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**IN THE SUPREME COURT OF THE STATE OF ARIZONA**

In the matter of: )  
 )  
 ) Supreme Court No. 20-0013  
PETITION TO AMEND VARIOUS )  
RULES OF PROCEDURE RELATED ) Renewed Request to Amend  
TO CREATING THE VERBATIM ) Petition and Amended Petition  
RECORD OF JUDICIAL PROCEEDINGS )  
\_\_\_\_\_ )

Pursuant to this Court’s December 15, 2020 Order, David K. Byers, Administrative Director, Administrative Office of the Courts, and Petitioner in this matter, hereby files his renewed request to file an amended petition and accompanying amended petition.

In the event that the Court is inclined to grant Petitioner’s request to amend the petition in this matter, Petitioner, pursuant to Rule 28, petitions this Court to approve proposed amendments in the attached Appendix, which include amendments to Criminal Rules 5.1 and 5.2 and Supreme Court Rule 30 to comport with recently passed legislation that expands the ability to use electronic recording

technology to make a record of court proceedings. Other proposed amendments include changes to various rules of procedure to update and conform verbiage.

## **I. Introduction and Background**

In recent years, and increasingly, there has been a decrease in the number of court reporters, resulting in significant job vacancies. The Arizona Supreme Court's strategic agenda *Justice for the Future Planning for Excellence 2019-2024* establishes a call to action. Goal 3, Promoting Judicial Branch Excellence and Innovation, states the following in addressing keeping the record:

With a growing shortage of qualified court reporters at both the state and national level, courts are faced with the ever-increasing challenge of keeping an accurate record of court proceedings. Through emerging innovations, including digital recording and remote court reporting, we will take necessary steps to ensure courts continue to create a complete and accurate record for each and every case.

To achieve this goal, the strategic agenda added a target to “[m]odernize statutes, rules, and the administrative code permitting courts to create and maintain a complete and accurate court record electronically to supplement court reporters and to reduce the time needed to produce a record and transcript for cases on appeal.”

It is in this context that the Supreme Court of Arizona established the Arizona Task Force to Supplement Keeping of the Record by Electronic Means, which reviewed and made recommendations regarding numerous Arizona statutes,

Arizona procedural rules, and the Arizona Code of Judicial Administration (ACJA).

Based on the task force's review, on January 9, 2020, Petitioner filed petition R-20-0013 proposing amendments to various rules of procedure related to creating the verbatim record of judicial proceedings. Changes to legislation, endorsed by the Arizona Judicial Council, were simultaneously proposed in the 2020 legislative session so that any changes to court rules would align with the Arizona Revised Statutes (ARS). The proposed bill did not pass due to interruptions in the legislative process as a result of the COVID-19 pandemic, but the bill was reintroduced in the 2021 legislative session.

At its August 2020 Rules Agenda, the Court deferred the petition until the December 2020 Rules Agenda and on October 27, 2020, Petitioner filed a request to delay consideration of the petition so that it could be amended, if necessary, to ensure that the proposed rule amendments would comport with any changes in legislation.

The Court granted Petitioner's request to defer consideration of the petition until the August 2021 Rules Agenda, but denied Petitioner's request to file an amended petition and granted Petitioner leave to renew the request by June 4, 2021.

## **II. Grounds for Petition Approval**

Since the filing of Petitioner’s petition in January 2020, Senate Bill 1267 was signed by Governor Ducey on May 7, 2021, which amends ARS § 38-424 related to when courts are permitted to use electronic recording devices in lieu of a court reporter or stenographer to create the court record. The proposed amendments contained in the Appendix reflect the changes necessary to comport with this legislation.

### **III. Contents of the Proposed Rules**

The proposed rule amendments do not propose changes where at least one of the following applied: (1) the current provision already contemplated electronic recording in the discretion of the court and it comports with Senate Bill 1267; or (2) the current provision did not address how the verbatim record of a court proceeding should be captured and preserved.

Additionally, the proposed rule amendments narrowly address court proceedings, meaning that they do not address how a verbatim record is created and maintained in non-judicial proceedings, such as administrative agency proceedings, political subdivision proceedings, or court-adjacent proceedings, such as a deposition.

The proposed amendments also do not alter *when* a verbatim record of court proceedings must be created and maintained. Instead, the changes deal with the

discretion a court has in deciding how (not whether) to create and maintain a verbatim record of court proceedings.

