

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

## Meeting Agenda

**Friday, September 16, 2016**

9:30 AM to 4:30 PM

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

Conference call-in number: (602) 452-3288 Access code: 9735

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 the August 26, 2016 meeting minutes</b>	<i>Judge Welty</i>
Item no. 3 Page 13	<b>Summary of the Court's action on pertinent petitions at its August 2016 rules agenda</b>	<i>Mr. Rogers</i>
Item no. 4  Page 45  Page 73  Pages 35, 75  Pages 61, 71	<b>Discussion of workgroup drafts</b> <ul style="list-style-type: none"><li>- <b>Workgroup 1: Rule 15 (further review)</b></li><li>- <b>Workgroup 2: Rule 36</b></li><li>- <b>Workgroup 3: Rules 12 and 41</b></li><li>- <b>Workgroup 4: Rule 18 and 25</b></li></ul>	<i>Judge Duncan, Mr. Euchner</i>  <i>Mr. Rogers</i>  <i>Judge Jeffery</i>  <i>Judge Tang, Mr. Nash</i>
Item no. 4	<b>Roadmap and additional rule assignments</b> <ul style="list-style-type: none"><li>- <b>Future Task Force meeting dates:</b>  <b>October 7</b> <b>October 21</b> <b>November 18</b> <b>December 9</b></li></ul>	<i>Judge Welty</i>
Item no. 5	<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: August 26, 2016

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

**Absent:** Hon. Richard Fields, Jerry Landau, Hon. Paul Tang

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

**Guests:** John Belatti

#### 1. Call to order, introductory comments, approval of the meeting minutes.

The Chair called the meeting to order at 9:41 a.m. He advised that there have been 8 workgroup meetings since the July 29 Task Force meeting, and 40 workgroup meetings to-date. He expressed appreciation for the continuing work of the members and staff.

Discussion of rules on today’s agenda will proceed in the following order: 23, 33, 16, 24, 22, and further review of 9.2 and 8(c). The Chair then asked members to review the draft July 29, 2016 meeting minutes.

**Motion:** To approve the draft minutes. Seconded, and the motion passed unanimously. CRTF-006

2. Workgroup 3: Rule 23 (“verdict”). Mr. Eckstein presented Rule 23. There is a new provision, analogous to an amendment to civil Rule 49 proposed by the Civil Rules Task Force, which permits a foreperson to affix initials and a juror number to a verdict form in lieu of a signature. The members concurred with this new provision. A change to Rule 23.1(b) requires jurors to assemble at “a specified time and place” rather than in the jury box.

Sections (a) through (d) of Rule 23.2 are substantively unchanged. However, unlike current section (e), which applies to aggravation verdicts in only capital cases, a revised section (e) would cover aggravation verdicts in both capital and non-capital cases. A judge member noted that if an element is inherent in an offense, the jury is not required to reach a separate aggravation verdict, e.g., if an offense is inherently dangerous, or if a prior conviction is an element of an offense. This is an issue the Task Force may discuss further when it considers Rule 19. However, to account for these circumstances and to clarify the rule, members changed the phrasing in section (e) to state that the jury must

render a verdict determining whether “...each of the alleged aggravation circumstances submitted to the jury was proven.” In Rule 23.2(f) and elsewhere, the workgroup changed the term “penalty hearing” to “penalty phase,” which is the statutory terminology, and the members agreed with this change.

The workgroup separated the two sentences of current Rule 23.3 into two sections. Although the term “lesser included” is commonly used, the workgroup preserved the use of “necessarily included,” a term that is in the current rule, and the members agreed. The workgroup also reorganized Rule 23.4 as two sections rather than one, although the rule is substantially the same. A member suggested changing the phrase “retire for further deliberations” to “further deliberate,” and the members agreed. The members also agreed to delete all of the comments to current Rule 23.

**3. Workgroup 3: Rule 33 (“criminal contempt”).** Mr. Eckstein began his presentation of Rule 33 by noting its historical context, including Justice Hugo Black’s remark about “the unrestrained power of judges” in the area of contempt. Mr. Eckstein then advised that Rule 33.1 is currently a single sentence, but the workgroup reorganized it into subparts, and used the active rather than the passive voice. The title of the rule is “criminal contempt,” and some members had concern with the circularity of describing contempt as “willfully contumacious conduct...” One member suggested “unreasonable” conduct. After further discussion, the members agreed to rephrase this as “any other willful conduct...” The members also discussed the workgroup’s recommendation to retain the comment to Rule 33.1, which includes references to statutes as well as to a leading Arizona case, *Ong Hing v Thurston*. The comment also distinguishes between civil and criminal contempt, and direct and indirect contempt. The U.S. Supreme Court citations, which are decades old, might be updated, but members agreed that the comment is helpful to judges and practitioners and should be retained.

Mr. Eckstein noted a change to the title of Rule 33.2 (formerly “summary procedure,” now “summary disposition of contempt.”) Rule 33.2 is substantively unchanged, but the workgroup changed the word “order” in section (a) to “citation,” and in section (b) changed “apprised” to “inform.” Members discussed the distinctions between a citation and an order. One member construed a citation as a notice of the charge, but because this rule provides a summary procedure for acts that occurred in the court’s presence, the court has already made a finding of the charge. The members thereafter agreed use the phrasing “written order reciting the grounds” in section (a), and “contempt finding” in section (b). The word “citation” remains in the title of section (a). The workgroup recommended, and the members agreed with, removal of the comment to Rule 33.2. The discussion continued with Rule 33.3. The restyled rule has a modified title, “disposition of contempt by notice and hearing.” The members agreed to retain the comment to Rule 33.3. This comment distinguishes between a Title 12 contempt, where

the act must independently be a crime, and contempt under the rule, which is “contumacious” but not necessarily a crime.

Because the current rule is unclear about when there is a right to a jury trial, the workgroup added a new first sentence to Rule 33.4, which says, “the person has a right to jury trial under this rule.” However, while the statutes treat contempt as a class 2 misdemeanor, contempt under the rule has no classification. The members acknowledged that if the contemptuous conduct rises to the level of a criminal act, the person could be charged with that crime and punished accordingly. However, members were unsure about the maximum punishment for contempt under Rule 33.4 for a person found guilty by a jury without a concurrent conviction for a criminal violation. A.R.S. § 12-864 suggests that an unclassified contempt might be punished as provided by the common law. Members believed that the proposed new first sentence contradicts other parts of the rule, and they deleted the sentence. Even after that, members had concerns with the rule’s potential constitutional deficiencies, and classification and sentencing issues. The members initially agreed not to make any substantive changes to Rule 33.4, but thereafter Mr. Eckstein suggested that the workgroup could reconsider the issues raised by the Task Force. The issues include identifying circumstances where the person has no right to a jury trial, and an upper limit of punishment for contempt under this rule. If the workgroup can fashion a solution, the Task Force can include it in the petition. However, they also agreed that a separate rule petition might be the most appropriate manner of requesting those changes, rather than including the changes as a component of the Task Force’s restyling package.

**4. Workgroup 4: Rule 16 (“pretrial motions and hearings”).** Ms. Kalman advised that the workgroup considered comments from Mr. Landau and Mr. Vick when revising this rule. Rule 16.1(a) is substantially the same. Rule 16.1(b) has improved readability. Some members expressed concern that Rule 16.1(b) permits oral as well as written motions. Oral motions may be appropriate if they are brief and not controversial. However, oral motions might also be problematic for the court to assure victims’ rights, and members agreed that substantive motions, especially in a high volume court, should be in writing. To avoid the issue about whether a motion is or is not substantive, the members agreed to modify the draft of Rule 16.1(b) by deleting words that allow motions to be made “orally in court or filed in writing.” The court therefore has discretion to permit simple oral motions and to require that substantive motions be in writing. The last sentence of the draft rule is, “the court may modify deadlines for good cause.” This raised an issue of whether the court could modify motion deadlines generally, or only in a specific case for good cause. The members accordingly agreed to delete the words “for good cause.” The members also agreed to delete verbiage in draft Rule 16.1(c).

