

# **Task Force on the Arizona Rules of Criminal Procedure**

## **Meeting Agenda**

**Friday, May 13, 2016**

10:00 AM to 2:00 PM

State Courts Building \* 1501 West Washington \* Conference Room 230 \* Phoenix, AZ

Conference call-in number: (602) 452-3288 Access code: 9886

Item no. 1	<b>Call to Order</b>  <b>Introductory comments</b>	<i>Judge Welty, Chair</i>
Item no. 2 Page 3	<b>Approval of April 8, 2016 meeting minutes</b>	<i>Judge Welty</i>
Item no. 3	<b>Discussion of OneDrive</b>	<i>All</i>
Item no. 4  Pages 19-34 Pages 35-52 Pages 13-18	<b>Discussion of workgroup drafts</b> <ul style="list-style-type: none"><li>- <b>Workgroup 3: Rules 7, 8 and 9</b></li><li>- <b>Workgroup 4: Rules 10, 13, 14, and 16</b></li><li>- <b>Workgroup 1: Rule 3</b></li></ul>	<i>Judge Jeffery</i> <i>Judge Tang</i> <i>Judge Duncan</i>
Item no. 5	<b>Roadmap and additional rule assignments</b> <ul style="list-style-type: none"><li>- <b>Future Task Force meeting dates:</b>  <b>June 17</b> <b>July 29</b> <b>September 16</b> <b>October 27</b> <b>December 9</b></li></ul> <p><b>All of the meetings are on Friday, except for Thursday, October 27.</b></p>	
Item no.6	<b>Call to the Public</b>  <b>Adjourn</b>	<i>Judge Welty</i>

*The Chair may call items on this Agenda, including the Call to the Public, out of the indicated order.*

Please contact Mark Meltzer at (602) 452-3242 with any questions concerning this Agenda.

Persons with a disability may request reasonable accommodations by contacting Sabrina Nash at (602) 452-3849. Please make requests as early as possible to allow time to arrange accommodations.



**Task Force on the Arizona Rules of Criminal Procedure (“CRTF”)**

**State Courts Building, Phoenix**

**Meeting Minutes: April 8, 2016**

**Members attending:** Hon. Joseph Welty (Chair), Paul Ahler, Hon. Kent Cattani, Hon. Sally Duncan, Timothy Eckstein, David Euchner by his proxy Mikel Steinfeld, Hon. Maria Felix, Hon. Richard Fields (by telephone), Hon. Pamela Gates, Hon. Eric Jeffery, Kellie Johnson, Amy Kalman, Prof. Jason Kreag (by telephone), Jerry Landau, Hon. Mark Moran, Aaron Nash, Natman Schaye, Hon. Paul Tang, Kenneth Vick

**Absent:** Bill Hughes

**Staff:** John Rogers, Mark Meltzer, Sabrina Nash, Julie Graber

**Guests:** Kathryn Pierce, John Belatti, Joey Hamby

**1. Call to order; explanation of OneDrive; approval of draft minutes.** The Chair called the second Task Force meeting to order at 10:00 a.m. and introduced the proxy and guests. He commended the efforts of the workgroups, each of which has met at least twice since the February 19 Task Force meeting. Today the Task Force will begin its discussion of eight rules (Rules 1, 2, 4, 5, 7, 9, 10, and 13), with two rules presented by each workgroup.

The Chair advised that the members prospectively would make rule revisions on OneDrive. He invited Ms. Graber to introduce OneDrive features. Ms. Graber first explained that each Task Force member must establish a Microsoft account; this is necessary to log-on to OneDrive. Portal.office.com is the URL for Microsoft’s Office website. Once a member has logged on, a search for the “criminal rules task force” will direct the member to the criminal rules page. Each workgroup has a separate folder on that page, although Task Force members have permission to view all workgroup folders. Ms. Graber explained the difference between “edit in Word,” which is a “full version” that shows tracked changes, and “edit in Word online,” which does not show tracked changes. Hitting the “save” button while editing in the full version will allow synchronization of changes in that version with the online version. OneDrive will also enable members to see who has made particular changes. The Chair thanked Ms. Graber for her presentation and encouraged members to contact her if they have additional questions. He informed the members that Ms. Graber will “lock” the workgroup versions ten days before each Task Force meeting to assure that every member will be reviewing the same documents at that meeting. He requested workgroups to be mindful of the ten-day limitation when scheduling their sessions.

The Chair directed the members to draft minutes of the February 19 meeting that were included in the packet of meeting materials. A member then made the following motion:

**Motion:** To approve the draft minutes. Seconded, and the motion passed unanimously. **CRTF-002**

**2. Uniformity in rules of court procedure.** The Chair then raised two issues for discussion. First, should the draft rules incorporate other rules by reference, as current Rule 35.5 has done, or should the rules “stand on their own?” Second, should provisions concerning such matters as format, time, and service be uniform across different sets of rules? The Chair stated his understanding that the Court prefers uniformity on these matters when possible, and they should differ only if there is a reason for the difference.

A judge member opposed cross-references and stated that criminal practitioners should only need to take a single volume of criminal rules to court. An attorney member advised that he practices only criminal law, and prefers to have all of the applicable rules in a single set. Another attorney follows criminal rule petitions, but not civil rule petitions, and cross-referencing might lead to criminal practitioners being uninformed of important civil rule changes proposed by a rule petition.

Mr. Rogers made an argument for cross-referencing. He said that when civil rules are amended, necessary and corresponding amendments to criminal rules do not always follow. Over time, the differences between these sets of rules increase. However, by cross-referencing a civil rule within a criminal rule, the criminal rule is effectively and simultaneously updated whenever a civil rule changes.

The Chair concluded the discussion by noting that a majority of members expressed a preference for a self-contained volume of criminal rules, without cross-references to civil rules. However, the criminal rules should attempt to maintain uniformity with corresponding civil rule provisions. He added that his directions are not the result of a formal vote on these issues, but they nonetheless should guide the member’s drafts as they proceed through the rules. On the subject of voting, the Chair added that the members would not vote to approve each rule following a discussion of the rule, but they should identify when they have achieved consensus concerning the rule, or whether the members should send a rule back to a workgroup for further review and revision. The Task Force will include rules on which there is consensus in a “vetting draft” that will be circulated to stakeholders before the Task Force files a rule petition. Accordingly, consensus on a rule is not the equivalent of ultimate Task Force approval of a rule. He also reminded the members to keep a record of any proposed substantive changes to a rule, which will allow the Task Force to identify those changes when it files its rule petition.

The Chair proceeded to the workgroup discussions of their draft rules.

3. **Workgroup 1.** Mr. Vick led the discussion of Rules 1 and 2.

**Rule 1: General Provisions.** Mr. Vick advised that Workgroup 1 restyled Rule 1.1 (“Scope”) and Rule 1.2 (“Purpose and Construction”), but it did not make any substantive changes. The workgroup reorganized Rule 1.3 (“Computation of Time”). It added a definition of “next day” that is consistent with a draft civil rule; this provision governs counting time backwards from a particular date. The members discussed draft Rule 1.3(a)(5), which allows additional time when service is made by specified methods’ the discussion included whether parties should add the extra 5 days before or after the basic time calculation. Mr. Rogers suggested, and the members approved, a revision to add 5 calendar days at the end of the initial calculation, starting with the first workday thereafter. The revision is, “after the specified time period would otherwise expire under Rule 1.3(a)(1)-(3)...” Ms. Graber memorialized this revision, as well as other revisions the members agreed to today, on the OneDrive version, which she displayed on a large screen during the meeting.

Draft Rule 1.4 (“Definitions”) moved the current definitions of “initial appearance” and “arraignment” to Rules 4 and 14, respectively, which detail those proceedings. The workgroup added definitions to Rule 1.4, including “defendant,” “magistrate,” “parties,” “person,” and “State.” The proposed definition of “magistrate” exceeded the definition in A.R.S. § 1-215, because it added the words “and judges pro tempore of these courts.” The definition does not include “commissioners,” and this led to a discussion of whether all commissioners in Arizona are also judges pro tempore. Members noted that not every county in Arizona uses commissioners. On the other hand, every judge pro tempore has the authority of a judge and therefore “pro tempore” does not need to be in the rule’s definition. The members concluded that in this instance, the rule definition should be identical to the statutory definition, and accordingly they agreed to delete the draft rule’s reference to judges pro tempore.

The members also discussed the definition of “State.” Mr. Rogers advised that the members should use “State” rather than “prosecutor” when drafting rules, except when the rule intends to refer to duties that are specific obligations of a prosecutor. The members agreed to this convention. They also agreed to use the term “defense counsel” rather than “defendant’s counsel.”

Draft Rule 1.5 (“Initial Appearance Masters”) derives from current Rule 1.7, which has the same title as the draft rule. The members agreed with the workgroup’s recommendation to relocate this rule under Rule 4. The Task Force will renumber the remaining provisions of Rule 1 accordingly.

Workgroup 1 did not intend to include any substantive changes in its draft of Rule 1.6 (“Interactive Audiovisual Systems”), but it significantly restyled the existing provisions of Rule 1.6(c)-(f) into a single new section (c). The goal of the workgroup was to add clarity to the rule. Mr. Vick asked for the members’ suggestions on a provision

that allows the use of video on guilty plea arraignments, and which would exclude from its application a felony guilty plea at arraignment. Based on the ensuing discussion, the workgroup will revise this portion of the rule so it includes separate provisions for misdemeanor and felony arraignments. One member asked if the Task Force should revise the awkward title of this rule, but the members made no changes to the title. As a convention to follow in all the rules, the members agreed to hyphenate “not-guilty” when used as an adjective, e.g., a non-guilty arraignment. A judge member raised concerns about a provision in Rule 1.6(b) that requires an interpreter to be present with the defendant during a video proceeding “absent compelling circumstances.” His county uses the remote interpreter service, so the interpreter may not be present with a defendant. The consensus was that this could be a “compelling circumstance,” but the members agreed it did not warrant a change to the substance of the provision.