Proposed substantive amendments track legislation by making the following changes:

- Criminal Rule 5.1 is amended to remove “court reporter” from the list of persons whose attendance must be secured when setting the date for a preliminary hearing, and adding a provision that the court must ensure a means by which to capture a verbatim record of the proceeding.
- Criminal Rule 5.2 is amended to add electronic recording in accordance with ARS § 38-424 as a permissible means of recording preliminary hearings.
- Supreme Court Rule 30(b)(1) is amended to specify that the court shall grant a request for a court reporter if the request is made pursuant to and meets the requirements of ARS § 38-424(B) or (C), and allowing discretion to grant other requests or requests that do not meet the requirements of ARS § 38-424(B) or (C). This rule is also amended to include language from current section 30(b)(2) related to the court’s discretion to determine how the record should be captured, absent a requirement in rule or statute.
- Supreme Court Rule 30(b)(2) is amended so that it no longer addresses making the record in the absence of a timely request for a certified reporter. Instead, it tracks legislation and addresses the ability of either party to

provide a certified reporter when electronic recording is being used to create the record. The proposed amendment also specifies that section 30(b)(4) governs the designation of the official record in this scenario, which tracks legislation.

- Supreme Court Rule 30(b)(3) is amended related to address when a certified reporter is required.
- The Comment to Supreme Court Rule 30(b) is amended to add additional considerations when a court is given discretion in determining how the record should be captured in felony jury trials, first degree murder trials, and initial determinations of sexually violent persons.

The proposed amendments also conform the definition of “authorized transcriber” throughout the Rules of Court to the definition provided in Supreme Court Rule 30(a)(2).

Lastly, the proposed rule amendments include changes intended to update language not affecting the procedural substance of the rules. Among the amendments are the following non-substantive changes:

- Amending “court reporter” to “certified reporter” for consistency throughout the Rules of Court and to conform to the terminology in the ACJA § 7-206: Certified Reporter.
- Elimination of outdated descriptors such as “audiotape.”

- Rules dealing with the mechanics of ordering transcripts from “reporters” were revised to add “authorized transcriber” to accommodate situations in which the transcript of an electronic recording may be prepared by someone other than a certified reporter.

#### **IV. Request**

For the foregoing reasons, Petitioner respectfully requests that the Court grant Petitioner leave to amend petition R-20-0013 and adopt the proposed rule amendments as contained in the attached Appendix to comport with the newly enacted legislation. The proposed amendments in the attached Appendix are intended to replace the proposed amendments in Appendix A of the January 9, 2020 petition.

Respectfully submitted this 3<sup>rd</sup> day of June, 2021.

By /s/ David K. Byers  
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## Appendix

### Proposed amendments

Deletions are shown by ~~strikethrough~~. Additions are shown by underline.

### Rules of Civil Procedure

#### **43. Taking Testimony**

(a) through (f) No change

#### **(g) Preserving Recording of Court Proceedings.**

(1) No change

(2) *Transcription.* If a ~~court-certified~~ reporter's verbatim recording is to be transcribed, the ~~court-certified~~ reporter who made the recording must be given the first opportunity to make the transcription, unless that ~~court-certified~~ reporter no longer serves in that position or is unavailable for any other reason.

#### **75. Hearing Procedures**

(a) through (e) No change

(f) **Record of Proceedings.** The arbitrator is not required to make a record of the hearing. If any party wants a ~~court-certified~~ reporter to transcribe the hearing, the party must pay for and provide the certified reporter. The certified reporter's charges are not considered costs in the action.

(g) No change

### Rules of Criminal Procedure

#### **5.1. Right to a Preliminary Hearing; Waiver; Continuance**

(a) through (c) No change

**(d) Hearing Demand.** A defendant who is in custody may demand that the court hold a preliminary hearing as soon as practicable. In that event, the magistrate must set a hearing date and must not delay its commencement more than necessary to secure the attendance of counsel, ~~a court reporter~~, and necessary witnesses, and ensure the ability to capture a verbatim record of the proceeding.

## **5.2. Summoning Witnesses; Record of Proceedings**

**(a)** No change

**(b) Record of Proceedings.** The magistrate must make a verbatim record of the preliminary hearing. Proceedings may be recorded by a certified ~~court~~-reporter or, in accordance with A.R.S. § 38-424, by electronic means or other means authorized by the superior court-presiding judge of the superior court. ~~But if a party requests that a certified court reporter record the proceedings, the court must record the proceedings in that manner, unless the court is located in an area where a certified court reporter is not reasonably available.~~

## **5.6. Transmittal and Transcription of the Record**

**(a)** No change

**(b) Transcript Preparation and Filing.** If a party makes a written request and avows that there is a material need for a transcript, the court must order a certified ~~court~~-reporter or an authorized transcriber of an electronic recording to prepare a transcript. The ~~court~~-certified reporter or authorized transcriber must file the transcript in the superior court no later than 20 days after the order's filing.

## **5.7. Preservation of Recording**

The clerk must retain and preserve any electronic recording of a preliminary hearing in the same manner as required for the original notes of a certified ~~court~~ reporter under Rule 28.1(c).

## **12.4. Who May be Present During Grand Jury Sessions**

**(a) General.** Only the following individuals may be present during grand jury sessions:

- (1) through (4) No change
- (5) a certified ~~court~~-reporter; and
- (6) No change

**(b)** No change

### **12.7. Record of Grand Jury Proceedings**

**(a) ~~Court~~-Certified Reporter.** The presiding or impaneling judge must assign a certified ~~court~~-reporter to record all grand jury proceedings, except its deliberations.