Draft Rule 16.1(d) would permit the court to rule on motions “when it concludes it can render a reasoned decision” without a hearing or memoranda. The members agreed that the court has this authority without a rule provision, and they agreed to delete section (d). Draft Rule 16.1(e) would preclude horizontal appeals, that is, a second decision on a previously decided motion after the court reassigns a case to a different judge. After discussion of the good cause requirement in this provision, the members agreed to keep the substance of the draft, but with the words in a different sequence. In doing so, the members’ intent was to permit the filing of motions to reconsider, which might be necessary to preserve the record, but the court need not re-determine the issue raised by the motion. Draft Rule 16.1(f) states that Rule 16 does not preclude a defendant from presenting relevant issues and properly disclosure defenses to a jury, such as voluntariness or identification. Ms. Kalman explained that section (f) is new and derives from a comment to the current rule. The members agreed that the provision was a correct statement, but one member thought the provision did not belong in the rules, or if it did, it did not belong in Rule 16. After further discussion, the members decided to delete section (f) but maintain its substance as a comment to Rule 16. Another member suggested that the comment also mention “reliability of experts,” and Ms. Kalman agreed. Except for this comment, the members agreed to delete all other comments to Rule 16.1.

On Rule 16.2(a), Mr. Euchner suggested that the rule should distinguish a motion to suppress, which is the subject of this rule, from a motion to preclude the use of evidence, for example, on *Daubert* grounds. The members agreed, and they added a new section (a) to state, “For purposes of this rule, ‘suppress’ refers to the exclusion of evidence that was unlawfully obtained due to a constitutional violation.” However, this new section would require the renumbering of the remaining sections of Rule 16.2. To preserve the designation of Rule 16.2(b), which practitioners commonly cite, the members renumbered draft Rule 16.2(a) (“duty of the court to inform the defendant”) as draft Rule 16.2(c). The members also discussed “defendant’s burden” under draft Rule 16.2(b), and whether that burden was to “come forward,” “present,” or “allege” specific circumstances and establish a prima facie case. The members agreed that “allege” was the most suitable term. They also agreed in (b)(2)(A) that “search and seizure” should be changed to “search or seizure” because one may not necessarily require the other.

Draft Rule 16 now dispenses with omnibus hearings under current Rule 16.3, and other descriptions and requirements for pretrial conferences under current Rules 16.4 and 16.5. Draft Rule 16 instead incorporates the most effective features of those current rules into a new draft Rule 16.3 entitled “pretrial conference.” Members discussed the significance of the first and last sentences of Rule 16.3(a) (“a court must conduct one or more pretrial conferences” and “in the superior court, the court must conduct at least one pretrial conference”) and decided to delete the first sentence and to retain the last

sentence with a minor modification. The members also discussed the “objectives” of a pretrial conference that are specified in draft Rule 16.3(b), some of which derive from the current rule on omnibus hearings. One member thought that in practice, pretrial conferences had little value beyond setting a trial date. Another noted the value of pretrial conferences for resolving discovery issues. A judge member observed that judges have a responsibility to engage in active case management, and this rule provides tools for fulfilling that purpose. Another judge noted that pretrial conferences provide meaningful opportunities for the court to dialogue with self-represented litigants. The members made one change to the “objectives” -- “complying with discovery requirements” is now “discussing compliance with discovery requirements.”

The members removed unneeded text from draft Rule 16.3(c) so it now simply states, “the court may require the parties to confer and submit memoranda before the conference.” A judge member observed that it might not be intuitive that judges can require parties to confer outside of court before the conference; this rule provides that authority. The members agreed that draft Rule 16.3(d) (“scope of proceeding”) may overlap with draft Rule 16.3(b) (“objectives”), but they made no changes to (d), (e), or (f).

The members then discussed the provisions of draft Rule 16.4 (“dismissal of prosecution.”) Section (a) provides that the court “may” order dismissal on the State’s motion and for good cause. Members disagreed on whether “good cause” should be a requirement, but case law appears to support the inclusion of this phrase. However, if there is not good cause to dismiss, or if the purpose of the State’s motion is to avoid Rule 8 time limits, a judge can deny the motion and require the matter to proceed, which could lead to a dismissal after jeopardy attaches. The members agreed that section (a) should provide that a dismissal on the State’s motion should be “without prejudice,” and the members added those two words to the rule. Rule 16.4(b) concerns dismissal “on a defendant’s motion.” The members agreed that the court must order dismissal if the charging document is “insufficient as a matter of law,” but the State might cure an insufficiency concerning a factual matter under Rule 13.5. However, the members also agreed to delete the second sentence of section (b) (“alternatively, the court may order amendment of the indictment under Rule 13.5.”) The members had no other suggestions concerning draft Rules 16.4 (c), (d), or (e), and they agreed to delete comments to Rule 16 except for the one to Rule 16.2 noted above.

**5. Workgroup 1: Rule 24 (“post-trial motions”).** Professor Kreag led the discussion of this rule. He noted use of the term “phase of trial” in Rule 24.1(a) and elsewhere in Rule 24. The restyled version of Rule 24.1(a) permits the court to order a new “phase of trial.” The workgroup added the words “on the court’s own initiative” to mirror language of the current rule, although the phrase “with the defendant’s consent,” which is already in the draft, implied that the court could make the motion.

The workgroup included a new sentence in Rule 24.1(b), which concerns timeliness: “This deadline [10 days after return of the verdict that is being challenged] is jurisdictional and the court may not extend it.” The sentence derived from a comment to the current rule. In connection with this new sentence, the members discussed the Supreme Court’s 2013 opinion in *State v. Fitzgerald*, which interpreted current Rule 24.1, and a requirement that a new trial motion must be filed within 10 days after the verdict regardless of the phase in which the jury returned the verdict. The members further discussed whether it might be more desirable for the rule to permit the filing of a new trial motion within 10 days after a verdict in the final phase of trial. For example, it might not be possible to investigate juror misconduct, which is grounds for the motion, until after the court discharges a jury at the conclusion of the final phase. One member noted that the Court adopted the current version of Rule 24.1 when multi-phase trials were uncommon, and the Task Force has an opportunity to revise the rule to reflect current processes. The members anticipate that if the Court adopts a revised rule, counsel may file a motion for new trial earlier than the conclusion of the final phase, because the motion may avoid subsequent phases of trial, and that attorneys still have a duty to timely raise issues to protect the record. However, a revised rule also would allow the filing of new trial motions after the completion of a multi-phase trial. The members agreed to refer this issue back to the workgroup for its further consideration.

In Rule 24.1(c) (“grounds”), the members discussed whether the word “prejudicial” needed to precede the word “misconduct.” Although one member suggested that this adjective should appear before the word “misconduct” in several places in Rule 24.1(c), other members thought this would be an incorrect statement of the law. For example, deciding a verdict by lot is misconduct and inherently improper. The members agreed that a comment should explain the significance of “prejudice,” and the Chair referred to the workgroup the task of drafting a comment to this rule. The members concurred with the workgroup’s recommendation in Rule 24.1(d) to change “court officer” to “court official,” and to delete the comment to current Rule 24.1(d).

