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IN THE SUPREME COURT OF THE STATE OF ARIZONA

In the Matter of:)	
PETITION TO AMEND VARIOUS)	Supreme Court No.
RULES OF PROCEDURE RELATING)	R. 05- _____
TO VERBATIM RECORDING OF)	
JUDICIAL PROCEEDINGS)	
_____)	

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Pursuant to Rule 28 of the Rules of the Supreme Court, Jennifer A. Greene, Staff to the Committee on Keeping the Record, petitions the Supreme Court on behalf of the Committee to approve the amendments to rules and to adopt the proposed new rules contained in the attached appendices. The changes are designed primarily to modernize language in existing rules to reflect current practices and to establish standards and guidelines previously appearing only in statutes. On December 14, 2005, the Committee presented these proposals in its Final Report to the Arizona Judicial Council. The Council has authorized the Committee to file this petition.

GROUND FOR APPROVAL OF PETITION

This petition results from a multi-year effort by the Supreme Court's

Committee on Keeping the Record¹ to review practices and standards in Arizona and elsewhere relating to verbatim record-making. The amendments contained in this petition result from the Committee's identification of rules that pose an obstacle to using the best and most appropriate method of keeping the record, whether that be traditional stenographic reporting, voice writing, or electronic recording technology.

A number of rules impact the courts' ability to take advantage of modern recording technology. Most are simply in need of updated terminology, and a few require more substantive revision. In addition, the Committee proposes two entirely new rules: one establishes standards for the preparation of official transcripts from electronic recordings; and the other establishes priorities among recording methods and introduces a method for addressing parties' requests for court reporters.

Appendix A

(1) Amendments Updating Terminology

The proposed amendments contained in Appendix A are intended primarily to update language for a number of different objectives not affecting the procedural substance of the rules. Among the amendments are the following categories of changes:

¹ A complete record of the Committee's work is available from the Committee's webpage: <http://www.supreme.state.az.us/ktr>.

- New references to “certified” reporters to reflect that official reporters must now be certified by the Supreme Court.
- Elimination of archaic terminology such as “books of record,” “tapes,” “typewritten,” “typist,” and “stenographic notes.”
- Revisions to language referencing specific technology or terminology from the “paper world” to allow for electronic recordings, for example, references to “papers, documents, and transcripts” would be amended by adding “or any other record.”
- Elimination of unnecessary descriptions of alternative means available for making a record and re-wording rules to read simply that a record should be made.
- Rules dealing with the mechanics of ordering transcripts from “court reporters” were revised to accommodate those situations in which the transcript of an electronic recording may be prepared by someone other than a certified court reporter.
- The term “certified transcript” was added to designate a transcript prepared by a certified reporter or other authorized transcriber.
- The term “authorized transcriber” has been added to pertinent rules to implement the recommendation that only certified reporters or

transcribers under contract with a court be permitted to prepare official transcripts.

- Rules relating to the filing of the transcript on appeal were amended to acknowledge that digital transcripts are being accepted by the court of appeals, Division 2, and this practice may expand to Division 1 in the future (Ariz. R. Crim. P. 31.8 & ARCAP 11).
- Rules relating to preparation of the record on appeal are amended to add a reference to an in-house “transcript coordinator” who would be responsible for arranging for the preparation of the transcript by an authorized transcriber in those cases in which the verbatim record was not created by an official reporter. When the official record is made electronically, there is a need for someone to step into the shoes of the court reporter to ensure timely notice, ordering, payment, and filing of the transcript. The proposed amendments providing for an in-house “transcript coordinator” delineate the processes to be followed. These amendments codify practices currently in use by courts that have already integrated electronic recording technology into their operations, and are found in Ariz. R. Crim. P., 31.2, 31.5, 31.8 and 31.9, and Ariz. R. P. Juv. Ct., 89 and 91. In civil appeals, the parties traditionally have controlled the ordering and filing of transcripts on

appeal, and are expected to continue dealing with the transcript preparer directly, although under the new system envisioned by the Committee, some contact with the in-house transcript coordinator may be needed to direct civil appellants to an authorized transcriber, and the official verbatim recording to be transcribed will need to be provided to the transcriber directly by the court.

Some of the other amendments to existing rules in Appendix A are more substantive in nature.

(2) *Ariz.R. Civ. P. 55(f) (Appendix A at 2)*

The proposed amendment to Rule 55(f), Arizona Rules of Civil Procedure, would change the current requirement that a plaintiff in a civil case pay for a transcript of a default hearing that may never be needed. Under the new practice, the transcript would not be ordered unless and until the defaulting party comes forward to challenge the judgment. The amendment mirrors Rule 44(F) of the recently adopted Arizona Rules of Family Law Procedure.

(3) *Notice of filing the Notice of Appeal, Ariz. R. Crim. P., 31.2, 31.7 & 31.9 (Appendix A at 9-19)*

Timelines for providing the notice of appeal to transcribers, parties and the court of appeals have also been established or modified. The Committee's proposed changes to Criminal Rule 31.2 include a deadline for

clerks to follow in notifying transcribers of the filing of a notice of appeal in a capital case. Previously this deadline was contained in Rule 31.9. The Committee found that from a chronological standpoint, this standard logically belongs in Rule 31.2. This same rule would also impose a slightly shorter deadline of eight days rather than ten days for the clerk to notify the attorneys, the reporters and transcribers, and the court of appeals of the filing of a new notice of appeal.

The Committee is also proposing expansion of the deadline for the court of appeals to docket a new criminal appeal from five days to ten days in Criminal Rule 31.7. The court of appeals relies on the superior court clerk for notice of the filing of a new criminal appeal before the court of appeals can docket the appeal. According to the Clerk of Court in Maricopa County, the superior court is not always able to notify the court of appeals in less than five days, and the ten day time limit is more reflective of practicalities. Combined with the suggested changes to Rule 31.2(f)(1)&(2), this proposal would codify a reasonable practice that would better coordinate actions between the trial court clerks and the appellate court clerks.

(4) Supreme Court Rule 91 (Appendix A at 28)

The page margins for transcripts have been amended in this rule to conform to the proposed new Manual of Transcript Procedures. The

Arizona Board of Certified Court Reporters has reviewed and recommended adoption of these standards into the Code of Judicial Administration, Section 7-206, which is binding on certified reporters.

(5) Supreme Court Rule 123 (Appendix A at 30)

The Committee was asked to determine whether to prohibit public access to the electronic verbatim recordings some courtroom clerks create in lieu of shorthand notes to assist in minute entry production. The Committee recommends an amendment to Supreme Court Rule 123 that would restrict public access to these unofficial recordings. The potential for confusion in the face of multiple records of the same proceeding are obvious. Furthermore, clerks should not be burdened with preserving or copying recordings that serve merely as a backup for drafting their minutes of the proceedings. These recordings essentially take the place of shorthand notes and should not be deemed official records of a proceeding anymore than the shorthand notes had been.

(6) Supreme Court Rule 125 (Appendix A at 30)

This rule defines the term “minute entry,” and requires notation of the identity of the court reporter, if any. The proposed amendment will require notation of the identity of the person operating the recording equipment when the official record of the proceeding is being produced electronically.

(7) Rule 7, Superior Court Rules of Appellate Procedure – Civil and Criminal (Appendix A at 44 & 46)

These rules are amended, in part, to specify that the superior court may authorize the filing of either a written transcript of the lower court trial, or an electronic recording of the proceeding. Several counties have adopted local rules permitting parties to file a copy of the digital or analog recording of a short trial. This cost-saving alternative should be available to parties when the superior court judge deems it appropriate.

Appendix B
Rules Related to Videotaped Depositions

The Committee was asked whether the Court should reconsider its 2003 rule change decision regarding videotaping depositions. The Committee reviewed one alternative amendment which the Court rejected that would allow a party to unilaterally decide to use electronic technology in lieu of a reporter for recording a deposition. The Committee invited representatives of the competing viewpoints to explain their concerns about the proposal as well as the changes adopted by the court in 2003.

As a result of its investigation of this issue, the Committee proposes amendments to pertinent rules that will maintain the rule as it was adopted by the Court in 2003 and resolve the questions raised by the 2003 amendments. The proposed amendments are contained the suggested

revisions to Rules 30(b), (e) & (f), and 32(a), Arizona Rules of Civil Procedure.

Under the current rule, both parties must agree to use electronic recording before forgoing the use of a court reporter. The Committee decided it was best to preserve the current policy. In the absence of a court reporter, certain responsibilities must fall to the attorneys themselves, and many stakeholders are uncomfortable with the prospect of removing the neutral third party record-keeper from the deposition process. On the other hand, when parties mutually agree to record a deposition without a reporter, they take responsibility for the consequences.

The Committee heard from a professional videographer who detailed some of the common problems that even professionals in the industry encounter in making an audible record of a deposition, ranging from faulty recording media to opposing counsel's inadvertent or intentional interference with microphones. Unless the quality control issues have been resolved to their satisfaction, practitioners should exercise caution in choosing to forgo a court reporter altogether.

At the request of the court reporting association, the Committee is recommending some amendments to the rules governing videotaped depositions to clarify ambiguities relating to these issues:

- Responsibility for recording costs (Rule 30(b));
- Responsibility for notifying the deponent of his or her right to review and correct testimony when neither attorney covers this issue (Rule 30(e));
- Mechanics of videotape review, signing, and correction by a deponent (Rule 30(e)); and
- Custody of the original videotape (Rule 30(f)).

