

# **Appendix A**

## **Redline of Proposed Amendments to Arizona Rules of Criminal Procedure**

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## **Rule 1.2. Purpose and Construction**

These rules are intended to provide for the just and speedy determination of every criminal proceeding. Courts, parties, and crime victims should construe these rules to secure simplicity in procedure, fairness in administration, the elimination of unnecessary delay and expense, and to protect the fundamental rights of the **individual accused and the victim** while preserving the public welfare. **These rules must be construed to protect the constitutional rights of victims enumerated in Article II, Section 2.1(A) of the Arizona Constitution.**

## **Rule 1.3. Computation of Time**

**(a) General Time Computation.** When computing any time period more than 24 hours prescribed by these rules, by court order, or by an applicable statute, the following rules apply:

**(1) Day of the Event.** Exclude the day of the act or event from which the designated time period begins to run.

**(2) Last Day.** Include the last day of the period, unless it is a Saturday, Sunday or legal holiday, in which case the period ends on the next day that is not a Saturday, Sunday, or legal holiday.

**(3) Time Period Less Than 7 Days.** If the time period is less than 7 days, exclude intermediate Saturdays, Sundays and legal holidays from the computation.

**(4) Next Day.** The “next day” is determined by counting forward when the period is measured after an event, and backward when measured before an event.

**(5) Additional Time After Service.** If a party **or crime victim** may or must act within a specified time after service and service is made under a method authorized by Rule 1.7(c)(2)(C), (D), or (E), 5 calendar days are added after the specified time period would otherwise expire under (a)(1)-(4), except as provided in Rule 31.3(d). This provision does not apply to the clerks’ distribution of notices, minute entries, or other court-generated documents.

**(b) If an Arraignment Is Not Held.** If an arraignment is not held under Rule 14.5, the date of arraignment for the purpose of computing time is the date the defendant receives notice of the next court date under Rule 5.8.

**(c) Entry.** A court order is entered when the clerk files it.

## Rule 1.4. Definitions

(a) **The Defendant.** “The defendant” is a person named as such in a complaint, indictment, or information. “The defendant” as used in these rules includes an arrested person who at the time of arrest is not named in a charging document. “The defendant” in the context of certain rules includes the attorney who represents the defendant.

(b) **Criminal Proceeding.** A “criminal proceeding” is any matter scheduled and held before a trial court, telephonically or in person, at which the defendant has the right to be present, including any post-conviction matter.

(c) **Identifying and Locating Information.** As used in this rule, “identifying and locating information” includes a person's date of birth, social security number, official state or government issued driver license or identification number, the person's address, telephone number, email addresses, and place of employment.

(d) ~~(b)~~ **Limited Jurisdiction Court.** A “limited jurisdiction court” is a justice court under A.R.S. §§ 22-101 et seq., or a municipal court under A.R.S. §§ 22-401 et seq.

(e) ~~(e)~~ **Magistrate.** “Magistrate” means an officer having power to issue a warrant for the arrest of a person charged with a public offense and includes the Chief Justice and justices of the Supreme Court, judges of the superior court, judges of the court of appeals, justices of the peace, and judges of a municipal court.

(f) ~~(d)~~ **Parties.** “Parties” means the State of Arizona and the defendants in a case. Use of the word “party” in these rules means either, or any, party.

(g) ~~(e)~~ **Person.** “Person” includes an entity.

(h) ~~(f)~~ **Presiding Judge.**

(1) **For the Superior Court.** The superior court presiding judge is the county's presiding judge. In a county that has only one superior court judge, that judge is the presiding judge. In other counties, the Chief Justice of the Supreme Court designates the presiding judge, who may appoint other judges to carry out one or more of the presiding judge's duties.

(2) **For a Limited Jurisdiction Court.** If a court consists only of one judge, that judge is the presiding judge. In courts having more than one judge, the presiding judge is designated by the appropriate authority.

(i) ~~(g)~~ **The State.** “The State” means the State of Arizona, or any other Arizona state or local governmental entity that files a criminal charge in an Arizona court. “The State” in the context of certain rules includes the prosecutor representing the State.

(j) ~~(h)~~ **Victim.** “Victim” means a person as defined in A.R.S. § 13-4401.

**(1) Cessation of Victim Status.** A victim retains the rights provided in these rules until the rights are no longer enforceable under A.R.S. §§ 13-4402 and 13-4402.01.

