

APPENDIX TO AMENDED PETITION¹
ARIZONA RULES OF CRIMINAL PROCEDURE

Rule 31.2. Notice of appeal; automatic appeal; joint appeals.

a. [No change to text.]

b. Automatic Appeal When Defendant is Sentenced to Death. When a defendant has been sentenced to death, ~~the clerk, pursuant to Rule 26.15, shall file a notice of appeal on his behalf at the time of entry of judgment and sentence. Such notice at the time of entry of judgment, the clerk~~ **OF THE SUPERIOR COURT** shall file a notice of appeal on the defendant's behalf. The clerk **OF THE SUPERIOR COURT** shall also contemporaneously file a notice of post-conviction relief pursuant to Rule 32. ~~The appeal will be stayed pending resolution of the defendant's petition for post-conviction relief and will be consolidated with any petition for review from that proceeding.~~ The notice of appeal shall be sufficient as a notice of appeal by the defendant with respect to all judgments entered and sentences imposed in the case. Within 10 days after the filing of the notice of post-conviction relief and notice of appeal in any capital case, the clerk of the superior court shall notify all authorized transcribers assigned to transcribe any portion of the proceedings that they are required to transmit their portions of the certified transcript to the clerk of the supreme court.

c. – g. [No change to text.]

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Rule 31.4. Motion to stay appeal; notice of reinstatement of appeal; consolidation of appeals

¹ Additions to text which were present in the initial rule-change petition are indicated by underscoring and deletions which were present in the initial rule-change petition are indicated by ~~strikethrough~~. All differences between the appendix to the original rule-change petition and this version are indicated with **red** text. Additions made for the first time in this modified filing are indicated by **ALL CAPS**. Deletions made for the first time in this modified petition are indicated by ~~double-strikethrough~~. Language that was added to the text of the initial filing but has been deleted in this filing is indicated by underscoring and strikethrough.

a. Motion to Stay Appeal; Notice of Reinstatement of Appeal.

(1) The appellate court, on motion of a party or on its own initiative, may stay an appeal while a motion under Rule 24 or a petition under Rule 32 is pending. If a stay is ordered, the clerk of the appellate court shall notify all parties, the clerk of the trial court, and, if the certified transcript has not yet been filed, the appropriate authorized transcribers.

(2) Within 20 days after the trial court's decision on the motion or petition, the appellant shall file with the clerk of the Appellate Court, and send to all persons notified of the stay, either a notice of reinstatement of the appeal or a motion to dismiss the appeal under Rule 31.15(a)(2). ~~In a capital case, the direct appeal is automatically stayed pending the trial court's decision on the petition for post-conviction relief.~~

b. [No change to text]

C. STAY AND CONSOLIDATION IN CAPITAL CASES. IN A CAPITAL CASE, AFTER THE RECORD ON APPEAL IS COMPLETE AND FILED, THE DIRECT APPEAL IS AUTOMATICALLY STAYED PENDING THE SUPERIOR COURT'S FINAL DECISION ON THE DEFENDANT'S PETITION FOR POST-CONVICTION RELIEF. THE SUPERIOR COURT SHALL SUBMIT TO THE SUPREME COURT A COPY OF ITS FINAL DECISION ON THE PETITION. ANY PETITION FOR REVIEW FROM THE POST-CONVICTION RELIEF PROCEEDING WILL BE CONSOLIDATED WITH THE DIRECT APPEAL.

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Rule 31.8. The record on appeal; transcript; duty of the authorized transcriber

a. – c. [No change to text.]

d. Duty of the Authorized Transcriber; Payment for Certified Transcript; Number of Copies.

(1) The authorized transcriber shall prepare the certified transcript promptly upon receipt of a notice of appeal by the state or a notice of appeal indicating

that the appellant proceeded as an indigent at the determination of guilt or at sentencing.

(2) Within 5 days after the filing of the notice of appeal or within 5 days after denial or a request to proceed as an indigent, an appellant who is not proceeding as an indigent shall make arrangements with the authorized transcriber to pay for the certified transcript. Thereupon the authorized transcriber shall promptly prepare the certified transcript. The authorized transcriber shall notify the appellate court if the appellant fails to make satisfactory arrangements within the prescribed time.

