer to the Supreme Court of any case pending before the Court of Appeals.

(g) Additional Fees. No additional fees shall be charged when an appeal is transferred from one appellate court to another appellate court pursuant to this rule.

Rule 19. Petition for Transfer to the Supreme Court

(a) Grounds for Transfer. An appeal pending in the Court of Appeals may be transferred to the Supreme Court if:

(1) The appeal requests overruling or qualifying a decision of the Supreme Court;

(2) There are conflicting Court of Appeals decisions concerning an issue on appeal; or

(3) Other extraordinary circumstances justify transfer.

(b) Transfer on Petition of a Party. A party to a case that is pending before the Court of Appeals may request the Supreme Court to transfer the case by filing a petition with the Supreme Court clerk on or before the date the appeal is at issue.

(c) Transfer on Petition by the Court of Appeals. The chief judge of the division of the Court of Appeals in which the appeal is pending may request transfer of the case by filing a petition with the Supreme Court at any time after the appeal is at issue.

(d) Form of a Petition. A petition filed under Rule19 (b) or (c) must be no more than 4 pages and must be in the form required by Rule 4(a)-(c). It must concisely explain why the Supreme Court should take jurisdiction of the case. The petitioner must serve a copy of the petition on each of the parties. The Supreme Court clerk will promptly transmit a copy of a petition for transfer to the appellate clerk of the appropriate division of the Court of Appeals.

(e) Response to Petition. A party may file a response to a petition to transfer within 5 days after service of the petition. The length of a response and its form must be the same as required for a petition under Rule 19(d).

(f) Transfer on Motion of the Supreme Court. The Supreme Court may order the transfer of a case pending before the Court of Appeals to the Supreme Court. It may also transfer a case filed in the Supreme Court to the Court of Appeals.

(g) No Additional Fees. No appellate court will charge additional fees for transfers under this Rule.

Petitioner's notes concerning the proposed rule:

Rule 19 ["petition for transfer to the Supreme Court"] is a restyled version of the current rule.

There are minor changes to the titles of sections (b), (c), (d), and (g)

Section (d) and (e) eliminate references to proportionate and monospaced typeface.

Rule 19(f) ["transfer on motion of the Supreme Court], in addition to allowing the Supreme Court to order transfer of a case from the Court of Appeals, would also allow the Supreme Court to transfer a case to the Court of Appeals. This may be useful, for example, in an election appeal inappropriately filed in the Supreme Court.

Rule 20. Notice of Decisions and Orders

Immediately after a decision is rendered or an order is made in any appeal, the clerk of the appellate court shall notify by mail all attorneys of record and any party not represented by an attorney. The notice shall state the date when the decision was rendered or the order made and shall include a copy of any opinion or order respecting the decision. The date of mailing the notice shall be noted in the docket.

Rule 20. Notice of Decisions and Orders

When an appellate court enters a decision or an order, the appellate clerk must promptly notify all parties by mail or electronic delivery. The notice must state the date the court filed the decision or order, and the appellate clerk must include with the notice a copy of the decision or order, or a hyperlink to the decision or order. The appellate clerk must note the date of mailing or electronic delivery in the appellate court's docket.

Petitioner's notes concerning the proposed rule:

Rule 20 is a restyled version of the current rule. The proposed rule, however, adds provisions that allow the appellate court clerk to serve notices of decisions and orders electronically; the current rule appears to require service by mail only. The proposed rule also recognizes Division One's practice of providing hyperlinks to its decisions and orders.

Rule 21. Procedures for Claiming Costs and Attorneys' Fees

(a) Timing and Content of Notice. A party intending to claim attorneys' fees incurred on appeal or on review must give notice of such intention in the time and manner set forth in this Rule.

(1) Notice that a party intends to claim attorneys' fees shall be made in the briefs on appeal or by written motion filed and served before oral argument or submission of the appeal. If a petition or cross-petition for review is filed, any party intending to claim attorneys' fees shall give notice of such claim in the petition or cross-petition for review or the response thereto.

(2) A notice under this Rule must specifically state the statute, rule, decisional law, contract, or other provision authorizing an award of attorneys' fees. If a party fails to comply with this subsection, the appellate court may decline to award fees on that basis. This Rule only establishes the procedure for claiming attorneys' fees. It does not create any substantive right to attorneys' fees.

(3) The appellate court may consider a notice of a claim for attorneys' fees made in the superior court as satisfying the notice requirements of this Rule, as long as no party is prejudiced thereby.

(b) Timing of Making Claims for Costs and Attorneys' Fees. A party entitled to costs or attorneys' fees may, within 10 days after the clerk has given notice that a decision has been rendered, file in the appellate court a verified itemized statement of costs or attorneys' fees on appeal or on review.

(c) Method of Establishing Claim for Attorneys' Fees. The statement of the amount claimed for attorneys' fees shall set forth any factors counsel consider relevant to the determination of a reasonable fee. In addition, counsel shall also attach and submit an affidavit containing an itemized statement of hours, indicating the following:

(1) The date on which the service was performed;

(2) The time expended on such date;

(3) The nature of the service; and

(4) The identity of the persons performing the service.

(d) Costs of Briefs; Appendices. The allowance for the cost of the necessary copies of briefs and appendices shall be the amount actually and necessarily expended therefor. However, if the original of a brief or appendix is typed and the copies are either carbon copies or are prepared by a duplicating or copying process, then the sum of two dollars per page shall be presumed to be the maximum cost of typing and preparing one page of the original and all copies of the brief or appendix.

(e) Objections to Claims for Costs and Attorneys' Fees; Procedure if No Objection. An

adverse party may file objections to a statement of costs or attorneys' fees within 5 days after service of such statement. If no objections are filed, the clerk may tax the costs or attorneys' fees in accordance with these rules.

(f) Procedure if Objections are Filed. If objections are filed to a statement of costs or attorneys' fees, the party entitled to costs or attorneys' fees may reply within 5 days after the service of the objections. The amount of costs or attorneys' fees to be taxed may then be determined by the clerk, or by a member of the appellate court's legal staff designated by administrative order of the appellate court. A party aggrieved by such determination may apply to the appellate court for relief by motion, filed within ten days from the date of the order setting forth such determination, requesting the court to review the statement of costs, the objections thereto, and the reply to the objections. The appellate court shall then determine de novo the amount of costs or attorneys' fees to be taxed, without further hearing or argument.

(g) Ruling on Statement of Costs While Petition for Review is Pending. Notwithstanding the filing of a petition for review, the Court of Appeals shall retain jurisdiction to rule on a timely filed statement of costs including attorneys' fees. When the Court of Appeals awards costs or attorneys' fees against a party after the filing of a petition for review, such party may, by motion filed with the clerk of the Supreme Court, request that the Supreme Court review the parties' objections to the awarding of such costs or fees as a part of the pending petition for review proceeding. Any such motion shall include a copy of the order of the Court of Appeals granting costs or fees. The party in whose favor costs or attorneys' fees have been awarded may file a response within ten days after service of such a motion.

(h) Clerk to Insert Costs in Mandate. The clerk shall include in the mandate an itemized statement of any attorneys' fees allowed and costs taxed on appeal pursuant to Rules 21(a), 21(c), and 21(f).

(i) Award of Costs and Attorneys' Fees Upon Vacation, Reversal or Modification of Court of Appeals' Decision. If the Supreme Court vacates, reverses or modifies the Court of Appeals' decision on the merits, a party entitled to costs and/or attorney's fees may, pursuant to Rules 21(a) and 21(c), file with the Supreme Court a statement of costs and a claim for attorneys' fees incurred in the Court of Appeals. The parties may then file a response and reply thereto pursuant to Rules 21(a) and 21(c). The Clerk of the Supreme Court or the Supreme Court may either tax such costs and rule on such request or remand the case to the Court of Appeals for such a determination.

Rule 21. Attorneys' Fees and Costs

(a) Claim for Attorneys' Fees. A party who intends to claim attorneys' fees incurred on appeal or on review must give notice of such intention in the time and manner set forth in this Rule.

> **(1) Notice Required.** A party who intends to claim attorneys' fees must give notice of the claim in the briefs on appeal, or by filing and serving a written motion of the claim before oral argument or submission of the appeal. Any party who intends to claim

attorneys' fees on a petition for review or a cross-petition must give notice of that claim in the petition or cross-petition for review, or in the response to a petition or cross-petition.

(2) Content of Notice. A notice under this Rule must specifically state the statute, rule, decisional law, contract, or other authority for an award of attorneys' fees. If a party fails to comply with this requirement, the appellate court may decline to award fees on that basis. This Rule only establishes the procedure for claiming attorneys' fees and does not create any substantive right to them.

(3) Claim Made in the Superior Court. The appellate court may consider a notice of a claim for attorneys' fees made in the superior court as satisfying the notice requirements of this Rule, if no party is prejudiced by doing so.

(b) Statement of Fees and Costs; Timing; Objections.

(1) Timing. Within 10 days after the appellate clerk has given notice of a decision, a party requesting attorneys' fees or costs must file in the appellate court an itemized and verified statement of attorneys' fees and costs on appeal or review.

(2) Attorneys' Fees. The statement must include any factors relevant to a decision to award fees and the determination of a reasonable fee. The itemized statement of fees must include the following:

(A) The dates on which each person for whom fees are claimed performed services;

(B) The time each person expended for each task on each date;

(C) A description of the service;

(D) The identity of the person performing the service; and

(E) Whether the fee is fixed or contingent, and if hourly, the applicable rate for each person.

(3) Costs. The statement must itemize taxable costs. The cost of preparing paper briefs and appendices must be the amount the party actually and necessarily spent, but must not exceed the sum of two dollars per page.

(4) Objections and Determination. Objections to the statement of attorneys' fees and costs must be filed within 10 days after service of the statement. If no objections are timely filed, the appellate court may award attorneys' fees and tax costs. If objections are timely filed, the requesting party may reply within 5 days after service. The appellate court will then determine the amount of attorneys' fees and costs without further hearing or argument.