**(2) Legal Entities.** The victims’ rights of any corporation, partnership, association, or other similar legal entity are limited as provided in statute.

### **Rule 1.5. Interactive Audiovisual Systems**

(a) **Generally.** If the appearance of a defendant or counsel is required in any court, the appearance may be made by using an interactive audiovisual system that complies with the provisions of this rule. Any interactive audiovisual system must meet or exceed minimum operational guidelines adopted by the Administrative Office of the Courts.

(b) **Requirements.** If an interactive audiovisual system is used:

- (1) the system must operate so the court and all parties can view and converse with each other simultaneously;
- (2) a full record of the proceedings must be made consistent with the requirements of applicable statutes and rules; and
- (3) provisions must be made to:
  - (A) allow for confidential communications between the defendant and defendant’s counsel before, during, and immediately after the proceeding;
  - (B) allow a victim a means to view and participate in the proceedings and ensure compliance with all victims’ rights laws;
  - (C) allow the public a means to view the proceedings consistent with applicable law; and
  - (D) allow for use of interpreter services when necessary and, if an interpreter is required, the interpreter must be present with the defendant absent compelling circumstances.

(c) **When a Defendant May Appear by Videoconference.**

(1) **In the Court’s Discretion.** A court may require a defendant’s appearance by use of

an interactive audiovisual system without the parties' consent at any of the following:

- (A) an initial appearance;
- (B) a misdemeanor arraignment;
- (C) a not-guilty felony arraignment;
- (D) a hearing on a motion to continue that does not include a waiver of time under Rule 8;
- (E) a hearing on an uncontested motion;
- (F) a pretrial or status conference;
- (G) a change of plea in a misdemeanor case; or
- (H) an informal conference held under Rule 32.7.

(2) **Generally Not Permitted.** A court may not require a defendant's appearance by use of an interactive audiovisual system at any trial, contested probation violation hearing, felony sentencing, or felony probation disposition hearing, unless the court finds extraordinary circumstances and the parties consent by written stipulation or on the record.

(3) **By Stipulation.** For any proceeding not included in (c)(1) and (c)(2), the parties may stipulate that the defendant may appear at the proceeding by use of an interactive audiovisual system. The parties must file a stipulation before the proceeding begins or state the stipulation on the record at the start of the proceeding. Before accepting the stipulation, the court must find that the defendant knowingly, intelligently, and voluntarily agrees to appear at the proceeding by use of an interactive audiovisual system. **and that the system will allow a victim means to view and participate in the proceedings and ensure compliance with all victims' rights laws.**

(4) **Change in Hearing's Scope.** If the scope of a hearing expands beyond that specified in (c)(1) and (c)(3), the court must reschedule a videoconference, **give notice to counsel and the victim,** and require the defendant's personal appearance.

#### **Rule 1.7. Filing and Service of Documents**

(a) **"Filing with the Court" Defined.** The filing of a document with the court is accomplished only by filing it with the clerk. If a judge permits, a document may be submitted directly to a judge, who must transmit it to the clerk for filing and notify the clerk of the date of its receipt.

(b) **Effective Date of Filing.**

(1) **Paper Documents.** A document is deemed filed on the date the clerk receives and accepts it. If a document is submitted to a judge and is later transmitted to the clerk for filing, the document is deemed filed on the date the judge receives it.

(2) **Electronically Filed Documents.** An electronically filed document is filed on the date and time the clerk receives it. Unless the clerk later rejects the document based on a deficiency, the date and time shown on the email notification from the court's electronic filing portal or as displayed within the portal is the effective date of filing. If a filing is rejected, the clerk must promptly provide the filing party with an explanation for the rejection.

(3) **Late Filing Because of an Interruption in Service.** If a person fails to meet a deadline for filing a document because of a failure in the document's electronic transmission or receipt, the person may file a motion asking the court to accept the document as timely filed. On a showing of good cause, the court may enter an order permitting the document to be deemed filed on the date that the person originally attempted to transmit the document.

(4) **Incarcerated Parties.** If a party is incarcerated and another party contends that the incarcerated party did not timely file a document, the court must deem the filing date to be the date when the document was delivered to jail or prison authorities to deposit in the mail.