**(b) Foreperson.** The foreperson must keep a record of how many grand jurors voted for and against an indictment, but must not record how each grand juror voted. If the grand jury returns an indictment, the foreperson's record of the vote must be transcribed by the ~~court~~-certified reporter and filed with the court no later than 20 days after the return of the indictment, and may be made available only to the court, the State, and the defendant.

**(c) Filing the Transcript and Minutes.** The ~~court~~-certified reporter's record of grand jury proceedings must be transcribed and filed with the superior court clerk no later than 20 days after return of the indictment, and may be made available only to the court, the State, and the defendant.

### **15.3. Depositions**

**(a)** through **(c)** No change

**(d) Manner of Taking.**

(1) through (3) No change

(4) *Recording.* A deposition may be recorded by someone other than a certified ~~court~~-reporter. If someone other than a certified ~~court~~-reporter records the deposition, the party taking the deposition must provide every other party with a copy of the recording no later than 14 days after the deposition, or no later than 10 days before trial, whichever is earlier.

(5) No change

(e) and (f) No change

### **28.1. Duties of Clerk**

(a) and (b) No change

(c) ~~Court-Certified Reporter Notes.~~ Court-Certified reporters' notes must be retained under retention and destruction schedules established by the Supreme Court.

### **31.2. Notice of Appeal or Notice of Cross-Appeal**

(a) No change

(b) **Automatic Appeal for a Defendant Sentenced to Death.** As provided in Rule 26.15, when a defendant has been sentenced to death, the superior court clerk must file a notice of appeal on the defendant's behalf after the oral pronouncement of sentence. That notice constitutes a notice of appeal by the defendant with respect to all judgments entered and sentences imposed in that case. No later than 10 days after the notice of appeal is filed, the clerk must notify all assigned ~~court-certified~~ court-certified reporters or authorized transcribers that they are required to transmit their portions of the certified transcript to the Supreme Court clerk.

(c) through (h) No change

### **31.3. Suspension of These Rules; Suspension of an Appeal; Computation of Time; Modifying a Deadline**

(a) No change

#### **(b) Suspension of an Appeal.**

(1) No change

(2) *Notice.* If an appeal is suspended, the appellate clerk must notify the parties, the superior court clerk, and, if certified transcripts have not yet been filed, the certified reporters or authorized transcribers.

(3) No change

(c) through (e) No change

### **31.8. The Record on Appeal**

(a) No change

#### **(b) Certified Transcripts.**

(1) *Generally.* Every transcript in the record on appeal must be prepared by an authorized transcriber. An “authorized transcriber” as used in ~~this~~ these rules means ~~a certified reporter or a transcriber under contract with an Arizona court~~ has the same meaning as set forth in Supreme Court Rule 30(a)(2). There may be multiple authorized transcribers for a single case.

(2) *Additions and Deletions.*

(A) By Appellant. No later than 30 days after filing a notice of appeal, the appellant may request from the certified ~~court~~-reporter or, if the record was made by electronic or other means, the court's designated transcript coordinator:

(i) a certified transcript of any proceeding not automatically included under (b)(1); and

(ii) to exclude from a certified transcript any portion of the proceedings the appellant deems unnecessary for a proper hearing of the appeal.

(B) By Appellee. No later than 30 days after the opening brief is filed, the appellee may request from the certified ~~court~~-reporter or, if the record was made by electronic or other means, the court's designated transcript coordinator, a certified transcript of:

(i) any portion of a proceeding deleted by the appellant; and

(ii) a proceeding not automatically included under (b)(1).

(C) and (D) No change

#### **(c) Authorized Transcriber: Time to Prepare, and Payment Arrangements for, Certified Transcripts.**

(1) No change

(2) ~~Court-Certified Reporter.~~ If a certified reporter attended a proceeding in the superior court, a party must order a certified transcript of proceedings directly from that certified reporter.

(3) *Audio or Video Recording.* If the superior court created only an audio or audio-video recording of the proceeding, a party must order a certified transcript of the proceeding directly from an authorized transcriber. Unless the ordering party is an indigent defendant, the superior court will furnish the authorized transcriber with a

copy of the designated electronic recording upon receiving a notice from the authorized transcriber that the authorized transcriber has reached a satisfactory arrangement for payment. All parties to the appeal must cooperate with the authorized transcriber by providing information that is necessary to facilitate transcription.

(4) through (6) No change

(d) through (g) No change

### **31.13. Due Dates; Filing and Service of Briefs**

(a) through (d) No change

#### **(e) Extension of Time to File a Brief.**

(1) *Extension Due to Transcript Unavailability.*

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

(i) certify that the party timely ordered and, if applicable, made payment arrangements for the transcript under Rule 31.8(c);

(ii) provide the reason for the certified reporter's or authorized transcriber's inability to have the transcript completed; and

(iii) state the certified reporter's or authorized transcriber's estimated date of completing and filing the transcript.