Rule 24.2 is “motion to vacate judgment.” With regard to section (a) (“grounds”), and after discussing each of three specified grounds, the members agreed that the court “must” vacate a judgment if it finds any of those grounds. The current rule uses “may.” The most challenging analysis concerned the third ground, the conviction was obtained in violation of the constitution. However, members concluded “must” was appropriate because the ground is not evidence that was obtained in violation of the constitution, which could be “harmless,” but rather the conviction itself was obtained in violation of the constitution. The members agreed to delete Rule 24.2(b), entitled “previous rulings.” The members will need to revisit Rule 24.2(c), “time for filing,” once Workgroup 2 agrees on terminology regarding “perfection” of an appeal. The members maintained the distinction between non-capital and capital cases in Rule 24.2(d). They had no comments

concerning Rule 24.2(e). The workgroup recommended keeping some comments to Rule 24.2 that contain helpful practice pointers, and the members agreed.

Rule 24.3 (“modification of sentence”), like Rule 24.2(c), uses the concept of “perfection” of an appeal, and the members will similarly need to revisit Rule 24.3 on this point. The members agreed to delete the comment to Rule 24.3. In Rule 24.4 (currently “clerical mistakes” but restyled as “clerical error”), the members agreed to add back in a provision that the workgroup omitted. This is now a new last sentence to Rule 24.4 (“the court must notify the parties of any correction.”) Usually the court will provide notice by minute entry, but if a limited jurisdiction court does not use minute entries, it will need to use another method.

6. **Workgroup 3: Rule 22 (“deliberations”).** Judge Jeffery, who presented this rule on behalf of the workgroup, noted that the workgroup changed the title of Rule 22.1(a), from “retirement of jurors” to “instructions and retirement.” Some members disliked the use of the term “retirement,” but that term is used in the current rule as well as in the vernacular (a jury “retires” to consider its verdict). The workgroup also reorganized draft Rule 22.1 into three subparts. To be consistent with other revised rules, the jury retires in the charge of a “court official” rather than a “court officer.” In draft Rule 22.1(b), the court must “admonish the jury” rather than “giving the admonition” under the current rule. Current Rule 22.2(a) does not allow the verdict forms to indicate whether the charged offense is a felony or misdemeanor “unless the statute upon which the charge is based directs that the jury make this determination.” Draft Rule 22.2(b) also used this phrase. However, the members could not identify any statutes that required that determination, and they accordingly deleted the phrase from the draft rule.

Current Rule 22.3 allows the court to “read” testimony to the jury if requested. The members added that the court may order testimony “replayed.” The members made no changes to Rules 22.4 or 22.5. The members discussed retaining the impasse instruction, which is contained in the comment to Rule 22.4. However, the instruction recently was added to the RAJI, and the members agreed that rather than retaining the instruction in the comment, the comment can refer users to the RAJI. The members agreed to retain the portion of the comment to Rule 22.4 that precedes the instruction, with a minor modification (“...when it would be appropriate and might be helpful” is now “even though it might be appropriate and helpful.” The members agreed to delete the other comments to current Rule 22. They had no other changes to this rule.

7. **Workgroup 3: Rule 9.2 (“defendant’s forfeiture of the right to be present due to disruptive conduct”).** At a previous meeting, the Task Force referred this rule back to the workgroup for further review. The principle issue was whether, after the court has excluded a defendant from the courtroom, it is mandatory for the judge to allow the

defendant to return upon the defendant's personal assurance of future good behavior. The workgroup concluded that it was mandatory during the first occurrence of disruptive behavior, but discretionary thereafter, and it revised Rule 9.2(c) to incorporate this concept. The revisions from the workgroup also require the court when expelling a defendant to inform the defendant that he or she can return upon a promise to the court of future orderly conduct; that the assurance referred to above must come from the defendant and from not defense counsel (i.e., a "personal assurance"); and that it is a best practice, codified in Rule 9.2(c), that the court make periodic inquiries about whether the defendant wishes to return. The members agreed with these revisions, and found that the use of the passive voice in the draft rule was appropriate. Draft Rule 9.2(d) ("contempt") derived from a comment to the current rule, and after further discussion, and in light of the previous discussion concerning Rule 33 contempt, the members agreed to delete draft Rule 9.2(d) as well as the comment.

8. **Workgroup 3: Rule 8.2(c) ("time limits/new trial")**. The Chair requested the workgroup to reconsider this section. Current Rule 32.8(d) authorizes the trial court following a Rule 32 proceeding, to "enter an appropriate order with respect to...any further proceedings, including a new trial," but it does not specify a "speedy trial" limit. Rule 8.2(c) specifies a time limit for a new trial following an appellate court remand. The workgroup recommended a corresponding provision in Rule 8.2(c) when the court orders a new trial after a Rule 32 proceeding. This will enable the trial court to establish a new "last day." The members agreed that 90 days was the appropriate limit. However, some members distinguished this scenario from an appellate court mandate, and suggested that the 90-day limit may cause practical difficulties in some situations involving new trials under Rule 32. Others noted that the State's petition for review of a new trial order operates to stay the order under Rule 32.9(d), which mitigates the 90-day limit. The members agreed to include a new trial order from a federal court in this new provision. The new Rule 8.2(c) provision provides, "a new trial ordered by a state court under Rule 32 or a federal court under collateral review must begin within 90 days after entry of the court's order."

9. **Roadmap; call to the public; adjourn**. The Chair advised that the members have now reached consensus on 20 of the 41 criminal rules. He requested that members advise staff next week of their availability for additional meetings on Friday, October 7, and Friday, November 18. He affirmed the existing meeting dates of September 16, which is the next meeting, October 21, and December 9.

The Chair then assigned additional rules to the workgroups as follows:

Workgroup 1:	Rules 37, 39, and 40
Workgroup 3:	Rules 29 and 41
Workgroup 4:	Rule 28

This completes the assignment of all 41 rules to a workgroup.

There was no response to a call to the public. The meeting adjourned at 4:33 p.m.



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IN THE SUPREME COURT  
STATE OF ARIZONA

In the Matter of  
PETITION TO AMEND RULES 6 )  
7, AND 41 OF THE ARIZONA ) Supreme Court No. R-16\_\_\_\_  
RULES OF CRIMINAL ) (expedited adoption requested)  
PROCEDURE )  
\_\_\_\_\_ )

Pursuant to Rule 28 of the Arizona Supreme Court, David K. Byers, Administrative Director, Administrative Office of the Courts, and Chair of the Supreme Court Task Force on Fair Justice for All: Court-Ordered Fines, Penalties, Fees, and Pretrial Release Policies (“the Task Force”) respectfully petitions this Court to amend Rules 6.1, 7.1, 7.2, 7.3, 7.4, 7.6, and 41, Forms 6 and 7, and to add Rule 7.7 to the Rules of Criminal Procedure, on an expedited basis. These changes are proposed to implement several of the Task Force’s [recommendations](#) dated August 12, 2016.

**I. Background and Purpose of the Proposed Rule Amendments.** The proposed rule changes follow through on the Task Force for Fair Justice for All purpose of “recommending best practices for making release decisions that protect

the public, but do not keep people in jail solely for the inability to pay bail” and the recommendations contained in the Task Force [report](#). National and local statistics reviewed by the Task Force indicate a significant number of people incarcerated pretrial are there *solely* because they cannot afford to pay a bond. The data also show that for some of these people, time spent in jail appears to foster further criminal behavior.<sup>1</sup> The proposed amendments will also facilitate a fundamental change in the professional culture of the Arizona criminal justice system – moving the system away from charge-based release decisions that rely upon money bail in presumptive amounts and toward conditional release based on an individualized assessment of a defendant’s risk profile.