(c) Pending Petition for Review. The Court of Appeals retains jurisdiction to rule on a timely filed statement of attorneys' fees or taxable costs notwithstanding the filing of a petition for review. If the Court of Appeals awards attorneys' fees or costs after the filing of a petition for review, a party that timely objected to the statement may file a motion with the Supreme Court to review the party's objections to the award when considering the petition. The motion must include a copy of the order of the Court of Appeals granting fees or costs. The party in whose favor the Court of Appeals awarded attorneys' fees or costs may file a response within 10 days after service of that motion.

(d) Vacation, Reversal or Modification. If the Supreme Court vacates, reverses, or modifies the Court of Appeals' decision, a party entitled to attorneys' fees and costs may file in the Supreme Court a statement of attorneys' fees and costs incurred in the Court of Appeals. The statement must meet the requirements of Rule 21(a) and (b). Any objections or reply must be filed within the times stated in Rule 21(b)(4). The Supreme Court clerk or the Supreme Court may determine the amounts of fees and costs, or the Supreme Court may remand the case to the Court of Appeals for that purpose.

(e) Mandate. The appellate clerk must include in the mandate separate statements of the amount of attorneys' fees awarded and costs taxed on appeal. The mandate must include the amounts of attorneys' fees awarded and costs taxed in the Supreme Court and in the Court of Appeals.

Petitioner's notes concerning the proposed rule:

Rule 21 ["attorneys' fees and costs"] restyles and re-titles current Rule 21 ["procedure for claiming costs and attorneys' fees."]

Current Rule 21 includes recent amendments [R-12-0039], and the proposed rule retains the substance of those amendments. Certain portions of the current rule, however, describe procedures that are not followed (in at least Division One), and these were modified, as explained below.

Rule 21(a) ["claim for attorneys' fees"] is substantially the same as the current rule. The proposed rule, however, includes titles for each of the rule's three paragraphs.

Rule 21(b) ["statement of fees and costs; timing; objections"] consists of four numbered paragraphs, each with a topic heading.

Paragraph (1) ["timing"] is based on current Rule 21(b).

Paragraph (2) ["attorneys' fees"] is based on current Rule 21(c). The proposed rule adds a fifth criterion: "whether the fee is fixed or contingent, and if hourly, the applicable rate for each person."

Paragraph (3) ["costs of briefs"] is based on current Rule 21(d), but references to the cost of a "typed" brief and "carbon copies" are deleted.

Paragraph (4) ["objections and determination"] consolidates current Rules 21 (e) and (f). The proposed rule, however, eliminates the procedures described in current Rule 21(f) calling for the clerk, or for the court's legal staff, to tax legal costs following the opposing party's filing of an

objection to costs or attorneys' fees; Division One does not use this procedure.

Rule 21(c) ["pending petition for review"] is based on current Rule 21(g).

Rule 21(d) ["vacation, reversal, or modification"] is based on current Rule 21(i).

Rule 21(e) ["mandate"] is based on current Rule 21(h), but it requires "separate" statements of attorneys' fees and costs rather than "itemized" statements. It also clarifies that the Supreme Court mandate should include the attorneys' fees and costs awarded by the Court of Appeals if the Supreme Court upholds the decision of the Court of Appeals.

Rule 22. Motions for Reconsideration

(a) Necessity. The filing of a motion for reconsideration in the Court of Appeals is not a prerequisite to the filing of a petition for review pursuant to Rule 23.

(b) Time for Filing; Extension of Time. Any party desiring reconsideration of a decision of an appellate court may file a motion for reconsideration in the appellate court within fifteen days after the filing of a decision by the appellate court. The motion shall not be amended except by leave of court. A request for extension of time shall be filed in the appellate court that issued the decision or opinion in question.

(c) Response. No response to a motion for reconsideration will be filed unless requested by the Court, but a motion for reconsideration will not be granted in the absence of such a request.

(d) Form, Length and Contents. A motion for reconsideration shall be directed solely to discussion of those specific points or matters in which it is claimed the appellate court erred in determination of facts or law. It shall comply with the provisions of Rule 6(c) not otherwise suspended by any Administrative Order of the Supreme Court. Except by permission of the court (1) a motion for reconsideration or a response prepared in a proportionately spaced typeface may not exceed 3500 words and may not have an average of more than 280 words per page, including footnotes and quotations; (2) a motion for reconsideration or a response prepared in a monospaced typeface may not exceed 10 pages and may not have an average of more than 350 words per page including footnotes and quotations; and (3) a handwritten motion for reconsideration may not exceed 12 pages. The motion or response shall be accompanied by a certificate of compliance that states either (1) that the motion or response uses a proportionately spaced typeface of 14 points or more, is double spaced using a roman font and contains [blank] words, or (2) that the motion or response uses a monospaced typeface of no more than 10.5 characters per inch and does not exceed 10 pages, or (3) that the motion for reconsideration was handwritten and does not exceed 12 pages. A party preparing this certificate may rely on the word count of the processing system used to prepare the petition for review.

(e) Motions Not Permitted. Unless permitted by specific order of the appellate court, no party shall file a motion for reconsideration of (1) an order denying a motion for reconsideration; (2) an order denying a petition for review; or (3) an order declining to accept jurisdiction of a petition for special action.

Rule 22. Motion for Reconsideration

(a) Purpose and Necessity. A motion for reconsideration requests the appellate court to consider whether its decision contained erroneous determinations of fact or law. A party need not file a motion for reconsideration in the Court of Appeals before filing a petition for review under Rule 23.

(b) Required Showing. A motion for reconsideration must state with particularity the points of law or fact that the party believes the appellate court has overlooked or misunderstood, or any

changes in legal or factual circumstances that may entitle the party to relief.

(c) Filing. A party desiring reconsideration of a decision must file a motion for reconsideration in the appellate court within 15 days after the court files its decision. A motion to extend this deadline must be filed in the appellate court that issued the decision. A party may amend a motion for reconsideration only with the appellate court's permission.

(d) Response. A party may not file a response to a motion for reconsideration unless requested by the appellate court to do so, but the appellate court will not ordinarily grant the motion without requesting the opposing party to file a response.

(e) Form and Length. A motion for reconsideration or a response to a motion must comply with the provisions of Rule 4a)-(c). A motion for reconsideration or response to a motion may not exceed 3,500 words (including footnotes and quotations), or, if handwritten, may not exceed 12 pages (including footnotes and quotations). A certificate of compliance, as provided in Form 2, must accompany a motion for reconsideration or a response. A party preparing this certificate may rely on the word count of the processing system used to prepare the motion or response.

(f) Motions Not Permitted. Unless permitted by specific appellate court order, no party may file a motion for reconsideration of an order denying a motion for reconsideration, of an order denying a petition for review, or of an order declining to accept jurisdiction of a petition for special action.

Petitioner's notes concerning the proposed rule:

Rule 22(a) ["purpose and necessity"] has a new first sentence. The "erroneous determination of fact or law" standard is from the first sentence of current Rule 22(d), which states that motions for reconsideration should be directed to claims that "…the appellate court erred in determinations of facts or law." This sentence has primacy in proposed Rule 22 to provide guidance to self-represented litigants as well as practitioners about when it is appropriate to file a motion for reconsideration. The second sentence of proposed Rule 22(a) is based on current Rule 22(a).

Rule 22(b) ["required showing"] is based on the first sentence of current Rule 22(d). The provision is given its own sub-part to highlight its importance.

Rule 22(c) ["filing"] is a restyled version of current Rule 22(b).

Rule 22(d) ["response"] is a restyled version of current Rule 22(c).

Rule 22(e) ["form and length"] incorporates the requirements of current Rule 22(d), beginning with the third sentence of the current rule. As noted above, the first sentence of current Rule 22(d) is now in proposed Rule 22(a). The second sentence of the current Rule 22(d) ["shall comply with the provisions of Rule 6(c)"] is deleted because it is unnecessary, inasmuch as all filings must comply with the formatting requirements of Rule 4(b), which replaces current Rule 6(c). The remainder of the second sentence of the current rule ("not otherwise suspended by any Administrative Order of the Supreme Court") also is deleted as unnecessary. The current rule's reference to monospaced typeface is omitted in the proposed rule, as it is in the other proposed

rules.

Rule 22(f) ["motions not permitted"] incorporates the substance of current Rule 22(e).

Rule 23. Petition for Review

(a) Time for Filing; Cross-Petition; Extension of Time. Within 30 days after the Court of Appeals issues its decision, any party may file a petition for review with the clerk of the Supreme Court; provided that, if a motion for reconsideration has been filed, a petition for review may be filed within 15 days after the final disposition of the motion. A cross-petition for review may be filed with the clerk of the Supreme Court within 15 days after service of a petition for review. Motions to extend the time to file a petition for review shall be filed in the Supreme Court.

(b) Priority of Motion for Reconsideration. In the event of the timely filing of a petition for review prior to the disposition of a motion for reconsideration, further proceedings relating to the petition or cross-petition for review shall be stayed until the clerk of the Court of Appeals has sent notice of the court's ruling on the motion for reconsideration to the parties and to the clerk of the Supreme Court.

If a motion for reconsideration is granted, proceedings relating to the petition or cross-petition for review shall be further stayed until the clerk of the Court of Appeals has sent notice of the court's ruling on any motion for reconsideration of the decision upon reconsideration, or until the time for filing a motion for reconsideration of such decision upon reconsideration has expired.

In the event a petition or cross-petition has become moot by reason of the granting of a motion for reconsideration, the petitioner or cross-petitioner shall give immediate written notice of such mootness to the clerk of the Supreme Court.

(c) Form, Length and Contents. The petition and cross-petition for review shall comply with the provisions of Rule 6(c) unless such requirements are otherwise suspended and the parties shall be designated as in the Court of Appeals. Except by permission of the court (1) a petition for review prepared in a proportionately spaced typeface may not exceed 3500 words and may not have an average of more than 280 words per page, including footnotes and quotations; (2) a petition for review prepared in a monospaced typeface may not exceed 10 pages and may not have an average of more than 350 words per page including footnotes and quotations; and (3) a handwritten petition for review may not exceed 12 pages. The petition shall be accompanied by a certificate of compliance that states either (1) that the petition for review uses a proportionately spaced typeface of 14 points or more, is double spaced using a roman font and contains [blank] words, or (2) that the petition for review uses a monospaced typeface of no more than 10.5 characters per inch and does not exceed 10 pages, or (3) that the petition for review was handwritten and does not exceed 12 pages. A party preparing this certificate may rely on the word count of the processing system used to prepare the petition for review.