(B) No change

(2) No change

## **Rules of the Supreme Court**

### **30. Verbatim Recording of Judicial Proceedings**

(a) No Change

#### **(b) Use of Court Reporting Resources.**

1. 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 pursuant to and meets the requirements of A.R.S. § 38-424(B) or (C). The court may exercise discretion for other requests and requests that do not meet the requirements of A.R.S. § 38-

424(B) or (C). Except as provide in (3) below, the record will be made within the sound discretion of the court, taking into consideration any other statutory and rule requirements at least three days prior to the proceeding to be recorded unless a different time frame has been established by local rule.

2. Making the record in the absence of a timely request for Providing a court certified reporter. If the court is using an electronic recording device to record the proceedings, either party may provide a certified reporter to also record the proceedings. The official record is as set forth in section (b)(4) of this rule. Except as provided in (3) 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.

3. Proceedings requiring When a certified court reporter is required. The following proceedings shall be recorded by a court shall use a certified court reporter to capture the record, and not solely by electronic means, as follows, unless this requirement is waived by the parties and the court approves the waiver:

a. Grand jury proceedings;

b. 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 Proceedings brought pursuant to A.R.S. Title 36, Chapter 5;

c. Felony jury trials When the trial or hearing arises out of an indictment or information and either party requests a certified reporter, if the following requirements are met:

(1) The request is in writing;

(2) A certified reporter is available on the day of the trial or hearing; and

(3) The request is made at least five court days before the trial or hearing.

However, if a request for a certified reporter was granted because the requirements in (1) through (3) were met at the time the request was granted, but a certified reporter becomes unavailable for the trial, if the court finds that a trial is scheduled to start within five days in order to comply with a victim's or defendant's right to a speedy trial, the court may commence the trial using an electronic recording device.

d. Initial determinations of sexually violent person status, pursuant to A.R.S. § 36-3706 When a trial or hearing is held pursuant to A.R.S. Title 36, Chapter 37 and either party requests a certified reporter, if the following requirements are met:

(1) The request is in writing;

(2) A certified reporter is available on the day of the trial or hearing; and

(3) The request is made at least five court days before the trial or hearing.

~~e. Proceedings on a request for authorization of abortion without parental consent, pursuant to A.R.S. § 36-2152.~~

4. 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-certified~~ reporter's record shall be the official record. The transcript in any case certified by the certified 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 certified reporter or other authorized transcriber.

### **[~~2006~~2021] COMMENT**

**Rule 30(a).** 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.

**Rule 30(b)(2).** 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~~ electronic recording device to capture the record of court proceedings. In exercising its discretion under subsection (Bb), ~~giving due deference to the parties' preference~~, the court ~~may~~ should consider the following factors: the unique demands of making the official verbatim record in felony jury trials, particularly first degree murder cases in which the State has filed a death penalty notice, and initial determinations of sexually violent person status; the 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; and 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.

## 75. Jurisdiction; Definitions

(a) No change

**(b) Definitions.** The following definitions shall apply in unauthorized practice of law proceedings.

1. through 8. No change

9. “Expenses” means all obligations in money, other than costs, necessarily incurred by the state bar in the performance of their duties under these rules. Expenses shall include, but are not limited to, administrative expenses, necessary expenses of bar counsel or staff, charges of expert witnesses, charges of ~~court~~ certified reporters and authorized transcribers, and all other direct, provable expenses.

10. through 16. No change

## 78. Initial Proceedings

(a) No change

**(b) Screening and Investigation.** Upon the commencement of an unauthorized practice of law proceeding against a respondent, the matter shall proceed as provided in this section.

1. and 2. No change

3. *Failure of Respondent to Provide Information; Deposition.* When a respondent has failed to comply with any request for information made pursuant to these rules for more than thirty days, unauthorized practice of law counsel may notify respondent that failure to so comply within ten days may necessitate the taking of the deposition of the respondent pursuant to subpoena.

A. No change

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 the committee, itemizing the costs and setting forth the reasons necessitating the deposition, and after giving the respondent ten days to respond, the committee 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.

4. and 5. No change

(c) No change

## **125. Defining Minute Entry, Order, Ruling, and Notice; Party Responsibility**

**(a) Minute entry.** 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) nature of the hearing;
- (2) appearances of counsel and parties;
- (3) identification and admission of exhibits;
- (4) administration of oaths and to whom administered;
- (5) names of witnesses who are called to testify;
- (6) parties' motions;
- (7) findings of fact and conclusions of law by the court as required by law or rule;
- (8) court rulings, orders, decisions and notices to the parties made in the course of the proceeding;
- (9) verdicts; and/or
- (10) any other matter directed by the court.