Draft Rule 1.7 (“Form of Documents”) is an addition to Rule 1, and derives from pending amendments to the corresponding rule of civil procedure. The civil rule requires the use of paper with line numbers in the left margin. At least one Task Force judge member supported the usefulness of line numbers in drawing the parties' attention to particular contentions and cases during oral argument. The judge also felt the criminal and civil rules should be consistent on this point. Other members opposed lined paper, and commented that parties can add lines even if the rules don't require it; that the clerk has some issues processing lined paper; that line numbers don't always align with text; and that lines are “a nightmare” for limited jurisdiction courts. On a straw poll, a few members supported the line number requirement, but a large majority was in opposition. The Chair concluded that the rule should neither require nor prohibit the use of line numbers, and the current draft is consistently with that conclusion.

The members also discussed draft Rule 1.7(a)(1)(B) and a requirement that the caption include the name of the party the attorney represents. Some members questioned whether this should simply require the type of party (i.e., “the State” or “the defendant”), but in a multi-party case, the name of individual defendants would be useful. The consensus was to leave the rule as drafted, which is consistent with the corresponding civil rule that requires the party's name. The members discussed whether the caption should be in the same font size, 13-point, as the remainder of the document, but the members agreed that the rule did not need to specify that. Draft Rule 1.7(c) concerns electronically filed documents. The members discussed whether to delete any language in the introduction to this draft rule, but they decided to leave it as written. This proposed rule may require amendment when electronic filing becomes mandatory, but the draft as written appropriately reflects current practices. The draft rule expresses a preference for documents in a “text-searchable .pdf format,” which is the language used in the proposed civil rule. The members discussed deleting this preference, but Mr. Rogers noted that the Court will rule on the civil rule petition this summer, and the Criminal Rules Task Force should make its rule consistent in this regard with whatever the Court decides in that

civil petition. Finally, the members agreed that draft Rule 1.7 satisfactorily dealt with the matter of electronic exhibits and attachments.

Rule 1.8 (“Filing and Service of Documents”) also derives from the proposed civil rule amendments. However, an added provision in Rule 1.8(b) deals with filing by an incarcerated person. (The inmate also is required to serve the filing on the State, but that is a subject of a different rule.) Other than that circumstance, Mr. Vick noted that the workgroup’s proposal provided that the filing of a document is accomplished “only by filing it with the clerk.” This provision deviates from the proposed civil rule, which permits filing a document with a judge. The workgroup believed that judges did not effectively deal with filings, or always assure the timely transmission of documents to the clerk. One judge member observed that he liked the clarity of the proposed rule; litigants frequently hand documents to him in open court, but he always hands the document to a clerk, who file stamps it. An attorney member said that a family member often hands her a letter in the courtroom on the day of sentencing, and because she is unable to photocopy the letter in that circumstance, she hands the original letter directly to the judge. Nonetheless, she wants the letter to become part of the record, and prefers the rule specify that the judge transmit the document to the clerk for filing. The majority of members agreed with the attorney’s view, and the Chair requested the workgroup to revise this rule accordingly. Documents filed under seal upon order of the court may deviate from the general rule, depending on the specific language of an order. The Task Force may revisit this draft rule after the Court decides the language of the corresponding civil rule.

***Rule 2: Commencement of Criminal Proceedings.*** Draft Rule 2.1(b) includes a process for commencing a misdemeanor action in the superior court. The draft rule derives from current Rule 2.5. However, members were uncertain about the purpose of that current rule, or whether the State ever uses Rule 2.5. The consensus was to include draft Rule 2.1(b) in the vetting draft, with a comment that the utility of the rule is unclear and stakeholders should consider whether to remove it from the rule set. The remainder of Rule 2 revisions consisted of restyling, and members suggested no additional changes.

**4. Workgroup 2.** Judge Cattani led the discussion of Rules 4 and 5.

***Rule 4: Initial Appearance and Arraignment.*** Workgroup 2 restyled this rule but made no substantive changes, and the members had no other edits. Judge Cattani agreed with Workgroup 1’s suggestion to relocate draft Rule 1.5 as a new Rule 4.3, and Workgroup 2 will revise Rule 4 accordingly. Regarding the release provisions of Rule 4.2(a)(7), staff reminded the members of a new Fair Justice for All Task Force, and the CRTF may need at a future meeting to consider the recommendations of that Task Force concerning pretrial release and detention.

**Rule 5: Preliminary Hearing.** The members had suggestions on several sections of this rule.

Rule 5.4 (“Determining Probable Cause”) includes a phrase in Rule 5.4(c), “such evidence may be in the form of hearsay....” After discussion, the members agreed to change this to, “may include hearsay in the following forms....” Draft Rule 5.4(d) had the title, “Discharging the Defendant.” The members agreed to change this to “Lack of Probable Cause.” They also agreed to reorganize the provision so it begins rather than concludes with the phrase, “The magistrate must dismiss the complaint and discharge the defendant....”

Some members believe that subsection (c) of Rule 5.5 (“Review of a Magistrate’s Probable Cause Determination”) should require the reviewing judge to consider exhibits as well as a “certified transcript of the proceedings,” as the rule currently provides. Other members suggested even a broader change that would the reviewing judge to consider a written offer of proof not admitted as an exhibit, or the entire justice court record. The members agreed to revise the rule so it allows a reviewing judge to consider “a certified transcript of the proceedings and exhibits admitted at the preliminary hearing.” The members recognized that this is a substantive change, but also agreed it was meritorious.

The members also considered the time line established by Rule 5.6 (“Transmittal and Transcription of the Record”). Is it adequate with regard to the time for filing a motion? The members agreed that it was, especially because defense counsel would have been present at the preliminary hearing and would be sufficiently familiar with the issues to prepare a motion without a transcript. The members agreed with deleting the contempt provision in the current rule, and noted that there is no corresponding provision concerning a court reporter’s preparation of a grand jury transcript. The members prefer a rephrasing of Rule 5.6 in an active voice, and stating the concepts in the draft rule separately. Workgroup 2 will reconsider the rule for those purposes.

The members discussed reorganizing the provisions of Rule 5.8 (“Notice if an Arraignment is Not Held”), but agreed that no changes were appropriate. However, the words “and prepare” were deleted from section (a)(1), which requires the magistrate to “enter a plea of not guilty for the defendant ~~and prepare~~ and provide the defendant....” The members also agreed to change the title of Rule 5.8(a) from “When an Arraignment Is Not Held” to the simpler title, “Notice.”

### **5. Workgroup 3.**

**Rule 7: Release.** Judge Jeffery began but did not conclude a discussion of this rule.

Rule 7.1 (“Definitions”) clarifies that an appearance bond can be secured or unsecured. The members discussed the definition of “own recognizance.” A member noted that the current rule makes an important distinction about an O.R. release,

specifically, that it is “without any condition of an undertaking relating to, or deposit of, security.” The draft definition excludes this phrase. The members discussed adding to the definition of “own recognizance” the words, “without any appearance bond.” Another member then referred to distinctions between an O.R. release and release on bail that appear in A.R.S. § 13-3997. The member suggested that a better approach to the definition of “own recognizance” would be deleting all of the language in the present draft, and simply saying that it is a release “without an appearance bond.” The member further noted that the other conditions of an O.R. release in the draft definition are included in draft Rule 7.3 (“Conditions of Release”), which apply to every release, so they do not need to be restated in the definition. Judge Jeffery stated that draft Rule 7.1(e) (“Professional Bondsman”) retained the six specified requirements in the current rule because they are not codified elsewhere. With regard to Rule 7.1(e)(5), the members agreed to add the word “outstanding” before the word “judgments,” and to delete the phrase, “outstanding against him or her.”

The members ended their discussion of Rule 7 at this point.

**6. Roadmap and additional rule assignments; call to the public; adjourn.**

The meeting agenda identified future meeting dates: May 13, June 17, July 29, September 16, October 27, and December 9. All of these dates are Fridays, with the exception of Thursday, October 27. These meetings will be set from 10:00 a.m. until 2:00 p.m. The Chair added that he would reschedule any meeting if a quorum was unavailable, and depending on the Task Force’s progress, he might schedule additional meetings. His goal is to have a complete vetting draft by the end of August. Staff would circulate the vetting draft to stakeholders for comment, and the Task Force would consider those comments before filing a rule petition in January. In addition, the Task Force may present its draft to the Arizona Judicial Council at the Council’s October 27 meeting.

The Chair assigned additional rules to the workgroups as follows:

Workgroup 1: Rules 15 and 35

Workgroup 2: Rules 31 and 36

Workgroup 3: Rules 12 and 34

Workgroup 4: Rule 11

Each workgroup now has five assigned rules. The Chair reminded the members that Ms. Graber would lock their drafts ten days before the next meeting, and to schedule their workgroup meetings accordingly.

*Criminal Rules Task Force: Draft minutes*  
**04.08.2016**

Ms. Kalman advised that Mr. Hamby, a guest at the meeting, had provided comments to her. The Chair requested that she transmit Mr. Hamby's comments to staff, and staff will append his comments to the meeting minutes.