A copy of the Court of Appeals' decision shall accompany the petition. Where the Court of Appeals' decision is simply an order declining to accept jurisdiction of a special action, a copy of the Superior Court's decision from which the petition for special action was taken shall also accompany the petition. The petition and cross-petition shall contain concise statements of the following:

1. The issues which were decided by the Court of Appeals and that the petitioner wishes to present to the Supreme Court for review. The petition shall also list, separately and without argument, those additional issues that were presented to, but not decided by, the Court of Appeals and which may need to be decided if review is granted.

2. The facts material to a consideration of the issues presented to the Supreme Court for review with appropriate references to the record on appeal. No evidentiary matter shall be included unless material to a proper consideration of the issues presented, in which instance a reference shall be made to the record or page of the certified transcript where such evidence appears.

3. The reasons the petition should be granted, which may include, among others, the fact that no Arizona decision controls the point of law in question, a decision of the Supreme Court should be overruled or qualified, that conflicting decisions have been rendered by the Court of Appeals, or that important issues of law have been incorrectly decided.

4. Whether the party claims entitlement to attorneys' fees, and, if so, the information required by Rule 21(a).

If there are documents in the record on appeal that are necessary for a determination of the issues raised by the petition or cross-petition, the petitioner and cross-petitioner shall file, simultaneously with the petition and cross-petition, an appendix consisting only of such documents. In the case of a petition or cross-petition for review submitted in hard copy, if the appendices exceed 15 pages in length, such appendices shall be bound or fastened in the top margin by a two-pronged fastener and shall be submitted separately from the petition and the copy of the Appeals Court's decision or the cross-petition. No adhesive bindings or bindings using numerous holes shall be used. An original and two copies of any separately bound or fastened appendices shall be filed with the petition or cross-petition. If the petition or cross-petition for review is filed electronically, and if the appendices contain multiple documents, such documents shall be electronically bookmarked in the appendices' table of contents.

Any petition for review presented for filing that does not substantially comply with this rule may, in the discretion of the clerk of the Supreme Court, be returned to the petitioner by the clerk with written instructions to the petitioner to file a proper petition within 30 days from the date on which the written instructions are sent to the petitioner.

(d) Availability of Partial Record Upon Filing of a Petition for Review.

1. *When No Motion for Reconsideration Is Pending.* When the clerk of the Court of Appeals is notified that a petition for review has been filed, if the time for filing a motion for reconsideration has passed and either no such motion has been filed or a motion has been filed and disposed of, the clerk shall make available to the clerk of the Supreme Court the briefs filed in the Court of Appeals.

2. *When a Motion for Reconsideration Is Pending.* If a motion for reconsideration is pending in the Court of Appeals when the clerk is notified that a petition for review has been filed, the clerk

shall make the briefs filed in the Court of Appeals available to the clerk of the Supreme Court when the motion for reconsideration has been denied, or if the motion is granted, upon disposition of any motion for reconsideration of the decision upon reconsideration or upon expiration of the time for filing a motion for reconsideration of such decision.

(e) Service and Response. 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 may file with the clerk of the Supreme Court a response within 30 days from the date upon which the petition or cross-petition for review is served. The response shall comply with the provisions of Rules 6(c) and 23(c) not otherwise suspended by any Administrative Order of the Supreme Court. If there are documents in the record on appeal that are necessary for a determination of the issues raised by the petition or cross-petition, the respondent shall file, simultaneously with a copy of the response, an appendix that complies with the requirements set forth in paragraph (c) of this rule, consisting only of such documents which were not included in the appendix filed with the petition or cross-petition. Failure to file a response shall not be considered an admission that the petition should be granted.

If a response is filed, the response shall list, separately and without argument, those additional issues, if any, that were presented to, but not decided by, the Court of Appeals, that were not listed by the petitioner, and that may need to be decided if review is granted.

No reply shall be filed by petitioner, unless the Court has so directed by specific order, in which event a reply may be filed within the time set by the Court.

(f) Order Granting Review. If the Supreme Court grants review, its order shall specify the issue or issues to be reviewed. The Supreme Court may order that the parties file additional briefs or that oral argument be heard, or both. If the order granting review does not provide for supplementation of briefs or for oral argument, either party may, within 15 days after the clerk sends notice of the Court's order, request the Court to do so by a motion specifying the reasons for supplementation or for oral argument, or both.

(g) Availability of Remaining Record. Upon notification by the clerk of the Supreme Court that a petition or cross-petition for review has been granted, the clerk of the Court of Appeals shall make the remaining record available to the clerk of the Supreme Court.

(h) Order Denying Review. If the Supreme Court denies review, its order shall specify those justices of the Supreme Court, if any, who voted to grant review. When all petitions and cross-petitions for review have been denied, the clerk of the Supreme Court shall so notify the clerk of the Court of Appeals and the parties, and shall return any original paper copies of the briefs to the clerk of the Court of Appeals.

(i) Dispositions.

(1) If an appeal is resolved by agreement of the parties after a petition for review by the Supreme

Court is filed, the Supreme Court may order that the decision of the Court of Appeals be vacated, or that any opinion of the Court of Appeals be redesignated as a Memorandum Decision.

(2) When review has been granted, the Supreme Court may remand the appeal to the Court of Appeals for reconsideration in light of authority identified in the Supreme Court's order.

(3) If issues were raised in, but not decided by, the Court of Appeals and review has been granted, the Supreme Court may consider and decide such issues, may remand the appeal to the Court of Appeals for decision of such issues, or may make such other disposition with respect to such issues as it deems appropriate.

(j) Amicus Curiae. The Supreme Court may permit participation by amicus curiae pursuant to the provisions of Rule 16 of these rules not otherwise suspended by any Administrative Order of the Supreme Court.

Rule 23. Petition for Review

(a) Purpose. A petition for review requests the Supreme Court to review a decision of the Court of Appeals.

(b) Place and Time for Filing.

(1) Place for Filing. A party may file a petition, a cross-petition, or a motion to extend the time for filing a petition or cross-petition, with the Supreme Court clerk.

(2) Filing Fee. The Supreme Court clerk may refuse to accept a filing under this Rule that is tendered without payment of the required filing fee.

(3) Timing. A party must file a petition for review within 30 days after the Court of Appeals issues its decision, unless a party filed a timely motion for reconsideration in the Court of Appeals, and in that event, a party must file a petition for review within 15 days after final disposition of the motion. A party may file a cross-petition for review within 15 days after service of a petition for review.

(c) Stay Pending Motion for Reconsideration. A petition for review is automatically stayed if the petition is filed before the Court of Appeals decides a motion for reconsideration. The stay remains in effect until the Court of Appeals clerk notifies the parties and the Supreme Court clerk of its denial on that motion. The time for filing a response to the petition for review, or a cross-petition, is computed as if the filing of that petition occurred on the date the stay is lifted, as described in the preceding sentence.

If the Court of Appeals grants a motion for reconsideration, the stay remains in effect until the Court of Appeals has made a final disposition. If a petition or cross-petition becomes moot because of the final disposition of a motion for reconsideration, the petitioner or cross-petitioner

must immediately file a written notice with the Supreme Court Clerk to this effect.

(d) Form and Length. The caption of the petition must designate the parties as they were designated in the caption of filings in the Court of Appeals. The form requirements of Rules 4(a)-(c) and the length limitations of Rule 22(e), including the necessity of a certificate of compliance as shown in Form 2, apply to a petition for review

(e) Contents. A copy of the Court of Appeals' decision must accompany the petition. If the Court of Appeals' decision is simply an order declining to accept jurisdiction of a special action, a copy of the superior court's decision that was the subject of the special action must accompany the petition for review. In addition, the petition or cross-petition must contain concise statements of the following:

> **(1)** The issues that were decided by the Court of Appeals that the petitioner is presenting for Supreme Court review. The petition must also list, separately and without argument, additional issues presented to, but not decided by, the Court of Appeals that the Supreme Court may need to decide if it grants review.
>
> **(2)** The facts material to a consideration of the issues presented to the Supreme Court for review, with appropriate references to the record on appeal. No evidentiary matter may be included if it is not material to proper consideration of the issues. If evidentiary matter is material, the party must include a reference to the record or page of the certified transcript where that evidence appears.
>
> **(3)** The reasons the petition should be granted, which may include, among others, that no Arizona decision controls the point of law in question, that a decision of the Supreme Court should be overruled or qualified, that there are conflicting decisions by the Court of Appeals, or that important issues of law have been incorrectly decided.
>
> **(4)** If the party claims attorneys' fees on appeal, the party must include the information required by Rule 21(a)(1) and (2).

(f) Appendix.

> **(1) Necessity.** If there are documents in the record on appeal that are necessary for determination of the issues raised by the petition or cross-petition, the petitioner and cross-petitioner must file, simultaneously with the petition and cross-petition, an appendix that contains only those documents.
>
> **(2) Form.** An appendix must comply with the requirements of Rule 13.1.

(g) Service. The petitioner or cross-petitioner must serve a copy of the petition or cross-petition and any appendix in the manner provided by Rule 4(f) on all parties who have appeared in the Court of Appeals.

(h) Response and Reply.

(1) Timing and Necessity. A party may respond to a petition or cross-petition by filing the response with the Supreme Court clerk within 30 days after service of the petition or cross-petition. A party's failure to file a response to a petition or cross-petition for review will not be treated as an admission that the Court should grant the petition or cross-petition.

(2) Form and Length. The response must comply with the form and length requirements of Rule 23(d). A response also must list, separately and without argument, any additional issues not listed by the petitioner that the parties presented to the Court of Appeals, which that court did not decide and which the Supreme Court may need to decide if it grants review.

(3) Appendix. The response may include an appendix as provided in Rule 23(f), but the appendix to the response may only include documents that were not within the appendix to the petition or cross-petition.

(4) Reply. The petitioner or cross-petitioner may not file a reply unless the Supreme Court issues an order specifically authorizing it, and then the petitioner or cross-petitioner must file the reply within the time set by that order.