As part of this proposal, new language is proposed for Rule 32(a) that would specifically authorize use of the audio or audio/video recording along with otherwise admissible portions of written depositions in a courtroom proceeding, except as restricted in Rule 56(e), relating to use of depositions in summary judgment.

Appendix C

New Rule Governing Transcript Preparation

The Committee recommends adoption of this rule intended to regulate production of transcripts from electronic recordings and from court reporters' notes. It is designed to work in tandem with the Committee's proposed Arizona Manual of Transcript Procedures and the proposed recommended specifications for transcription services contracts, which requires courts to establish relationships with qualified vendors for transcript production. The Manual establishes uniform formatting standards and protocols for handling inaudible portions of an electronic recording. It is

similar to manuals in use in Alaska, Illinois, and Colorado, and was co-authored by a Committee member who has experience in the electronic recording industry and is a member of the board of the American Association of Electronic Recording Technicians.

The proposed rule identifies “authorized transcribers” of electronic recordings as either certified reporters or contractors doing business with one or more courts in Arizona. Any transcript that is filed for official use by a court on appeal or otherwise must be produced by an individual meeting these qualifications. The regulatory framework envisioned by the Committee will permit Arizona-certified reporters to prepare transcripts from electronic recordings without the need for a formal contract; their status as certified reporters suffices for their qualifications. However, people who are not certified reporters will need to formally contract with a court to be deemed qualified to prepare official transcripts. In the process of creating these contracts, court administrators will be able to ensure that only those individuals with professional qualifications and familiarity with the Manual will prepare official transcripts.

Appendix D

New Rule Governing Use of Court Reporting Resources

The Committee was asked to determine which proceedings and under what circumstances electronic recording technology should be authorized as the official means of recording a judicial proceeding. The Committee recommends authorizing the use of electronic recording technology within the guidelines set forth in the Committee's proposed new rule governing use of court reporting resources. The rule appears in Appendix D. Under this rule, court reporters must be used to make the official record in grand jury proceedings, capital case proceedings, and felony jury trials, as well as initial hearings to determine sexually violent person status (Ariz. Rev. Stat. § 36-3706), and hearings on a minor's request for an abortion in the absence of parental consent (Ariz. Rev. Stat. § 36-2152). These types of proceedings typically are reported by court reporters even in those courts that currently use electronic recording systems. In addition, they typically involve high transcript volume, and exacting due process standards that argue in favor of maintaining the traditional record-maker.

The rule also preserves the statutory requirement that judges honor a party's request for a reporter for any type of hearing. In keeping with the Committee's proposed change to Ariz. Rev. Stat. § 38-424, the rule adds a timeliness requirement to ensure courts have sufficient notice that a reporter

will be needed. The rule also specifies that when both a reporter and a recording system are in use, the reporter's notes are deemed the "official" record.

The rule is intended to work with several proposed amendments of existing civil, criminal, juvenile, and domestic relations rules of procedure governing pre-trial conference hearings (also contained in Appendix D). These amendments will safeguard the parties' right to request a reporter for a trial by ensuring that the issue will be included in the pre-trial conference.

Development of the reporting resources rule consumed considerable time and attention. The Committee struggled with striking a balance between local practices that appear to work well and the need to preserve the statutory right of practitioners to choose the manner in which the verbatim record of a proceeding would be made. In addition, the Committee identified certain proceedings in which the use of a certified court reporter has been the customary practice, namely, grand jury proceedings, cases involving major criminal offenses, and complex, multi-party civil matters. Given the current practice in this state, and also in many other states, the presumption is that such proceedings will be recorded by a certified court reporter, absent a waiver by the parties.

Conclusion

For the foregoing reasons, petitioner respectfully requests the court to circulate this petition for comment, pursuant to Supreme Court Rule 28, with the aim of adopting the proposed amendments as they appear here or as modified in light of comments received from the public.

Respectfully submitted this ____ day of _____, 2005.

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APPENDIX A
RULES AMENDMENTS
(new language is underlined, deletions are ~~stricken~~)

RULES OF CIVIL PROCEDURE

Rule 16(d) Joint Pretrial Statement: Preparation; Final Pretrial Conference.

(1) through (5) [no changes]

(6) A statement by each party indicating any depositions intended to be offered by that party at the trial, indicating with respect thereto the portions to be offered and the party or parties against whom they will be offered. If any deposition or portion thereof is so offered and such deposition was not transcribed ~~stenographically~~, a ~~stenographic~~ certified transcript of the pertinent portions of the deposition testimony shall be prepared and submitted by the person so offering the deposition.

[no changes]

Rule 51 (b). Instructions to jury; notations; filing transcript

(1) [no changes]

(2) The written instructions shall be filed among the papers in the action and constitute a part of the record. At the request and cost of either party, the entire instructions given by the court shall be transcribed by the certified court reporter or authorized transcriber and filed with the clerk.

(3) The court's preliminary and final instructions on the law shall be in written form and a copy of the instructions shall be furnished to each juror before being read by the court. Upon retiring from deliberations the jurors shall take with them all jurors' copies of final written instructions given by the court. In limited jurisdiction courts, the court may record jury instructions on ~~an audiotape~~ electronically and provide these ~~audio~~ instructions to the jury for their use during deliberations.

Rule 53(g). Report; contents and filing

The master shall prepare a report upon the matters submitted to the master by the order of reference and, if required to make findings of fact and conclusions of law, the master shall set them forth in the report. The master shall file the report with the clerk of the court and unless otherwise directed by the order of reference, shall file with it a certified transcript of the proceedings and of the evidence and original exhibits. The clerk shall forthwith mail to all parties notice of the filing.

Rule 55 (f). Judgment when service by publication; statement of evidence

Where service of process had been made by publication and no answer has been filed within the time prescribed by law, judgment shall be rendered as in

other cases, but a ~~reporter's transcript certified by the reporter as correct~~ record of the proceedings, in a form approved by the court, shall be filed as a part of the record maintained on a tangible medium or that is stored in any electronic or other medium and that is retrievable in perceivable form.

Rule 74. Rulings by arbitrator; hearing; evidence and procedure.

(a) through (i) [no changes]

(j) *Record of proceedings.* The arbitrator shall not be required to make a record of the proceedings. If any party desires ~~the presence of a reporter to~~ make a verbatim record of the proceedings, such party shall pay for and provide for the ~~reporter recording.~~ The charges of the ~~reporter recording~~ shall not be considered costs in the case.

(k) [no changes]

RULES OF CRIMINAL PROCEDURE

Rule 5.2. Summoning of witnesses and record of proceedings

The magistrate shall issue process to secure the attendance of witnesses and, shall provide for a verbatim record of proceedings, which may be by a certified court reporter, electronic, or other means in the discretion of the Presiding Judge of the Superior Court unless a certified court reporter is

requested by a party. Such request for a certified court reporter shall be honored unless the court is in a geographic location where certified court reporters are not reasonably available.

Rule 5.5. Review of preliminary hearing.

(a) and (b) [no changes]

c. *Evidence.* Review of the evidence shall be limited to the certified transcript of the proceedings.

d. [no changes]

Rule 5.6. Transmittal and transcription of record.

Within 3 days after waiver or conclusion of the preliminary hearing, the magistrate shall transmit the ~~audiotape or videotape~~ verbatim record of the preliminary hearing, if any, all papers and records in the case, and a prescribed transmittal form, to the clerk of the Superior Court. No ~~audiotape, videotape or court reporter's notes of the preliminary hearing~~ verbatim record shall be transcribed absent a written request by a party avowing that there is a material need for the transcript, in which case a certified transcript shall be filed in Superior Court no later than 20 days after receipt of such request. Failure to timely file this certified transcript may be treated as a contempt of court.

Rule 5.7. Preservation of recording.

The clerk shall retain and preserve any ~~audiotape or videotape~~ electronic recording of a preliminary hearing in the same manner as required for the original notes of a certified court reporter pursuant to Rule 28.1(c), Rules of Criminal Procedure.

Rule 12.5. Persons authorized to be present during sessions of the grand jury.

No person other than the witness under examination, counsel for the witness if the witness is a person under investigation by the grand jury, prosecutors authorized to present evidence to the grand jury, the certified court reporter, and the interpreter, if any, shall be present during sessions of the grand jury. No person other than the grand jurors shall be present during their deliberation and voting.

Rule 12.8. Record of proceedings before grand jury.

a. *Reporter.* The presiding or impaneling judge shall assign a regularly appointed certified court reporter to record the proceedings before the grand jury, except ~~their~~ its deliberations.

b. *Foreman.* The foreman of the grand jury shall keep a record of the numerical count of the grand jury vote for and against such indictment. The foreman's record of the vote from which an indictment is returned shall be transcribed and filed with the clerk of the superior court no later than 20 days following the return of the indictment and made available to the prosecution and defendant only.

c. *Filing of the transcript and minutes.* The certified court reporter's ~~notes~~ containing verbatim record of the proceedings from which an indictment is returned ~~and the foreman's record of the vote~~ shall be transcribed and filed with the clerk of the superior court no later than 20 days following the return of the indictment and ~~such record and~~ the certified transcript shall be made available to the prosecution and defendant only.

Rule 12.9. Challenge to grand jury proceedings.