(3) The authorized transcriber shall promptly make any additions and deletions requested by the parties.

(i) *For non-electronically filed transcripts.* The authorized transcriber shall prepare an original and two copies of the certified transcript unless further copies are ordered. The authorized transcriber shall file the original certified transcript with the clerk of the appellate court within the time for the clerk to file the record pursuant to Rule 31.9(a). When the state is the appellee the authorized transcriber shall send one copy of the certified transcript to the Office of the Attorney General. When the state is the appellant, the authorized transcriber shall send one copy of the certified transcript to the agency that prosecuted the case in Superior Court. The authorized transcriber shall submit the copy for the defendant to the clerk of the Superior Court, who will retain the copy for release to the defendant's appellate counsel or to the defendant if he or she is proceeding pro se, unless there is a local rule or administrative order providing otherwise, in which case the authorized transcriber shall distribute the defendant's copy as provided by such rule or order. **IN A CASE WHERE THE DEATH PENALTY HAS BEEN IMPOSED, THE AUTHORIZED TRANSCRIBER SHALL SUBMIT TWO COPIES FOR THE DEFENDANT TO THE CLERK OF THE SUPERIOR COURT, WHO WILL RETAIN ONE COPY EACH FOR RELEASE TO THE DEFENDANT'S APPELLATE COUNSEL AND POST-CONVICTION COUNSEL.** Notice of service of the certified transcript shall be filed with the appellate court reflecting when and upon whom service was made.

(ii) *For electronically filed transcripts.* In courts that accept electronic filings, the authorized transcriber shall file the original certified electronic transcript with the clerk of the appellate court within the time for the clerk to

file the record pursuant to Rule 31.9(a). When the state is the appellee, the authorized transcriber shall send an electronic copy of the certified transcript to the Office of the Attorney General and the appropriate county attorney's office, if any. When the state is the appellant, the authorized transcriber shall send an electronic copy of the certified electronic transcript to the agency that prosecuted the case in Superior Court. The authorized transcriber shall submit the electronic transcript for the defendant to the clerk of the Superior Court, who will provide the electronic transcript to the defendant's appellate counsel or to the defendant if he or she is proceeding pro se. If a paper transcript is required or requested in lieu of an electronic transcript, the authorized transcriber shall submit the paper copy for the defendant to the clerk of the Superior Court, who will retain the copy for release to the defendant's appellate counsel or to the defendant if he or she is proceeding pro se, unless there is a local rule or administrative order providing otherwise, in which case the authorized transcriber shall distribute the defendant's copy as provided by such rule or order. **IN A CASE WHERE THE DEATH PENALTY HAS BEEN IMPOSED, THE CLERK OF THE SUPERIOR COURT WILL PROVIDE THE ELECTRONIC TRANSCRIPT TO THE DEFENDANT'S APPELLATE COUNSEL AND POST-CONVICTION COUNSEL. IF A PAPER TRANSCRIPT IS REQUESTED IN LIEU OF AN ELECTRONIC TRANSCRIPT IN A CASE WHERE THE DEATH PENALTY HAS BEEN IMPOSED, THE AUTHORIZED TRANSCRIBER SHALL SUBMIT TWO PAPER COPIES FOR THE DEFENDANT TO THE CLERK OF THE SUPERIOR COURT, WHO WILL RETAIN THE COPIES FOR RELEASE TO THE DEFENDANT'S APPELLATE COUNSEL AND POST-CONVICTION COUNSEL.** Notice of service of the certified transcript shall be lodged with the appellate court reflecting when and upon whom service was made.

(iii) *Retention of transcript copies.* Copies of transcripts retained under this rule shall be retained for 90 days.

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Rule 31.13. Appellate briefs

a. – e. [No change to text.]

f. Capital Cases.