Nothing in this rule shall be read to require minute entries in any proceeding or to inhibit innovations or programs that would eliminate minute entries.

(b) through (e) No change

## **Arizona Rules of Civil Appellate Procedure**

### **2. Definitions**

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

“Appellate clerk” means the clerk of an appellate court in which an appeal is pending.

“Appellate court” means the Arizona Supreme Court and the Arizona Court of Appeals, Divisions One and Two.

“Appellant” is a party that commences an appeal. An appellant also may be a cross-appellee.

“Appellee” is a party that responds to an appeal. An appellee also may be a cross-appellant.

“Authorized transcriber” has the same meaning as set forth in Supreme Court Rule 30(a)(2).

“Decision” is a written disposition of an appeal, as provided in Rule 28. “Entry” of an appellate court decision or order occurs when it is filed by an appellate clerk.

“Judgment” is an appealable order. A judgment may be identified as a “judgment,” or it may be identified as an “order,” a “decree,” or by another term. “Entry” of a judgment occurs when it is filed by the superior court clerk.

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

“Person” is an individual, a business organization, or any other private or public entity.

“Stipulation” means a signed written agreement that parties file with a court.

## **10. Appeals in Expedited Election Matters**

(a) through (e) No change

### **(f) Preparation of the Record on Appeal.**

(1) No change

(2) *Transcripts; Stipulated Record.*

(A) The appellant must promptly order and ask the ~~court-certified reporter~~ or authorized transcriber to expedite the preparation of any transcripts necessary for determination of the appeal.

(B) No change

(C) The party that orders a transcript must make payment arrangements with the ~~court-certified reporter~~ or authorized transcriber, and upon receipt of the transcript, must promptly file it with the appellate court and serve other parties with a copy.

(D) and (E) No change

(g) through (j) No change

## 11. The Record on Appeal

(a) No change

**(b) Transcripts of Oral Proceedings.** A transcript of an oral proceeding in the superior court must be prepared by a certified ~~court~~-reporter or by an authorized transcriber. A party that wants the record on appeal to include a transcript of an oral proceeding that was not previously filed as a part of the official record must order the transcript as follows:

(1) *Certified Transcript.* If a certified ~~court~~-reporter attended a proceeding in the superior court, a party must order a certified transcript of proceedings directly from that certified reporter.

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

**(c) Appellant's Duty to Order Transcripts and Other Parties' Transcript Designations.**

(1) No change

(2) *When to Order.* The appellant must order transcripts directly from a certified ~~court~~-reporter or an authorized transcriber within 10 days after filing the notice of appeal, or within 10 days after entry of an order disposing of the last timely remaining motion under Rule 9(e), whichever is later.

(3) and (4) No change

(5) *Payment.* When ordering transcripts, a party must make satisfactory arrangements with the certified ~~court~~-reporter or authorized transcriber for timely paying the cost of the transcripts the party has ordered.

(6) No change

(d) through (h) No change

## 11.1. Transmitting the Record to the Appellate Court

(a) through (c) No change

### (d) Delivery and Filing of Transcripts.

(1) *Delivery and Filing.* If the ordering party has made payment, within 30 days after the date of a party's order the ~~court~~-certified reporter or authorized transcriber must provide the ordering party with a certified electronic transcript, or with a certified paper transcript if one was requested by the ordering party. Within 5 days after receipt of a certified transcript, the ordering party must file it with the appellate clerk.

(2) *Extension of Time.* If a ~~the~~ certified reporter or authorized transcriber cannot complete a transcript within 30 days after a party's order, the ordering party may request the appellate clerk to grant additional time for the certified reporter or authorized transcriber to provide it. Under Rule 15(e)(1), the unavailability of a transcript may be a basis for an extension of time to file a brief.

(3) *Service on Other Parties.* Within 5 days after receipt of a certified transcript from the certified reporter or authorized transcriber, the ordering party must serve a copy of the transcript on all other parties. An ordering party that receives an electronic transcript must serve the transcript in either electronic or paper format, as requested by the other parties.

(4) No change

## 15. Due Dates; Filing and Service of Briefs

(a) through (d) No change

### (e) Extension of Time to File a Brief.

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

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

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

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

## **Arizona Rules of Family Law Procedure**

### **8. Telephonic Appearances and Testimony**

(a) No change

(b) **Appearance of a Party at a Non-Evidentiary Proceeding.** The court may allow a party to appear telephonically at a non-evidentiary proceeding if each person will be audible to every other person participating in the proceeding, including the judge, and, if applicable, to the ~~court~~ court certified reporter or an electronic recording system.

(c) through (f) No change

### **12. Court Interviews of Children**

(a) and (b) No change

(c) **Record of the Interview.**

(1) *Generally.* Unless the parties stipulate otherwise on the record or in writing, the court must record the interview, either by having a ~~court-certified~~ reporter transcribe it or by recording it through ~~another~~ a retrievable and perceivable electronic medium. However, any interview conducted by a judicial officer must be recorded.

