

SUPREME COURT OF ARIZONA

In the Matter of) Arizona Supreme Court
) No. R-15-0017
RULES 9.1, 14.3, 26.11 & 41,)
RULES OF CRIMINAL PROCEDURE)
) **FILED 08/27/2015**
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_____)

**ORDER
AMENDING RULES 9.1, 14.2, 14.3, 26.3, ARIZONA RULES OF CRIMINAL
PROCEDURE, AND RULE 41, FORMS 6, 7, 23, AND 29**

A petition having been filed proposing to amend Rules 9.1, 14.3, 26.3, Arizona Rules of Criminal Procedure, and Rule 41, Forms 6, 7, and 23, and to promulgate a new Form 19(a), and comments having been received, upon consideration,

IT IS ORDERED amending Rules 9.1, 14.2, 14.3, 26.3(a)(1), and 41, Forms 6, 7, 23, and 29, in accordance with the attachment hereto, effective January 1, 2016.

DATED this 27th day of August, 2015.

SCOTT BALES
Chief Justice

Arizona Supreme Court No. R-15-0017

TO:

Rule 28 Distribution

John A Furlong

Patricia A Sallen

Mark C Faull

David J Euchner

ATTACHMENT*

RULES OF CRIMINAL PROCEDURE

Rule 9.1. Defendant's waiver of right to be present

Except as otherwise provided in these rules, a defendant may waive the right to be present at any proceeding other than sentencing by voluntarily absenting himself or herself from it. The court may infer that an absence is voluntary if the defendant had personal notice of the time of the proceeding, the right to be present at it, and a warning that the proceeding would go forward in his or her absence should he or she fail to appear.

Rule 14.2. Presence of the defendant

The defendant shall be arraigned personally before the trial court or by video telephone, provided that, in the event the defendant has personally appeared at an initial appearance, the defendant may waive appearance at the arraignment by filing a written waiver of personal appearance at arraignment at least two (2) days prior to the date of the arraignment with the clerk of the court and the arraignment court. The written waiver shall be signed by the defendant and the defendant's lawyer, and shall be notarized. An affidavit signed by the defendant and notarized must be filed with the superior court within twenty (20) days after arraignment, stating that defendant has knowledge of all scheduled court appearances in this matter, and that the defendant understands the failure to appear at sentencing may result in the loss of the right to a direct appeal.

Rule 14.3. Proceedings at Arraignment

The court shall:

a. Ascertain the defendant's plea of not guilty, guilty, or no contest. Unless the defendant pleads guilty or no contest, the court shall enter a plea of not guilty.

b. Hear and decide motions concerning the conditions of release under Rule 7. Unless the arraignment is held in conjunction with the defendant's initial appearance before a magistrate under Rule 4.2, a contested release motion shall be heard upon at least 5 days prior notice, unless such time is waived by all parties.

c. Set the date for trial or pretrial conference.

* Additions to text are shown by underlining, deletions by ~~strikeouts~~.

d. Advise the parties in writing of the dates set for further proceedings and other important deadlines.

e. Advise the defendant of the right to be present at all future proceedings, that all proceedings other than sentencing may be held in the defendant's absence, or that defendant may be charged with an offense and a warrant issued for defendant's arrest without further notice.

f. Advise the defendant that, if the defendant's absence prevents sentencing from occurring within 90 days following conviction, the defendant may lose the right to have an appellate court review the proceedings by way of a direct appeal.

fg Advise the defendant of the right to jury trial, if applicable.

gh. For misdemeanors, inform the defendant of the right to counsel and the right to court-appointed counsel if eligible. As necessary, the court shall appoint counsel.

hi. For summoned defendants charged with a felony offense, a violation of Title 13, Chapter 14, or Title 28, Chapter 4¹, or a domestic violence offense as defined in § 13-3601, if the defendant does not present a completed mandatory fingerprint compliance form to the court, or if the court has not received the process control number, the court shall order that within twenty calendar days, the defendant be ten-print fingerprinted at a designated time and place by the appropriate law enforcement agency.