The amendments to Rules 6.1(b) and 7.4(e) require appointment of counsel to assist defendants who find themselves in need of an advocate for modification of release conditions set at the initial appearance when a defendant who is indigent is unrepresented. Although current rules direct appointment of counsel for indigent defendants at the Initial Appearance, the Task Force heard that some judges delay the appointment pending the filing of charges, or because a conviction of the charge will not necessarily call for incarceration and therefore does not require appointment of counsel. Consequently, an unrepresented indigent defendant may unnecessarily

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<sup>1</sup> *Justice for All: Report and Recommendation of the Task Force on Fair Justice for All* (Arizona Supreme Court, August 16, 2016) at p. 27, available at: <http://www.azcourts.gov/Portals/0/FairJusticeArizonaReport2016.pdf>

languish in jail because the relevant information that would justify release on conditions the defendant can satisfy has not been presented to the court.

The amendments to Rules 7.1, 7.2, 7.3, and 7.6 are intended to promote the use of unsecured and cash bonds over secured bonds, in keeping with the statistical reports showing these types of bonds in lower amounts are equally effective as surety bonds in higher amounts in incentivizing people to meet their appearance obligations. A definition for the term “deposit bond” has been added to Rule 7.1, and the term has been added to the list of possible monetary conditions in 7.3(b); this type of bond allows a defendant to pay a percentage rather than the full amount of a cash bond. The word “appearance” has been deleted from the term “appearance bond” in all rules and forms because it is misleading; release on bond is ordered not only to secure a defendant’s appearance in court, but also to ensure the safety of the community.

The changes to Rule 7.3(b) are designed to clarify the hierarchy of release conditions; to emphasize the judge’s obligation to impose the least onerous conditions needed to ensure the defendant’s appearance and the safety of the community; and to require imposition of non-monetary conditions rather than a secured appearance bond, unless such conditions are reasonable and necessary. The amendments also direct the judge to make an individualized determination of the defendant’s risk of non-appearance, risk to the safety of the community, and finances

and prohibits use of a bond schedule that produces an unnecessarily high bond amount.

Corresponding changes to Forms 6 and 7 are also proposed. These forms have been substantially re-formatted, making it impractical to show the proposed revisions. Accordingly, the Appendix includes the current versions of the forms and the proposed new versions for purposes of comparison. Form 6 – Release Order - is used by courts when imposing conditions of release at initial appearance, or arraignment or after a subsequent hearing held pursuant to Rule 7. Form 7 – Appearance Bond - is used when a defendant is ordered to post a bond to secure release. The Task Force is recommending modification of Form 6 and Form 7 to clearly list the various release conditions and bond types available to the court. Additionally, these changes will clarify to the defendant the requirements of the release order and the type of bond imposed. The table contained in Form 6 was modified to include the complete list of release types and added the additional release type of “Pretrial supervision release” (PSR) and the bond type of “Deposit Bond” (DB). Condition 19 was added to read “Provide a current address and phone number to Pretrial Services immediately and notify of any changes.” The warning of consequences of violating the release order was reformatted in bold text. Form 7 was revised to list the bond types in order of least restrictive to most restrictive. The warning of consequences of violating the appearance bond was reformatted in bold

text.

The addition of Rule 7.7 addresses a specific situation that arises when a felony probationer is prevented from receiving some type of court-ordered treatment because the probationer is in pretrial custody on a misdemeanor charge before a justice or municipal court and unable to make bail. The new rule will clarify the sentencing superior court's authority to modify conditions of release in the misdemeanor case to allow the probationer to participate in the superior court-ordered treatment program.

**II. Preliminary Comments.** While the Task Force included a very comprehensive cross-section of the criminal justice community and the proposed rule amendments were either specifically recommended or promote one or more Task Force recommendations, the specific language of this petition has not been circulated to the Task Force or to other criminal justice system stakeholders for comment before filing. Therefore, an opportunity for comment as part of the Court's expedited review is recommended.

**III. Request for Expedited Consideration.** Pursuant to Rule 28(G) of the Rules of the Supreme Court, petitioner requests expedited consideration of this Petition, including immediate publication of this Petition for comments through October 21, 2016, with petitioner's Reply to be filed by November 10. This will allow the Task Force to consider comments received at its next meeting, scheduled

for November 3, 2016, and to file a timely response to any comments requiring a response, before the Court's December rules agenda.

Wherefore, petitioner respectfully requests that the Court amend the Rules of Criminal Procedure as proposed in the Appendix included herewith.

RESPECTFULLY SUBMITTED this \_\_\_\_ day of \_\_\_\_, 2016.

By /s/ \_\_\_\_\_  
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## APPENDIX

(language to be removed is shown in ~~strike through~~, new language is underlined)

### **Rule 6.1. Rights to counsel; waiver of rights to counsel**

**a. [no changes]**

**b. *Right to Appointed Counsel.*** An indigent defendant ~~shall be~~ is entitled to have an attorney appointed: ~~to represent him or her in~~

(1) If detained pretrial after criminal charges are filed;

(2) In any criminal proceeding ~~which~~ that may result in loss of liberty; and

(3) In any other criminal proceeding in which the court concludes that the interests of justice so require.

**c. through e. [no changes]**

### **Rule 7.1. Definitions and applicability of rule**

**a. *Own recognizance.*** "Own recognizance" means release ~~without any condition of an undertaking relating to, or deposit of, security~~ of a person without imposing any bond as a condition of release.

**b. *Unsecured Appearance bond.*** An "unsecured appearance bond" is an undertaking, on a form approved by the Supreme Court, to pay to the clerk of the court a specified sum of money upon failure of a person released to comply with ~~its~~ the conditions of the bond.

**c. *Cash bond.*** A "cash bond" is a secured bond consisting of actual cash deposited by the person released or someone on behalf of that person other than a professional bondsman.

**d. *Deposit bond.*** A "deposit bond" is a partially-secured bond in which the person, or someone on behalf of that person other than a professional bondsman, deposits a percentage of the full bond amount in cash.

**ce. *Secured Appearance bond.*** A "~~secured appearance bond~~" is ~~an appearance a~~ a bond secured by deposit with the clerk of security equal to the full amount thereof.

**df. *Security.*** "Security" is cash, a surety's undertaking, or any property of value, deposited with the clerk to secure ~~an appearance a~~ a bond. The value of such property shall be determined by the clerk, or at the clerk's or a party's request, by the court.

**eg. *Surety.*** A "surety" is one, other than the person released, who executes ~~an~~

~~appearance~~ a bond and binds ~~himself or herself~~ the surety to pay its amount if the person released fails to comply with its conditions. A surety shall file with ~~an appearance~~ a bond an affidavit that he or she is not an attorney or person authorized to take bail, and that ~~he or she~~ the surety owns property in this state (or is resident of this state owning property) worth the amount of the ~~appearance~~ bond, exclusive of property exempt from execution and above and over all liabilities, including the amount of all outstanding ~~appearance~~ bonds entered into by ~~him or her~~ the surety, specifying such property, the exemptions and liabilities thereon, and the number and amount of such ~~appearance~~ bonds.

**fh. Professional Bondsman.** Any person who is surety simultaneously on more than four ~~appearance~~ bonds is a "professional bondsman." No person may be a professional bondsman unless the person annually certifies in writing under oath to the clerk of the Superior Court that ~~he or she~~ the person

(1) Is a resident of this state;

(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 pursuant to ~~an appearance~~ a bond on which the person is a surety;

(4) Has not been convicted of a felony, except as otherwise provided by A.R.S. § 20-340.03;

(5) Has no judgments arising out of surety undertakings outstanding against him or her;

(6) Has not, within a period of two years, violated any provisions of these rules or any court order.

Capacity to act as a professional bondsman may be revoked or withheld by the clerk, or by the court, for violation of any provision of this rule.

**gj. Applicability.** This rule shall not apply to minor traffic offenses.

#### COMMENT [AMENDED 2007]

Rule 7.1 contains the definitions of the terms used in the rule and the requirements for "sureties" and "professional bondsmen" currently specified in the rules of criminal procedure.