(2) and (3) No change

(d) No change

### **18. Preserving a Recording of a Court Proceeding**

(a) No change

(b) **Transcription.** If a ~~court-certified~~ reporter's verbatim recording will be transcribed, the ~~court-certified~~ reporter who made the recording must be given the first opportunity to make the transcription, unless that ~~court-certified~~ reporter no longer serves in that position or is unavailable for any other reason.

### **57. Depositions by Oral Examination**

(a) No change

**(b) Notice of a Deposition; Method of Recording; Deposition by Remote Means; Deposition of an Entity; Other Formal Requirements.**

(1) through (3) No change

(4) *By Remote Means.* The parties may agree, or the court may order that a deposition be taken by telephone or other remote means. The deposition takes place where the deponent answers the questions, but an Arizona certified ~~court~~ reporter may record the testimony in Arizona. If the deponent is not in the officer's physical presence, the officer may nonetheless place the deponent under oath or affirmation with the same force and effect as if the deponent was in the officer's physical presence.

(5) No change

**(c) Examination and Cross-Examination; Record of the Examination; Objections; Conferences Between Deponent and Counsel.**

(1) *Examination and Cross-Examination.* The examination and cross-examination of a deponent must proceed as they would at trial under the Arizona Rules of Evidence including Rule 615. Parties may not make evidentiary objections, including relevance objections. Any party not present within 30 minutes after the time specified in the notice of deposition waives any objection that the deposition was taken without the party's presence. After putting the deponent under oath or affirmation, the certified ~~court~~-reporter personally—or a person acting in the presence and under the direction of the officer—must record the testimony by the method(s) designated under Rule 57(b)(3).

(2) *Objections.* A certified ~~court~~-reporter must note on the record any objection made during the deposition—whether to evidence, to a party's, deponent's, or counsel's conduct, to the officer's qualifications, to the manner of taking the deposition, or to any other aspect of the deposition. An objection must be stated concisely, in a nonargumentative manner, and without suggesting an answer to the deponent. Unless requested by the person who asked the question, an objecting person must not specify the defect in the form of a question or answer. Counsel may instruct a deponent not to answer—or a deponent may refuse to answer—only when necessary to preserve a privilege, to enforce a limit ordered by the court, or to present a motion under Rule 57(d)(3). Otherwise, the deponent must answer, and the testimony is taken subject to any objection.

(3) No change

(d) through (g) No change

## **69. Binding Agreements**

**(a) Validity.** An agreement between the parties is valid and binding on the parties if:

(1) No change

(2) the agreement's terms are stated on the record before a judge, commissioner, judge pro tempore, or ~~court~~certified reporter; or

(3) No change

**(b) and (c)** No change

## **73. Family Law Conference Officer**

**(a) and (b)** No change

**(c) Procedures.**

(1) *Conducting a Conference.* The conference officer should conduct the proceedings in an informal manner but must give the parties an opportunity to present their positions. The conference officer may record the proceedings by ~~audiotape~~electronic means or by a ~~court~~certified reporter. A party represented by an attorney has the right to have the attorney present at the conference.

(2) and (3) No change

**(d)** No change

## **Arizona Rules of Protective Order Procedure**

### **18. Record of Hearings**

A judicial officer must cause all contested protective order hearings and, where practicable, all *ex parte* hearings to be recorded electronically or by a ~~court~~certified reporter. An appeal from a contested hearing that was not electronically recorded or otherwise reported results automatically in a new hearing in the original trial court.

## **Arizona Rules of Probate Procedure**

### **12. Telephonic and Video Attendance and Testimony**

(a) No change

(b) **When Permitted.** Parties and their attorneys are expected to appear in open court for court proceedings unless the court, in its discretion, permits telephonic attendance under this rule. The court may allow a person to telephonically attend, or testify at, a proceeding if both of the following are true:

(1) the person can be heard by every other person participating in the proceeding, including the judicial officer and, if applicable, the ~~court~~-certified reporter or an electronic recording system; and

(2) No change

(c) through (h) No change

### **22. Settlement Conference**

(a) through (d) No change

(e) **Record.** Settlement discussions are not recorded by a ~~court~~-certified reporter or an electronic recording system. If the parties reach a settlement, the terms of the settlement must either be placed on the record and entered in the minutes or be included in a writing signed by the parties.

(f) and (g) No change

## **Rules of Procedure for the Juvenile Court**

### **1. Applicability; Definitions; Required Format of Stipulations, Motions and Orders**

(A) and (B) No change

(C) For the purposes of these rules, an “authorized transcriber” is a certified court reporter or a transcriber under contract with an Arizona court has the same meaning as set forth in Supreme Court Rule 30(a)(2).