(1) *Time for Filing.* In capital cases, the appellant's opening brief shall be filed within ~~90~~ 60 days after **THE PETITION FOR REVIEW FROM THE DENIAL OF POST-CONVICTION RELIEF IS FILED, OR IF NONE IS FILED, 60 DAYS AFTER THE TIME FOR FILING THE PETITION FOR REVIEW EXPIRES.** ~~the superior court issues a final decision in the post-conviction relief proceeding~~ court issues a notice that the record is complete. The appellee's brief shall be filed within 60 days after service of the appellant's brief. Appellant's reply brief shall be filed within 30 days after service of appellee's brief.

(2) *Length.* Except by permission of the court, (i) a principal brief in a capital case prepared in a proportionately spaced typeface may not exceed 32,000² ~~28,000~~ words, and a reply brief may not exceed 14,000 words, and neither may have an average of more than 280 words per page, including footnotes and quotations; and (ii) a principal brief in a capital case prepared in a monospaced typeface may not exceed 100 ~~80~~ pages, and a reply brief may not exceed 40 pages. All other requirements for the form of the briefs shall be as specified in subsection (b) of this rule.

~~(3) *Ineffective Assistance of Counsel Claims.* Appellant's counsel shall include in the opening brief all colorable claims of ineffective assistance of trial and sentencing counsel regardless of whether the claims have been raised in a petition for post-conviction relief or in the petition for review from the denial of post-conviction relief. The supreme court shall address the ineffective assistance of trial and sentencing counsel claims on direct appeal.~~

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Rule 32.4. Commencement of proceedings

a. ~~Form, Filing and Service of Petition~~ **FILING OF NOTICE.** A proceeding is commenced by timely filing a notice of post-conviction relief with the court in which the conviction occurred. The court shall provide notice forms for commencement of all post-conviction relief proceedings. In a Rule 32 of-right proceeding, the notice must be filed within ninety days after the entry of judgment and sentence or within thirty days after the issuance of the final order or mandate by the appellate court in the petitioner's first petition for post-conviction relief

² This word count increase is intended to accommodate the incorporation of the PCR petition for review with the opening brief.

proceeding. In all other non-capital cases, the notice must be filed within ninety days after the entry of judgment and sentence or within thirty days after the issuance of the order and mandate in the direct appeal, whichever is the later. In a capital case, the clerk of the ~~supreme court~~ SUPERIOR COURT shall ~~expeditiously~~ file a notice for post-conviction relief ~~with the trial court contemporaneously with the notice of appeal~~ AND SEND A COPY TO THE SUPREME COURT upon the issuance of a mandate affirming the defendant's conviction and sentence on direct appeal. Any notice not timely filed may only raise claims pursuant to Rule 32.1(d), (e), (f), (g) or (h). The notice shall bear the caption of the original criminal action or actions to which it pertains. On receipt of the notice, the court shall file a copy of the notice in the case file of each such original action and promptly send copies to the defendant, the county attorney, the defendant's attorney, if known, and the attorney general or the prosecutor, noting in the record the date and manner of sending the copies. If the conviction occurred in a court other than the Superior Court, the copy shall be sent to the office of the prosecuting attorney who represented the state at trial. The state shall notify any victim who has requested notice of post-conviction proceedings.

b. Notification of Appellate Court. In non-capital cases, If an appeal of the defendant's conviction, sentence, or both is pending, the clerk, or the court, within 5 days after the filing of the notice for post-conviction relief, shall send a copy of the notice to the appropriate appellate court, noting in the record the date and manner of sending the copies.

c. Appointment of Counsel; FILING OF PETITION.

(1) *Capital Cases.* Upon the filing of the notice of post-conviction relief and notice of appeal from the judgment of conviction and sentence ~~After the supreme court has affirmed a defendant's conviction and sentence in a capital case,~~ the supreme court, or if authorized by the supreme court, the presiding judge of the county from which the case originated, shall appoint counsel for the defendant FOR BOTH THE POST-CONVICTION RELIEF PROCEEDING AND THE DIRECT APPEAL pursuant to A.R.S. § 13-4041 and Rule 6.8 if the defendant is determined to be indigent. If the appointment is made by the presiding judge, a copy of the court's order appointing counsel shall be filed in the supreme court.