**Rule 7.1(a).** See Form 6 for an order of release.

**Rule 7.1(b).** The rule substitutes for "bail bond" and "bail" the term "~~appearance~~ unsecured bond" which emphasizes the role of unsecured bonds. See Ariz.Rev.Stat. Ann. § 13-1577(E) (Supp.1972) [now § 13-3967] (noting propriety of conditions other than money bail). See Form 7.

**Rule 7.1(ce).** "Secured ~~appearance~~ bond" is used instead of "bail". See Form 7 for a secured

appearance bond.

**Rule 7.1(df).** “Security” is defined broadly enough to encompass anything of value.

**Rule 7.1(eg).** This definition includes the requirements of the 1956 Ariz.Rules of Criminal Procedure, as amended, Rules 46, 47, 48(A) and 49. Wherever standards are unclear under present rules, this definition chooses their most onerous interpretation. See Form 7 and Attachment A thereto for the form of the surety's undertaking and affidavit.

**Rule 7.1(fh).** The definition of “professional bondsman” is more limited than the 1956 Ariz.Rules of Criminal Procedure, as amended, Rules 50 and 51. The clerk is required to review a professional bondsman's qualifications annually.

## Rule 7.2. Right to release

**a. Before Conviction; Persons Charged With an Offense Bailable as a Matter of Right.** All persons charged with a crime but not yet convicted are presumed to be innocent. Except as otherwise provided in these rules, Any person charged with an offense bailable as a matter of right shall must be released pending or during trial on the person's own recognizance with only the conditions of release required by Rule 7.3(a), unless the court determines, in it is discretion, that such a release will not reasonably assure the person's appearance as required. If such a determination is made, the court may impose the least onerous condition or conditions contained in rule 7.3(b) ~~which will reasonably assure the person's appearance~~ that are reasonable and necessary to protect other persons or the community from an actual risk posed by the person or to secure the appearance of the person in court.

**b. through d. [no changes]**

### COMMENT TO 2014 AMENDMENT TO RULE 7.2(B)

Rule 7(b) was amended in 2014 to comply with *Lopez-Valenzuela v. Arpaio*, 770 F.3d 772 (9th Cir. 2014), cert. denied, 135 S.Ct. 2046 (2015), which held unconstitutional A.R.S. Const. Art. 2, § 22(A)(4) and A.R.S. § 13-3961(A)(5) mandating that bail be denied to undocumented immigrants charged with a serious crime.

### COMMENT

**Rule 7.2(a).** This section establishes a presumption for release on recognizance in most cases. Offenses “bailable as a matter of right” are defined in Ariz.Const. Art. 2, § 22 and Ariz.Rev.Stat. Ann. § 13-1571 (1956) [now § 13-3961] as all cases except “capital offenses when the proof is evident or the presumption great” and felonies committed while on bail (using the same “proof is evident or the presumption great” standard).

The presumption of an “own recognizance release” follows closely the ABA, Standards Relating to Pretrial Release, § 5.1 (Approved Draft, 1968), and the Federal Bail Reform Act, 18 U.S.C.A. § 3146 (1966). This section of the rule differs only in emphasis from Ariz.Rev.Stat. Ann. § 13-1577(B).

**Rule 7.2(b).** See Rule 17, Rules of the Supreme Court, 17 Ariz.Rev.Stat. Ann.

### COMMITTEE COMMENT TO 1993 AMENDMENT

The 1993 amendment renumbered as Rule 7.2(b)(1) former Rule 7.2(b), which provides for the custody of a person convicted of an offense for which that person in all probability will suffer a sentence of incarceration, and made it applicable only in superior court. It added Rule 7.2(b)(2), applicable in

limited jurisdiction courts, which represents a significant diversion from the parallel provision of Rule 7.2(b)(1). Rule 7.2(b)(2) provides that the person *shall* remain released on bail or own recognizance if these were conditions that existed prior to the person's conviction. A bond may still be required under Rule 6. Superior Court Rules of Appellate Procedure, in order to stay the execution of the remaining portion of the person's sentence.

### **Rule 7.3. Conditions of release**

#### **a. Mandatory Conditions. [no changes]**

~~**b. Additional Conditions.** An order of release may include the first one or more of the following conditions reasonably necessary to secure a person's appearance:~~

- ~~(1) Execution of an unsecured appearance bond in an amount specified by the court;~~
- ~~(2) Placing the person in the custody of a designated person or organization agreeing to supervise him or her;~~
- ~~(3) Restrictions on the person's travel, associations, or place of abode during the period of release;~~
- ~~(4) Any other condition not included in (5) or (6) which the court deems reasonably necessary;~~
- ~~(5) Execution of a secured appearance bond; or~~
- ~~(6) Return to custody after specified hours.~~

**b. Discretionary Conditions in General.** The court may impose as a condition of release one or more of the following conditions, if the court finds the condition is reasonable and necessary to protect other persons or the community from an actual risk posed by the person or secure the person's appearance. In making this determination, the court must consider the results of an approved risk assessment, if provided.

#### (1) Non-monetary conditions:

- (i) Place the person in the custody of a designated person or organization agreeing to provide supervision;
- (ii) Restrict the person's travel, associations, or residence;
- (iii) Prohibit the person from possessing any dangerous weapon or engaging in certain described activities or consuming intoxicating liquors or illegal drugs;
- (iv) Require the person to report regularly to and remain under the supervision of an officer of the court;
- (v) Return the person to custody after specified hours; or
- (vi) Any other non-monetary condition that has a reasonable relationship to assuring the safety of other persons or the community from an actual risk posed by the person or securing the person's appearance.

(2) Monetary conditions. In deciding whether to impose a monetary condition of release and what amount to impose, the court must make an individualized determination of the person's risk of non-appearance, risk to the community, and financial circumstances rather than rely on a schedule of charge-based bond amounts. The court must not impose a monetary condition that results in unnecessary pretrial incarceration solely because the person is unable to pay the bond. If the court determines a monetary condition is necessary, the court must impose the least onerous of the types of bonds listed below in the lowest amount necessary to protect other persons or the community from an actual risk posed by the person or to secure the person's appearance. Monetary conditions include:

- (i) Unsecured bond;
- (ii) Deposit bond;
- (iii) Cash bond; or
- (iv) Other type of secured bond.

#### COMMENT [AMENDED 2007]

**Rule 7.3(a).** This section replaces the 1956 Ariz.Rules of Criminal Procedure, as amended, Rules 48 and 68 (forms of undertaking), specifying the matters which must be included in every order of release. The rule adds the requirement of good behavior from [Ariz.Rev.Stat. Ann. § 13-1578\(B\)](#) [now § 13-3968]. Also, following [Ill. Ann. Stat. Ch. 38, § 110-10\(a\)\(3\) and \(b\)\(3\)](#) (Smith-Hurd 1970), the prohibition against out-of-state travel without leave of the court is mandated for every case. The diligent prosecution of an appeal is also taken from the Illinois statute. (See the provision in Rule 7.2(b) for mandatory revocation upon violation of this requirement.) The surety's undertaking to surrender the person in the event of a supervening felony charge is deleted. See generally Form 6.