(D) No change

### **81. Consent to Adopt**

(A) No change

**(B) Procedure.** At the hearing, the person seeking to give consent is responsible for the following:

1. No change
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
3. No change

(C) and (D) No change

### **104. Time Within Which an Appeal May be Taken and Notice Thereof; Preparation of Certified Transcript and Record on Appeal**

(A) and (B) No change

(C)(1) Within two business days following 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.~~ (D)(2) of this rule 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 persons who were sent a copy of the notice of appeal.

(2) No change

(D) No change

(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 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, on each ~~court~~ certified reporter who reported a designated portion of the proceedings, 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~~ certified reporters or 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 104(D)(2). The supplemental designation of record shall be served on all parties and on each affected ~~court~~-certified reporter and authorized transcriber.

(2) No change

**(G)** No change

**(H)** The ~~court-certified~~ reporter(s) ~~or reporters~~ or authorized ~~transcribers~~ transcriber(s) 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.(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 authorized transcriber to pay for the transcript. The certified ~~court~~ reporter or 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 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.~~ (C)(2) of this rule.

(J) No change

### **105. Docketing of Appeal; Transmission and Filing of Record on Appeal; Filings in Juvenile Court after Commencement of Appeal**

(A) No change

(B) The ~~court-certified~~ reporter(s) ~~or reporters~~ or authorized transcriber(s) shall file the completed certified 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) 30 days after the filing of a notice of appeal by a governmental agency or of a notice of appeal stating that appellant proceeded with appointed counsel in the juvenile court when the final order that is the subject of the appeal was filed, or

(2) 30 days after service of an order of the presiding judge of the juvenile court appointing counsel to represent the appellant on appeal, or

(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 certified transcript, the ~~court-certified~~ reporter(s) ~~or reporters~~ or authorized transcriber(s) shall serve one copy of the certified transcript on each appellant and each appellee who has not filed a notice pursuant to 104(C)(2). The ~~court-certified~~ reporter(s) ~~or reporters~~ or authorized transcriber(s) 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-certified reporter(s) or reporters~~ or authorized transcriber(s) shall be subject to such orders or sanctions as the court of appeals deems appropriate in its discretion.

(D) through (G) No change

## **106. Briefing, Consideration and Disposition in the Court of Appeals**

(A) through (D) No change

(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-certified reporter(s) or reporters~~ or the court's designated transcript coordinator.

(F) through (H) No change

## **Superior Court Rules of Appellate Procedure—Civil**

### **1. Scope of Rules; Definitions**

(a) No change

(b) All appeals from the limited jurisdiction courts shall be on the record. 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 change

**(h)** For the purposes of these rules, an “authorized transcriber” ~~is a certified court reporter or a transcriber under contract with an Arizona court~~ has the same meaning as set forth in Supreme Court Rule 30(a)(2).

## **Superior Court Rules of Appellate Procedure—Criminal**

### **1. Scope; Definitions**

**(a)** through **(e)** No change

**(f)** For the purposes of these rules, an “authorized transcriber” ~~is a certified court reporter or a transcriber under contract with an Arizona court~~ has the same meaning as set forth in Supreme Court Rule 30(a)(2).

### **2. Record of Proceedings**

**(a)** A record in the trial court shall be made by a certified ~~court~~ reporter or other electronic means approved by the Supreme Court.

**(b)** through **(d)** No change

## **Rule of Procedure for Judicial Review of Administrative Decisions**

### **5. Record on Appeal**

**(a)** through **(c)** No change

**(d) Preparation and Certification of Transcript.** The transcript of the administrative hearing, or designated portions thereof, must be included in the record on appeal if requested by appellant in the notice of appeal or in writing filed by any other party within 10 days after that party is served with a notice of appeal.

1. A party requesting a transcript not already contained in the administrative record of a hearing stenographically reported by a ~~court-certified~~ reporter must make satisfactory arrangements with the certified reporter for payment of the cost of the transcript. That party must file the original transcript with the superior court within 30 days of the request.

2. A party requesting a transcript not already contained in the administrative record of a hearing created by recording must obtain a copy of the ~~tape~~-recording from the

agency that conducted the hearing and cause a written transcript to be prepared at the requesting party's expense. The requesting party must file the transcript with the clerk of the superior court within 30 days of the request.

(e) No change

## **Justice Court Rules of Civil Procedure**

### **123. Depositions**

**(a) Definition; before whom a deposition may be taken.** A deposition is an opportunity to question another party or a witness while the other party or witness is under oath. A deposition is taken out of court before an officer authorized to administer oaths, without a judge present. A court clerk or a certified ~~court~~-reporter in Arizona may administer oaths. An out-of-state deposition may be taken before an officer who is authorized to administer an oath by the law or by a court of that state. A deposition may be taken in a foreign country before an officer authorized to administer an oath by the law of the place where the examination is held.