Within 7 days of entry of judgment, trial counsel shall file a notice with the superior court stating that a copy of the trial file is available for post-conviction and appellate counsel. If trial counsel fails to file such a notice, the superior

court shall hold a hearing for counsel to show cause why a copy of the trial file has not been made available. ~~On appointment, post-conviction counsel shall investigate expeditiously, before and after the notice of completion of the record on appeal, the factual and legal grounds for the filing of a petition for post-conviction relief.~~

Upon the filing of a successive notice, the presiding judge shall appoint the previous post-conviction counsel of the capital defendant unless counsel is waived or good cause is shown to appoint another qualified attorney from the list described in A.R.S. § 13-4041.

On the first notice in capital cases, appointed counsel for the defendant shall have **NO MORE THAN 12 months 365 DAYS** from the notice of completion of the record on appeal ~~filing of the notice~~ to file a petition for post-conviction relief. ~~On the filing of a successive notice of post-conviction relief, appointed counsel, or the defendant if proceeding without counsel, shall file the petition within thirty days from the filing of the notice.~~ On a showing of EXTRAORDINARY CIRCUMSTANCES, A DEFENDANT IN A CAPITAL CASE MAY BE GRANTED AN APPROPRIATE EXTENSION IN WHICH TO FILE THE PETITION. ~~good cause, a defendant in a capital case may be granted a sixty day extension in which to file the petition. Additional extensions of thirty days may be granted for good cause. If a petition for post-conviction relief is not filed within 12 months from the date of appointment of counsel, or 12 months from the date the notice is filed, or the date a request for counsel is denied if the defendant is proceeding without counsel, the defendant or counsel for the defendant shall file a notice in the supreme court, advising the court of the status of the proceedings. Thereafter, defendant or counsel for the defendant shall file status reports in the supreme court every sixty days until the petition for post-conviction relief is filed.~~ ON THE FILING OF A SUCCESSIVE NOTICE OF POST-CONVICTION RELIEF, APPOINTED COUNSEL, OR THE DEFENDANT IF PROCEEDING WITHOUT COUNSEL, SHALL FILE THE PETITION WITHIN THIRTY DAYS FROM THE FILING OF THE NOTICE OF POST-CONVICTION RELIEF.

(2) [No changes to text.]

d. – f. [No changes to text.]

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Rule 32.6. Additional pleadings; summary disposition; amendments³

a. – b. [No change to text]

c. Summary Disposition. The court shall review the petition within twenty days after the defendant's reply was due. On reviewing the petition, response, reply, files and records, and disregarding defects of form, the court shall identify all claims that are procedurally precluded under this rule. If the court, after identifying all precluded claims, determines that no remaining claim presents a material issue of fact or law which would entitle the defendant to relief under this rule and that no purpose would be served by any further proceedings, the court shall order the petition dismissed. If the court does not dismiss the petition, the court shall set a hearing within thirty days on those claims that present a material issue of fact or law. **IN A CAPITAL CASE, THE COURT SHALL ISSUE A FINAL DETERMINATION ON THE MERITS OF THOSE CLAIMS NO LATER THAN 365 DAYS FROM THE FILING OF THE REPLY, OR IF NONE IS FILED, FROM THE FILING OF THE STATE'S RESPONSE, OR 60 DAYS FROM THE CONCLUSION OF THE HEARING, WHICHEVER IS EARLIER.** If a hearing is ordered, the state shall notify the victims, upon the victims' request pursuant to statute or court rule relating to victims' rights, of the time and place of the hearing.

Rule 32.9. Review

a. – b. [No change to text]

c. Petition for Review. Within thirty days after the final decision of the trial court on the petition for post-conviction relief or the motion for rehearing, any party aggrieved may petition the appropriate appellate court for review of the actions of the trial court. A cross-petition for review may be filed within 15 days after service of a petition for review. The petition for review, cross-petition and all responsive pleadings filed pursuant to this rule shall be filed in the appellate court. Within 3 days after filing a petition or cross-petition for review, the petitioner and cross-petitioner, if any, shall file a notice of such filing with the trial court. The notice of filing may include a designation of record adding to the record defined in Rule 32.9(e) any additional certified transcripts of trial court proceedings that were prepared pursuant to Rule 32.4(d) or that were otherwise available to the trial court

³ No change to Rule 32.6 was included in the initial rule-change petition.

and the parties and that are material to the issues raised in the petition for review. Motions for extensions of time to file petitions or cross-petitions shall be filed in and ruled upon by the trial court. All other motions shall be filed in the court in which the petition is to be filed.