~~**Rule 7.3(b).** This section sets forth the additional conditions which a court may impose under the standard of Rules 7.2(a) or (b), and the order of priority in their imposition—e.g., the court may not properly impose (b)(6) unless it finds (b)(5) inadequate. See Form 6, which lists these conditions in the same order.~~

~~Subsection (1) calls for an unsecured appearance bond as defined in Rule 7.1. This condition is closely related to Release on Own Recognizance and is used interchangeably with it in the Federal Bail Reform Act, [18 U.S.C.A. § 3146 \(1966\)](#).~~

~~Subsection (2) is taken from the statute. If a person willfully fails to produce a defendant released in his custody, the court may hold him in contempt. Subsection (3) and (4) are taken verbatim from § 13-1577(E)(2) and (6) [now § 13-3967]. Subsection (4) would also encompass the additional possibilities mentioned in the statute: prohibition against possessing weapons, engaging in certain activities or indulging in drugs or intoxicating liquors [[§ 13-1577\(E\)\(4\)](#)] and requiring the defendant to report to and remain under the supervision of an officer of the court [[§ 13-1577\(E\)\(5\)](#)].~~

~~Subsection (5), a fully secured bond, is included within the language of [§ 13-1577\(E\)\(3\)](#), and is listed as the second least desirable condition. Part-time incarceration, authorized by [§ 13-1577\(E\)\(6\)](#), is the harshest permissible condition.~~

#### Rule 7.4. Procedure

##### a. through d. [no changes]

e. *Appointment of Counsel.* The court must appoint counsel in any case in which the defendant is eligible for appointment of counsel under Rule 6.1(b).

## **Rule 7.6. Transfer and disposition of bond**

### **a. through c. [no changes]**

#### **d. Exoneration**

(1) At any time before violation that the court finds that there is no further need for an appearance a bond, ~~it shall~~ the court must exonerate the ~~appearance~~ bond and order the return of any security deposited.

(2) When a deposit bond or cash bond is exonerated, the court must order the return of the entire amount deposited.

~~(23)~~ If the surety, in compliance with the requirements of A.R.S. § 13-3974, surrenders the defendant to the sheriff of the county in which the prosecution is pending, or delivers an affidavit to the sheriff stating that the defendant is incarcerated in this or another jurisdiction, and the sheriff reports the surrender or status to the court, the court may exonerate the bond.

~~(34)~~ In all other instances, the decision whether or not to exonerate a bond shall be within the sound discretion of the court.

### **e. [no changes]**

## **Rule 7.7. Temporary modification of conditions of release**

If a felony probationer has been detained for failure to post a secured bond in a misdemeanor case, a superior court judge may temporarily modify the conditions for release imposed in the misdemeanor case to permit release of the probationer to participate in treatment ordered in the felony case. If such modification occurs, the Clerk must provide the associated order to the court that imposed the conditions of release in the misdemeanor case.

[CURRENT]

Form 6. Release Order  
COURT

County,  
Arizona

STATE OF ARIZONA, Plaintiff -vs- Defendant (FIRST, MI, LAST)	Booking Number	Date of Birth	<b>RELEASE ORDER</b>

LINE #	COMPLAINT NO.	VIOLATION CODE	NF	OR	3P	BOND	BA	U	S	C	NB
1						\$					
2						\$					
3						\$					
4						\$					
5						\$					

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

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

**MANDATORY AND STANDARD CONDITIONS OF RELEASE:**

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

**OTHER CONDITIONS OF RELEASE:**

- [ ] 9. Not threaten or initiate any type of contact with any person as specified here: \_\_\_\_\_.
- [ ] 10. Not possess weapons as specified here: \_\_\_\_\_.
- [ ] 11. Not consume any alcoholic beverages.
- 12. [ ] Not go to scene of the alleged crime:  
[ ] Not go to locations as specified here: \_\_\_\_\_.
- [ ] 13. Comply with the assigned pretrial supervision program as specified here: \_\_\_\_\_.



**THIRD PARTY OBLIGATIONS**

**YOU MUST** comply with the following obligations if the defendant has been placed in your custody while the case is pending in court.

- A. Supervise the defendant in accordance with all of the release conditions.
- B. Make every effort to assure that the defendant is present for all scheduled court hearings.
- C. Make every effort to assure that the defendant will contact Indigent Defense Services to determine indigency status.
- D. Notify the court immediately in the event the defendant violates any conditions of release or disappears.

As **Third Party Custodian** appointed by the Court, I understand and accept these obligations.

_____		( _____ )
Third Party Custodian	e	Date
Signature		Phone No.

\_\_\_\_\_  
Address

\_\_\_\_\_  
City    State    Zip

**WARNING**

**IF YOU WILLFULLY VIOLATE ANY OF THESE OBLIGATIONS, THE COURT MAY HOLD YOU IN CONTEMPT AND IMPOSE A JAIL SENTENCE, FINE OR BOTH, AND YOU MAY LOSE YOUR RIGHT TO APPEAL.**

[CURRENT]

**Form 7. Appearance Bond**  
**COURT**

County, Arizona

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

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

**SECURED APPEARANCE BOND**

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

Depositor:

Address:

Phone Number:

**OR**

[ ] \_\_\_\_\_ (Name, Address)

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

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

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



COURT \_\_\_\_\_

County, Arizona

STATE OF ARIZONA Plaintiff -VS- _____ Defendant (FIRST, MI, LAST)	RELEASE ORDER
_____ Booking Number	_____ Date of Birth

LINE #	COMPLAINT NO.	VIOLATION CODE	NF	ORR	PSR	3PR	BOND	BA	UB	DB	CB	SB	NB
1							\$						
2							\$						
3							\$						
4							\$						
5							\$						

**(NF=Charge not filed; ORR=Own recognizance release; PSR=Pretrial supervision release; 3PR=Third party release bond; Bond=Amount of bond; BA=Bond applies; UB=Unsecured bond; DB=Deposit Bond; CB=Cash; SB=Secured bond; NB=Non-bondable)**

If you are released from jail, you must follow all release conditions and appear at court as indicated below:

**MANDATORY AND STANDARD CONDITIONS OF YOUR RELEASE:**

1. Appear at \_\_\_\_\_ court on: \_\_\_\_\_ at \_\_\_\_\_ a.m. / p.m., Courtroom: \_\_  
(Court name and address) (Date) (Time)  
 for \_\_\_\_\_ and attend all future court hearings.

2. Violate no federal, state or local criminal laws.

3. Not leave the state of Arizona without written permission from the court.

Defendant may leave the state of Arizona provided defendant returns for court dates.

4. Diligently pursue any appeal if released from custody after judgment and sentence have been imposed.

5. Maintain contact with your attorney.

6. Provide a current address and phone number to the court and to your attorney and immediately notify both of any changes.

7. Not threaten or initiate any type of contact with the alleged victim(s).

8. Not drive a motor vehicle without a valid driver's license in your possession.

9. Not threaten or initiate any type of contact with any person as specified here: \_\_\_\_\_.

10. Not possess weapons as specified here: \_\_\_\_\_.

11. Not consume any alcoholic beverages.

12. Not go to scene of the alleged crime.

13. Not go to locations as specified here: \_\_\_\_\_.

14. Comply with 3rd party custody release conditions as specified here: \_\_\_\_\_.

15. Contact probation or parole officer.

(See 3rd party obligations in this document.)

16. Electronic monitoring, if available, (mandatory if charged with a felony offense under Chapters 14 or 35.1 of Title 13)

17. Other: \_\_\_\_\_.

**ADDITIONAL CONDITIONS FOR YOUR PRETRIAL SUPERVISION RELEASE (PSR):**

18. Comply with the assigned pretrial supervision program as specified here: \_\_\_\_\_.

19. Provide a current address and phone number to Pretrial Services immediately and notify of any changes.

**FINANCIAL CONDITIONS OF RELEASE:** If you cannot post a bond of \$ \_\_\_\_\_ you will remain in custody until your next court hearing on \_\_\_\_\_.