(a) [no changes]

b. *Timeliness.* A motion under Rule 12.9(a) may be filed only after an indictment is returned and no later than 25 days after the certified transcript and minutes of the grand jury proceedings have been filed or 25 days after the arraignment is held, whichever is later.

Rule 15.3. Depositions.

(a) through (c) [no changes]

d. *Manner of taking.* Except as otherwise provided herein or by order of the court, depositions shall be taken in the manner provided in civil actions. With the consent of the parties, the court may order that a deposition be taken on written interrogatories in the manner provided in civil actions. Any statement of the witness being deposed which is in the possession of any party shall be made available for examination and use at the taking of the deposition to any party who would be entitled thereto at trial. A deposition may be recorded by other than ~~stenographic means, such as, by an audio recording device~~ a certified court reporter. If a deposition is recorded by other than ~~stenographic means~~ a certified court reporter, the party taking the deposition shall provide the opposing party with a copy of the recording within 14 days after the taking of the deposition or not less than 10 days before trial, whichever is earlier. The parties may stipulate, or the court may order, that a deposition be taken by telephone, consistent with the provision of Rule 15.3(d).

(e) and (f) [no changes]

Rule 15.9. Appointment of Investigators and Expert Witnesses for Indigent Defendants.

(a) [no changes]

b. *Ex parte proceeding.* No ex parte proceeding, communication, or request may be considered pursuant to this rule unless a proper showing is made

concerning the need for confidentiality. Any such proceeding, communication, or request shall be ~~transcribed~~ recorded verbatim and made a part of the record available for appellate review.

(c) and (d) [no changes]

Rule 16.3. Procedure on omnibus hearings.

(a) through (d) [no changes]

e. *Record of proceedings.* All proceedings at the omnibus hearing shall be ~~reported~~ recorded verbatim.

(f) [no changes]

Rule 26.2. Time of rendering judgment.

(a) through (c) [no changes]

d. *Factual determination.* In the event the trial court did not make an affirmative finding of a factual basis for the plea pursuant to Rule 17.3, before the entry of the judgment of guilt the trial court shall make such determination. One or more of the following sources may be considered: statements made by the defendant; police reports; certified ~~reporter's~~ transcripts of the proceedings before the grand jury; and other satisfactory information.

Rule 26.11. Duty of the court after pronouncing sentence.

[no changes]

(a) [no changes]

(b) (1) [no changes]

(2) If the defendant is unable to pay for a certified copy of the record on appeal and the ~~reporter's~~ certified transcript, they will be provided by the county.

(c) [no changes]

Rule 27.7. Revocation of probation.

(a) through (e) [no changes]

f. *Record.* A ~~complete~~ record of the revocation arraignment, violation hearing and disposition hearing shall be made.

Rule 27.9. Revocation of probation in absentia.

(a) through (e) [no changes]

f. *Record of proceedings.* A ~~complete~~ record shall be made of all proceedings at the revocation hearing in absentia.

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

(a) [no changes]

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 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 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) through (e) [no changes]

f. *Service of the Notice of Appeal.*

(1) *When defendant appeals.* When a defendant appeals, within 8 days of the filing of the notice of appeal, the clerk of the trial court shall send a copy of the notice of appeal to the prosecutor of the county in which the defendant was tried, to the attorney general, to each co-defendant at trial who is not a joint-appellant and defendant's counsel of record, if any, to the appropriate certified court reporter or reporters, or to the court's designated transcript coordinator, if the record was made by electronic or other means, and to the clerk of the proper Appellate Court.

(2) *When the state appeals.* When the state appeals or cross-appeals, within 8 days of the filing of the notice of appeal, the clerk of the trial court shall send

a copy of the notice of appeal to each defendant and defendant's counsel of record, if any, to the appropriate certified court reporter or reporters, or to the court's designated transcript coordinator, if the record was made by electronic or other means, and to the clerk of the proper Appellate Court.

(3) & (4) [no changes]

(g) [no changes]

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

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 ~~court reporters~~ authorized transcribers.

(2) [no changes]

(b) [no changes]

Rule 31.5. Appeals by indigents.

a. *Determination of indigency.*

(1) A defendant who had appointed counsel at the determination of guilt or at sentencing may proceed on appeal as an indigent without further

authorization, unless, after a notice of appeal is filed, the trial court finds that the defendant is now able to employ counsel and pay for a certified copy of the record on appeal and the ~~reporter's~~ certified transcript.

(2) [no changes]

(b) and (c) [no changes]

d. *Notice to clerk of the appellate court and to the certified court reporter or to the court's designated transcript coordinator.* A copy of any order or decision made under this rule shall be sent to the parties, the clerk of the appellate court and to the appropriate certified court reporter or reporters, or to the court's designated transcript coordinator, if the record was made by electronic or other means.

Rule 31.7. Docketing in the Appellate Court; designating the parties

a. *Docketing the Appeal.* Within ~~5~~ 10 days after filing the notice of appeal, the clerk of the Appellate Court shall docket the appeal.

(b) [no changes]

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

a. *Composition of the record on appeal; additions; deletions.*

(1) Composition. The record on appeal to the appellate court shall be a

certified ~~copy of the~~ transcript, all documents, papers, books and photographs introduced into evidence, and all pleadings and documents in the file— (other than subpoenas and praecipes not specifically designated) ~~—shall constitute the record on appeal,~~ and if authorized by the appellate court, an electronic recording of the proceeding.

(2) Additions and deletions.

(i) *By the appellant.* Within 5 days after the filing of the notice of appeal the appellant may file with the clerk of the trial court a designation to include in the record the subpoenas and praecipes ~~he or she~~ appellant deems necessary, and to delete from the record all the documents, papers, books and photographs he or she deems unnecessary.

(ii) *By the appellee.* Within 12 days after the filing of the notice of appeal the appellee may file with the clerk of the trial court a designation to include in the record those subpoenas and praecipes ~~he or she~~ appellee deems necessary, and any document, paper, book or photograph deleted by the appellant.

(iii) [no changes]

b. Certified Transcript: Composition, additions and exclusions.

(1) For the purpose of these rules, an “authorized transcriber” is a certified court reporter or a transcriber under contract with an Arizona court.

~~(1)~~ (2) *Composition.* Except in cases where the death penalty has been imposed, ~~the transcript shall consist of the reporter's~~ a certified transcript of

the following proceedings shall be provided:

(i) through (v) [no changes]

~~(2)~~ (3) *Composition where the death penalty has been imposed.* The certified transcript shall consist of ~~the reporter's transcript~~ of all recorded proceedings at ~~which a court reporter was present~~, including grand jury proceedings.

~~(3)~~ (4) *Additions and deletions.* Within 5 days after the filing of the notice of appeal, the appellant may request the certified court reporter or the court's designated transcript coordinator, if the record was made by electronic or other means, to add to the certified transcript any proceeding not automatically included, and to exclude from the certified transcript any portion of the proceedings the appellant deems unnecessary for the proper hearing of his or her appeal.

Within 12 days after the filing of the notice of appeal, the appellee may request the certified court reporter or the court's designated transcript coordinator, if the record was made by electronic or other means, to add to the certified transcript any portion deleted by the appellant or not automatically included under paragraph (1).

c. [no changes]

d. *Duty of the ~~court reporter~~ authorized transcriber; payment for certified transcript; number of copies.*

(1) The ~~court reporter~~ 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 ~~court reporter~~ authorized transcriber to pay for the certified transcript. Thereupon the ~~court reporter~~ authorized transcriber shall promptly prepare the certified transcript.

The ~~court reporter~~ authorized transcriber shall notify the appellate court if the appellant fails to make satisfactory arrangements within the prescribed time.

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

(i) For non-electronically filed transcripts. The ~~court reporter~~ authorized transcriber shall prepare an original and two copies of the certified transcript unless further copies are ordered. The ~~court reporter~~ 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 ~~court reporter~~ authorized transcriber shall send one copy of the certified transcript to the Office of the Attorney General. When the state is the appellant, the ~~court reporter~~ authorized transcriber shall

send one copy of the certified transcript to the agency that prosecuted the case in Superior Court. The ~~court reporter~~ authorized transcriber shall file the copy for the defendant with 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 ~~court reporter~~ authorized transcriber shall distribute the defendant's copy as provided by such rule or order. 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 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 file the electronic transcript for the defendant with 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 file the paper copy for the defendant with 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. Notice of service of the certified transcript shall be lodged with the appellate court reflecting when and upon whom service was made.

e. *Responsibility for payment.* Non-indigent parties shall pay for all portions of the record on appeal and certified transcript which they have designated or requested. In addition, non-indigent appellants shall pay for those portions of the record on appeal and certified transcript required under Sections (a)(1), (b)(1), and (b)(2) and not deleted.

(f) [no changes]

g. *Agreed statement as the record on appeal.* In lieu of the record on appeal as defined above, the parties may prepare and sign a statement of the case showing how the issues presented by the appeal arose and were decided in the trial court, setting forth only so many of the facts averred and proved or thought to be proved as are essential to a decision of the issues presented. Notice that a statement is being prepared shall be served promptly on the appropriate ~~court reporter or reporters~~ authorized transcriber and on the clerk

of the trial court.

The agreed statement shall be submitted for the trial court's approval within 20 days of the filing of the notice of appeal. The court may make such additions as it considers necessary fully to present the appeal.