Rule 26.3. Date of sentencing; extension

a. Date of Sentencing

(1) *Superior Court.* Upon a determination of guilt, the court shall set a date for sentencing. Sentence shall be pronounced not less than 15 nor more than 30 days after the determination of guilt unless the court, after advising the defendant of his or her right to a pre-sentence report, grants his or her request that sentence be pronounced earlier. When the court sets a date for sentencing, the court shall notify the defendant that the defendant must be present for sentencing and, if the defendant fails to appear for sentencing, a warrant will be issued for his or her arrest. Additionally, following a conviction based on a trial, the court shall notify the defendant that, if the defendant's absence prevents the sentencing from occurring within 90 days, the defendant will lose the right to have an appellate court review the proceedings by way of a direct appeal.

Rule 41. Forms

Form 6. Release Order

_____ COURT

_____ County, Arizona

STATE OF ARIZONA, Plaintiff -vs- _____ Defendant (FIRST, MI, LAST)	_____ Booking Number	_____ Date of Birth	RELEASE ORDER
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LINE #	COMPLAINT NO.	VIOLATION CODE	NF	OR	3P	BOND	BA	U	S	C	NB
1						\$					
2						\$					
3						\$					
4						\$					
5						\$					

(**NF** = charge not filed; **OR** = own recognizance release; **3P** = 3rd party custody; **BA**= bond applies; **U** = unsecured app. bond; **S** = secured app. bond; **C** = cash only; **NB** = non-bondable)

BOND: If you cannot post a bond of \$ _____ you will remain in custody until your next court hearing on _____. If you are released from jail, you must follow all release conditions and appear at court as indicated below:

MANDATORY AND STANDARD CONDITIONS OF RELEASE:

- 1. Appear at _____ Court on: _____.
Court name, and address or see attached sheet for Court location at _____ a.m. / p.m., Courtroom: _____ for _____ and attend all future court hearings.
- 2. Violate no federal, state or local criminal law.
- 3. Not leave the state of Arizona without written permission from the court.
 Defendant may leave the state of Arizona provided defendant returns for court dates.
- 4. Diligently pursue any appeal if released from custody after judgment and sentence have been imposed.
- 5. Maintain contact with your attorney.
- 6. Provide a current address and phone number to the Court and to your attorney and immediately notify both of any changes.
- 7. Not threaten or initiate any type of contact with the alleged victim(s).
- 8. Not drive a motor vehicle without a valid driver's license in your possession.

OTHER CONDITIONS OF RELEASE:

- 9. Not threaten or initiate any type of contact with any person as specified here: _____.
- 10. Not possess weapons as specified here: _____.
- 11. Not consume any alcoholic beverages.
- 12. Not go to scene of the alleged crime:
 Not go to locations as specified here: _____.
- 13. Comply with the assigned pretrial supervision program as specified here: _____.
- 14. Comply with 3rd party custody release conditions as specified here: _____.
- 15. Contact probation or parole officer. See 3rd party obligations on back
- 16. Electronic monitoring, if available, (Mandatory if charged with a felony offense under Chapters 14 or 35.1 of Title 13)
- 17. Other: _____.

CONSEQUENCES OF VIOLATING THIS ORDER: You have the right to be present at your trial and at all other proceedings in your case. If you fail to appear the court may issue a warrant for your arrest and/or hold the trial or proceeding in your absence.

IF CONVICTED, YOU WILL BE REQUIRED TO APPEAR FOR SENTENCING. IF YOU FAIL TO APPEAR, YOU MAY LOSE YOUR RIGHT TO A DIRECT APPEAL.

If you violate any condition of an appearance bond, the court may order the bond and any related security deposit forfeited to the State of Arizona. In addition, the court may issue a warrant for your arrest upon

learning of any violation of the conditions of release. After a hearing, if the court finds that you have not complied with the release conditions, the court may modify the conditions or revoke the release altogether.

If you are released on a felony charge, and the court finds the proof evident or the presumption great that you committed a felony during the period of release, the court must revoke your release. You may also be subject to an additional criminal charge, and upon conviction you could be punished by imprisonment in addition to the punishment which would otherwise be imposable for the crime committed during the period of release. Upon finding that you violated conditions of release, the court may also find you in contempt of court and sentence you to a term of imprisonment, a fine, or both.