There was no response to a call to the public. The meeting adjourned at 2:00 p.m.

**Addendum to the April 8, 2016 meeting minutes:** Ms. Kalman sent the following email to staff on April 8, 2016 at 3:02 p.m.

Mr. Joey Hamby of the Law Offices of David Cantor wished to convey the following comments as a member of the public, but had to leave before the public comment period was opened:

- Rule 1.5(d). The definition of magistrate appears redundant.
- Rule 1.6(b)(3)(d)-this rule states “absent compelling circumstances” without clarification as to who finds the compelling circumstances. Should it be the criminal presiding judge or the hearing judge? Must they make a finding on the record?
- (c). Concerns regarding lack of clarity of term “not-guilty arraignment”. While it is a common term of art, should probably be more clearly defined, as an out-of-state practitioner could come in and not be clear on what this means. Suggested alternative wording: “A felony arraignment where a plea of ‘not guilty’ is entered on behalf of a defendant.”
- Rule 1.7-it would be very helpful to create uniformity across the rules.
  - Rule 1.7(c)-the title sentence should be removed completely-unless you can guarantee that a document can be filed electronically (under seal is one example, but some courts cannot accept notices of appearance electronically). Otherwise the rule as worded risks confusion when it authorizes something that may not even be possible.
  - (c)(1)(a) – the file extension preferences are way too temporal (formats may change as technology evolves, these rules are meant to be lasting). Additional concern – cost. Many people have not made the switch to Microsoft or pdf due to cost, but use WordPerfect (an older software) or OpenOffice, which is a free software. This would seem to preclude them from using the software they rely upon. The Court should not get into purchasing decisions of counsel.

Thank you for giving me the opportunity to make sure they are part of the record.



### **Rule 3. Arrest Warrant or Summons upon Commencement of Criminal Proceedings**

#### **Rule 3.1. Issuance of Summons or Warrant**

- (a) **Issuance.** A summons commands a defendant to appear before a magistrate. A warrant commands the arrest of a defendant by a peace officer for the purpose of bringing a defendant before a magistrate.
- (1) ***Return of Indictment.*** If a grand jury returns an indictment, the court must promptly issue a warrant or summons, or a notice of supervening indictment under Rule 12.7(c).
  - (2) ***Finding of Probable Cause.*** If a magistrate makes a finding of probable cause under Rule 2.4(a), the court must promptly issue a warrant or summons.
  - (3) ***Prosecutor's Complaint.*** If a prosecutor presents a signed complaint, the court must promptly issue a summons or, if the court finds probable cause, the court may issue a warrant.
- (b) **Preference for Summons.** Unless there is good cause to issue a warrant, a summons should issue if the defendant is not in custody, the offense charged is bailable as a matter of right, and there is reason to believe that the defendant will appear. If a prosecutor requests a warrant, the prosecutor must state the reasons for issuing a warrant rather than a summons.
- (c) **Initial Arrest Warrant.** Before issuing an arrest warrant, the magistrate must determine that probable cause exists that the defendant committed the offense or find that such a determination was previously made. The court may issue an initial arrest warrant if:
- (1) a defendant failed to appear after being served with a summons;
  - (2) there is good cause to believe that the defendant will not appear; or
  - (3) a summons cannot readily be served or delivered.
- (d) **Pre-Disposition Warrant.** After the initial appearance and before the disposition of a case, the court may issue a warrant to secure a defendant's appearance if the defendant fails to appear after receiving proper notice.
- (e) **Warrants in ATTC Cases.** If a person served with an Arizona Traffic Ticket and Complaint provides a written promise to appear in court at a designated time and date and fails to appear, personally or by counsel, on or before that date, the court may

issue a warrant. Additionally, if a complaint is filed under A.R.S. § 13-3903(F), the court must issue a warrant for that proceeding.

### **Rule 3.2. Content of a Warrant or Summons**

**(a) Warrant.** A warrant must:

- (1) be signed by the issuing magistrate;
- (2) contain the defendant's name or, if the defendant's name is unknown, any name or description by which the defendant can be identified with reasonable certainty;
- (3) state the charged offense and whether the offense is one to which victims' rights provisions apply;
- (4) command that the defendant be arrested and brought before the issuing magistrate or, if the issuing magistrate is absent or unable to act, the nearest or most accessible magistrate in the same county or in the county of arrest if the defendant is arrested outside the county where the warrant was issued; and
- (5) state the amount of a secured appearance bond, if the defendant is bailable as a matter of right.

**(b) Summons.**

- (1) **Form.** A summons must be in the same form as a warrant except it must summon the defendant to appear at a date, time and place no more than 30 days after an indictment, information, or complaint is filed.
- (2) **Photograph and Fingerprints.** At the prosecutor's request or by court order, the summons may command the defendant to report to a designated place to be photographed and fingerprinted before the defendant's appearance in response to the summons. If the defendant fails to report to be photographed and fingerprinted as directed, the defendant may be arrested when he or she appears in response to the summons and the magistrate must order the defendant to report immediately for photographing and fingerprinting.
- (3) **10-Print Fingerprints Required.** If a summons is issued for a defendant who is charged with a felony offense, a violation of Title 13, Chapter 14, a violation of Title 28, Chapter 41, or a domestic violence offense as defined in A.R.S. § 13-3601, the summons must direct the defendant to provide 10-print fingerprints to the applicable law enforcement agency.

### **Rule 3.3. Execution and Return of Warrant; Defective Warrants**

- (a) **By Whom.** The warrant is directed to, and may be executed by, all peace officers in Arizona.
- (b) **Manner of Execution.** A warrant is executed by arresting the defendant named in the warrant. The officer does not need to possess the warrant when the arrest is made, but the officer must show the warrant to the defendant as soon as possible if the defendant asks to see it. If the officer does not have the warrant when the arrest is made, the officer must inform the defendant of the charged offense and the fact that a warrant has been issued.
- (c) **Return.** Return of the warrant must be made either to the magistrate who issued it or to the magistrate at the initial appearance.
- (d) **Defective Warrant.** An arrest warrant is not invalid, and any person in custody on a warrant need not be released, because of a defect in the warrant's form. A magistrate may amend a warrant to correct a defect in form.

### **Rule 3.4. Service of Summons**

- (a) **Territorial Limits of Effective Service.** A summons may be served anywhere within Arizona.
- (b) **Service by Mail.** A summons may be served by first class mail or by certified mail, return receipt requested. Return of the signed receipt is presumptive evidence of service.
- (c) **Serving an Individual.** Unless (d), (e), or (f) applies, an individual may be served by:
- (1) delivering the summons to that individual personally;
  - (2) leaving the summons at that individual's dwelling or usual place of abode with someone of suitable age and discretion who resides there; or
  - (3) delivering the summons to an agent authorized by appointment or by law to receive service of process.
- (d) **Serving a Minor.** Unless (e) applies, a minor less than 16 years old may be served by delivering the summons to the minor in the manner set forth in (c) and also delivering the summons:
- (1) to the minor's parent or guardian, if any of them reside or may be found within Arizona; or

(2) if none of them resides or is found within Arizona, to any adult having the care and control of the minor, or any person of suitable age and discretion with whom the minor resides.

(e) **Serving a Minor Who Has a Guardian.** If a court has appointed a guardian for a minor, the minor must be served by serving the guardian in the manner set forth in (c), and separately serving the minor in that same manner.

(f) **Serving a Person Adjudicated Incompetent Who Has a Guardian** If a court has declared a person to be insane, gravely disabled, incapacitated, or mentally incompetent to manage that person's property and has appointed a guardian for the person, the person must be served by serving the guardian in the manner set forth in (c), and separately serving the person in that same manner.

(g) **Serving a Corporation, Partnership, or Other Unincorporated Association.** A domestic or foreign corporation, partnership, or other unincorporated association may be served by delivering the summons to a partner, an officer, a managing or general agent, or any other agent authorized by appointment or by law to receive service of process and—if the agent is one authorized by statute and the statute so requires—by also mailing the summons to the defendant.

(h) **Serving a Corporation if an Authorized Officer or Agent Is Not Found Within Arizona**

(1) **Generally.** If a domestic corporation, or a foreign corporation authorized to transaction business in Arizona, does not have an officer or an agent within Arizona on whom process can be served, the corporation may be served by depositing two copies of the summons with the Arizona Corporation Commission. Following this procedure constitutes personal service on that corporation.

(2) **Evidence.** If the sheriff of the county in which the action is pending states in the return that, after diligent search or inquiry, the sheriff has been unable to find an officer or agent of such corporation on whom process may be served, the statement constitutes prima facie evidence that the corporation does not have such an officer or agent in Arizona.

(3) **Commission's Responsibilities.** The Arizona Corporation Commission must retain one of the copies of the summons being served for its records and immediately mail the other copy, postage prepaid, to the corporation or any of the corporation's officers or directors, using any address obtained from the

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corporation's articles of incorporation, other Corporation Commission records, or any other source.