(h) [no changes]

Rule 31.9. Transmission of the record.

a. *Time for transmission.* Within 45 days after the filing of the notice of appeal, the clerk of the superior court shall transmit to the appellate court a copy of the pleadings, documents, and minute entries, and the original paper and photographic exhibits of a manageable size filed with the clerk of the superior court. ~~Within 10 days after the filing of the notice of appeal in any capital case, the clerk of the superior court shall notify all certified court reporters who reported any portion of the record that the reporters are required to transmit their portions of the record to the clerk of the supreme court.~~

b. *Duty to certify and transmit the record.* After certifying that it is true, correct, and complete as ordered, the clerk of the trial court and the ~~court reporter or reporters~~ authorized transcriber shall transmit to the clerk of the appellate court the portions of the record on appeal for which ~~they are~~ each is responsible. Each shall number the items comprising ~~his~~ that portion of the

record on appeal and shall transmit with that portion a list of the items so numbered.

c. *Extension and reduction of time for transmission of the record.* The appellate court, on a showing of good cause, may grant one extension of the time for transmitting the record on appeal which shall not exceed 20 days or it may require the record to be transmitted at any time within the prescribed period. A copy of any order issued under this section shall be sent to the parties, the clerk of the trial court, and to the ~~appropriate court reporter or reporters~~ requesting authorized transcriber.

(d) [no changes]

Rule 31.15. Motion to dismiss.

(a) and (b) [no changes]

c. *Notice of dismissal.* The clerk of the appellate court shall give prompt notice of dismissal of an appeal to the parties, the clerk of the trial court, and if the certified transcript has not yet been filed, to the appropriate ~~court reporter or reporters~~ authorized transcribers.

Rule 32.4. Commencement of proceedings.

(a) through (c) [no changes]

d. *Transcript preparation.* If the ~~transcripts of the~~ trial court proceedings have not been previously transcribed, the defendant may request on a form provided by the clerk of court that ~~the~~ certified transcripts be prepared. The court shall expeditiously review the request and order only those transcripts prepared that it deems necessary to resolve the issues to be raised in the petition. The preparation of the transcripts shall be at county expense if the defendant is indigent. The time for filing of the petition shall be tolled from the time a request for the transcripts is made until the transcripts are prepared or the request is denied. Certified transcripts shall be prepared and filed within sixty days of the order granting the request.

(e) and (f) [no changes]

Rule 32.8. Evidentiary hearing.

a. *Evidentiary hearing.* The defendant shall be entitled to a hearing to determine issues of material fact, with the right to be present and to subpoena witnesses. If facilities are available, the court may, in its discretion, order the hearing to be held at the place where the defendant is confined, giving at least 15 days notice to the officer in charge of the confinement facility. In superior court, ~~a complete record of the hearing shall be made~~ recorded.

(b) through (d) [no changes]

e. *Transcript.* The court may, and shall upon request of a party within the

time for filing a petition for review, order that a certified transcript of the evidentiary hearing be prepared. The preparation of the evidentiary hearing transcript shall be at county expense if the defendant is indigent.

Rule 32.9. Review.

(a) and (b) [no changes]

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 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.

(1) and (2) [no changes]

(d) [no changes]

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 ~~reporter's~~ certified transcript, shall be transmitted to the appellate court.

In capital cases, the record of the post-conviction proceedings shall 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 entry orders issued in the post-conviction proceedings, plus the ~~reporter's~~ certified transcript and any exhibits admitted by the trial court in the post-conviction proceedings.

(f) through (h) [no changes]

SUPREME COURT RULES

Rule 32. Organization of State Bar of Arizona.

(a) through (i) [no changes]

(j) Formal requirements of ~~papers~~ filings. All ~~transcripts of testimony~~ verbatim records and all copies of recommendations, documents, papers, pleadings, reports and records required or permitted by any provision of these rules relating to admission, discipline, disability, and reinstatement may be either typewritten, ~~or~~ electronically prepared, or copied by a ~~any mechanical duplicating~~ process that is clear, ~~and~~ legible, or audible. ~~and if prepared by duplicating process.~~ An original is not required. ~~no original typewritten copy shall be required.~~

(k) and (l) [no changes]

Rule 46. Jurisdiction in discipline and disability matters; definitions.

(a) through (e) [no changes]

(f) (1) through (11) [no changes]

12. “Expenses” means all obligations in money, other than costs, necessarily incurred by the state bar and the disciplinary clerk’s office in the performance of their duties under these rules. Expenses shall include, but are not limited to, administrative expenses, necessary expenses of hearing officers, commission members, bar counsel or staff, charges of expert witnesses, charges of certified court reporters and all other direct, provable expenses.

(13) through (17) [no changes]

18. "Record" means the complaint and accompanying panelists' order of probable cause, or other document that commences formal discipline, disability or reinstatement proceedings, or contempt proceedings and every later-filed document or exhibit. Certified transcripts ~~Tape recordings~~ shall not be submitted to the court as part of the record unless the court directs otherwise in a specific case.

(19) through (21) [no changes]

Rule 47. Rules of procedure.

(a) through (f) [no changes]

(g) *Transcript of hearings.* The disciplinary clerk shall cause a record to be made, by ~~stenographic~~ certified court reporters or electronic means, of all evidentiary hearings and oral arguments or upon request of the hearing officer or the parties. Testimony recorded by electronic means is admissible for the same purposes as transcripts ~~provided by certified court reporters~~. After the conclusion of each evidentiary hearing or oral argument in a contested case, the disciplinary clerk shall obtain and file one (1) copy of the ~~written~~ certified transcript of the hearing and serve a copy on bar counsel and respondent. A ~~written~~ certified transcript of an evidentiary hearing before a hearing officer that involves a tender of admissions and agreement for discipline by consent may be secured and filed by the disciplinary clerk only upon the request of

the hearing officer, the respondent or bar counsel, the commission or the court. The disciplinary clerk may also cause a record to be made of meetings and oral arguments before the commission. The costs to the disciplinary clerk of the services of a certified court reporter and certified transcripts may be included in the costs of adjudication that are assessed against the respondent pursuant to Rule 60(b).

(h) and (i) [no changes]

(j)(1) [no changes]

2. *Imposition of costs.* When a lawyer's failure to cooperate results in a deposition being conducted pursuant to the preceding subsection (h)(1), the lawyer shall be liable for the actual costs of conducting the deposition, including but not limited to service fees, certified court reporter fees, travel expenses and the cost of transcribing the deposition, regardless of the ultimate disposition of the discipline proceeding. Upon application of chief bar counsel to a panelist, itemizing the costs and setting forth the reasons necessitating the deposition, and after giving the lawyer ten (10) days to respond, the panel shall, by order, assess such costs as appear appropriate against the lawyer. Commission review of an order assessing costs under this rule may be had.

(k) and (l) [no changes]

Rule 56. Discipline by Consent.

(a) through (d) [no changes]

(e) *Hearing officer report.* Within thirty (30) days of the submission of an agreement and joint memorandum or the conclusion of an evidentiary hearing, if one is held, and receipt of the certified transcript, the hearing officer shall file a report with the disciplinary clerk and serve a copy on the parties. The report shall recommend acceptance, rejection or modification of the proposed agreement and shall address the proportionality of the sanction to be imposed.

(1) through (3) [no changes]

(f) [no changes]

Rule 57. Formal proceedings

(a) through (i) [no changes]

(j) *Report.* Within thirty (30) days after receiving the certified transcript, the hearing officer shall prepare and file with the disciplinary clerk a written report containing findings of fact, conclusions of law and recommendations regarding discipline, together with a record of the proceedings. The hearing officer shall serve a copy of the report on respondent and on bar counsel. For good cause shown, a hearing officer may request that the chair of the commission, or the chair's designee, grant an extension of time within which

to file the report. If no appeal is timely filed, the decision of the hearing officer is final as to any dismissal, diversion, informal reprimand, assessment of costs and expenses, probation and restitution, if not part of a sanction which includes disbarment, suspension or censure.

(k) [no changes]

Rule 65. Reinstatement; application and proceedings.

(a) [no changes]

(b)(1) and (2) [no changes]

3. *Hearing officer report.* Within thirty (30) days after receiving the certified transcript, the hearing officer shall file a report containing findings of fact and a recommendation concerning reinstatement with the commission, which shall include a record of the proceedings. The hearing officer shall serve a copy of the report on the parties.

(4) and (5) [no changes]

Rule 78. Initial Proceedings.

(a) [no changes]

(b) (1) and (2) [no changes]

3. (A) [no changes]

B. *Imposition of Costs.* When a respondent's failure to cooperate results in a

deposition being conducted pursuant to the preceding subsection (b)(3)(A), the respondent shall be liable for the actual costs of conducting the deposition, including but not limited to service fees, certified court reporter fees, travel expenses and the cost of transcribing the deposition, regardless of the ultimate disposition of the unauthorized practice of law proceeding. Upon application of chief bar counsel to a panelist, itemizing the costs and setting forth the reasons necessitating the deposition, and after giving the respondent ten days to respond, the panel shall, by order, assess such costs as appear appropriate against the respondent. An order assessing costs under this rule may be appealed to the superior court.

(c) [no changes]

Rule 91. Superior courts and clerks.

(a) through (g) [no changes]

(h) *Uniform size of pages of transcripts.*

(1) The certified transcript of testimony of any proceeding shall be furnished by the ~~court reporter~~ authorized transcriber on 8 1/2 by 11 inch paper having 25 lines per page with ~~a left hand margin of 1 3/4 inches and a right hand margin of 3/8 inch~~ total combined margins of text not to exceed 2 and 1/8 inches.