STATE OF ARIZONA Plaintiff -VS- _____	<b>BOND</b>
Defendant (FIRST, MI, LAST)	Booking Number _____ Date of Birth _____

**TYPE OF BOND YOU HAVE**

**[ ] UNSECURED BOND:** In accordance with the terms of a release order or warrant issued on \_\_\_\_\_, 20\_\_\_\_\_, by Judicial Officer of the \_\_\_\_\_ court, of \_\_\_\_\_, State of Arizona, the defendant \_\_\_\_\_ and the defendant’s surety \_\_\_\_\_ (If none, so state) hereby promise to pay the State of Arizona the sum of \$\_\_\_\_\_ in the event the defendant fails to appear at \_\_\_\_\_ at \_\_\_\_\_ a.m./p.m. on \_\_\_\_\_, 20\_\_\_\_\_ and at any other hearing during the pendency of the case, unless excused by the judicial officer.

**[ ] DEPOSIT BOND:** The defendant will deposit with the Clerk of the Court \_\_\_\_\_% of the total sum of \$\_\_\_\_\_, with the remainder of \$\_\_\_\_\_ as an unsecured bond. The deposited amount of the case appearance bond will be returned to the defendant, if defendant appears at \_\_\_\_\_ at \_\_\_\_\_ a.m./p.m. on \_\_\_\_\_, 20\_\_\_\_\_ and at any other hearing during the pendency of the case to appear and answer the charges or submit to the orders and process of the court having jurisdiction of the case. In the event the defendant fails to appear at the hearing or during the pendency of the case, defendant will forfeit the cash bond to the State of Arizona.

**[ ] CASH BOND:** The defendant will deposit with the Clerk of the Court the total sum of \$\_\_\_\_\_. The total amount of the cash bond will be returned to defendant if defendant appears at \_\_\_\_\_ at \_\_\_\_\_ a.m./p.m. on \_\_\_\_\_, 20\_\_\_\_\_ and at any other hearing during the pendency of the case to appear and answer the charges or submit to the orders and process of the court having jurisdiction of the case. In the event the defendant fails to appear at the hearing or during the pendency of the case, defendant will forfeit the cash bond to the State of Arizona.

**[ ] SECURED BOND—without a surety:** The defendant hereby deposits with the court cash or property of value in the full amount of this bond, the same to be forfeited in the event the defendant fails to comply with its conditions.

**Depositor:** \_\_\_\_\_

**Email address:** \_\_\_\_\_

**Address:** \_\_\_\_\_

**Phone number:** \_\_\_\_\_

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

**WARNING: IF YOU DO NOT APPEAR AS REQUIRED, THIS BOND MAY BE FORFEITED AND THE PROCEEDINGS BEGUN WITHOUT YOU. IF CONVICTED, YOU WILL BE REQUIRED TO APPEAR FOR SENTENCING. IF YOU FAIL TO APPEAR, YOU MAY LOSE YOUR RIGHT TO A DIRECT APPEAL.**

**ACKNOWLEDGEMENTS**

\_\_\_\_\_  
Date

\_\_\_\_\_  
Defendant

State of Arizona                    )  
  )  
County of \_\_\_\_\_)

Subscribed and sworn to before me on  
\_\_\_\_\_

My Commission Expires \_\_\_\_\_

\_\_\_\_\_  
Notary Public

**Approved:**

\_\_\_\_\_  
Date

\_\_\_\_\_  
Surety or Authorized Agent

# Form 7 Attachment A

## [No changes]

## **IV. Pretrial Procedures**

### **Rule 12. The Grand Jury**

#### **Rule 12.1. Selecting and Preparing Grand Jurors**

(a) **Summons.** Grand jurors are summoned and impaneled as provided in A.R.S. tit. 21.

(b) **Voir Dire.** Each prospective grand juror must be examined under oath or affirmation to confirm that the prospective juror will act impartially and without prejudice, and that the prospective juror is qualified under A.R.S. § 21-201. Inquiry also may be made about other relevant subjects.

(c) **Oath.** Each grand juror must take the following oath: “I swear (or affirm) that I will give careful attention to the proceedings, abide by the court’s instructions, and decide matters placed before the grand jury in accordance with the law and evidence presented to me (so help me God).”

(d) **Instructions.** The court must inform the grand jurors of the:

- (1) duty to be present at each grand jury session;
- (2) duty to inquire into every offense that is presented;
- (3) duty of a grand juror to disqualify himself or herself in a particular matter for any of the reasons listed in Rule 12.2;
- (4) duty to return an indictment only if they are convinced there is probable cause to believe an offense has been committed and the person under investigation committed it;
- (5) right to ask the State to present additional evidence; and
- (6) confidentiality of grand jury matters and materials, and the penalties for unlawful disclosure.

#### **Rule 12.2. Grounds to Disqualify a Grand Juror**

A grand juror is disqualified from serving in any particular matter if the juror is a witness in the matter; is interested directly or indirectly in the matter under investigation; is related by consanguinity or affinity within the fourth degree to a person under investigation or a witness; or is biased or prejudiced in favor of either the State or a person under investigation.

### **Rule 12.3. Challenge to a Grand Jury or a Grand Juror**

#### **(a) Grounds for a Challenge.**

- (1) The grand jury may be challenged only on the ground that the grand jurors were not drawn or selected according to law.
- (2) An individual grand juror may be challenged on the ground that the juror is not qualified to sit on the grand jury or on a particular matter.

#### **(b) Method of Challenge.**

- (1) A challenge by the State to a grand jury or a grand juror must be directed to the presiding or impaneling judge.
- (2) A defendant may challenge a grand jury or grand juror only after the indictment has been returned.
- (3) Any challenge made after the grand jurors are sworn must be in writing.

#### **(c) Effect of Sustaining a Challenge.**

- (1) *To a Grand Jury.* If a challenge to the grand jury is sustained, the grand jury must be discharged.
- (2) *To an Individual Grand Juror.* If a challenge to an individual juror is sustained, the juror must be discharged or excluded from deliberation on the particular matter that was the subject of the challenge.

### **Rule 12.4. Grand Jury Foreperson**

**(a) Appointment and Powers.** The court must appoint a foreperson and an acting foreperson to serve in the foreperson's absence. The foreperson will preside over the grand jury's proceedings and act as the court's representative in maintaining order, administering oaths, excluding unauthorized persons and persons acting in an unauthorized manner, appointing officers within the grand jury as necessary for its orderly functioning, and performing other duties as may be imposed on the foreperson by law or by court order.

**(b) Request for Contempt Proceeding.** The foreperson may request the court to initiate a contempt proceeding against a person whose conduct violates these rules or disrupts grand jury proceedings.

### **Rule 12.5. Who May Be Present During Grand Jury Sessions**

Only the following individuals may be present during grand jury sessions: the witness under examination; counsel for a witness if the witness is a person under investigation by

the grand jury; a law enforcement officer or detention officer accompanying an in-custody witness; a prosecutor authorized to present evidence to the grand jury; a certified court reporter; and an interpreter, if any. Only grand jurors may be present during their deliberation and voting.

### **Rule 12.6. Appearance of a Person Under Investigation**

- (a) **The Person.** A person under investigation by the grand jury may be compelled to appear before the grand jury, or may be permitted to appear upon the person's written request. The person must be advised of the right to remain silent and the right to have counsel present to advise the person while giving testimony.
- (b) **Counsel.** If counsel accompanies the person, counsel may not communicate, or attempt to communicate, with anyone other than the person. The foreperson may expel counsel from the grand jury session if counsel violates this rule.

### **Rule 12.7. Indictment**

- (a) **Number of Grand Jurors Necessary to Indict.** An indictment requires the concurrence of at least 9 grand jurors, regardless of the number of grand jurors hearing a matter,
- (b) **Return of Indictment.** The indictment must be returned by the foreperson in open court and in the presence of the grand jury and the prosecutor.
- (c) **Notice of Supervening Indictment.** If the defendant previously has had an initial appearance under Rule 4.2, the court must prepare and send to the defendant and defense counsel a notice of supervening indictment instead of issuing a warrant or summons.
- (d) **No Indictment Returned.** If a person is in custody or has posted bond on a matter presented to the grand jury and no indictment is returned, the foreperson through the prosecutor must promptly inform the court in writing that the grand jury did not return an indictment.