## **Rule 7. Release**

### **Rule 7.1. Definitions**

- (a) **Own Recognizance.** “Own recognizance” is a release of a defendant without an appearance bond.
- (b) **Appearance Bond.** An “appearance bond” is a promise by a defendant or by a third party to pay to the clerk a specified sum of money if the defendant fails to appear at a court proceeding or comply with the conditions of release. An appearance bond can be secured or unsecured. A secured appearance bond is secured by a deposit with the clerk of security equal to the full amount of the bond.
- (c) **Security.** “Security” is cash, a surety's undertaking, or any property of value, deposited with the clerk to secure an appearance bond. The value of that property is determined by the clerk, or at the clerk's or a party's request, by a magistrate.
- (d) **Surety.** A “surety” is a person, other than the defendant, who executes an appearance bond and agrees to pay the amount of the bond if the defendant fails to comply with its conditions. A surety must file an affidavit with an appearance bond stating that the surety is not an attorney or person authorized to take bail, and that the surety owns property in Arizona (or is a resident of Arizona owning property) with a value equal to or more than the amount of the appearance bond. The property's value is calculated after deducting the amount exempt from execution and all liabilities, including the amount of any other outstanding appearance bonds that the surety has entered into involving the same property.
- (e) **Professional Bondsman.** Any person who is a surety simultaneously on more than 4 appearance bonds is a “professional bondsman.” A person may not be a professional bondsman unless the person annually certifies in writing under oath to the superior court clerk that the person:
- (1) is an Arizona resident;
  - (2) has sufficient financial net worth to satisfy reasonable obligations as a surety;
  - (3) agrees to assume an affirmative duty to the court to remain in regular contact with any defendant released under an appearance bond on which the person is a surety;
  - (4) has not been convicted of a felony, except as otherwise provided in A.R.S. § 20-340.03;

- (5) has no outstanding judgments arising out of surety undertakings; and
- (6) has not, within a period of two years, violated any provisions of these rules or any court order.

The clerk or the court may revoke or withhold a professional bondsman's capacity as surety if the bondsman violates this rule's provisions.

## **Rule 7.2. Right to Release**

**(a) Before Conviction; Persons Charged With an Offense Bailable as a Matter of Right.** Any person charged with an offense bailable as a matter of right must be released on the person's own recognizance pending or during trial, unless the court finds that the release will not reasonably assure the person's required appearances and compliance with the conditions of release. If the court makes that finding, it must impose the least onerous condition of release set forth in Rule 7.3(b) that will reasonably assure the person's appearance and compliance with the conditions of release.

**(b) Before Conviction; Persons Charged With an Offense Not Bailable as a Matter of Right.** The court must not release a defendant on bail if it finds the person is not bailable under applicable law.

### **(c) After Conviction.**

#### **(1) *Superior Court.***

**(A) *Generally.*** After a person is convicted of any offense for which the person will, in all reasonable probability, receive a sentence of imprisonment, the court may not release the person on bail or on the person's own recognizance unless the court finds that reasonable grounds exist to believe that the conviction may be set aside on a motion for new trial, reversed on appeal, or vacated in any post-conviction proceeding.

**(B) *Lack of Diligence on Appeal.*** If a defendant is released pending appeal but fails to diligently prosecute the appeal, the court must revoke the release.

**(C) *Release Upon Sentence Completion.*** A defendant held in custody pending appeal must be released if the person's term of incarceration is completed before the appeal is decided.

#### **(2) *Limited Jurisdiction Courts.***

- (A) *Conditions of Release on Appeal.* If a defendant files a timely notice of appeal of a conviction for an offense for which the court has imposed a sentence of incarceration, the defendant may remain out of custody under the same conditions for release imposed at or after the defendant's initial appearance or arraignment.
- (B) *Lack of Diligence on Appeal.* If a defendant is released pending appeal but fails to diligently prosecute the appeal, the court must revoke the release.
- (C) *Motion to Amend Conditions of Release.*
- (i) Upon the filing of a timely notice of appeal, the court—on motion or on its own—may amend the conditions of release if it finds a substantial risk exists that the defendant presents a danger to another person or the community, or the defendant is unlikely to return to court if required to do so after the appeal's conclusion.
  - (ii) The court must hear a motion under this rule within 3 days after filing, although it may continue the hearing for good cause. The defendant may be detained pending the hearing. The hearing must be on the record, and the defendant is entitled to representation by counsel. Any testimony by the defendant is not admissible in another proceeding except as it relates to compliance with prior conditions of release, perjury, or impeachment. The court must state findings on the record.
  - (iii) The court may amend the conditions of release in accordance with the standards set forth in Rule 7.3 and Rule 7.4(b). In determining the method of release or the amount of bail, the court must consider the nature and circumstances of the offense, family or local ties, employment, financial resources, the defendant's character and mental condition, the length of residence in the community, the record of arrests or convictions, and appearances at prior court proceedings.
- (D) *Release Upon Sentence Completion.* A defendant held in custody pending appeal must be released if the defendant's term of incarceration is completed before the appeal is decided.
- (E) *Superior Court Review.* If the trial court enters an order setting a bond or requiring incarceration during the appeal, the defendant may petition the superior court to stay the execution of sentence and to allow the defendant's release either without bond, or on a reduced bond.

**(d) Burden of Proof.** A court must determine issues under Rules 7.2 (a) and (c) by a preponderance of the evidence. The prosecutor bears the burden of establishing factual issues under Rule 7.2 (a), (b) and (c)(2). The defendant bears the burden of establishing factual issues under Rule 7.2(c)(1).

### **Rule 7.3. Conditions of Release**

**(a) Mandatory Conditions.** Every order of release must contain the following conditions:

- (1) the defendant must appear at all court proceedings;
- (2) the defendant must not commit any criminal offense;
- (3) the defendant must not leave Arizona without the court's permission; and
- (4) if a defendant is released during an appeal after judgment and sentence, the defendant will diligently prosecute the appeal.

**(b) Mandatory Condition if Charged with an Offense Listed in A.R.S. § 13-610(O)(3).**

(1) **Generally.** If a defendant is charged with an offense listed in A.R.S. § 13-610(O)(3) and has been summoned to appear in court, the magistrate must order the defendant to report to the arresting law enforcement agency or its designee within 5 days after release, and submit a sample of buccal cells or other bodily substances for DNA testing as directed. The defendant must provide proof of compliance at the next scheduled court proceeding.

(2) **Required Notice.** The court must inform a defendant that a willful failure to comply with an order under (b)(1) will result in revocation of release.

**(c) Additional Conditions.** The court may impose as a condition of release one or more of the following conditions if the court finds the condition is reasonably necessary to secure a person's appearance:

- (1) an unsecured appearance bond;
- (2) placing the person in the custody of a designated person or organization that agrees to supervise the person;
- (3) a secured appearance bond;
- (4) restrictions on the person's travel, associations, or residence; or
- (5) any other condition the court deems reasonably necessary.

#### **Rule 7.4. Procedure**

(a) **Initial Appearance.** At an initial appearance, the court must issue an order containing the conditions of release. The order must inform the defendant of the conditions and possible consequences for violating a condition, and that the court may immediately issue a warrant for the defendant's arrest if there is a violation.

#### **(b) Later Review of Conditions.**

(1) **Generally.** On motion or on its own, a court may reexamine the conditions of release if the case is transferred to a different court or a motion alleges the existence of material facts not previously presented to the court.

(2) **Motion Requirements and Hearing.** The court may modify the conditions of release only after giving the parties an opportunity to respond to the proposed modification. A motion to reexamine the conditions of release must comply with Rule 39's victims' rights requirements.

(3) **Non-Bailable Offenses.** If the motion involves whether the person should be held without bail, it need not allege new material facts. The court must hold a hearing on the record as soon as practicable, but no later than 7 days after the motion's filing.

(c) **Evidence.** A court may base a release determination under this rule on evidence that is not admissible under the Arizona Rules of Evidence.

(d) **Review of Conditions of Release for Misdemeanors.** Within 10 days after arraignment, the court must review the conditions of release of any defendant held in custody on bond for a misdemeanor. It must determine whether to amend the conditions of release.

**Note:** Consider retaining the following comment regarding Rule 7.4(d): The intent of the rule is to assure that a person will not spend more time in jail on bond than the person would spend after a sentence imposed for the charge, and to assure that no one becomes lost in the system. The court shall document the review of the case file. Hold for reconsideration.

#### **Rule 7.5. Review of Conditions; Revocation of Release**

(a) **On State's Petition.** If the State files a verified petition stating facts or circumstances showing the defendant has violated a condition of release, the court may issue a summons or warrant under Rule 3.2, or a notice setting a hearing, to secure the

defendant's presence in court and to consider the matters raised in the petition. A copy of the petition must be served with the summons, warrant, or notice.

**(b) On Pretrial Services' Report.** If pretrial services submits a written report to the court stating facts or circumstances showing the defendant has violated a condition of release, the court may issue a summons or warrant under Rule 3.2, or a notice, to secure the defendant's presence in court, and to consider the matters raised in the report. A copy of the report must be provided to the State and served with the summons, warrant, or notice.

**(c) On Victim's Petition.** After consultation with the prosecutor, and if the prosecutor decides not to file a petition pursuant to section (a), the victim may petition the court to revoke the bond or release on personal recognizance of the defendant, or otherwise modify the conditions of the defendant's release. The petition must include a statement under oath by the victim concerning any harassment, threats, physical violence, or intimidation by the defendant, or on the defendant's behalf, against the victim or the victim's immediate family. ~~Substitute language of current rule 7.5(c), but change prosecutor to victim and break up the second sentence as shown above.~~

**(d) Hearing; Modification of Conditions; Revocation.**

**(1) *Modification of Conditions of Release.*** If the court finds that defendant has willfully violated the conditions of release, after a hearing on the matters set forth in the petition or report, it may impose different or additional conditions of release.