(2) [no changes]

(i) [no changes]

Rule 95. Visiting judges.

(a) through (d) [no changes]

(e) *Extension of time.* A judge who has heard and determined a civil action or proceeding in another county may enlarge or extend the time for hearing or determining a motion for new trial or to set aside the judgment, or to file a certified transcript ~~of the reporter's notes~~ or statement of the evidence or proceedings, by a written order signed by the judge, and transmitted by mail to the clerk of the court in which the action or proceeding is pending. The order when filed with the clerk shall have the same force and effect as if made within the county where the action or proceeding is pending.

Rule 102. Appellate review of orders under A.R.S. Section 36-2153 (Parental consent waiver proceedings).

(a) [no changes]

(b) The clerk of the superior court shall transmit the record in the case to the appellate court forthwith upon the filing of the notice of appeal. The record in the case shall be as defined in Rule 11(a)(1) of the Arizona Rules of Civil Appellate Procedure, except that it shall be required to include a ~~reporter's~~ certified transcript of the proceedings in the superior court.

(c) through (h) [no changes]

Rule 123. Public access to the judicial records of the state of Arizona.

(a) through (c) [no changes]

(d) *Access to Case Records.*

(1) through (3) [no changes]

(4) Unofficial verbatim recordings of proceedings. Electronic verbatim recordings made by a courtroom clerk or at the direction of the clerk and used in preparing minute entries are closed.

(e) through (h) [no changes]

Rule 125. Defining minute entry, order, ruling, and notice; party responsibility

(a) A minute entry is the memorialization, electronic or otherwise, either by form or narrative of events occurring during a court proceeding or of matters required to be performed by statute or rule. It is not intended to be a verbatim record of the court proceeding. A court proceeding includes those matters heard in chambers when one or more parties are present or represented by counsel. In addition to the date and starting and ending times of a proceeding and the identity of the certified court reporter, alternative recording method and operator, or the absence thereof, a minute entry shall include all official acts occurring during the proceeding, which may consist of any or all of the following as applicable:

(1) through (10) [no changes]

(b) through (e) [no changes]

RULES OF CIVIL APPELLATE PROCEDURE

Rule 11. Record on appeal.

(a) *Composition of record on appeal; transmission of record.*

(1) The ~~papers making up the~~ record on appeal to the appellate court shall be the ~~original papers~~ official documents, exhibits, minute entries, and other objects filed with the clerk of the superior court, and a ~~reporter's~~ 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 ~~original~~ 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) through (6) [no changes]

(b) *The certified transcript of proceedings; 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 ~~from the reporter~~ an original and one copy of a certified transcript, if any, of such parts of the proceedings as ~~he~~ 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, ~~he~~ 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.

~~(2)~~ (5) Unless the entire certified transcript as limited in subparagraph (5) below is to be included, the appellant shall, within the time above provided, file a description of the parts of the certified transcript which ~~he~~ the appellant intends to include in the record and a concise statement of the issues ~~he~~ 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, ~~he~~ 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, ~~he~~ 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.

(3) (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 ~~with the court reporter~~ shall be cause for such sanctions as the superior court deems proper.

(4) (7) Unless otherwise ordered by the Court of Appeals, promptly upon the docketing of the appeal, the appellant shall file the ~~original~~ 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.

~~(5)~~ (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.

~~(6)~~ (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 ~~his~~ 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) [no changes]

(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) *Transcript defined.* "Transcript" for purposes of these rules shall refer to a reporter's transcript, a narrative statement of evidence pursuant to Rule 11(c) or an agreed statement pursuant to Rule 11(d).~~

(h) [no changes]

Rule 12. Notice to appellant to pay fee and file opening brief; docketing the appeal; filing of the record; docketing statement.

(a) through (c) [no changes]

(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(h) 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) [no changes]

Rule 13. Briefs.

(a) [no changes]

(1) through (3) [no changes]

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) through (7) [no changes]

(b) through (f) [no changes]

Rule 23. Petition for Review.

(a) and (b) [no changes]

(c) (1) [no changes]

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) [no changes]

(d) through (k) [no changes]

Rule 30. Arizona Appellate Settlement Conference Program.

(a) through (c) [no changes]

(d) [Applicable in Division One] [no changes]

(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 ~~from court reporters~~, 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) through (r) {no changes}

RULES OF PROCEDURE FOR SPECIAL ACTIONS

Rule 7. Special appellate court provisions.

(a) through (d) [no changes]

(e) The petition shall consist of a single document. It shall include a jurisdictional statement, a statement of the issues, a statement of the facts

material to a consideration of the issues presented, and an argument containing the petitioners' contentions with respect to the issues presented, and the reasons therefor, with citations to the authorities, statutes and appropriate references to the record. A copy of the decision from which the petition is being taken shall be attached to the petition. All references to the record shall be supported by an appendix of documents in the record ~~on appeal~~ before the trial court that are necessary for a determination of the issues raised by the petition. The response to the petition shall, if necessary, be supported by an appendix of documents in the record ~~on appeal~~ before the trial court that are necessary for a determination of the issues raised by the petition which are not contained in the petitioner's appendix. If either party's appendix exceeds 15 pages in length, it shall be fastened together separately from the petition or response. Except by permission of the court, petitions and responses shall not exceed (i) 10,500 words if in proportionate typeface, or (ii) 30 pages if in monospace typeface, exclusive of the appendix and the copy of the decision from which the petition is being taken. The reply, if any, shall not exceed (i) 5,250 words if in proportionate typeface, or (ii) 15 pages if in monospaced typeface. The petition, response and any reply must otherwise comply with Rules 6(c) or 14a(a)(1), ARCAP or Rules 31.12 or 31.13 of the Ariz. R. Crim. P. The petition, response and any reply must each be accompanied by a certificate of compliance that states the petition's line

spacing and states either (i) the petition uses a proportionately spaced typeface, together with the typeface, point size, and word count, or (ii) the petition uses a monospaced typeface, together with the number of characters per inch. A party preparing this certificate may rely on the word count of the processing system used to prepare the petition.

(f) through (i) [no changes]

(j) Filing may be accomplished by mail addressed to the clerk, but filing of ~~any papers~~ under this rule shall not be timely unless ~~the papers are~~ received by the clerk within the time fixed for filing.

TAX COURT RULES OF PRACTICE

Rule 6. Cases transferred to the Tax Court.

(a) [no changes]

(b) When a tax case is transferred, the Clerk of the Superior Court from which the case is transferred shall forthwith transmit the file together with all exhibits and certified transcripts to the Clerk of the Tax Court. If the case is transferred from a county other than Maricopa, the Clerk of the county from which the case is received shall remit to the Clerk of the Maricopa County Superior Court Tax Court Department filing and appearance fees paid to the transferring Clerk by the parties. If the case was first filed other than in Maricopa County, the parties shall pay to the Clerk of the Maricopa County Superior Court Tax Court Department such document storage and retrieval

fees, and other surcharges as are applicable. Such payment shall be made within 30 days of the order transferring the case.

Rule 25. Small claims hearings and trials.

All testimony in a small claims hearing or trial shall be given under oath. The proceedings need not be ~~reported by a court reporter~~ recorded.

SUPERIOR COURT RULES OF APPELLATE PROCEDURE-CIVIL

Rule 1. Scope of rules; Definitions.

(a) [no changes]

(b) All appeals from the limited jurisdiction courts shall be on the record. ~~The record may consist of audio, video, digital, transcription or other method of recording as approved by the Supreme Court.~~ The record may be made by a certified court reporter or other electronic means approved by the Supreme Court. A trial de novo shall not be granted when a party who had opportunity to request that a verbatim record of the limited jurisdiction court proceedings be made, failed to do so.

(c) through (g) [no changes]

(h) For the purposes of these rules, an “authorized transcriber” is a certified court reporter or a transcriber under contract with an Arizona court.

Rule 4. Time for taking appeal and cross-appeal

(a) through (c) [no changes]

(d) Within the 14 calendar day deadline to file the notice of appeal, or five day deadline in forcible and special detainer cases, the appellant shall also pay the applicable record or transcript fees to the trial court in cash or other manner allowed by the trial court, or make arrangements with ~~court reporters or transcribers~~ an authorized transcriber for the preparation and filing with the trial court of the certified transcript(s). Within the 28 calendar day deadline to file a cross-appeal, or ten day deadline in forcible and special detainer cases, the cross-appellant shall pay the applicable record or transcript fee pertaining to the cross-appeal to the trial court in cash or other manner allowed by the trial court, or make arrangements with ~~court reporters or transcribers~~ the authorized transcriber for the preparation and filing with the trial court of the certified transcript(s) pertaining to the cross-appeal. Appellant shall be responsible for the filing of all certified transcripts with the trial court prior to the filing of its memorandum. Cross-appellant shall be responsible for the filing of all certified transcripts pertaining to the cross-appeal with the trial court prior to the filing of its appellate memorandum. The trial court may assess a separate fee to prepare additional requested copies of the record, including documents, exhibits, ~~tapes, CD's, videos, or other~~ and electronic recordings of proceedings.

(e) [no changes]

Rule 7. Record on Appeal.