(i) Availability of Briefs. When the Supreme Court clerk notifies the Court of Appeals clerk that a party has filed a petition for review:

(1) If the time for filing a motion for reconsideration has passed, and no party filed such a motion, or a party filed a motion that was decided by the court, the Court of Appeals clerk will make available to the Supreme Court the briefs the parties filed in the Court of Appeals. The Court of Appeals clerk must also make available other portions of the record requested by the Supreme Court or its staff attorneys.

(2) If a motion for reconsideration is pending in the Court of Appeals, the Court of Appeals clerk will make the briefs filed in the Court of Appeals available to the Supreme Court clerk upon final disposition of the motion.

(j) Order Denying Review. An order of the Supreme Court denying review will specify those justices of the Supreme Court, if any, who voted to grant review. The Supreme Court clerk will promptly notify the parties and the Court of Appeals clerk if the Supreme Court has denied all petitions and cross-petitions for review, and the Supreme Court clerk will return any original paper briefs to the Court of Appeals clerk.

(k) Order Granting Review. The Supreme Court clerk must promptly notify the parties and the Court of Appeals clerk if the Supreme Court grants a petition or cross-petition for review. A Supreme Court order granting review will specify the issue or issues that the Supreme Court will review. The Supreme Court may order the parties to file supplemental briefs, or it may set oral

argument, or both. If an order granting review does not provide for supplemental briefs or oral argument, any party may file a motion specifying the reasons that supplementation or oral argument, or both, would be appropriate. A party must file this motion within 15 days after the Supreme Court clerk sends notice to the parties of the order granting review.

(l) Availability of the Remaining Record. The Court of Appeals clerk will make the remaining record available to the Supreme Court clerk upon notification that the Court has granted a petition or cross-petition for review.

(m) Disposition. If the Supreme Court grants review, it may decide the appeal in any manner specified in Rule 28(a). Additionally, the Supreme Court may do the following:

> **(1)** Remand the appeal to the Court of Appeals for reconsideration in light of authority it identifies in its order.
>
> **(2)** If issues were raised in, and not decided by, the Court of Appeals, it may consider and decide those issues, remand the appeal to the Court of Appeals to decide them, or dispose of those issues as it deems appropriate.
>
> **(3)** If the parties by agreement resolve the appeal after a petition for review is filed, it may vacate the disposition of the Court of Appeals, or order designation of an opinion of the Court of Appeals as a memorandum decision.

Petitioner's notes concerning the proposed rule:

Rule 23(a) ["purpose"] is new. Because of this rule's length and importance, section (a) provides a brief introduction.

Rule 23(b) ["place and time for filing"] is taken from current Rule 23(a), but it separates the current provisions into three paragraphs, each with a topic heading ["place for filing," "filing fee," and "timing."]

Paragraph 1 emphasizes that a party files a petition for review in the Supreme Court, and not in the Court of Appeals. Paragraph 2 adds a new sentence to the rule: "The clerk may refuse to accept a filing that is tendered without payment of the required fee." This addition reflects existing practice. *See* 1-A, Arizona Appellate Handbook § 3.16.1 at 3-188 (5th ed. 2010) ("The clerk may not accept the petition or cross-petition for filing without payment of the fee. Filing fees for responses to such petitions or cross-petitions are to be paid when such documents are filed in the supreme court.").

Rule 23(c) ["stay pending motion for reconsideration"] is based on current Rule 23(b) ["priority of motion for reconsideration"]. The proposed rule restyles the current rule's surfeit language, such as its use of the word "reconsideration" five times in its second sentence.

Rule 23(d) ["form and length"] is based on current Rule 23(c) ["form, length, and contents"]. Current Rule 23(c) is very lengthy. To make the rule easier to understand, its contents are broken into several separate sub-parts in proposed Rules 23(e), 23(f), and 23(g). The proposed

rule incorporates by reference the form requirements set forth in proposed Rules 4(a)-(c), and the length limitations set forth in proposed Rule 22(e).

Rule 23(e) ["contents"] incorporates the "contents" portion of current Rule 23(c). The next-to-last paragraph of the current rule is now set forth in proposed Rule 23(f).

Rule 23(f) ["appendix"] is the next-to-last paragraph of current Rule 23(f), but it breaks up that existing paragraph into two separate paragraphs ["necessity" and "form."] The form of an appendix must comply with the requirements of proposed Rule 13.1.

Rule 23(g) ["service"] corresponds with the first sentence of current Rule 23(e) ["service and response"]. It separates the remainder of current Rule 23(e) concerning a response to a petition for review into a new section (h).

Rule 23(h) ["response and reply"] includes portions of current Rule 23(e). Proposed Rule 23(h) breaks up that portion of the current rule into four paragraphs ["timing and necessity," "form and length," "appendix," and "reply"]. The proposed rule removes as unnecessary references in the current rule to administrative orders concerning form.

Proposed Rule 23(i) ["availability of briefs"] is based on current Rule 23(d). The rule appears to be archaic for electronic briefs, inasmuch as the technology does not require physical removal of a brief from one court to another. However, to the extent that the Court of Appeals still receives some documents in paper format (such as sealed documents), the rule still may have some applicability. The proposed rule includes a provision allowing Supreme Court staff attorneys to request portions of the record in the Court of Appeals.

Rule 23(j) ["order denying review"] corresponds to current Rule 23(h).

Rule 23(k) ["order granting review"] corresponds to current Rule 23(f).

Rule 23(l) ["availability of the remaining record"] corresponds to current Rule 23(g).

Rule 23(m) ["disposition"] includes the scenarios described in current Rule 23(i), but in different order. The proposed rule also begins with a provision that is not found in current Rule 23(i), allowing the Court to dispose of the petition "in any manner specified in Rule 28(a)."

Note: The following two provisions of current Rule 23 are not included in the proposed rule:

- The last paragraph of current Rule 23(c) concerning non-compliant petitions is covered by proposed Rule 4(d).

- Current Rule 23(j) ["amicus curiae"] is addressed by proposed Rule 16(f).

Rule 24. Issuance of Mandates by Appellate Courts and Mandates from United States Supreme Court

(a) Mandates by Appellate Courts.

(1) If there has been no motion for reconsideration and no petition for review filed, the clerk of the Court of Appeals shall issue the mandate at the expiration of the time for the filing of such motion or petition.

(2) If a motion for reconsideration has been filed, the mandate shall not issue until the motion has been disposed of and until the expiration of the time provided by Rule 23 for the filing of a petition for review.

(3) If a petition for review is filed, the clerk of the Court of Appeals shall not issue a mandate until 15 days after the receipt by the clerk of the Court of Appeals of an order of the Supreme Court denying the petition for review.

(4) When the Supreme Court has filed any decision which requires the issuance of a mandate, the clerk of the Supreme Court shall not issue the mandate until 15 days after the filing of the decision, or if a motion for reconsideration has been filed, 15 days after the motion is disposed of.

(5) Any papers, exhibits, minute entries or other objects transmitted as originals by the clerk of the superior court to the appellate court pursuant to Rule 11(a)(3) shall be returned with the mandate to the clerk of the appropriate court or agency. The papers, exhibits, minute entries or other objects which were transmitted as certified copies to the appellate court may be returned with the mandate to the clerk of the appropriate court or agency, or destroyed after issuance of the mandate pursuant to rule or administrative order of the appellate court.

(b) Stay of Mandate Pending Application for Certiorari.

(1) A stay of the issuance of the mandate of either the Court of Appeals or the Arizona Supreme Court pending application to the United States Supreme Court for a writ of certiorari may be granted upon request.

(2) An application for a stay of the issuance of a mandate of the Arizona Supreme Court may be filed with the clerk of the Arizona Supreme Court within 15 days after the filing of the court's opinion, memorandum decision or order denying a motion for reconsideration.

(3) An application for a stay of the issuance of a mandate of the Court of Appeals may be filed with the clerk of the Court of Appeals within 15 days after an order of the Supreme Court denying a petition for review, or in any other situation requiring the Court of Appeals to issue a mandate.

(4) The stay shall not exceed 90 days unless the period is extended for cause shown. If, during

the period of the stay, there is filed with the clerk of the appropriate court a notice that the party who has obtained the stay has filed a petition for a writ of certiorari, the stay shall continue until the clerk is notified by the United States Supreme Court that the writ has been denied or, in a case in which the writ has been granted, that a mandate has been issued by the United States Supreme Court.

(c) Mandates From United States Supreme Court. Upon receipt of a mandate by the clerk of the appellate court from the Supreme Court of the United States in any action brought to the appellate court on appeal and taken from the appellate court by appeal or writ of error or certiorari to the Supreme Court of the United States, the clerk shall forthwith issue under the clerk's hand and the seal of the appellate court a remittitur to the superior court of the county in which the original judgment was rendered, commanding such court to take such action in the premises as is proper under the mandate. The remittitur shall contain a recital of the mandate in haec verba, and all costs subsequent to the appeal from the superior court shall be taxed in the remittitur.

Rule 24. Appellate Court Mandates

(a) Definition. *"Mandates"* are instructions from an appellate court commanding a superior court or agency to take further proceedings or to enter a certain disposition of a case.

(b) Generally. An appellate court will issue the mandate in an appeal as follows:

(1) If the parties did not file a motion for reconsideration or a petition for review, the Court of Appeals clerk will issue the mandate when the time for the filing that motion or petition expires.

(2) If a party filed a motion for reconsideration, the Court of Appeals clerk will issue the mandate after the appellate court disposes of the motion and the time for filing a petition for review expires.

(3) If a party filed a petition for review, the clerk of the Court of Appeals will issue a mandate 15 days after the receipt by the clerk of an order of the Supreme Court denying the petition for review.

(4) When the Supreme Court has filed any disposition that requires the issuance of a mandate, the Supreme Court clerk will issue the mandate 15 days after the filing of the disposition, or, if a party files a motion for reconsideration, 15 days after a final disposition of the motion.

(c) Return of Papers. The appellate clerk will return to the superior court clerk or other transmitting body any original portions of the record transmitted under Rule 11 to the appellate court. The appellate clerk may destroy copies of the record under rule or appellate court administrative order after the mandate's issuance.

(d) Stay of Mandate.