**(2) *Revocation of Release on a Felony Offense.*** The court may revoke release of a person charged with a felony if, after hearing, the court finds:

**(A)** probable cause exists to believe that the person committed another felony during the period of release and the proof is evident or the presumption great as to the present charge; or

**(B)** the person poses a substantial danger to another person or the community, no other conditions of release will reasonably assure the safety of the other person or the community, and the proof is evident or the presumption great as to the present charge.

**(e) *Revocation of Release: DNA Testing.*** The State may file a motion asking the court to revoke a defendant's release for failing to comply with the court's order to provide a sample of buccal cells or other bodily substances for DNA testing under A.R.S. § 13-3967(F)(4) and to provide proof of compliance. The motion must state facts

establishing probable cause to believe that a defendant has not complied with the order. At defendant's next court appearance, the court must proceed in accordance with this rule's requirements and A.R.S. § 13-3967(F)(4).

- (f) Revocation of Release: 10-print Fingerprinting.** If a defendant fails to timely present a completed mandatory fingerprint compliance form or if the court has not received the process control number, the court may remand the defendant into custody for 10-print fingerprinting. If otherwise eligible for release, the defendant must be released from custody after being 10-print fingerprinted.

### **Rule 7.6. Transfer and Disposition of Bond**

- (a) Transfer Upon Supervening Indictment.** An appearance bond or release order issued following the filing of a felony complaint in justice court will automatically be transferred to a criminal case in superior court after an indictment is filed that alleges the same charges.
- (b) Filing and Custody of Appearance Bonds and Security.** A defendant must file an appearance bond and security with the clerk of the court in which a case is pending or the court in which the initial appearance is held. If the case is transferred to another court, the transferring court also must transfer any appearance bond and security.
- (c) Forfeiture Procedure.**
- (1) Arrest Warrant and Notice to Surety.** If the court is informed that the defendant has violated a condition of an appearance bond, it may issue a warrant for the person's arrest. Within 10 days after issuance of the warrant, the court must notify the surety, in writing or electronically, that the warrant was issued.
  - (2) Hearing and Notice.** After issuing the arrest warrant, the court must set a hearing within a reasonable time, no more than 120 days after it issued the warrant, requiring the parties and any surety to show cause why the bond should not be forfeited. The court must notify the parties and any surety of the hearing in writing or electronically. The forfeiture hearing may be combined with a Rule 7.5(d) hearing.
  - (3) Forfeiture.** If the court finds that the violation is not excused, it may enter an order forfeiting all or part of the amount of the bond, and the State may enforce that order as a civil judgment. The order must comply with Arizona Rule of Civil Procedure 58(a).
- (d) Exoneration.**

- (1) **Generally.** If the court finds before a violation, if the court finds that there is no further need for an appearance bond, it must exonerate the bond and order the return of any security.
  - (2) **Surrender of the Defendant.** The court must exonerate the bond if the following conditions are met:
    - (A) the surety, in compliance with the requirements of A.R.S. § 13-3974:
      - (i) surrenders the defendant to the sheriff of the county in which the prosecution is pending; or
      - (ii) delivers an affidavit to the sheriff stating that the defendant is incarcerated in this or another jurisdiction.
    - (B) the sheriff reports the surrender or status to the court.
  - (3) **Other Circumstances.** In all other instances, the court may exonerate a bond if appropriate.
- (e) **Post-Forfeiture Notice.** After filing an order of forfeiture, the court must provide:
- (1) a copy of the order to the State, the defendant, the defendant's attorney, and the surety; and
  - (2) a copy of a signed order to the county attorney for collection.

**Note:** The last sentence of draft Rule 7.5(c)(1) is derived from a comment to the current rule.

## **Rule 8. Speedy Trial**

### **Rule 8.1. Priorities in Scheduling Criminal Cases**

- (a) Priority of Criminal Trials.** A trial of a criminal case has priority over a trial of a civil case.
- (b) Preferences.** The trial of a defendant in custody, and the trial of a defendant whose pretrial liberty may present unusual risks, have preference over other criminal cases.
- (c) Duty of the Prosecutor.** The prosecutor must advise the court of facts relevant to a determination of the order in which the court should try its assigned criminal cases.
- (d) Duty of Defense Counsel.** Defense counsel must advise the court of an impending expiration of time limits in the defendant's case. A court may sanction counsel for failing to do so, and should consider a failure to timely notify the court of an expiring time limit in determining whether to dismiss an action with prejudice under Rule 8.6.
- (e) Suspension of Rule 8.** Within 25 days after a superior court arraignment, either party may move for a hearing to establish extraordinary circumstances requiring a suspension of Rule 8. Within 5 days after the motion is filed, the court must hold a hearing on the motion and make findings of fact about whether extraordinary circumstances exist that justify the suspension of Rule 8. If the trial court finds that Rule 8 should be suspended, the court must immediately transmit its findings to the Supreme Court Chief Justice. If the Chief Justice approves the findings, the trial court may suspend Rule 8's provisions and reset the trial for a later specified date. [Cross-reference Rule 8.4(d)]

### **Rule 8.2. Time Limits**

- (a) Generally.** Subject to Rule 8.4's exclusions, the court having jurisdiction over an offense must try every defendant against whom an indictment, information, or complaint is filed within the following times:
  - (1) *Defendants in Custody.*** No later than 150 days from arraignment if the defendant is held in custody, except as provided in Rule 8.2(a)(3).
  - (2) *Defendants Out of Custody.*** No later than 180 days from arraignment if the defendant is released under Rule 7, except as provided in Rule 8.2(a)(3).
  - (3) *Defendants in Complex Cases.*** No later than 270 days from arraignment if the defendant is charged with any of the following:
    - (A)** first degree murder, except as provided in Rule 8.2(a)(4);

- (B) offenses that will require the court to consider evidence obtained as the result of an order permitting the interception of wire, electronic or oral communication; or
- (C) any case the court determines by written factual findings to be complex.
- (4) **Capital Cases.** No later than 24 months from the date the State files a notice of intent to seek the death penalty under Rule 15.1(i).
- (b) **Waiver of Appearance at Arraignment.** If a person waives an appearance at arraignment under Rule 14.2, the date of an arraignment held in the defendant's absence is deemed to be the arraignment date.
- (c) **New Trial.** A trial ordered after a mistrial or the granting of a new trial motion must commence within 60 days after the court order is filed. A trial ordered upon an appellate court's reversal of a judgment must commence within 90 days after the appellate court issues its mandate.
- (d) **Extension of Time Limits.** The court may extend these time limits under Rule 8.5.
- (e) **Specific Date for Trial.** In all superior court cases except those in which the court has suspended Rule 8 under Rule 8.1(e), the court, either at the superior court arraignment or at a pretrial conference, must set trial for a specified date.

### **Rule 8.3. Prisoner's Right to a Speedy Trial**

- (a) **Prisoner in Another State.** Within 90 days after receiving a written request from a person charged with a crime who is incarcerated in another state, or within a reasonable time after otherwise learning of such person's incarceration, the prosecutor must take action as required by law to obtain that person's presence for trial. The defendant must be brought to trial within 90 days after having been delivered into the custody of the appropriate authority of the State of Arizona.
- (b) **Prisoner in Arizona.**
  - (1) **Request for Final Disposition.** A defendant imprisoned in Arizona may request the final disposition of any untried indictment, information or complaint pending in Arizona. The request must be in writing, addressed to the court in which the charge is filed and to the prosecutor charged with the duty of prosecuting it. The request must state the defendant's place of imprisonment.
  - (2) **Detainer.** Within 30 days after a detainer is filed against a defendant incarcerated in Arizona, the prosecutor who is prosecuting the charge that

resulted in the detainer must inform the defendant about the detainer and about the defendant's right to request its final disposition under Rule 8.3(b)(1).

- (3) ***Deadline for Acting on a Request.*** The defendant must be brought to trial on the charge within 90 days after sending a request for final disposition to the court and prosecutor.
- (4) ***Escape from Custody.*** A defendant's request for final disposition is void if he the defendant later escapes from custody.

#### **Rule 8.4. Excluded Periods**

The following periods are excluded from the time computations set forth in Rules 8.2 and 8.3:

- (a) delays caused by or on behalf of the defendant, whether or not intentional or willful, including, but not limited to, delays caused by an examination and hearing to determine competency or intellectual disability, the defendant's absence or incompetence, or the defendant's inability to be arrested or taken into custody in Arizona;
- (b) delays resulting from a remand for a new probable cause determination under Rules 5.5 or 12.9;
- (c) delays resulting from a time extension for disclosure under Rule 15.6;
- (d) delays necessitated by trial calendar congestion, but only if the congestion is due to extraordinary circumstances, in which case the presiding judge must promptly apply to the Supreme Court Chief Justice to suspend Rule 8 or any other Rule of Criminal Procedure; [Cross-reference Rule 8.1(e).]
- (e) delays resulting from continuances granted under Rule 8.5;
- (f) delays resulting from joinder for trial with another defendant for whom the time limits have not run, if they are properly joined or consolidated under Rule 13.3; and
- (g) delays resulting from the setting of a transfer hearing under Rule 40.

**Note:** Draft Rule 8.4(a) includes the words, “whether or not intentional or willful.” These words were derived from a comment to the current rule.

### **Rule 8.5. Postponing a Trial Date**

**(a) Motion.** A party may seek to postpone trial by filing a motion. The motion must be in writing and state the specific reasons and supporting facts justifying postponement.