(a) Joint Statement of the Record. In lieu of any part of the record or transcripts in the trial court, the parties may prepare and submit a joint statement of the record on appeal, signed by all parties and setting forth the issues and pertinent facts presented by the appeal. Notice that a joint statement will be used shall be given to the trial court and any ~~court reporters~~ or authorized transcribers.

(b) (1) through (9) [no changes]

(10) the ~~record~~ recording or certified transcript of the trial (except that oral argument on motions, voir dire, opening and closing arguments, and jury instructions shall not be included unless designated by a party) The Superior Court may require the filing of either of the above;

[no changes]

(c) Designation of the Record on Appeal. Within the time allowed to appeal, the appellant shall also file an original, and one copy for each party, of a designation of items to be included in the record on appeal. The documents shall be date stamped on their face when received by the trial court. The trial court shall send the copy(ies) to the opposing side(s). Within 14 calendar

days of the date of filing, the opposing party(ies) may also file its designation of portions of the record to be included.

(d) Correction or Modification of the Record on Appeal. If anything material to any party is omitted from the record on appeal or is misstated, the parties by stipulation, the trial court (before the record is transmitted to the Superior Court), or the Superior Court (after the record has been transmitted), may direct that the omission or misstatement be corrected or that the record be augmented to reflect what took place, and if necessary, that a supplemental record be certified and transmitted to the Superior Court.

(e) [no changes]

SUPERIOR COURT RULES OF APPELLATE PROCEDURE- CRIMINAL

Rule 1. Scope and definitions

(a) through (e) [no changes]

(f) For the purposes of these rules, an “authorized transcriber” is a certified court reporter or a transcriber under contract with an Arizona court.

Rule 2. Record of Proceedings

a. A record in the trial court shall be made by ~~court reporter, video, audio, digital or other method of recording~~ a certified court reporter or other electronic means approved by the Supreme Court.

(b) through (d) [no changes].

Rule 3. Notice of appeal.

(a) and (b) [no changes]

c. When a party appeals, the trial court shall send a copy of the notice of appeal to the opposing side and to ~~any court reporters or transcribers~~ authorized transcribers responsible for preparing the transcript, ~~if any~~, and shall note such fact in the court records.

(d) [no changes]

Rule 7. Record on appeal.

a. Within 14 calendar days after the filing of the notice of appeal, when the defendant is the appellant, a defendant who is not proceeding as an indigent on appeal shall make arrangements with all ~~court reporters or~~ authorized transcribers to pay any record or transcript preparation fees. Thereupon, each ~~court reporter or~~ authorized transcriber shall promptly prepare the transcript.

b. In lieu of the record of proceedings or transcript in the trial court, the parties may submit a joint statement of the record on appeal, prepare and sign an agreed statement as to the record on appeal, setting forth the issues and pertinent facts presented by the appeal. Notice that a joint statement will be used shall be given to the trial court, any ~~court reporter or~~ authorized

transcribers.

c. (1) through (8) [no changes]

(9) the recording or certified transcript of the trial (except that voir dire, opening and closing argument, and jury instructions shall not be included unless designated by a party). The Superior Court may require the filing of either of the above;

(10) and (11) [no changes]

d. [no changes]

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

f. [no changes]

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

* * *

STAGE ONE - THE TRIAL COURT

1. [no changes]

2. THE RECORD. Within 14 calendar days after you file your notice of appeal, you must also arrange to pay for a copy of the proceedings at the hearing. The copy may be a recording or a certified transcript. The clerk will explain which type of record is required. Payment must be in cash or other method explained by the clerk. If you cannot afford to pay for the record, ask the clerk for information about a possible waiver or extension ("deferral") to make payment later. If you fail to pay for the record or certified transcript, your appeal may be dismissed. Additional copies of the trial or proceeding record or certified transcript may be obtained for an additional charge.

(3) through (8) [no changes]

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

* * *

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

* * *

RULES OF PROCEDURE FOR THE JUVENILE COURT

Rule 1. Applicability; Definitions

(A) and (B) [no changes]

(C) For the purposes of these rules, an “authorized transcriber” is a certified court reporter or a transcriber under contract with an Arizona court.

Rule 34. Transfer for criminal prosecution.

(A) through (E) [no changes]

(F) (1) [no changes]

(2) (a) through (d) [no changes]

e. Certified Transcript of proceeding. The certified transcript of the probable cause phase of the hearing shall be filed with the clerk of the superior court within twenty (20) days of the completion of the hearing if the juvenile is to be transferred.

(3) through (5) [no changes]

Rule 81. Consent to adopt.

(A) [no changes]

(B) (1) [no changes]

2. Making arrangements for the presence of a certified court reporter at the hearing if one is required to effectuate an out-of-state adoption; and

(C) and (D) [no changes]

Rule 89. Time within which an appeal may be taken and notice thereof; preparation of certified transcript and record on appeal.

(A) and (B) [no changes]

C. 1. Immediately upon the filing of a notice of appeal, the clerk of the superior court shall serve copies of the notice of appeal on all parties or their counsel; on each certified court reporter who reported any juvenile court proceeding that is part of the certified transcript as defined by subsection D.2. of this rule; ~~upon each juvenile court word processing operator who has possession of a tape recording of any such proceeding~~ or the court's designated transcript coordinator, if the record was made by electronic or other means, and on the clerk of the court of appeals. The clerk of the superior court shall include with the copy of the notice of appeal served on the clerk of the court of appeals a copy of the order from which the appeal is taken and the names of the ~~court reporters and word processing operators~~ persons who were sent a copy of the notice of appeal.

(2) [no changes]

(D) (1) (a) through (d) [no changes]

2. The certified transcript shall consist of the following:

(a) through (e) [no changes]

Notwithstanding the preceding provisions of Rule 89D.2., the certified transcript shall not include any proceeding or portion thereof excluded pursuant to Rule 89E.

E. No later than five days after filing the notice of appeal the appellant may file with the clerk of the superior court and serve a pleading entitled "designation of record" (1) requesting that the clerk of the superior court add to the record on appeal specifically identified subpoenas or praecipes, or specifically identified studies, reports or medical or psychological evaluations, or compilations of such studies, reports or evaluations, prepared as required by statute, court rule or order for the use of the juvenile court in the proceedings resulting directly or indirectly in the order from which the appeal is taken and not otherwise part of the record; (2) requesting that the clerk of the superior court delete from the record specifically identified items otherwise automatically included in the record on appeal; and (3) requesting that one or more certified court reporters or ~~juvenile court word processing personnel~~ the court's designated transcript coordinator, if the record was made by electronic or other means, add to the transcript any proceeding or part thereof not automatically included, and to exclude from the transcript any portion thereof otherwise automatically included. The appellant shall serve the designation of record on all parties, ~~and~~ on each ~~affected~~ court reporter

who reported a designated portion of the proceedings, or juvenile court word processing operator and on the court's designated transcript coordinator, if the record was made by electronic or other means.

F. 1. No later than 12 days after the filing of the notice of appeal any appellee may file with the clerk of the superior court and serve a pleading entitled "supplemental designation of record" (1) requesting that the clerk of the superior court add to the record on appeal specifically identified subpoenas or praecipes, or specifically identified studies, reports or medical or psychological evaluations, or compilations of such studies, reports or evaluations, prepared as required by statute, court rule, or order for the use of the juvenile court in the proceedings resulting directly or indirectly in the order from which the appeal is taken and not otherwise part of the record, or any specifically identified items deleted by appellant's designation of record; and (2) requesting that one or more court reporters or ~~juvenile court word processing personnel~~ authorized transcribers add to the transcript any proceeding or part thereof deleted by appellant's designation of record or not automatically part of the transcript as defined in Rule 89D.2. The supplemental designation of record shall be served on all parties and on each affected court reporter and ~~juvenile court word processing operator~~ authorized transcriber.

(F) (2) [no changes]

G. No party shall request that ~~the clerk of the superior court or a court reporter or juvenile court word processing operator~~ add any item be added to the record, or any proceeding to the transcript, that is not essential to deciding the issues presented by the appeal. For any infraction of this rule, the appellate court may impose sanctions pursuant to ARCAP 25 made applicable in juvenile appeals by Rule 88G.

H. The court reporter or reporters or ~~word processing personnel of the juvenile court~~ authorized transcribers shall prepare the original certified transcript and one copy for each party to the appeal who has not filed a notice pursuant to subsection C.2. of this rule promptly upon receiving a notice of appeal filed by a governmental entity or a notice of appeal stating that the appellant was proceeding with appointed counsel in the juvenile court when the final order that is the subject of the appeal was filed.

I. No later than five days after the filing of the notice of appeal or five days after the denial of a request to proceed with appointed counsel, an appellant who is not proceeding with appointed counsel shall make arrangements with the certified court reporter or ~~reporters or juvenile court word processing personnel~~ authorized transcriber to pay for the transcript. The certified court reporter or ~~reporters or juvenile court word processing personnel~~ authorized transcriber shall immediately notify the appellate court in writing if an appellant fails to make satisfactory arrangements within the prescribed time.

When satisfactory payment arrangements are made, the certified court reporter or ~~reporters or juvenile court word processing personnel~~ authorized transcriber shall promptly prepare the certified original transcript and one copy for each party to the appeal who has not filed a notice pursuant to subsection C.2. of this rule.

(J) [no changes]

Rule 90. Docketing of appeal; transmission and filing of record on appeal; filings in juvenile court after commencement of appeal.