ACKNOWLEDGEMENT: I fully understand and will comply with all release conditions indicated above and further understand the consequences should I violate any part of this order.

_____		_____	
rent address where you live	Apt. No.	Address where you receive mail if different from current address	
_____		_____	
	() Phone No.		() Phone No.

X		X	
_____	_____	_____	_____
Defendant Signature	Date	Judicial Officer	Date

DISTRIBUTION: WHITE--COURT YELLOW--SIMS OPERATOR PINK--DEFENDANT

Form 7. Appearance Bond

_____ COURT

_____ County, Arizona

STATE OF ARIZONA, Plaintiff -vs-	[CASE/COMPLAINT NO.]	APPEARANCE BOND
Defendant (FIRST, MI, LAST)		

In accordance with the terms of a release order or warrant issued on _____(month/day) 20____, by Judicial Officer of the _____ court, of _____(city, justice, or county), State of Arizona, the defendant, _____ and the defendant's surety _____(If none, so state) hereby promise to pay the State of Arizona the sum of dollars (\$_____), in the event the defendant fails to appear at _____ at _____ a.m./p.m. on _____(month/day) 20____, or during the pendency of the case to appear to answer the charges or to submit to the orders and process of the court having jurisdiction of the case.

SECURED APPEARANCE BOND

[] The defendant hereby deposits with the court cash or property of value in the full amount of this bond, the same to be forfeited in the event the defendant fails to comply with its conditions.

Depositor: _____

Address: _____

Phone Number: _____

OR

[]

(Name, Address)

surety for the defendant, hereby swears (or affirms) that the surety is not an attorney or person authorized to take bail, and that the surety owns property in this state (or is a resident of this state owning property) worth the amount of this bond, exclusive of property exempt from execution and above and over all liabilities, as detailed in Attachment A.

WARNING: IF YOU DO NOT APPEAR AS REQUIRED, THIS BOND MAY BE FORFEITED AND THE PROCEEDINGS BEGIN WITHOUT YOU.

IF CONVICTED, YOU WILL BE REQUIRED TO APPEAR FOR SENTENCING. IF YOU FAIL TO APPEAR, YOU MAY LOSE YOUR RIGHT TO A DIRECT APPEAL.

ACKNOWLEDGEMENTS

Date

Defendant

State of Arizona

)

Subscribed and sworn to before me on

) ss.

County of _____

)

My Commission Expires _____

Notary Public

Approved:

Date

Surety or Authorized Agent

Form 23. Notice of Rights of Review after Conviction in Superior Court

_____ COURT _____ County, Arizona

STATE OF ARIZONA, Plaintiff -vs- Defendant (FIRST, MI, LAST)	[CASE/COMPLAINT NO.]	NOTICE OF RIGHTS OF REVIEW AFTER SUPERIOR COURT * (Capital & Non-Capital)
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*In limited jurisdiction cases, see Superior Court Rules of Appellate Procedure--Criminal Form 1

RIGHT TO APPEAL (CAPITAL)

If you are a capital defendant and sentenced to death the clerk shall file a notice of appeal at the time of entry of judgment and sentence. This notice shall be sufficient as a notice of appeal with respect to all judgments entered and sentences imposed in this case (Rule 31.2b, Rules of Criminal Procedure).

RIGHT TO APPEAL (NON-CAPITAL)

You have a right to appeal from a final judgment of conviction, from an order denying a post-trial motion, or from a sentence which is illegal or excessive. Arizona Constitution art. 2, sec. 24; A.R.S. § 13-4031. YOU DO NOT HAVE A RIGHT TO DIRECT APPEAL IF YOU HAVE PLED GUILTY OR NO CONTEST OR HAVE ADMITTED A VIOLATION OF CONDITIONS OF PROBATION OR HAVE FAILED TO APPEAR AT SENTENCING CAUSING THE SENTENCING TO OCCUR MORE THAN 90 DAYS BEYOND THE DATE OF CONVICTION. IN THAT CASE, RELIEF MAY BE SOUGHT ONLY BY PETITION FOR POST-CONVICTION RELIEF. Rules 17.1, 17.2 and 27.8, Rules of Criminal Procedure, A.R.S. § 13-4033(B).