**(b) Grounds.** A court may grant a motion to postpone trial only on a showing that extraordinary circumstances exist and that delay is indispensable to the interests of justice. It may postpone trial only for so long as is necessary to serve the interests of justice. In reaching its decision, the court must consider the rights of the defendant and any victim to a speedy disposition of the case. If it grants the motion, the court must state on the record specific reasons for postponing trial.

**Notes:** Should a motion under Rule 8.5 require a certificate of good faith?

Consider keeping as a comment the following portion of the Maricopa County Rule 8 Guidelines, which currently appear after Rule 8.7:

As provided in Rule 8.5(b), any Motion to Continue must establish the existence of extraordinary circumstances and must justify any delay as being indispensable to the interests of justice for the court to grant the motion. In determining whether extraordinary circumstances exist and a delay is indispensable to the interests of justice, although not exclusive, the following factors will be considered by the court.

1. Were the circumstances cited as reasons for the continuance unforeseeable?
2. Were the circumstances due to lack of preparation?
3. Are the reasons relevant?
4. Is any other party prejudiced?

Motions to Continue must set forth grounds with specificity. Motions which contain only conclusory statements such as plea negotiations are ongoing, additional time is needed to prepare for trial or investigate the matter, or that all witnesses have not been interviewed will be denied.

Finally, any Motion to Continue that is filed in an untimely manner under these guidelines will be denied unless the motion sets forth with specificity the reason for filing the motion within 5 days of the trial.

**Rule 8.6. Denial of Speedy Trial**

On the defendant's motion or on its own, the court must dismiss a prosecution—with or without prejudice—if it determines, after excluding the time periods listed in Rule 8.4, that a time limit established by Rules 8.2(a), 8.2(b), 8.2(c), 8.2(d), 8.3(a), 8.3(b)(2), or 8.3(b)(3) has been violated.

**Rule 8.7. Accelerating Trial**

If there are special circumstances relating to the victim, the court may accelerate the trial to the earliest possible date consistent with the defendant's right to a fair trial. The presiding judge may assign another judge to preside at trial to ensure that the trial commences on the scheduled date.



## **Rule 9. Presence of the Defendant, Witnesses, and Spectators**

### **Rule 9.1. The Defendant's Waiver of the Right to Be Present**

Except for sentencing or as these rules otherwise provide, a defendant waives the right to be present at any proceeding, by the defendant's voluntary absence. The court may infer that a defendant's absence is voluntary if the defendant had notice of the date and time of the proceeding, the right to be present, and notice that the proceeding would go forward in the defendant's absence.

### **Rule 9.2. The Defendant's Forfeiture of the Right to Be Present**

**(a) Disruptive Conduct.** A defendant who engages in disruptive conduct, after having been warned by the court that the conduct will result in the defendant's expulsion from a proceeding, forfeits the right to be present at that proceeding.

**(b) Reacquiring the Right.** If a defendant is excluded from a proceeding under Rule 9.2(a), the court may grant the defendant a reasonable opportunity to return to the proceeding if the defendant personally assures the court of future good behavior. If the defendant later engages in disruptive conduct, the court may exclude the defendant from the proceeding without additional warning.

**(c) Continuing Duty to Permit Participation.** If the court excludes a defendant from a proceeding, it must use every feasible means to enable the defendant to hear, observe, and be informed of the proceeding's progress, and to consult with counsel at reasonable intervals.

**(d) Contempt.** In addition to the authority granted under this rule, the court may treat a defendant's disruptive conduct as contempt under Rule 33.

**Note:** Draft Rule 9.2(d) is derived from an existing comment to Rule 9.2.

### **Rule 9.3. Exclusion of Witnesses and Spectators**

#### **(a) Witnesses.**

**(1) Generally.** The court may and, at the request of either party must, exclude prospective witnesses from the courtroom during opening statements and other witnesses' testimony. If the court finds that a party's claim that a person is a prospective witness is not made in good faith, it may not exclude the person

**(2) Exceptions.**

(A) *Victim.* A victim as defined in Rule 39(a) has a right to be present at all proceedings at which the defendant has that right.

(B) *Investigator.* If the court enters an exclusion order, both the defendant and State are nevertheless entitled to the presence of one investigator at counsel table.

(3) *Instruction.* As part of its exclusion order, the court must instruct the witnesses not to communicate with each other about the case until all of them have testified.

(4) *After Testifying.* Once a witness has testified on direct examination and has been made available to all parties for cross-examination, the court must allow the witness to remain in the courtroom, unless a party requests continued exclusion because the witness may be recalled or the court finds that the witness's presence would be prejudicial to a fair trial.

**(b) Spectators.**

(1) *Generally.* All proceedings must be open to the public, including news media representatives, unless the court finds, on motion or on its own, that an open proceeding presents a clear and present danger to the defendant's right to a fair trial by an impartial jury.

(2) *Record.* The court must keep a complete record of any closed proceedings and make it available to the public following the trial's completion, or, if no trial occurs, disposition of the case.

**(c) Protection of a Witness.** The court may exclude all spectators except press representatives during a witness's testimony if the court finds it is reasonably necessary to protect the witness's safety or to protect the witness from embarrassment or emotional disturbance.

~~**(d) Investigator.** If the court enters an exclusion order, both the defendant and the prosecutor are nevertheless entitled to the presence of one investigator at counsel table.~~

**Note:** Draft Rule 9.3(c) includes the phrase "if the court finds" to provide a basis for reviewing the court's discretion to exclude spectators.

## **Rule 10. Change of Judge or Place of Trial**

### **Rule 10.1. Change of Judge for Cause**

**(a) Grounds.** A party is entitled to a change of judge if the party shows that the assigned judge's interest or prejudice would impair the right to a fair and impartial hearing or trial.

#### **(b) Procedure.**

- (1) *Motion, Timing, and Form.*** A party seeking a change of judge for cause must file a motion requesting that relief. The party must file the motion within 10 days after discovering that grounds exist for a change of judge for cause, but may not file such a motion after a hearing or trial commences. The motion must be supported by an affidavit of the moving party and must state specific grounds for the change of judge.
- (2) *Further Action by Judge.*** If a party files a timely motion for change of judge under this rule, the judge should proceed no further in the action, except to enter necessary temporary orders before the action can be transferred to the presiding judge or the presiding judge's designee. However, if the named judge is the presiding judge, that judge may continue to perform the functions of the presiding judge.
- (3) *Preserving Error.*** Allegations of interest or prejudice that prevent a fair and impartial hearing or trial may be preserved for appeal by filing, and obtaining a ruling on, a motion to change a judge for cause.

#### **(c) Hearing, Disposition, and Effect on Other Defendants.**

- (1) *Hearing and Ruling.*** Promptly after a party files a motion under this rule, the presiding judge must provide for a hearing on the motion before a judge other than the challenged judge. After holding the hearing, the hearing judge must decide the issues by a preponderance of the evidence and enter an order stating findings and ruling on the motion. The hearing judge will then return the matter to the presiding judge.
- (2) *Assignment or Reassignment.*** The presiding judge will promptly assign the action back to the original judge if the motion is denied, or will make a new assignment if the motion is granted.
- (3) *Effect on Other Defendants.*** If there are multiple defendants, the grant of a motion for change of judge filed by one or more defendants does not require a

change of judge as to the other defendants, even though the change of judge may result in severance for trial purposes.

**Notes:**

Is the process in this rule feasible for counties that have only a single judge?

Suggest adding a comment to Rule 10.1, derived from a comment to existing Rule 10.4, as follows: The right to challenge for cause is waived only by knowing relinquishment; a party will not be allowed to let a proceeding continue in the hope of prevailing, and then assert a challenge for cause if he loses.

**Rule 10.2. Change of Judge as a Matter of Right**

**(a) Entitlement.**

- (1) **Generally.** Each side is entitled as a matter of right to one change of judge.
- (2) **Meaning of “Side.”** Each case, including one that is consolidated, is treated as having only two sides; but whenever two or more parties on a side have adverse or hostile interests, the presiding judge or that judge's designee may allow additional changes of judge as a matter of right.
- (3) **Per Party Limit.** A party exercising a change of judge as a matter of right is not entitled to another change of judge as a matter of right.
- (4) **Inapplicability to Certain Proceedings.** A party is not entitled to a change of judge as a matter of right in a proceeding under Rule 32 or a remand for resentencing.

**(b) Procedure.**

- (1) **Generally.** A party may exercise a right to change of judge by filing a “Notice of Change of Judge” signed by counsel, if any, and otherwise by the party, and stating the name of the judge to be changed. The notice also must include an avowal that the party is making the request in good faith and not for an improper purpose. An attorney’s avowal is in the attorney’s capacity as an officer of the court.
- (2) **“Improper Purpose.”** “Improper purpose” means:
  - (A) for the purpose of delay;
  - (B) to obtain a severance;
  - (C) to interfere with the judge’s reasonable case management practices;

- (D) to remove a judge for reasons of race, gender or religious affiliation;
- (E) for the purpose of using the rule against a particular judge in a blanket fashion by a prosecuting agency, defender group, or law firm;
- (F) to obtain a more convenient geographical location; or
- (G) to obtain an advantage or avoid a disadvantage in connection with a plea bargain or at sentencing, except as permitted under Rule 17.4(g).

(3) **Further Action by the Judge.** If a notice of change of judge is timely filed, the judge should proceed no further in the action, except to enter any necessary temporary orders before the action can be transferred to the presiding judge or the presiding judge's designee. However, if the named judge is the presiding judge, that judge may continue to perform the functions of the presiding judge.