(1) Request for Stay. A party may request an appellate court to stay issuance of the mandate pending application to the United States Supreme Court for a writ of certiorari:

(A) A party may file an application for a stay of issuance with the Arizona Supreme Court clerk within 15 days after the filing of the Court's opinion, memorandum decision, or order denying a motion for reconsideration.

(B) A party may file an application for a stay of issuance with the Court of Appeals clerk within 15 days after the Supreme Court enters an order denying a petition for review, or within 15 days in any other situation requiring the Court of Appeals to issue a mandate.

(2) Duration. A stay may not exceed 90 days unless the appellate court extends the time for good cause. If during the period of the stay a party files a notice with the appellate clerk stating that the party has filed a petition for a writ of certiorari, the stay will continue until the clerk receives notice from the United States Supreme Court of a denial of the writ or, in a case in which the United States Supreme Court grants the writ, that the United States Supreme Court has issued a mandate.

(e) Mandates from the United States Supreme Court. Upon receipt of a mandate from the United States Supreme Court, an Arizona appellate court will issue its own mandate to the superior court of the county that entered the original judgment. The appellate clerk's mandate will contain a verbatim recital of the United States Supreme Court mandate and command the superior court to take action as provided in the mandate.

Petitioner's notes concerning the proposed rule:

Rule 24 ["appellate court mandates"] shortens the title of the current rule ["issuance of mandates by appellate courts and mandates from United States Supreme Court"].

Rule 24(a) ["definition"] is new. There is no definition of "mandate" in the current rule, yet this word is technical and not ordinarily understood. Rule 24(a) provides a definition.

Rule 24(b) ["generally"] is based on current Rule 24(b) and is restyled. The fifth paragraph of current Rule 24(b) is moved to proposed Rule 24(c).

Rule 24(c) ["return of papers"] is based on current Rule 24(b)(5). The word "body" is used in the proposed rule instead of "agency," which is used in the current rule. The proposed rule requires the appellate clerk to return original portions of the record, but it allows destruction of copies after the issuance of a mandate and as provided by rule or appellate court administrative order.

Rule 24(d) ["stay of mandate"] is based on current Rule 24(b). Proposed Rule 24(d) separates the four paragraphs of the current rule into two paragraphs ["request for stay" and "duration"]. The second sentence of paragraph 4 of current Rule 24(b) is particularly lengthy, and is now broken into two sentences in proposed Rule 24(d)(2).

Rule 24(e) ["mandates from the United States Supreme Court"] is based on current Rule 24(c). The proposed rule, however, uses more easily understood terms rather than the current rule's use of "writ of error or certiorari," "remititur," and "in haec verba."

Rule 25. Sanctions for Delay or Other Infractions

Where the appeal is frivolous or taken solely for the purpose of delay, or where a motion is frivolous or filed solely for the purpose of delay, or where any party has been guilty of an unreasonable infraction of these rules, the appellate court may impose upon the offending attorneys or parties such reasonable penalties or damages (including contempt, withholding or imposing of costs, or imposing of attorneys' fees) as the circumstances of the case and the discouragement of like conduct in the future may require.

Rule 25. Sanctions

An appellate court may impose sanctions on an attorney or party if it determines that an appeal or a motion is frivolous, an appeal or a motion is filed solely for the purpose of delay, or for an unreasonable violation of these Rules. An appellate court may impose sanctions that are appropriate in the circumstances of the case, or to discourage similar conduct in the future. Sanctions may include contempt, dismissal, or withholding or imposing costs or attorneys' fees.

Petitioner's notes concerning the proposed rule:

Rule 25 ["sanctions"] is essentially the same as current Rule 25, but the title is shorter and the content is restyled. The proposed rule separates the single-sentence content of the current rule into three sentences. The phrase "reasonable penalties or damages" in the current rule is subsumed as "sanctions" in the proposed rule. The proposed rule also adds "withholding attorneys' fees" and "dismissal" as possible sanctions.

Rule 26. Voluntary Dismissal

(a) Dismissal in Superior Court. If an appeal has not been docketed, the appeal may be dismissed by the superior court upon stipulation, or upon motion by the party taking the appeal.

(b) Dismissal in the Appellate Court. If the parties to an appeal shall file with the clerk of the appellate court a stipulation that the proceeding be dismissed, specifying the terms as to payment of costs, and shall pay whatever fees are due, the clerk shall enter the case dismissed, but no mandate or other process shall issue without an order of the court. An appeal taken by a party may be dismissed on motion of the party taking the appeal, upon such terms as may be agreed upon by the parties or fixed by the court.

Rule 26. Voluntary Dismissal

(a) Dismissal by the Superior Court. If the appellate clerk has not assigned an appellate case number under Rule 12(a), the superior court may dismiss the appeal on the filing of a stipulation signed by all parties, or on the appellant's motion with notice to all parties.

(b) Dismissal by the Appellate Court. An appellate clerk may dismiss an appeal if the parties pay whatever fees are due and file a signed stipulation requesting dismissal and specifying the terms for payment of costs. The clerk, however, may not issue a mandate or other process without an order from the appellate court. The appellant also may move to dismiss the appeal on such terms as the parties agree, or on terms fixed by the court.

Petitioner's notes concerning the proposed rule:

Rule 26(a) ["dismissal by the superior court"] is a restyled version of current Rule 26(a). In place of the current rule's use of the term "docketed," the proposed rule uses the assignment of an appellate case number as the designated event.

Rule 26(b) ["dismissal by the appellate court"] is a restyled version of current Rule 26(b).

Rule 27. Substitution of Parties

(a) Death of a Party. If a party to an appeal dies while the appeal is pending, or if a party has died prior to an appeal being filed and no substitution has previously been made, the action shall not abate unless otherwise provided by law. The personal representative of the deceased party may be substituted in his or her place upon motion filed with the appellate court by the representative or by any party. The motion of a party shall be served upon the representative. If the deceased party has no representative, any party may suggest the death on the record and such proceedings shall then be had as the appellate court may direct.

(b) Substitution for Other Causes. If substitution of a party is necessary for any reason other than death, substitution shall be effected in accordance with the procedure prescribed in subdivision (a).

(c) Public Officers; Death or Separation From Office

(1) When a public officer in his official capacity is a party to an appeal, and during its pendency he ceases to hold the office, the action does not abate and his successor is automatically substituted as a party. Proceedings following the substitution shall be in the name of the substituted party, but any misnomer not affecting the substantial rights of the parties shall be disregarded. An order of substitution may be entered at any time, but failure to enter such an order shall not affect the substitution.

(2) When a public officer in his official capacity is a party to an appeal, he may be described as a party by his official title rather than by name; but the court may require his name to be added.

Rule 27. Substitution of Parties

(a) Death of a Party. If a party to an appeal dies while the appeal is pending, the decedent's personal representative may be substituted as a party on the personal representative's motion or on motion of any party. A party's motion must be served on the personal representative in accordance with Rule 4(f). If the decedent has no representative, any party may inform the appellate court of the death and the appeal may proceed as the appellate court directs.

(b) Substitution for Other Reasons. If a party's substitution is necessary for any reason other than death, the procedure described in Rule 27(a) applies.

(c) Public Officers:

> **(1) Identification of Party.** A public officer who is a party to an appeal in an official capacity may be described as a party by an official title rather than by name. But the appellate court may require the addition of the officer's name.
>
> **(2) Automatic Substitution of Officeholder.** If a public officer is a party to an appeal in his or her official capacity and if the officer ceases to hold office during the pendency of

the appeal, the appeal does not abate, and the officer's successor automatically substitutes as a party. Proceedings following the substitution are in the name of the substituted party, but the appellate court will disregard any misnomer that does not affect the substantial rights of the parties. The appellate court may enter an order of substitution at any time, but failure to enter such an order will not affect the substitution.

Petitioner's notes concerning the proposed rule:

Rule 27 is a restyled version of the current rule.

Rule 27(a) ["death of a party"] omits the phrase "…if a party died prior to an appeal…." that appears in current Rule 27(a). Proposed Rule 9(d) ["extension of time on death of a party"] describes this circumstance, and a further description in this rule might only cause confusion.

Rule 27(b) ["substitution for other reasons"] is based on current Rule 27(b) ["substitution for other causes"].

Rule 27(c) ["public officers"] incorporates the substance of current Rule 27(c), but reverses the order of the paragraphs and gives each paragraph a topic heading.

Rule 28. Publication of Opinions of the Supreme Court and the Court of Appeals

(a) Opinion; Memorandum Decision; Order; Publication.

(1) An opinion is written disposition of a matter which is intended for publication under subdivision (4) below.

(2) A memorandum decision is a written disposition of a matter not intended for publication.

(3) An order is any disposition of a matter before the court other than by opinion or memorandum decision.

(4) Publication is the distribution of opinions for reporting by publishing companies in compliance with the provisions of A.R.S. § 12-107, § 12-108 and § 12-120.07.

(b) When Disposition to Be by Opinion. Dispositions of matters before the court requiring a written decision shall be by written opinion when a majority of the judges acting determine that it:

1. establishes, alters, modifies or clarifies a rule of law, or

2. calls attention to a rule of law which appears to have been generally overlooked, or

3. criticizes existing law, or

4. involves a legal or factual issue of unique interest or substantial public importance, or

5. if the disposition of a matter is accompanied by separate concurring or dissenting expression, and the author of such separate expression desires that it be published, then the decision shall be by opinion.

(c) Dispositions as Precedent. Memorandum decisions shall not be regarded as precedent nor cited in any court except for (1) the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case or (2) informing the appellate court of other memorandum decisions so that the court can decide whether to publish an opinion, grant a motion for reconsideration, or grant a petition for review. Any party citing a memorandum decision pursuant to this rule must attach a copy of it to the motion or petition in which such decision is cited.

(d) Designation of Written Disposition. The written disposition of the case shall contain in the caption thereof the designation “Opinion,” “Memorandum Decision,” or “Order.”

(e) Publication of Dissenting Vote on Denial of Petition for Review. If a Petition for Review is denied and a justice of the Supreme Court voted to grant review, such justice's dissenting vote shall be reported in the caption of the decision of the Court of Appeals, if such decision is

published in accordance with these rules.