(A) [no changes]

B. The court reporter or reporters or ~~word processing personnel of the juvenile court~~ authorized transcriber shall file the completed certified ~~original~~ transcript with the clerk of the court of appeals, marked with the number assigned to the appeal by the court of appeals, no later than

(1) and (2) [no changes]

3. 30 days after the appellant makes satisfactory arrangements to pay for the certified transcript, whichever event first occurs. At the time of filing the ~~original~~ certified transcript, the court reporter or reporters or ~~word processing personnel of the juvenile court~~ authorized transcriber shall serve one copy of the certified transcript on each appellant and each appellee who has not filed a notice pursuant to Rule 89C.2. The court reporter or reporters or ~~word~~

~~processing personnel of the juvenile court~~ authorized transcriber shall contemporaneously file notice of service of the certified transcript with the appellate court, reflecting when, upon whom, and by what means service was made. Service of certified transcript copies shall be made in the manner prescribed by any applicable local rule or administrative order, or otherwise in accordance with the prevailing custom in the juvenile court from which the appeal originates.

C. If the certified transcript is not timely filed with the clerk of the court of appeals, the noncomplying court reporter or reporters or ~~juvenile court word processing personnel~~ authorized transcriber shall be subject to such orders or sanctions as the court of appeals deems appropriate in its discretion.

(D) (1) [no changes]

2. identify and assemble the original ~~paper, book, binder,~~ documentary and ~~photographic~~ electronic exhibits in the record that are of manageable size, including those added to the record pursuant to Rule 89E. or F. and excluding those deleted from the record pursuant to Rule 89(E);

(3) through (5) [no changes]

(E) through (G) [no changes]

Rule 91. Briefing, consideration and disposition in the court of appeals.

(A) through (D) [no changes]

E. The appellate court, upon motion of the appellee, or upon its own initiative after notice to all parties, may dismiss an appeal for any legal cause including want of prosecution, unless an affected party makes a showing of good cause why the appeal should not be dismissed. The clerk of the court of appeals shall give prompt notice of dismissal of an appeal to the parties, the clerk of the superior court, and if the certified transcript has not yet been filed, to the appropriate court reporter or reporters or ~~word processing personnel of the juvenile court~~ the court's designated transcript coordinator.

(F) [no changes]

Rule 92. Petition for review.

(A) [no changes]

(B) (1) [no changes]

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) and (4) [no changes]

(C) through (J) [no changes]

RULES OF PROCEDURE IN CIVIL TRAFFIC VIOLATION CASES

Rule 20. Record; summary transfer.

(a) A record of the proceedings shall be made by ~~court reporter, video, audio,~~
~~digital, or other recording~~ a method approved by the Supreme Court.

(b) [no changes]

Rule 28. Time for filing; payment of record or transcript fee to trial court.

(a) [no changes]

(b) Within the 14 calendar day deadline to file the notice of appeal, the appellant shall also pay the applicable record ~~or transcript~~ fee to the trial court in cash or other manner allowed by the trial court. The trial court may also assess a separate fee to prepare additional requested copies of recorded proceedings.

RULES OF THE COMMISSION ON JUDICIAL CONDUCT

Rule 27. Hearings.

(a) through (e) [no changes]

(f) (1) through (8) [no changes]

(9) The hearing shall be transcribed by a certified court reporter or ~~tape~~ recorded for use by the supreme court, and a certified transcript shall be filed

with the commission's recommendations. Any party may obtain a copy of the certified transcript at his or her own expense.

(10) Where a member of a hearing panel has not heard the evidence, that member shall not participate in any deliberations or decisions unless he or she has personally considered the whole record, including any recording or certified transcript from portions of the hearing from which that member was absent.

(g) and (h) [no changes]

Rule 28. Recommendations.

(a) By a hearing panel. The hearing panel may file proposed recommendations at any time after the conclusion of the formal hearing and shall do so no later than fifteen days after the certified transcript of the hearing is filed with the commission. The recommendations shall be served on both parties, and either party may file a motion for reconsideration within ten business days. The motion shall be limited to whether the evidence in the record supports the findings of fact. If a motion is filed, the adverse party may file a response within ten business days, and no reply shall be filed unless ordered by the hearing panel. The hearing panel may accept or reject any objections to the factual findings without further proceedings.

(b) By a hearing officer. The hearing officer may file proposed

recommendations at any time after the conclusion of the formal hearing and shall do so no later than fifteen days after the certified transcript of the hearing is filed with the commission. Commission members who have not previously participated in the investigation shall review the findings of fact based on a clearly erroneous standard and the conclusions of law on a de novo basis. The commission so constituted may thereafter adopt, reject, or modify the proposed recommendations. The recommendations shall be served on both parties, and either party may file a motion for reconsideration within ten business days. The motion shall be limited to whether the evidence in the record supports the findings of fact. If a motion is filed, the adverse party may file a response within ten business days, and no reply shall be filed unless ordered by the commission. The commission may accept or reject any objections to the factual findings without further proceedings.

(c) [no changes]

Appendix B
Videotaping Depositions
(new language is underlined, deletions are ~~stricken~~)

Rule 30(b). Notice of Examination; General Requirements; Special Notice; Method of Recording; Production of Documents and Things; Deposition of Organization; Deposition by Telephone.

(1) Absent a stipulation of all parties to the action or an order of the court authorizing a briefer notice, a party desiring to take the deposition of any person upon oral examination shall give notice in writing to every other party to the action at least ten days prior to the date of the deposition. The notice shall state the date, time and place for taking the deposition, ~~the technique for recording the deposition and the protocols to be used for such recording, the identity of the person recording the deposition, the placement of camera(s) if any, and~~ the name and address of each person to be examined, if known, and, if the name is not known, a general description sufficient to identify the person or the particular class or group to which the person belongs, and the name and address of the person before whom the deposition shall be taken. If a subpoena duces tecum is to be served on the person to be examined, the designation of the materials to be produced as set forth in the subpoena shall be attached to or included in the notice.

If the deposition is to be recorded by audio or audio-video, the notice shall state the technique for recording the deposition and the protocols to be used for such recording, the identity of the person recording the deposition, and the placement of camera(s), if any.

(2) and (3) [no changes]

(4) Unless the parties stipulate or the court orders otherwise, the deposition shall be recorded by a certified court reporter ~~stenographic means~~ and may also be recorded by audio or audio-video ~~sound or sound and visual~~ means.

When a deposition is recorded by a certified court reporter and the testimony is requested to be transcribed by one of the parties, the party noticing the deposition shall be responsible for the cost of the original transcript. The deposition shall contain the certified court reporter's name, certification number, and business address; the date, time and place of the deposition; the name of the deponent; the administration of the oath or affirmation to the deponent; and an identification of all persons present. ~~The party taking the deposition shall bear the cost of the recording.~~ If audio or audio-video is additionally requested by one of the parties, the requesting party shall be responsible for the cost of such recording.

If the deposition is recorded only by audio or audio-video, the party noticing the deposition shall bear the cost of the recording. The stipulation or order shall designate the person before whom the deposition shall be taken, the manner of recording, preserving and filing the deposition, and may include other provisions to assure that the recorded testimony will be accurate and trustworthy. A party may arrange to have a ~~stenographic~~ certified transcription made at the party's own expense.

Any changes made by the witness, the witness' signature identifying the deposition as the witness' own or the statement of the officer that is required if the witness does not sign as provided in subdivision (e), and the certification of the officer required by subdivision (f) shall be set forth in a writing to accompany a deposition ~~recorded by nonstenographic means~~. Unless otherwise agreed by the parties, a deposition shall be conducted before an officer appointed or designated under Rule 28 and shall begin with a statement or notation on the record by the officer that includes (A) the officer's name and business address; (B) the date, time and place of the deposition; (C) the name of the deponent; (D) the administration of the oath or affirmation to the deponent; and (E) an identification of all persons present. The officer shall repeat items (A) through (C) at the beginning of each unit of recorded tape or other recording medium. The appearance or demeanor of

deponents or attorneys shall not be distorted through camera or sound-recording techniques. At the end of the deposition, the officer shall state or note on the record that the deposition is complete and shall set forth any stipulations made by counsel concerning the custody of the transcript or recording and the exhibits, ² or concerning other pertinent matters.

(5) through (7) [no changes]

Rule 30(e). Submission to Witness; Changes, Signing

Before completion of the deposition and if not otherwise informed by counsel, the officer shall advise a deponent of the right to review, modify, and sign the transcript or affirm the accuracy of the audio or video recording. If requested by the deponent or a party before completion of the deposition, the deponent shall have 30 days after being notified by the officer that the transcript or recording is available in which to review the transcript or recording and, if there are changes in form or substance, to sign a statement reciting such changes and the reasons given by the deponent for making them. The officer shall indicate in the certificate prescribed by subdivision (f)(1) whether any review was requested and, if so, shall append any changes made by the deponent during the period allowed. If the witness does not submit such a statement or a written explanation why such statement cannot be

submitted within the time period provided, the officer shall ~~state on the record~~ indicate in the certificate prescribed by subdivision (f)(1) or by affidavit the fact of the refusal to submit a statement with the reason therefore, if any, and the deposition may then be used as fully as though signed unless on a motion to suppress under Rule 32(d)(4) the court holds that the reasons given for the refusal to submit a statement require rejection of the deposition in whole or in part.

Rule 30(f). Certification and Delivery by Officer; Exhibits; Copies.