**(c) Timing.**

(1) **Generally.** Except as provided in (c)(2), a party must file a notice of change of judge within 10 days after any of the following:

- (A) the arraignment, if the case is assigned to a judge and the parties are given actual notice of the assignment at or before the arraignment;
- (B) the superior court clerk's filing of a mandate issued by an appellate court; or
- (C) in all other cases, actual notice to the requesting party of the assignment of the case to a judge.

(2) **Exception.** Despite (c)(1), if a new judge is assigned to a case fewer than 10 days before trial (inclusive of the date of assignment), a notice of change of judge must be filed, with appropriate actual notice to the other party or parties, no later than by 5:00 p.m. on the next business day following actual receipt of a notice of the assignment or by the start of trial, whichever occurs earlier.

**(d) Assignment to a New Judge and Effect on Other Defendants.**

(1) **On Stipulation.** If a notice of change of judge is timely filed, the notice may inform the court that all the parties have agreed on a judge who is available and willing to accept the assignment. Such an agreement may be honored and, if so, it bars further changes of judge as a matter of right, unless the agreed on judge later becomes unavailable. If a judge to whom the action has been assigned by agreement later becomes unavailable because of a change of calendar assignment, death, illness, or other legal incapacity, the parties may assert any

rights under this rule that existed immediately before the assignment of the action to that judge.

- (2) ***Absent Stipulation.*** If a timely notice of judge has been filed and no judge has been agreed on, the presiding judge must immediately reassign the action to another judge.
- (3) ***Effect on Other Defendants.*** If there are multiple defendants, a notice of change of judge filed by one or more defendants does not require a change of judge as to the other defendants, even though the notice of change of judge may result in severance for trial purposes.

- (e) **Waiver.** A party loses the right to a change of judge under this rule if the party participates before that judge in any contested matter in the case, an omnibus hearing, any pretrial hearing, a proceeding under Rule 17, or the commencement of trial.
- (f) **Renewal on Remand.** If an appellate court remands an action for a new trial on one or more offenses charged in the indictment or information, all parties' rights to change of judge or place of trial are renewed if the party or side seeking a change of judge has not previously exercised a change of judge as a matter of right in the action. No event connected with the first trial constitutes a waiver. A party, however, has no right to a change of judge following a remand for resentencing.

### **Notes:**

The third sentence of draft Rule 10.2(a) is derived from the second sentence of current Rule 10.5(a).

“Remands for resentencing” in current Rule 10.2(a) was deleted because the subject is addressed in draft Rule 10.2(f).

The substance of Rule 10.4 (“Waiver and renewal”) has been relocated in Rule 10.2(e) and (f).

### **Rule 10.3. Changing the Place of Trial**

- (a) **Grounds.** A party is entitled to change the place of trial to another county if the party shows that the party cannot have a fair and impartial trial in that place for any reason other than the trial judge's interest or prejudice.
- (b) **Prejudicial Pretrial Publicity.** If the grounds to change the place of trial are based on pretrial publicity, the moving party must prove that the dissemination of the prejudicial material probably will result in the party being deprived of a fair trial.

- (c) **Procedure.** A party seeking to change the place of trial must file a motion seeking that relief. The motion must be filed before trial, and, in superior court, at or before the omnibus hearing.
- (d) **Waiver.** A party loses the right to change the place of trial if the party allows a proceeding to commence or continue without raising a timely objection after learning of the cause for challenge.
- (e) **Renewal on Remand.** If an appellate court remands an action for a new trial on one or more offenses charged in an indictment or information, all parties' rights to change the place of trial are renewed, and no event connected with the first trial constitutes a waiver.

#### **Rule 10.4. Transfer to Another County**

If the court transfers a case to another county, the clerk in the transferor county must transmit to the clerk in the transferee county the court file, any evidence in the clerk's custody, and any appearance bond or security. If the defendant is in custody, the sheriff in the transferor county must transfer the defendant to the sheriff of the transferee county. The action will retain the case number and geographic designation of the matter while it was in the transferor county.

**Notes:** Because current Rule 10.4 was relocated to Rule 10.2, current Rule 10.5 has been renumbered as draft Rule 10.4

**Rule 10.6** ("Duty of judge upon filing of motion or request under Rules 10.1 or 10.2) has been eliminated because the provisions of that rule are relocated in Rule 10.1(b)(2) and Rule 10.2(b)(2).



## **Rule 13. Indictment and Information**

### **Rule 13.1. Definitions and Nature**

- (a) General Definition.** An indictment or information is a plain, concise statement of the facts sufficiently definite to inform the defendant of a charged offense.
- (b) Indictment Defined.** An indictment is a written statement charging the defendant with the commission of a public offense, endorsed as a “true bill,” signed by a grand jury foreperson, and presented to the court by a grand jury.
- (c) Information Defined.** An information is a written statement charging the defendant with the commission of a public offense, signed and presented to the court by the State.
- (d) Charging the Offense.** Each count of an indictment or information must state the official or customary citation of the statute, rule, regulation or other provision of law the defendant allegedly violated.
- (e) Necessarily Included Offenses.** An offense specified in an indictment, information, or complaint is a charge of that offense and all necessarily included offenses.

### **Rule 13.2. Timeliness of an Information and Dismissal**

The State must file an information in superior court within 10 days after a magistrate finds probable cause or the defendant waives a preliminary hearing. If the State fails to file a timely information, a court may dismiss the information if the defendant files a motion seeking that relief under Rule 16.1(b). A dismissal under this rule is without prejudice, but if the prosecution is refiled, the time limits under Rule 8.2 must be computed from the defendant’s initial appearance on the original complaint.

### **Rule 13.3. Joinder**

- (a) Of Offenses.** Two or more offenses may be joined in an indictment, information, or complaint if they are each stated in a separate count, and if they:
  - (1)** are of the same or similar character;
  - (2)** are based on the same conduct or are otherwise connected together in their commission; or
  - (3)** are alleged to have been a part of a common scheme or plan.
- (b) Of Defendants.** Two or more defendants may be joined if each defendant is charged with each alleged offense, or if the alleged offenses are part of an alleged common

conspiracy, scheme, or plan, or are otherwise so closely connected that it would be difficult to separate proof of one from proof of the others.

- (c) **Consolidation.** If offenses or defendants are charged in separate proceedings, the court, on motion or on its own, may wholly or partly consolidate the proceedings in the interests of justice.

#### **Rule 13.4. Severance**

- (a) **Generally.** On motion or on its own, a court may order a severance if two or more offenses or two or more defendants are joined for trial, and severance of any or all of the offenses, or of any or all of the defendants, or both, is necessary to promote a fair determination of any defendant's guilt or innocence of any offense.
- (b) **As of Right.** A defendant is entitled to a severance of offenses joined solely under Rule 13.3(a)(1), unless evidence of the other offense or offenses would be admissible under the Arizona Rules of Evidence if the offenses were tried separately.
- (c) **Timeliness and Waiver.** A defendant must move to sever offenses or defendants at least 20 days before trial or at the omnibus hearing. If the motion is denied, the defendant must renew the motion during trial before or upon the close of evidence. If a ground for severance previously unknown to a defendant arises during trial, the defendant must move for severance before or upon the close of evidence. The right to severance is waived if the defendant fails to timely file and renew a proper motion seeking severance.
- (d) **Jeopardy.** The court may not grant the State's motion to sever offenses after trial begins unless the defendant consents. Offenses severed during trial on the defendant's motion or with the defendant's consent will not bar a later trial of that defendant on the severed offenses.

#### **Rule 13.5. Amending Charges; Defects in the Charging Document**

- (a) **Prior Convictions and Other Non-Capital Sentencing Allegations; Challenges.** Within the time limits of Rule 16.1(b), the State may amend an indictment, information or complaint to add allegations of one or more prior convictions and other non-capital sentencing allegations that must be found by a jury. A defendant may challenge the legal sufficiency of the State's allegations by filing a motion under Rule 16.
- (b) **Altering Charges; Amending to Conform to the Evidence.** A preliminary hearing or grand jury indictment limits the trial to the specific charge or charges stated in the magistrate's order or the grand jury indictment. Unless the defendant consents, a charge may be amended only to correct mistakes of fact or remedy formal or technical

defects. The charging document is deemed amended to conform to the evidence admitted during any court proceeding. Nothing in this rule precludes the defendant from consenting to the addition of a charge as part of a plea agreement.

**(c) Amending to Conform to Capital Sentencing Allegation; Challenges.** The filing of a notice to seek the death penalty that includes aggravating circumstances amends the charging document, and the State is not required to file any further pleading. A defendant may challenge the legal sufficiency of the State's allegation by filing a motion under Rule 16.

**(d) Defects in Charging Document.** A defendant may object to a defect in the charging document only by filing a motion under Rule 16.



## **Rule 14. Arraignment**

### **Rule 14.1. General Provisions**

The purpose of arraignments is to formally advise defendants of their legal rights and of the charges against them, to assure they are provided counsel, and to set a trial date or a later court date. At an arraignment, a magistrate informs a defendant of the matters in Rule 14.4.

### **Rule 14.2. When an Arraignment Is Held**

**(a) Generally.** Except as provided in (b), (c), and (d), these time limits apply:

- (1) for defendants in custody,** an arraignment must be held within 10 days after the filing of an indictment, information, or complaint.
- (2) for defendants not in custody,** an arraignment must be held within 30 days after the filing of an indictment, information, or complaint.