In a capital case, within ~~90~~ THIRTY days after the final decision of the trial court on the petition for post-conviction relief or the motion for rehearing, ANY PARTY AGGRIEVED MAY PETITION THE SUPREME COURT FOR REVIEW OF THE ACTIONS OF THE TRIAL COURT. IF THE DEFENDANT FILES A PETITION FOR REVIEW, the petition ~~for review~~ shall be consolidated with the direct APPEAL ~~review opening brief~~ pursuant to Rule 31.2.

1. *Form and contents.* The petition or cross-petition for review shall comply with the form requirements of Rule 31.12 of these rules and contain a caption setting forth the name of the appellate court, the title of the case, a space for the appellate court case number, the trial court case number and a brief descriptive title. An original and seven copies of the petition and an original and one copy of the appendix, if any, shall be filed if review is being sought in the supreme court. An original and four copies of the petition and an original and one copy of the appendix, if any, shall be filed if review is being sought in the Court of Appeals. An original and one copy shall be filed if review is being sought in the superior court. The parties shall be designated as in the trial court proceedings. The petition or cross-petition shall not exceed 20 pages, exclusive of the appendix, shall not have a cover or be bound, but shall be fastened with a single staple in the upper left corner, and shall contain the following:

(i) Copies of the trial court's rulings entered pursuant to rules 32.6(c), 32.8(d) and 32.9(b).

(ii) The issues which were decided by the trial court and which the defendant wishes to present to the appellate court for review.

(iii) The facts material to a consideration of the issues presented for review.

(iv) The reasons why the petition should be granted. ~~In capital cases any record made during the post-conviction proceedings, including transcripts, shall be prepared with and made part of the record on appeal and all references in a petition for review shall be made to the record on appeal. all references to the record in the trial court shall be supported by an appendix, with appropriate copies of the portions of the record which support the~~

~~petition. The petition shall not incorporate any document by reference, except the appendices. If the appendices exclusive of the trial court's rulings exceed 15 pages in length, such appendices shall be fastened together separately from the petition and the copies of the trial court's rulings.~~

~~In Rule 32 of right and non-capital cases, an~~ An appendix is not required, but the petition for review shall contain specific references to the record.

The filing of a motion for rehearing pursuant to paragraph (a) of this rule does not limit the issues that may be raised in the petition or the cross-petition for review. Failure to raise any issue that could be raised in the petition or the cross-petition for review shall constitute waiver of appellate review of that issue.

2. *Service; Response; Reply.* [No changes to text.]

d. Stay Pending Review. [No changes to text.]

e. Filing of the Record. In Rule 32 of-right and non-capital cases, within 45 days after the receipt of the notice of filing of a petition for review, the record, including the trial court file and the certified transcript, shall be transmitted to the appellate court.

~~In capital cases, the record of the post-conviction proceedings shall be prepared expeditiously and transmitted to the supreme court to be consolidated with the record on appeal~~ not be transmitted to the appellate court unless requested by that court. If requested by the appellate court, the record shall consist of copies of the notice of post-conviction relief, the petition for post-conviction relief, response and reply, all motions and responsive pleadings filed and all minute entries and orders issued in the post-conviction proceedings, plus the certified transcript and any exhibits admitted by the trial court in the post-conviction proceedings.

IN CAPITAL CASES, UPON RECEIPT OF THE FINAL DECISION OF THE TRIAL COURT ON THE FIRST PETITION FOR POST-CONVICTION RELIEF, THE SUPREME COURT SHALL ORDER THAT THE RECORD OF THE POST-CONVICTION PROCEEDING, INCLUDING TRANSCRIPTS, BE TRANSMITTED AND INCLUDED IN THE RECORD ON APPEAL. FOR SUCCESSIVE POST-CONVICTION PROCEEDINGS, THE SUPREME COURT SHALL ORDER TRANSMISSION OF THE RECORD AS NEEDED.

f. – h. [No changes to text.]