(f) Depublication. Notwithstanding the provisions of Rule 28(b) above, an opinion which has been certified for publication by the Appeals Court shall not be published, on an order to that effect by the Supreme Court entered in a case which is before the Supreme Court on a petition for review, cross-petition for review, or petition for special action and which is entered before such opinion becomes final.

(g) Partial Publication of Decisions. When the court issuing a decision concludes that only a portion of that decision meets the criteria for publication as an opinion, the court shall issue that portion of the decision as a published opinion and shall issue the remainder of the decision as a separate memorandum decision not intended for publication.

Rule 28. Decisions; Publication of Opinions

(a) Generally. An appellate court's decision of an appeal will be in writing. The caption of a decision will contain the designation *"Opinion," "Memorandum Decision," "Decision Order,"* or *"Order."*

> **(1)** An *"opinion"* is a written disposition of an appeal intended for publication. Publication means that the appellate court will distribute the opinions for reporting by publishing companies in compliance with the provisions of A.R.S. § 12-107, § 12-108 and § 12-120.07.
>
> **(2)** A *"memorandum decision"* is a written disposition of an appeal that is not intended for publication.
>
> **(3)** A *"decision order"* or *"order"* is any disposition of a matter before the appellate court other than by opinion or memorandum decision.

(b) Factors for Disposition by Opinion. An appellate court will issue an opinion if a majority of the judges deciding the appeal determines that the court's disposition does one or more of the following:

> **(1)** Establishes, alters, modifies or clarifies a rule of law;
>
> **(2)** Calls attention to a rule of law that is generally overlooked;
>
> **(3)** Criticizes existing law; or
>
> **(4)** Involves a legal or factual issue of unique interest or substantial public importance.

If a disposition includes a separate concurrence or dissent, and the author of the separate expression desires that it be published, then the disposition will be by opinion.

(c) Partial Publication. If the appellate court issuing a decision concludes that only a portion of its decision meets the criteria for publication, it may issue a portion of the decision as an opinion and the remainder as a separate memorandum decision.

(d) Dissenting Vote on Denial of a Petition for Review. If the Supreme Court denies a petition for review of an opinion and a justice voted to grant review, the caption of the Court of Appeals' published decision will report that justice's dissenting vote.

(e) Depublication. Notwithstanding other provisions of this Rule, the Supreme Court may enter an order that there be no publication of either the entirety of a Court of Appeals opinion, or a specified portion of an opinion.

(f) Citations to Memorandum Decisions. Memorandum decisions are not precedent and may not be cited in any court, except:

> **(1)** For the purpose of establishing a defense of res judicata, collateral estoppel, or the law of the case; or
>
> **(2)** To inform an appellate court of other memorandum decisions so that the court can decide whether to publish an opinion, grant a motion for reconsideration, or grant a petition for review.

Any party citing a memorandum decision under this Rule must attach the decision to the motion or petition that cites it.

[**Alternative section (f) if the Supreme Court adopts the rule amendment proposed by R-14-0004**, but with conforming stylistic changes:

(f) Citations to Memorandum Decisions: Memorandum decisions are not precedent and may not be cited in any court, except:

> **(1)** For the purpose of establishing a defense of res judicata, collateral estoppels, or the law of the case; or
>
> **(2)** To inform an appellate court of other memorandum decisions so that the court can decide whether to publish an opinion, grant a motion for reconsideration, or grant a petition for review; or
>
> **(3)** For the decision's persuasive value if filed on or after _____, 201_.

Because a memorandum decision cited for its persuasive value is not precedent, it is not binding on any court of this state. A court need not distinguish or otherwise discuss a memorandum decision and a party has no duty to research or cite it. Any party citing a memorandum decision under this Rule must note in its citation that the decision is unpublished and attach a copy of it to the motion or petition in which such decision is cited.]

(g) Motion for Publication. A motion for publication of a memorandum decision must be filed within 15 days of the decision. Any response to the motion must be filed within 10 days after service of the motion.

Petitioner's notes concerning the proposed rule:

This proposed rule and current ARCAP Rule 28 duplicate most of the provisions of Rule 111 of the Rules of the Supreme Court.

Rule 28(a) ["generally"] includes the substance of current Rules 28(a) and 28(d), but the proposed rule reorganizes those provisions. The proposed rule also adds the term "decision order" alongside "order."

Rule 28(b) ["factors for disposition by opinion"] includes the substance of current Rule 28(b). However, it does not include item #5 of the current rule as an enumerated factor, but instead sets out its substance as an unnumbered sentence.

Rule 28(c) ["partial publication"] is based on current Rule 28(g).

Rule 28(d) ["dissenting vote on denial of a petition for review"] is a restyled version of current Rule 28(e).

Rule 28(e) ["depublication"] is based on current Rule 28(f).

Rule 28(f) ["citation to memorandum decisions"] is a restyled version of current Rule 28(c) ["dispositions as precedent"].

Note that a pending rule petition, R-14-0004, proposes amendments to current ARCAP Rule 28, Supreme Court Rule 111, and Arizona Rule of Criminal Procedure 31.24 that would allow citation to unpublished decisions for their persuasive value, although the decisions would be non-precedential and non-binding. An alternative provision based on that rule petition's proposed amendment (with minor restyling) is included in the proposed rule, and the Court may adopt the alternative if it grants R-14-0004.

Rule 28(g) ["motion for publication"] is new. It reflects current practices regarding motions for publication. See for example Division One's policy on this subject, as posted on its website.

Rule 28.1. Availability of Tax Memorandum Decisions.

(a) Tax Memorandum Decision. Tax Memorandum Decision, as defined in these rules, shall mean any memorandum decision as defined in Rule 28 of these rules that is a disposition of an appeal or a portion thereof that involves the imposition, assessment or collection of a tax, including all questions of law and fact relating to disputes about taxes, or the providing of tax decisions, and includes:

1. Actions arising under Arizona Revised Statutes, title 5, chapters 1, 2, 3 or 4, title 23, chapters 4 or 6 or title 20, 28, 42, 43 or 48,

2. Disputes between political subdivisions of this state regarding taxes, and

3. Appeals involving taxes imposed, assessed or collected by local jurisdictions.

(b) Availability. Within thirty days from the date of issuance, all Tax Memorandum Decisions issued by any Court that contain, in the discretion of the Court, substantive or significant procedural issues, shall be posted on the respective Court of Appeals or Supreme Court website in a manner that prominently indicates that the Tax Memorandum Decisions are not binding legal precedent and cannot be cited except as prescribed under Rule 28 of these rules.

(c) Length of Availability. Tax Memorandum Decisions shall remain posted on the respective Court website for three years from the date of issuance unless, in the sole discretion of the Court, a different length of time is appropriate.

Rule 28.1. Availability of Tax Memorandum Decisions

The respective appellate court websites must post any Tax Memorandum Decision that addresses, in the discretion of the issuing appellate court, substantive or significant procedural issues. The website will post the Tax Memorandum Decision as required by law, and in a manner that prominently indicates that a Tax Memorandum Decision is not binding legal precedent and that a citation to the decision is not permitted except as provided under Rule 28.

Petitioner's notes concerning the proposed rule:

Proposed Rule 28.1 ["availability of tax memorandum decisions"] eliminates much of the current rule's content. The rule no longer serves its original purpose because tax memorandum decisions are available on electronic services such as Westlaw, but an Arizona statute requires the Supreme Court to adopt a rule governing this subject. *See* A.R.S. § 42-2077(D) ("The supreme court shall adopt rules to establish a procedure to distribute tax memorandum decisions to the general public and determine what memorandum decisions are appropriate for distribution.") The proposed rule's intent is to address the statute's directive without repeating its specific requirements. For example, the statute defines "tax" and "tax decision" and reiterating those definitions in this rule is unnecessary. The proposed rule simply and concisely meets the statute's requirements.

Rule 29. Accelerated Appeals

(a) Initiation. The provisions of this Rule shall apply, including where inconsistent with other provisions of these Rules, in the following cases in the Court of Appeals:

1. *By Stipulation.* The parties may agree that an appeal be accelerated under this Rule by stipulation filed with the Court of Appeals in a form prescribed by such court. Such stipulation may be filed within 15 days after the clerk of the court mails the notice required under Rule 12(a).

2. *Upon Notice or Motion.* After an appeal is at issue as defined in Rule 15(a), the court may, on its own motion, with notice, or upon motion of a party, order that an appeal be accelerated under this Rule. Any party may file an objection within ten days of such a notice or of service of such a motion, and an opposing party may file a response within ten days of service of an objection.

(b) Briefs. Briefs in appeals governed by this Rule shall be prepared and filed as prescribed in Rules 13, 14, and 15 unless the parties stipulate before the filing of the brief of the appellant to file summary briefs as provided in subsection (c).

(c) Summary Briefs. Where the parties have stipulated to summary briefs, appellant's and appellee's briefs shall not exceed ten pages if printed or 15 pages if typewritten, and reply briefs shall not exceed five pages if printed or seven pages if typewritten. The argument shall contain only an outline of each argument presented, consisting of a summary statement of that argument and a list, without elaboration, of the authorities and the specific pages thereof relied on. No motion may be filed to vary the provisions of this subsection.

(d) Expedited Decision and Extended Oral Argument. Where no oral argument has been requested the Court of Appeals shall dispose of appeals governed by this Rule within 90 days of when the appeal is at issue or within 90 days of an order or stipulation under section 29(a)(2), whichever is longer. Where oral argument has been requested, oral argument shall be heard within 90 days of when the appeal is at issue or within 90 days of an order or stipulation under section 29(a)(2), whichever is longer. Thirty minutes shall be allowed to each side for argument, which may be extended by the Court of Appeals before or during argument. The Court of Appeals shall dispose of the appeal within three days after oral argument.

(e) Decision by Order. The Court of Appeals may dispose of appeals governed by this Rule by order summarily stating the basis for the disposition. The court may also give an oral decision from the bench following oral argument in addition to such order.

(f) Petitions for Review. The Supreme Court shall give priority to accelerated appeals in which a petition for review is filed. If review is granted, the Supreme Court may decide the case by order, by memorandum decision or by opinion.