IN ORDER TO EXERCISE YOUR RIGHT TO APPEAL;

1. You must file a NOTICE OF APPEAL (Form 24(a)) within 20 days of the entry of judgment and sentence. If you do not file a notice of appeal within 20 days you will lose your right to appeal. The entry of judgment and sentence occurs at the time of sentencing.
2. To file a Notice of Appeal you should contact your lawyer, by letter, telephone or in person, telling him or her that you want to appeal. You can file the notice of appeal before you leave the courtroom on the day you are sentenced if you wish.
3. If you do not have a lawyer, get copies of Form 5, Defendant's Financial Statement and Request for Appointment of Counsel and Form 24 (a), Notice of Appeal, either from the clerk of the court, jail, or the prison, fill them both out and file or send them to the clerk of the superior court in the county where you were tried and sentenced. They must arrive at the clerk's office within 20 days after you were sentenced.
4. You should have a lawyer handle your appeal.

You must file a NOTICE OF APPEAL (Form 24(a)) within 20 days of the entry of judgment and sentence. If you do not file a notice of appeal within 20 days you will lose your right to appeal. The entry of judgment and sentence occurs at the time of sentencing.

RIGHT TO POST-CONVICTION RELIEF (CAPITAL)

If you are a capital defendant and sentenced to death, the clerk of the Supreme Court shall file a notice of Post Conviction Relief with the Trial Court upon the issuance of a mandate affirming your conviction and sentence on direct appeal. If your death sentence is reduced to life on direct appeal, it is your responsibility to file your own Notice of Post Conviction Relief. (Please see Right to Post-Conviction Relief (Non-Capital) section below).

RIGHT TO POST-CONVICTION RELIEF (NON-CAPITAL)

You also have a right to petition the Superior Court for Post-Conviction Relief. Rule 32, Rules of Criminal Procedure.

In order to exercise your Post-Conviction Relief right;

1. You must file a NOTICE OF POST-CONVICTION RELIEF (Form 24(c)) within 90 days of the entry of judgment and sentence if you do not file, or you do not have the right to file, a Notice of Appeal. If you do appeal, the time you have to file a Notice of Post-Conviction Relief extends from the entry of judgment and sentence to 30 days after the issuance of the order and mandate affirming the judgment and sentence on direct appeal.

NOTE: If you do not timely file a Notice of Post-Conviction Relief, you may never have another opportunity to have any errors made in your case corrected.

2. To seek post-conviction relief, you must obtain a copy of Form 24(c) (Notice of Post-Conviction Relief), either from your attorney, the clerk of the court, or the jail or prison, fill it out and file or send it to the clerk of the Superior Court of the county where you were sentenced. The notice must arrive at the clerk's office within 90 days after you were sentenced or within 30 days after the issuance of the order and mandate affirming the judgment and sentence on direct appeal.
3. If you cannot afford to hire an attorney, you should execute the Affidavit of Indigency contained in the Notice of Post-Conviction Relief and request that an attorney be appointed to represent you.

If you want a full copy of the rules governing appeals and post-conviction relief, the clerk of the court in the county where you were convicted will send you one upon request.

RECEIPT BY DEFENDANT

I have received a copy of this notice explaining my right to appeal, my right to seek post-conviction relief and the procedures I must follow to exercise these rights.

Date

Defendant

4 The defendant is further advised of the right to (jury) trial in this matter.

5.

5 The defendant is further advised that discovery is available from the Prosecutor's office, as provided in

6. rule 15.1, Rules of Criminal Procedure.

6 The defendant is directed to contact his/her attorney within 72 hours of service of this notice.

7.

7 The defendant has requested an interpreter: [] Spanish [] Other Language _____

8.

I acknowledge that I have received a copy of this document.

Dated: _____

Defendant

Address

(____) _____

Telephone Number

Dated: _____

Defense Attorney

Bar No.