(1) The officer must certify that the witness was duly sworn by the officer and that the deposition is a true record of the testimony given by the witness. This certificate must be in writing and accompany the record of the deposition. Unless otherwise ordered by the court, the officer must securely seal the deposition in an envelope or package endorsed ~~indorsed~~ with the title of the action and marked "Deposition of [here insert name of witness]" and must promptly send it to the attorney who arranged for the transcript or recording, who must store it under conditions that will protect it against loss, destruction, tampering, or deterioration. Documents and things produced for inspection during the examination of the witness must, upon the request of a party, be marked for identification and annexed to the deposition and may be inspected

and copied by any party, except that if the person producing the materials desires to retain them the person may (A) offer copies to be marked for identification and annexed to the deposition and to serve thereafter as originals if the person affords to all parties fair opportunity to verify the copies by comparison with the originals, or (B) offer the originals to be marked for identification, after giving to each party an opportunity to inspect and copy them, in which event the materials may then be used in the same manner as if annexed to the deposition. Any party may move for an order that the original be annexed to and returned with the deposition to the court, pending final disposition of the case.

(2) Unless otherwise ordered by the court or agreed by the parties, ~~the officer shall retain stenographic notes and tapes of any deposition and a copy of the recording of any deposition taken by another method for a period of ten years which shall be retained by the officer in such place and manner as to ensure their availability to the court or any party upon request~~ the certified court reporter shall preserve the record of any deposition for a period of time corresponding to the applicable records retention and disposition schedules adopted by the Supreme Court. Upon payment of reasonable charges therefor, the ~~officer~~ certified court reporter shall furnish a copy of the transcript ~~or other recording~~ of the deposition to any party or to the deponent.

If the record of the deposition is created solely by audio or audio-video means, and unless otherwise ordered by the court or agreed by the parties, the officer shall retain the original recording of any deposition for a period of time corresponding to the applicable records retention and disposition schedules adopted by the Supreme Court in such place and manner as to ensure its availability to the court or any party upon request. Upon payment of reasonable charges therefor, the officer shall furnish a copy of the recording of the deposition to any party or to the deponent.

(3) [no changes]

Rule 32(a). Use of Depositions

At the trial or at any hearing, any part or all of a deposition, so far as admissible under the rules of evidence applied as though the witness were then present and testifying, may be used against any party who was present or represented at the taking of the deposition or who had reasonable notice thereof, and had an opportunity and similar motive to develop the testimony by direct, cross, or redirect examination. The party who seeks admission of ~~said~~ the testimony by deposition may do so without proof of the deponent's unavailability to testify at trial. Nothing contained in this Rule shall be

construed to limit, in any way, the right of any party to call the deposed witness to testify in person at trial.

If only part of a deposition is offered in evidence by a party, the court may require the offeror to introduce contemporaneously any other part which ought in fairness to be considered together with the part introduced.

Except as provided in Rule 56(e), the use of the deposition transcript may be supplemented with contemporaneously recorded audio and video files that may be synchronized to the deposition transcript, if any.

Substitution of parties pursuant to Rule 25 does not affect the right to use depositions previously taken; and, when an action has been brought in any court of the United States or of any state, and another action involving the same subject matter is afterward brought between the same parties or their representatives or successors in interest, all depositions lawfully taken and duly filed in the former action may be used in the latter as if originally taken therefor. A deposition previously taken may also be used as permitted by the Arizona Rules of Evidence.

Appendix C
Proposed Rule
Governing Transcription In Arizona Courts
(new language is underlined)

Rule ____ . Transcripts of court proceedings; standards

A transcript is a document containing a verbatim record of the spoken words of a court proceeding prepared from either the certified reporter's notes or other verbatim record of the proceeding. Transcripts certified for use by any court shall be:

1. Prepared and certified by an authorized transcriber in accordance with the standards set forth in the Arizona Manual of Transcript Procedures. The current version of this manual is available from the Administrative Office of the Courts.

2. For purposes of this rule, an "authorized transcriber" means:

a. a certified reporter; or

b. an individual or a transcription service under contract with an Arizona court.

COMMENT

This rule is not intended to prevent a party from retaining a transcriber, at the party's expense, to prepare an unofficial transcript of all or part of a proceeding. An unofficial transcript cannot be referenced or used in any court proceeding.

Appendix D
Reporting Resources Proposal
(new language is underlined)

The proposal is in two parts:

1. New rule establishing reporting priorities in superior court (pp.1-3).
2. Civil, criminal, juvenile and family law rules amendments to ensure parties have an opportunity to request a certified reporter prior to trial (pp. 4-7).

1. New rule establishing reporting priorities in superior court.

Rule ____ . Use of Court Reporting Resources

(A) Request for certified reporter. Any party to any action in superior court may request that any proceeding in that action be recorded by a certified court reporter. The court shall grant the request if it is made at least three days prior to the proceeding to be recorded unless a different time frame has been established by local rule.

(B) Making the record in the absence of a timely request for a court reporter. Except as provided in (C) below, in the absence of a timely request for a certified court reporter the record will be made in a manner within the sound discretion of the court.

(C) Proceedings requiring a certified court reporter. The following proceedings shall be recorded by a certified court reporter and not solely by

electronic means, unless this requirement is waived by the parties and the court approves the waiver:

1. Grand jury proceedings;
2. All proceedings in a first degree murder case, pursuant to A.R.S. §13-1105, once the intention to seek the death penalty notice has been filed;
3. Felony jury trials;
4. Initial determinations of sexually violent person status, pursuant to A.R.S. §36-3706;
5. Proceedings on a request for authorization of abortion without parental consent, pursuant to A.R.S. §36-2152.

(E) Official record. When an Arizona-certified court reporter records a proceeding in a superior court that is simultaneously recorded by electronic recording equipment, the court reporter's record shall be the official record. The transcript in any case certified by the reporter or other authorized transcriber shall be deemed prima facie a correct statement of the testimony taken and proceedings had. No transcripts of the proceedings of the court shall be considered as official except those made from the records certified by the reporter or other authorized transcriber.

COMMENT

Rule (B). In the absence of a timely request for a certified court reporter, the court may approve use of a certified court reporter, audio or video recording. In exercising its discretion under subsection (B), giving due deference to the parties' preference, the court may consider the following factors:

- availability of a certified reporter,
- the probability that a transcript will be requested,
- the number of litigants,
- convenience of the parties and the court's schedule,
- sufficiency of another form of record to convey the substance of the matters discussed at the proceeding,
- whether testimonial evidence will be presented at the proceeding,
- presence of non-native English speakers as witnesses or parties,
- the likelihood that technical or otherwise difficult terminology will be used,
- the need for formal or informal proceedings,
- the need for a real-time transcript,
- the likelihood that daily transcripts will be required,
- Any other factor which in the interests of justice warrants a particular form of record, or as otherwise required to serve the interests of justice.

RULES OF CIVIL PROCEDURE

Rule 16(b). Scheduling and Subjects to Be Discussed at Comprehensive Pretrial Conference in Non-Medical Malpractice Cases

[no changes]

(1) through (18) [no changes]

(19) Determine how verbatim record of future proceedings in the case will be made.

Rule 16(c). Scheduling and Subject Matter at Comprehensive Pretrial Conferences in Medical Malpractice Cases

[no changes]

(1) through (12) [no changes]

(13) Determine how verbatim record of future proceedings in the case will be made.

Rule 16(d). Joint Pretrial Statement; Preparation; Final Pretrial Conference

[no changes]

(1) through (6) [no changes]

(7) A statement by each party on how a verbatim record of the trial will be made.

[no changes]

RULES OF CRIMINAL PROCEDURE
16.4. Mandatory prehearing conference.

a. [no changes]

(b) Request for Court Reporter. Among other issues to be addressed by the parties and reported to the court is a determination of how a verbatim record of future proceedings in the case will be made.

(b) and (c) [renumber -- no changes]

RULES OF THE JUVENILE COURT
Rule 28. Advisory hearing.

(A) and (B) [no changes]

C. [no changes]

(1) through (8) [no changes]

9. Determine how a verbatim record of the adjudication hearing will be made.

(D) and (E) [no changes]

Rule 32. Revocation of probation.

(A) through (C) [no changes]

(D) [no changes]

(1) [no changes]

(2) [no changes]

(a) through (g) [no changes]

h. Determine how a verbatim record of the probation violation hearing will be made.

(E) [no changes]

Rule 54. Pretrial conference.

(A) [no changes]

(B) [no changes]

(1) [no changes]

(2) [no changes]

(a) through (e) [no changes]

f. How a verbatim record of the dependency adjudication hearing will be made.

(C) [no changes]

Rule 62. Initial guardianship hearing.

(A) and (B) [no changes]

(C) [no changes]

(1) through (7) [no changes]

8. Determine how a verbatim record of the guardianship adjudication hearing will be made.

(D) [no changes]

Rule 65. Initial termination hearing.

(A) and (B) [no changes]

(C) [no changes]

(1) through (6) [no changes]

7. Determine how a verbatim record of the termination adjudication hearing will be made.

(D) [no changes]

RULES OF FAMILY LAW PROCEDURE

Rule 76. Pretrial Procedures

(A) and (B) [no changes]

(C) [no changes]

1. [no changes]

(a) through (k) [no changes]

l. a statement by each party on how a verbatim record of the trial will be made.

(2) through (5) [no changes]

(D) [no changes]