Questions and answers at a deposition are recorded by a certified ~~court~~-reporter, or by another method that is agreed to by the parties. A deposition may not be recorded by a party, by a person who is a relative, a friend, or an employee of a party, by an attorney for a party or an employee or relative of an attorney for a party, or by a person who is financially interested in the lawsuit. **[ARCP 28(a)-(c)]**

(b) No change

**(c) Notice of deposition; deposition of a representative of a public or private entity.** At least ten (10) days before the date of the deposition, a notice of deposition must be provided to (“served on”) (1) the person who will be deposed and (2) the other parties to the lawsuit. The notice of deposition must state the name of the person who will be deposed; the location of the deposition; the date and starting time of the deposition; and the name of the person who will record the deposition and the method of recording. When a party deposes another party, a notice of deposition must also include the following language:

*“The Justice Court Rules of Civil Procedure allow a party to take the deposition of another party. A deposition is an opportunity to ask questions to another person while the person who is deposed is under oath. A deposition takes place out of*

*court and a judge is not present. A deposition is recorded by a ~~court~~-certified reporter or by another method agreed to by the parties. A deposition may not take longer than four (4) hours, unless agreed to by the parties or unless ordered by the court.*

*“If you fail to appear for your deposition, the party who sent this notice may file a motion asking that the court order you to appear. If the court orders you to appear for your deposition, the court may also order that you pay the expenses, including attorneys' fees, incurred by the other party as a result of your failure to appear. If you fail to appear for your deposition after the court has ordered you to appear, the court may impose additional penalties against you, including an order that you may not introduce evidence of some or all of your claims or defenses in this lawsuit; if you are a plaintiff, that your lawsuit be dismissed; or if you are a defendant, that your answer be stricken and that judgment be entered against you.”*

A notice of deposition may be served on a public or private entity, such as a governmental body or agency, a corporation, or a partnership, whether or not the entity is a party to the lawsuit, and the notice may describe with reasonable specificity the topics that will be asked about during the deposition. The entity must then designate one or more of its officers, directors, or employees who have knowledge of the specified topics and who will appear at the deposition and testify concerning those subjects. [ARCP 30(b), (d)]

**d. Procedure.** The attendance of a witness who is not a party at a deposition may be required by serving the witness with a subpoena, as provided in Rule 137(b). A party may be required to produce documents at a deposition pursuant to Rule 125. The party requesting the deposition must pay the cost of recording, unless the court orders or the parties agree otherwise.

The deposition must start within thirty (30) minutes of the time provided in the notice, and any party not present within thirty (30) minutes of the time provided in the notice of deposition waives any objection to the deposition starting without the party's presence. The officer specified in section (a) of this rule must administer the oath to the person who is deposed before the start of testimony. If a deposition is recorded by means other than a certified ~~court~~-reporter, the person operating the recording equipment must be sworn to fully and fairly record the proceeding. The person or persons recording the deposition will note the starting and ending times of the deposition, and the times of any breaks during the deposition.

Any objections at a deposition, including objections to a specific question, will also be recorded, and evidence is taken subject to the objections. Objections to the form of a question, or to the responsiveness of an answer, must be concise, and must not suggest answers to the person being deposed. Continuous or unwarranted off-the-record conferences with the person being deposed, following questions and before answers, are not permitted, and this conduct is subject to penalties under Rule 127(d).

The ~~court~~-certified reporter or other person recording the deposition must identify and maintain any exhibits used at the deposition, although copies of original exhibits may be substituted by agreement of the parties. Before concluding the deposition, the ~~court~~-certified reporter or other recorder must ask the witness if the witness would like an opportunity to review the transcript or recording to affirm its accuracy, or if the witness waives that right. A witness who asks to review the transcript or recording will have thirty (30) days after notification that the transcript or recording is available to review and to submit a statement concerning any inaccuracy of the transcript or recording, and a statement submitted by the witness to the ~~court~~-certified reporter or other recorder within that time must be included with the transcript or recording of the deposition.

Upon motion, the court may impose an appropriate penalty under Rule 127(d) against any party, attorney, or witness who engages in unreasonable, groundless, abusive or obstructionist conduct at a deposition, or against a party or attorney who takes a deposition in bad faith, or to annoy or embarrass the person being deposed. [ARCP 30(b)-(d), 32(d)]

(e) No change

## **Rules of Procedure for Eviction Actions**

### **11. Initial Appearance and Trial Procedures**

**(a) In General.** All proceedings in eviction actions shall be recorded, either through a recording device or by a ~~court~~-certified reporter. On the date and at the time set for the initial appearance, and after announcing the name of the plaintiff and the defendant, the court shall:

(1) Call the case, identify the parties and any attorneys or representatives present and ascertain that they are properly authorized to represent the parties to the action.

As provided by Arizona Supreme Court Rule 31, no property manager or other agent shall be allowed to represent a party unless he or she is the property owner, a sub lessor entitled to possession, or an attorney licensed to practice law and in good standing in Arizona.

(2) State or summarize the material allegations contained in the complaint.

(3) Ask the defendant whether the defendant contests the allegations contained in the complaint.

**(b)** through **(e)** No change