(g) Discretion of Court. The Court of Appeals or Supreme Court may at any time remove an appeal from accelerated disposition under this Rule if the court concludes that the appeal is not

an appropriate one for acceleration.

Rule 29. Accelerated Appeals

(a) Scope. This Rule provides an optional procedure for accelerated disposition of an appeal by the Court of Appeals. Where they are inconsistent with provisions of other Rules, the provisions of this Rule apply.

(b) Designation. The appellate court may enter an order designating an appeal "accelerated" by stipulation or motion.

> **(1) By Stipulation.** If all parties agree to an accelerated appeal, they may file a stipulation with the Court of Appeals in a form prescribed by the court. The parties must file the stipulation within 15 days after the appellate clerk mails the initial notice required under Rule 12(b).
>
> **(2) By Motion.** After an appeal is at issue as defined in Rule 15(b), the appellate court on its own motion, with notice, or on motion of a party, may order that the appeal be accelerated. Any party may file an objection within 10 days of service of the appellate court's notice or a motion, and an opposing party may file a response within 10 days of service of the objection.

(c) Briefs. Rules 13 and 14 govern briefs in accelerated appeals, unless the parties stipulate before the filing of the appellant's brief to file summary briefs. If the parties have stipulated to summary briefs, neither brief may exceed 3,500 words, or 10 pages if handwritten. The argument in a summary brief must contain only an outline of each argument, consisting of a summary statement of the argument and a list, without elaboration, of the authorities and the specific pages relied on. If the parties have a stipulation to file summary briefs, neither the stipulation nor a motion may modify these provisions.

(d) Oral Argument and Expedited Decision. If a party requests oral argument under Rule 18 and the appellate court grants the request, the appellate court will hear the argument within 90 days from the date of entry of an order under Rule 29(b), or within 90 days of when the appeal is at issue under Rule 15(b). The appellate court will decide the appeal within 3 days after oral argument. If the parties do not request oral argument, the appellate court will dispose of an accelerated appeal within 90 days of an order under Rule 29(b), or within 90 days of when the appeal is at issue, whichever is later.

(e) Summary Decision. The Court of Appeals may decide an accelerated appeal by an order that summarily states the basis for the disposition. The court also may give an oral decision from the bench following oral argument in addition to providing a summary written order.

(f) Petitions for Review. If a party files a petition for review in an accelerated appeal, the Supreme Court will give priority to the petition.

(g) Discretion of the Court. An appellate court at any time may remove an appeal from

accelerated disposition if it concludes that the appeal is not appropriate for accelerated treatment.

Petitioner's notes concerning the proposed rule:

Rule 29(a) ["scope"] adds a new and introductory first sentence: "This Rule provides an optional procedure for accelerated disposition of an appeal by the Court of Appeals." The first portion of the first sentence of current Rule 29(a) is included as the second sentence of the proposed rule.

Rule 29(b) ["designation"] is a restyled version of the remaining portions of current Rule 29(a). This provision clarifies that a stipulation or motion is insufficient to designate an appeal as an accelerated appeal; the designation requires a court order.

Rule 29(c) ["briefs"] consolidates current Rules 29(b) ["briefs"] and 29(c) ["summary briefs."].

Rule 29(d) ["oral argument and expedited decision"] is based on existing Rule 29(d), but clarifies that:

(1) the time runs from the date of the order, not the stipulation;

(2) oral argument in an accelerated appeal is discretionary, as it is with other appeals, and

(3) the time for oral argument in an accelerated appeal should be the same as other appeals under proposed Rule 18, notwithstanding that the current rule on accelerated appeals allows 30 minutes per side.

Rule 29(e) ["summary decision"] is based on existing Rule 29(e) ["decision by order."].

Rule 29(f) ["petitions for review"] is based on existing Rule 29(f).

Rule 29(g) ["discretion of the court"] is based on current Rule 29(g).

Rule 30. Arizona Appellate Settlement Conference Program

(a) Goals. The Arizona Appellate Settlement Conference Program (Program) is established to provide an alternative means for resolving certain civil appeals and to enhance public confidence in the appellate court system. The Program is intended to provide parties to an appeal a forum and process to (1) realistically explore settlement of the entire case or issues in the case, (2) limit and simplify issues on appeal, and (3) aid the speedy and just resolution of the appeal. The Program shall be provided at no additional court costs to the parties beyond the normal appellate filing fees.

(b) Definitions.

(1) *Court.* "Court" means the Arizona Court of Appeals. Where " Division One" or "Division Two" is specified, such references shall be to the respective Divisions of the Arizona Court of Appeals.

(2) *Appellate Mediator.* "Appellate Mediator" means a retired or active appellate judge or superior court judge or active member of the Arizona State Bar who has agreed to serve as an appellate mediator for the Program. The Court shall maintain a list of appellate mediators who shall be approved by and serve at the pleasure of the Chief Judge of the Court and the Arizona Supreme Court.

(3) *Settlement Conference Attorney.* "Settlement conference attorney" means an employee of the Court designated by the Chief Judge to assist the Court in implementing the Program.

(c) Applicability. All appeals filed in the Arizona Court of Appeals are eligible for the Program except: (1) criminal appeals; (2) appeals involving habeas corpus petitions; (3) appeals in which a party is incarcerated; (4) appeals from juvenile court; (5) appeals from the Arizona Department of Economic Security Appeals Board; (6) direct appeals from the corporation commission; and (7) special actions.

(d) [Applicable in Division One] Order of Assignment. Except as provided in paragraph (f) of this rule, the Court shall select those cases for assignment to the Program which the Court, following a review of the appellate record, deems most likely to benefit from alternative dispute resolution. Within three days after either payment of appellant's filing fee or order waiving, deferring or acknowledging that appellant is exempt from paying a filing fee, the Court shall enter an order notifying the parties to a selected case that the case has been assigned to the Program. The order shall instruct the parties to submit their paragraph (h) settlement statements to the appellate mediator in care of the settlement conference attorney at the Court. The order shall stay the normal appellate briefing schedule pending completion of the settlement process. The order shall not stay payment of fees, posting bonds or filing notices of cross- appeals or civil appeals docketing statements.

(d) [Applicable in Division Two] Order of Assignment. Except as provided in paragraph (f) of this rule, Division Two shall select those cases for assignment to the Program which Division

Two deems most likely to benefit from alternative dispute resolution. Within three days after the appellant has filed the Notice of Appeal, Division Two may enter an order notifying the parties to a selected case that the case has been assigned to the Program. The order shall stay the normal appellate briefing schedule pending completion of the settlement process. The order may also stay posting bonds for costs on appeal, filing notices of cross-appeals, ordering certified transcripts, or transmitting indexes of records on appeal. The assignment order shall also notify the appellant that the filing fee shall be paid within ten days.

(e) Objection to Assignment. A party may object to assignment to a settlement conference by submitting a written objection no later than five calendar days after the date of the order of assignment. The objection shall not be filed in the Court, shall be confidential, shall not be placed in the appellate case file, and need not be served upon opposing counsel. To ensure confidentiality, the party shall send the objection in an envelope marked "confidential" to the settlement conference attorney. The settlement conference attorney shall not disclose the contents of the objection to an opposing party without the consent of the objecting party. Upon submitting the objection, the party shall also file a notice of filing objection to settlement conference in the Court. The settlement conference attorney will present the objection with a recommendation for disposition to the Chief Judge or the Chief Judge's designee. The Court, in its discretion, shall enter an order vacating the conference, continuing the conference or denying the objection.

(f) Motion for Participation. Before the opening brief is filed, any party who has paid an appellate filing fee, has obtained a fee waiver or deferral or is exempt from payment of the fee for a Program-eligible case may submit a written request to the settlement conference attorney for assignment to the Program. The request shall indicate the reasons the case should be assigned to the Program and in Division One a copy of the civil appeals docketing statement shall be attached to the request. If an appellee in Division One is the requesting party and appellant has not yet filed a civil appeals docketing statement, the appellee in Division One shall complete the civil appeals docketing statement form and attach it to the request. Requests shall remain confidential and the requesting party need not serve the request upon the opposing parties. If the requesting party desires a stay of the appellate process pending completion of the settlement process, the request shall describe the status of the appellate process and what aspect of the process is sought to be stayed.

Within three days of receipt of a request for assignment to the Program, the Court shall grant or deny the request. If the request is denied, the settlement conference attorney shall provide written notification of that denial to the requesting party. If the request is granted, the Court shall enter an order notifying all parties that the case has been assigned to the Program. The order shall instruct the parties to submit their paragraph (h) settlement statements to the appellate mediator in care of the settlement conference attorney at the Court. The order may indicate that all or part of the appellate process is stayed pending completion of the settlement process. Notwithstanding the foregoing, the order shall not stay payment of fees, posting bonds, filing notices of cross-appeals or civil appeals docketing statements or preparation of the index to the record on appeal.

(g) Mandatory Participation. Participation is mandatory for all parties to appeals assigned to

the Program unless the Court grants an objection to assignment as provided in paragraph (e).

(h) Settlement Statement. In Division One, the order of assignment shall instruct the parties to submit a confidential settlement statement in a form prescribed by the Court within ten calendar days from the date of the order of assignment. In Division Two, upon appellant's payment of the filing fee, Division Two shall instruct the parties to submit within ten calendar days a confidential settlement statement in a form prescribed by Division Two and give notice that appellee's filing fee shall be paid within the same period. If the tenth day falls on a weekend or holiday, the statement is due on the following business day. To ensure confidentiality, the parties shall send their statements in an envelope marked "confidential" to the appellate mediator in care of the settlement conference attorney. The statements shall not be filed with the Court, shall be confidential, shall not be placed in the appellate case file, and need not be served upon opposing parties. In no event shall the appellate mediator or the settlement conference attorney disclose the statement or its contents to opposing parties without the consent of the party submitting the statement. Upon submission of the settlement statements to the appellate mediator, the parties shall file a notice of filing settlement statement with the Court.

(i) Selection of Appellate Mediator. Upon assignment of a case to the Program, the settlement conference attorney shall select an appellate mediator on a rotating basis from the list of appellate mediators maintained by the Court. The parties will not be charged for the services of the appellate mediators.