(c) **Service of All Documents Required; Manner of Service.** Every person filing a document with any court must serve a copy of the document on all other parties **and victim's attorney** as follows:

(1) **Serving an Attorney.** If a party **or victim** is represented by an attorney, service under this rule must be made on the attorney unless the court orders service on the party.

(2) **Service Generally.** A document is served under this rule by any of the following:

(A) handing it to the person;

(B) leaving it:

(i) at the person's office with a clerk or other person in charge or, if no one is in charge, in a conspicuous place in the office; or

(ii) if the person has no office or the office is closed, at the person's dwelling or usual place of abode with someone of suitable age and discretion who resides there;

(C) mailing it by U.S. mail to the person's last-known address—in which event

service is complete upon mailing;

(D) delivering it by any other means, including electronic means other than that described in (c)(2)(E), if the recipient consents in writing to that method of service or if the court orders service in that manner—in which event service is complete upon transmission; or

(E) transmitting it through an electronic filing service provider approved by the Administrative Office of the Courts, if the recipient is an attorney of record in the action—in which event service is complete upon transmission.

(3) *Certificate of Service.* The date and manner of service must be noted on the last page of the original of the served document or in a separate certificate, in a form substantially as follows:

*A copy has been or will be mailed/mailed/hand-delivered [select one] on [insert date] to:*

*[Name of opposing party or attorney] [Address of opposing party or attorney] [Name of victim's attorney]  
[Address of victim's attorney]*

If the precise manner in which service has actually been made is not noted, it will be presumed that the document was served by mail. This presumption will only apply if service in some form has actually been made.

#### **Rule 1.8. Clerk's Distribution of Minute Entries and Other Documents**

(a) **Generally.** The clerk must distribute, either by U.S. mail, electronic mail, or attorney drop box, copies of every minute entry to all parties **and to any victim's attorney.**

(b) **Electronic Distribution.** The clerk may distribute minute entries, notices and other court-generated documents to a party or a party's **or victim's attorney** by electronic means. Electronic distribution of a document is complete when the clerk transmits it to the email address that the party or attorney has provided to the clerk.

#### **Rule 1.9. Motions, Oral Argument, and Proposed Orders**

(a) **Content.** A motion must include a memorandum that states facts, arguments, and authorities pertinent to the motion.

(b) **Service of Motion; Response; Reply.** The moving party must serve the motion on all other parties. No later than 10 days after service, another party may file and serve a

response, and, no later than 3 days after service of a response, the moving party may file and serve a reply. A reply must be directed only to matters raised in a response. If no response is filed, the court may deem the motion submitted on the record. **When addressing matters that impact any victim's rights, a victim may file motions, responses, and replies that comply with these rules.**

**(c) Length.** Unless the court orders otherwise, a motion or response, including a supporting memorandum, may not exceed 11 pages, exclusive of attachments, and a reply may not exceed 6 pages, exclusive of attachments.

**(d) Waiver of Requirements.** ~~On a party's request or on its own,~~ The court may waive a requirement specified in this rule, or it may overlook a formal defect in a motion.

**(e) Oral Argument.** ~~On a party's request or on its own,~~ The court may set a motion for argument or hearing.

**(f) Proposed Orders.** A proposed order must be prepared as a separate document and may not be included as part of a motion, stipulation, or other document. There must be at least two lines of text on the signature page of a proposed order. A party **or victim's attorney** must serve the proposed order on the court and all other parties **and victim's attorney**. A party **or victim's attorney** must not file a proposed order, and the court will not docket it, until a judge has reviewed and signed it. Absent a notice of filing, proposed orders will not be part of the record.

### **Rule 1.10. Victims' Rights: Exercising the Right to be Heard, The Right to Representation; Victim and Court Obligations.**

#### **(a) Exercising the Right to Be Heard**

**(1) Nature of the Right.** If a victim exercises the right to be heard, the victim does not do so as a witness and the victim is not subject to cross-examination. A victim is not required to disclose any statement to any party and is not required to submit any written statement to the court. The court must give any party the opportunity to explain, support, or refute the victim's statement. This rule does not apply to victim impact statements made in a capital case under A.R.S. § 13-752(R).

**(2) Victims in Custody.** If a victim is in custody for an offense, the victim's right to be heard under these rules is satisfied by affording the victim the opportunity to submit a written statement.

**(3) Victims Not in Custody.** A victim who is not in custody may exercise the right to be heard under these rules through an oral statement or by submitting a written