**(b) Exception for Special Situations.** If the court cannot hold the arraignment within the time specified, in Rule 14.2(a) because the defendant has not yet been arrested or summoned, or is in custody elsewhere, the court must hold the arraignment as soon as possible after those time periods.

**(c) Exceptions for Limited Jurisdiction Courts.** An arraignment is not necessary if:

- (1)** the defendant's attorney has entered a plea of not guilty; or
- (2)** the court permits a defendant to enter a not-guilty plea by mail and to receive a court date by mail. Delivery of the notice is presumed if the notice is deposited in the U.S. mail, addressed to the defendant's last known address, and the notice is not returned to the court.

**(d) Exception for Superior Court.** The superior court is not required to conduct an arraignment after the filing of an indictment or information if the presiding judge issues an order that Rule 14 does not apply to superior court cases in that county.

**(e) Combined Proceedings.** If the defendant's first court appearance occurs after the complaint's filing, the court may hold the arraignment in conjunction with the initial appearance before the magistrate, if the initial appearance is held in the trial court. If the initial appearance is not held in the trial court, the court must order the defendant to appear for arraignment in the trial court within 10 days after the initial appearance, and a written notice of the arraignment date must be delivered to the defendant.

### **Rule 14.3. The Defendant's Presence**

- (a) **Personal Presence Required.** A defendant must be arraigned personally before the trial court or by an interactive video appearance under Rule 1.6.
- (b) **Personal Presence Not Required if Waived.** A defendant who personally appeared at an initial appearance may waive his or her presence at an arraignment in superior court by filing a waiver of personal appearance at arraignment at least two days before the arraignment date. The defendant and the defendant's attorney must sign the waiver, which must be notarized. A defendant who waives personal presence must file an affidavit within 20 days after arraignment stating the defendant is aware of all scheduled court appearances in the matter and understands that failure to appear at sentencing may result in losing the right to a direct appeal.

### **Rule 14.4. Proceedings at Arraignment**

At an arraignment, the court must:

- (a) enter the defendant's plea of not guilty, unless the defendant pleads guilty or no contest;
- (b) hear and decide motions concerning the conditions of release under Rule 7, provided at least 5 days' notice is given for a contested release motion if notice is not waived by all parties, unless the arraignment is held in conjunction with the defendant's initial appearance before a magistrate under Rule 4.2;

[*current Rule 14.3(b) version*] 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.

[*proposed amended version*] hear and decide any motion concerning conditions of release under Rule 7, including a contested release motion at an arraignment held in conjunction with the defendant's initial appearance before a magistrate under Rule 4.2 after at least 5 days' notice, unless this notice is waived by all parties.

- (c) set the date for trial or a pretrial conference;
- (d) inform the parties in writing of the dates set for further proceedings and other important deadlines;
- (e) inform 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, and that the defendant may be charged with an offense and a warrant issued for defendant's arrest without further notice;

- (f) inform the defendant that if the defendant's absence prevents sentencing from occurring within 90 days following conviction, the defendant may lose the right to a direct appeal to an appellate court;
- (g) inform the defendant of the right to jury trial, if applicable;
- (h) for misdemeanors, inform the defendant of the right to counsel and the right to court-appointed counsel if eligible, and appoint counsel if necessary; and
- (i) order a summoned defendant to be 10-print fingerprinted within 20 calendar days by the appropriate law enforcement agency at a designated time and place if:
  - (1) the defendant is charged with a felony offense, a violation of A.R.S. § 13-1401, et seq. or A.R.S. § 28-1301, et seq., or a domestic violence offense as defined in A.R.S. § 13-3601; and
  - (2) 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.

**Notes:**

Draft Rule 14.1 derives from a comment preceding current Rule 14.1.



## **Rule 16. Pretrial Motions and Hearings**

### **Rule 16.1. General Provisions**

- (a) **Scope.** Rule 16 governs court procedures between arraignment and trial, unless another rule provides a specific procedure.
- (b) **Motions Before Trial.** Parties must file or make in open court all motions no later than 20 days before trial, unless the court orders otherwise. Lack of jurisdiction may be raised at any time. Unless the court orders otherwise, the opposing party must file any responsive memorandum within 10 days after a written motion is served. [A judge may extend these deadlines for good cause.]
- (c) **Effect of a Failure to File or Make a Timely Motion.** The court may preclude any motion, defense, objection, or request not timely raised by motion under Rule 16.1(b), unless the basis for the motion, defense, objection, or request was not then known, and could not have been known by the exercise of reasonable diligence, and the party raises it promptly upon learning the basis for it. This rule does not preclude the defendant from presenting relevant issues to the jury, such as voluntariness or identification.
- (d) **Finality of Pretrial Determinations.** Except for good cause or as these rules provide otherwise, a court may not reconsider an issue that it previously decided.

### **Rule 16.2. Procedure on Pretrial Motions to Suppress Evidence**

- (a) **Duty of Court to Inform the Defendant.** If an issue arises before trial concerning the constitutionality of using specific evidence against the defendant and the defendant is not represented by counsel, the court must inform the defendant that:
- (1) the defendant may, but is not required to, testify at a pretrial hearing about the circumstances surrounding the acquisition of the evidence;
  - (2) if the defendant testifies at the hearing, the defendant will be subject to cross-examination;
  - (3) by testifying at the hearing, defendant does not waive the right to remain silent at trial; and
  - (4) the defendant's testimony at the hearing will not be disclosed to the jury unless the defendant testifies at trial concerning the same matters.
- (b) **Burden of Proof on Pretrial Motions to Suppress Evidence.**

- (1) **Generally.** Subject to Rule 16.2(b)(2), the State has the burden of proving by a preponderance of the evidence the lawfulness in all respects of the acquisition of all evidence that the prosecutor will use at trial.
- (2) **Defendant's Burden.** If any of the conditions listed below are present, the State's burden of proof under Rule 16.2(b)(1) arises only after the defendant comes forward with [alleges/shows?] specific circumstances that establish a prima facie case supporting the suppression of the evidence at issue:
  - (A) the defendant is entitled under Rule 15 to discover the circumstances surrounding the taking of any evidence by confession, identification, or search and seizure;
  - (B) defense counsel was present at the taking; or
  - (C) the evidence was obtained under a valid search warrant.

### **Rule 16.3. Pretrial Conference**

- (a) **Generally.** On motion or on its own, any superior court or limited jurisdiction court may conduct one or more pretrial conferences. The court may designate the types of cases for which the court will hold a pretrial conference, identify the persons who are required to attend, provide for sanctions if a person fails to attend, and establish other procedures and requirements that are reasonable and necessary to conduct and to carry out a pretrial conference's objectives. In superior court, the court must hold at least one pretrial conference.
- (b) **Objectives.** The objectives of a pretrial conference may include:
  - (1) providing a forum and a process for the fair, orderly, and just disposition of cases without trial;
  - (2) permitting the parties, without prejudice to their rights to trial, to engage in disclosure and to conduct negotiations for dispositions without trial;
  - (3) providing an opportunity for complying with discovery requirements set forth in these rules and constitutional law;
  - (4) eliminating the need for setting trial dates for cases that may be resolved without a trial; and
  - (5) enabling the court to set a trial date.
- (c) **Duty to Confer; Memoranda.** The court may require the parties to confer prior to the conference or to file memoranda before the conference if it concludes that either

would be helpful to the court. The court may set the requirements for what the memoranda should contain.

- (d) Scope of Proceeding.** The court has broad authority at a pretrial conference. At the conference the court may:
- (1)** hear motions made at or filed before the conference. The court may review with counsel the grounds offered in support of a motion. The court may rule on motions when it concludes it can render a reasoned decision without setting an evidentiary hearing, reviewing written memoranda, or taking the matter under advisement.
  - (2)** set further hearings as needed for the taking of evidence or argument on motions.
  - (3)** obtain stipulations to relevant facts; and
  - (4)** discuss and determine any other matters that will promote a fair and expeditious trial, including imposing time limits on trial proceedings, using juror notebooks, giving brief pre-voir dire opening statements and preliminary instructions, and the managing documents and exhibits effectively during trial; and
- (e) Stipulated Evidence.** At a pretrial conference or any time before the start of an evidentiary hearing, the parties may submit any issue to the court for decision based on stipulated evidence.
- (f) Record of Proceedings.** Proceedings at a pretrial conference must be on the record.
- (g) Preclusion of Issues Not Raised at Conference.** Any issue not raised by a party at the pretrial conference may not be raised later, unless the requesting party shows good cause and the other parties have an adequate opportunity to respond.

#### **Rule 16.4. Dismissal of Prosecution**

- (a) On the State's Motion.** On the State's motion and for good cause, the court at any time may order a prosecution's dismissal if it finds that the dismissal's purpose is not to avoid Rule 8.
- (b) On a Defendant's Motion.** On a defendant's motion, the court must order a prosecution's dismissal if it finds that the indictment, information, or complaint is insufficient as a matter of law. Alternatively, the court may order amendment of the indictment under Rule 13.5.
- (c) Record.** If the court grants a motion to dismiss a prosecution, it must state on the record its reasons for ordering dismissal.

- (d) **Effect of Dismissal.** Dismissal of a prosecution is without prejudice to commencing another prosecution, unless the court order finds that the interests of justice require that the dismissal to be with prejudice.
- (e) **Release of Defendant; Exoneration of Bond.** If a court dismisses a prosecution, it must order the release of the defendant from custody, unless he or she also is being held on another charge. It also must exonerate any appearance bond.