(j) Authority of Appellate Mediator. The role of the appellate mediator is to facilitate the voluntary resolution of cases by assisting the parties and their counsel to come to an agreement. The appellate mediator shall have no duty to make a recommendation for settlement of the appeal. The appellate mediator is authorized to order conferences and request the parties to provide the appellate mediator with additional information. The appellate mediator has the authority to terminate the settlement process if the appellate mediator believes the process is unproductive or that any party is not proceeding in good faith.

(k) Orders. After the initial conference, in Division One the appellate mediator or in Division Two the court shall either enter an order setting another settlement conference in accordance with these rules, or enter a disposition order as provided in paragraph (m)(6).

(l) Termination of Stay. Unless earlier terminated, all stays issued as part of the Program shall automatically terminate upon entry of an order returning the case to the appellate docket. Upon entry of the order returning the case to the appellate docket, the parties shall resume the normal appellate process.

(m) Settlement Conference.

(1) *Scheduling of the Conference.* The Court shall schedule a conference to be held within fifteen days after the due date for submitting settlement statements.

(2) *Location of the Conference.* Unless otherwise ordered by the Court, all conferences shall be

held at the Arizona Court of Appeals.

(3) *Attendance at the Conference.* The parties and their attorneys shall attend the settlement conference in person unless the Court finds good cause to permit a party to participate by telephone. In the case of a corporation, partnership, association, governmental body or other organization, both a representative having settlement authority for that party and the party's attorney shall attend. In the case of an official named as a nominal party, the Court shall ordinarily exempt such party from attendance.

(4) *Nature of the Conference.* The conference shall be an informal confidential meeting presided over by the appellate mediator. The appellate mediator shall have discretion to set the agenda and sequence of presentations and may deliver an agenda to the parties in advance of the conference. The discussions at the settlement conference shall not be recorded.

(5) *Completion of the Conference.* The settlement process shall be completed within three calendar days of the initial conference unless the appellate mediator extends the deadline for completion of the settlement process for a maximum period of seven additional calendar days.

(6) *Disposition Order.* Upon completion of the settlement process, the appellate mediator shall either enter an order returning the case to the normal appellate process or enter an order indicating that the parties will file a stipulated motion to dismiss within ten days of the date of the order. If the stipulation is not timely filed, the court will return the case to the normal appellate process.

(n) Confidentiality.

(1) *Communication Between the Court, the Appellate Mediator and the Parties.* The parties to a case selected for the Program, the appellate mediator and any court employee who becomes involved in the Program in a particular case shall not communicate to anyone any matters or information discussed or learned either during the conference or from the settlement statements. Such information shall be confidential, not discoverable and shall be inadmissible in evidence in any judicial proceedings.

(2) *Documents.* Documents prepared by the parties and received by the appellate mediator or the settlement conference attorney as part of the Program shall not be filed as part of the appellate case file with the Court, shall not be served upon opposing parties and shall not be disclosed to any person or party without the consent of the party who prepared the documents. Upon termination of the settlement process, in Division One the settlement conference attorney and the appellate mediator shall destroy the documents in their case files except for the final settlement report, and in Division Two the documents shall be returned to the parties. These documents and the final settlement report shall not be discoverable and shall be inadmissible in evidence in any judicial proceedings.

(3) *Rules of Professional Conduct.* Notwithstanding the provisions of paragraphs (n)(1) and (2), if the appellate mediator becomes aware that a lawyer has violated the Rules of Professional

Conduct raising a substantial question as to that lawyer's honesty, trustworthiness or fitness as a lawyer in other respects, the appellate mediator may disclose documents and discussions relevant to that violation to the appropriate professional authority.

(o) Immunity. Appellate mediators, the settlement conference attorney and all other court employees involved in the Program shall be absolutely immune from suit for all conduct in the course of their official duties.

(p) Disqualification of Appellate Mediator. Any person who participates as an appellate mediator shall not thereafter participate in any way in the consideration or disposition of the appeal on its merits.

(q) Final Settlement Report in Division One. Upon completion of the settlement process in Division One, the settlement conference attorney shall prepare a final report approved by the appellate mediator to explain why the settlement process succeeded or did not succeed in that case. The final report shall be confidential and neither the appellate mediator nor the settlement conference attorney shall disclose to or discuss with any third person the contents of such final report. The final report shall be retained in a confidential file separate from the appellate case file and may be used to compile information concerning the success of the Program provided that any statistic or report on the Program shall not identify particular cases, parties or attorneys.

(r) Time. In computing any period of time prescribed by these rules or by order entered pursuant to these rules, the provisions of Ariz. R. Civ. P. (6)(a) or Ariz. Rules Fam. L. Proc. 4(A) shall apply, unless the rule or an order expressly states otherwise.

Rule 30. Arizona Appellate Settlement Conference Program

The Arizona Appellate Settlement Conference Program (the "program") provides an alternative process for resolving certain civil appeals and for enhancing public confidence in the appellate court system. The program's objectives are to provide parties to an appeal a procedure to:

(1) Realistically explore settlement of the entire case or issues in the case;

(2) Limit and simplify issues on appeal; and

(3) Aid the speedy and just resolution of the appeal.

Every appeal filed in the Arizona Court of Appeals under these Rules is eligible for the program. The program is available at no additional court cost to the parties beyond the normal appellate filing fees.

Each division of the Court of Appeals may establish its policy for participation in the program or objecting to participation; assignment of cases to the program; selection of appellate mediators; and other procedures including settlement conferences. Each policy must provide that:

(1) All proceedings in this program are confidential, are not discoverable, and are inadmissible in evidence in any judicial proceeding. A party to an appeal selected for the program likewise may not communicate to a third person any information that he or she discusses or learns of in the course of the program**,** except to the extent required by law or compelled by process**.**

(2) Appellate mediators, settlement conference attorneys and all other court employees involved in the program are absolutely immune from suit for all conduct in the course of their official duties.

(3) Any person who participates as an appellate mediator must not later participate in any way in the consideration or disposition of the appeal on its merits.

Appellate Settlement Conference Program policies for each division must be published on the division's website, and be available at the office of the appellate clerk.

Petitioner's notes concerning the proposed rule:

The proposed rule substantially shortens current Rule 30. The portion that remains is restyled, but the substance of that portion is essentially unchanged.

Although Rule 30 is useful, it applies to a very small number of appeals, yet is the lengthiest appellate rule. (The rule is seven columns of text, or 3-1/2 pages, in Volume I of the 2014 Arizona Rules of Court.) The proposed rule eliminates most of the current rule's text and replaces it with a short rule that mentions the program's existence and provides a brief description of how cases are designated for the program.

The proposed rule provides that remaining program details will be available on Division One and Division Two websites as court policy statements. This mechanism, and removing the program's details from the rules, has the following advantages:

- It allows each division's website to state only that division's policy, compared to the current rule that includes different practices for each of the two divisions;
- It permits modification of policies without the necessity for a time-consuming rule amendment; and
- It substantially reduces the length of Rule 30.

Rule 31. Notice of Settlement

It shall be the duty of counsel or any party if unrepresented by counsel to give the Clerk of the appellate court prompt notice of the settlement of any case or matter filed in the Court. In the event of any unreasonable delay in the giving of such notice, the Court may impose sanctions against counsel or the parties to insure future compliance with this rule.

Rule 31. Notice of Settlement

The attorney for a party and any party unrepresented by an attorney must give the appellate court clerk prompt notice of the settlement of any pending appeal or other matter. An appellate court may impose sanctions against an attorney or a party for any unreasonable delay in giving such notice to the appellate clerk.

Petitioner's notes concerning the proposed rule:

Rule 31 ["notice of settlement"] has the same substance as the current rule, but the rule's language is restyled.

The current ARCAP has no corresponding rule.

Rule 32. Websites, Filing Portals, and Forms

a. Websites. Information concerning the appellate courts is available on their respective websites:

(1) Arizona Supreme Court:

http://www.azcourts.gov/azsupremecourt.aspx

(2) Arizona Court of Appeals, Division One:

http://azcourts.gov/coa1/Home.aspx

(3) Arizona Court of Appeals, Division Two:

http://www.appeals2.az.gov/

b. Filing Portals. The appellate courts have the following portals for electronic filing:

(1) For the Arizona Supreme Court and Division One of the Court of Appeals:

www.azturbocourt.gov

(2) For Division Two of the Court of Appeals:

www.appeals2.az.gov/e-filer/login.cfm

c. Forms Included in the Appendix to These Rules.

Form 1: Notice of appeal or cross-appeal [Rule 8(c)]

Form 2: Certificate of compliance [Rule 14(a)(6), Rule 22(e) and Rule 23(d)]

Form 3: Caption [Rule 4(a)]

Form 4: Caption of a brief [Rule 14(b)]

Form 5: Consent for electronic service by the appellate clerk [Rule 4(h)]

d. Authority of the Administrative Director. The Administrative Director of the Administrative Office of the Courts has authority to:

(1) Add, delete, or change addresses of appellate websites listed in Rule 32(a) and filing portals listed in Rule 32(b), as necessary.

(2) Modify forms listed in Rule 32(c) in response to changes in state laws or procedures, to make other necessary administrative amendments or technical corrections, or to add or delete forms, as appropriate.

Petitioner's notes concerning the proposed rule:

Rule 32 ["websites, filing portals, and forms"] is new.

Rule 32(a) ["website"] provides URL's for the Arizona Supreme Court and for Division One and Division Two of the Court of Appeals.

Rule 32(b) ["filing portals"] provides URL's for electronic filing portals for Arizona appellate courts.

Rule 32(c) ["forms included in the appendix to these rules"] contains five basic forms. Two of the forms (a "notice of appeal" and a "certificate of compliance") are included in the current rules. These two forms have been restyled. There are new forms for an appellate brief's caption, for a caption for other appellate filings, and for a self-represented litigant's consent to electronic service by the appellate clerk.

Rule 32(d) ["authority of the administrative director"] authorizes the Administrative Director of the Administrative Office of the Courts to change the foregoing website addresses, as necessary, or to amend or add forms, as appropriate. This bypasses the rule amendment process established by Rule 28 of the Arizona Rules of the Supreme Court, and permits changes on an expedited basis.