#### **Notes:**

The phrase "regardless of the number of grand jurors hearing a matter" in draft Rule 12.7(a) is new, and derives from a comment to the current rule.

Draft Rule 12.7(d) is new. The substance of this draft rule is derived from the second sentence of current Rule 12.7(a).

### **Rule 12.8. Record of Grand Jury Proceedings**

- (a) Court Reporter.** The presiding or impaneling judge must assign a certified court reporter to record all grand jury proceedings, except its deliberations. [Note: Workgroup deleted “regularly appointed” certified court reporter in the current rule.]
- (b) Foreperson.** The foreperson must keep a record of how many grand jurors voted for and against an indictment, but must not record how each grand juror voted. If the grand jury returns an indictment, the foreperson’s record of the vote must be transcribed by the court reporter.
- (c) Filing the Transcript and Minutes.** The court reporter’s record of grand jury proceedings must be transcribed and filed with the superior court clerk no later than 20 days after return of the indictment, and may be made available only to the State and the defendant.

**Note:** The phrase in draft Rule 12.8(b), “must not record the vote of individual grand jurors,” is derived from a comment to the current rule.

### **Rule 12.9. Challenge to Grand Jury Proceedings**

- (a) Grounds.** A defendant may challenge a grand jury proceeding only by filing a motion for a new finding of probable cause alleging that the defendant was denied a substantial procedural right, or that an insufficient number of qualified grand jurors concurred in the indictment.
- (b) Timing.** A defendant must file a motion under Rule 12.9(a) within 25 days after the certified transcript and minutes of the grand jury proceedings are filed, or 25 days after the defendant’s arraignment, whichever is later.
- (c) Relief.** If the court grants a motion for a new finding of probable cause, the State may proceed with the prosecution of the case by filing a complaint under Rule 2 or by resubmitting the matter to the same or another grand jury. Unless a complaint is filed, or a grand jury’s consideration begins, within 15 days after entry of the order granting the motion for a new finding of probable cause, the court must dismiss the case without prejudice

### **Rule 12.10. Entering a Not-Guilty Plea**

- (a) Notice.** In a county where an arraignment is not held as provided in Rule 14.1(d), a defendant must be brought before a magistrate within 10 days after the indictment is returned. The magistrate must:

- (1) enter a plea of not guilty for the defendant, and prepare and provide the defendant and defense counsel with a notice specifying that a plea of not guilty has been entered;
- (2) schedule a date for the trial or a pretrial conference;
- (3) advise the parties in writing of the dates set for further proceedings and other important deadlines;
- (4) advise the defendant of the defendant's right to be present at all future proceedings, that any proceeding may be held in the defendant's absence, and that if the defendant is absent, the defendant may be charged with an offense and a warrant may be issued for defendant's arrest; and
- (5) advise the defendant of the right to a jury trial, if applicable.

[**NOTE:** Do any jurisdictions still use this procedure? If not, consider deleting this rule. If so, consider adding in this rule the corresponding provisions of Rule 14.3(e), (f), and (i).]

**(b) Form of Notice.** A notice to the defendant under Rule 12.10(a) must be in writing and be signed by the defendant and defense counsel.

## **Rules for State Grand Juries**

### **Rule 12.21. Applicability of Other Provisions of Rule 12**

The provisions of Rule 12 pertaining to grand juries also apply to state grand juries, except that Rule 12.22(a) ["Summons"] applies instead of Rule 12.1(a); 12.22(d) ["Examination"] applies instead of Rule 12.1(b); and Rule 12.28 ["Challenge to State Grand Jury Proceedings"] applies instead of Rule 12.3.

**Note:** Are certain provisions of the rules for state grand juries cumulative to the rules for county grand juries, and if so, can those provisions be deleted?

In keeping with the statutes, A.R.S. §§ 21-421, et seq, "state grand jury" is not capitalized in the draft rule, except when it appears in the title of a rule or a heading.

Cross-references contained in the comment to current Rule 12.21 are no longer accurate.

### **Rule 12.22. Selection and Preparation of State Grand Jurors**

**(a) Summons.** State grand jurors are summoned and impaneled as provided in statute and Rule 12.

**(b) Assistance.** The Supreme Court Chief Justice must designate the assignment judge for a state grand jury, as provided in A.R.S. § 21-421. The presiding judge and jury

commissioner in each county must assist the assignment judge in impaneling a state grand jury. At the assignment judge's direction, the jury commissioner of each county must submit to the assignment judge, by a date set by that judge, a specified number of prospective jurors selected at random. The total number of prospective jurors must be based on reasonably proportional representation for each county according to the most recently published federal statewide census, and should include no less than 3 prospective state grand jurors from each county.

**Note:** The provision about “not less than three prospective state grand jurors from the least populous county” is in current Rule 12.22(b), but it does not appear to be a statutory requirement. See A.R.S. § 21-421. See further A.R.S. § 21-423, which states that “a state grand jury shall consist of the same number of members as a county grand jury.” Application of the rule's requirement for “proportional representation for each county,” starting with 3 jurors for the least populous county, would appear to result in an unusually large jury. It might also conflict with Rule 12.23, which requires a state grand jury to be composed of 16 people. Also, see staff's note to Rule 12.23.

**(c) Preliminary Selection.** With the assistance of the jury commissioner in the county in which the assignment judge is serving, the assignment judge must send a questionnaire to each prospective state grand juror. From those prospective state grand jurors who return questionnaires and who are qualified and not excused, the jury commissioner must select at random a number of them sufficient for the final selection of state grand jurors. Each person must be summoned to appear before the assignment judge for final selection. The jury commissioner must keep a permanent record of the reason for excusing a prospective state grand juror.

**(d) Examination.** Each prospective state grand juror must be examined under oath or affirmation to confirm that the prospective juror is qualified to be a state grand juror; that service as a state grand juror would not impose an undue hardship; and that the prospective juror will act impartially and without prejudice. Inquiry also may be made about other relevant subjects. A verbatim record of this examination must be made, transcribed, and filed with the superior court clerk of the county in which the assignment judge is serving.

**Note:**

The first sentence of draft Rule 12.22(b) is new. The term “assignment judge” is not capitalized in the statute, and it is therefore not capitalized in this rule.

### **Rule 12.23. Size of State Grand Jury**

When impaneled, a state grand jury must be composed of at least 12 but not more than 16 persons.

#### **Note:**

~~A.R.S. § 21-423(A) states that “a state grand jury shall consist of the same number of members as a county grand jury.” A.R.S. § 21-404 provides that “the grand jury shall consist of at least twelve but not more than sixteen persons.” Current Rule 12.23, shown above verbatim, appears to deviate from the statute by specifying a requirement for sixteen state grand jurors.~~

### **Rule 12.24. Location of State Grand Jury Sessions**

Sessions of a state grand jury may be held at any county seat in the State of Arizona designated by the assignment judge.

### **Rule 12.25. Preservation of State Grand Jury Evidence**

**(a) Transmittal.** The foreperson must transmit all physical evidence, including records, presented to or considered by a state grand jury to the superior court clerk of the county in which the assignment judge is serving. The clerk must preserve the evidence and make it available in the same manner as a transcript of grand jury proceedings.

**(b) Release or Retention.** Nothing in this rule is intended to abrogate any right of a person under applicable law to possess or regain custody of physical evidence, but the assignment judge may impose limitations on access, use, transport, care, and disposal as may be necessary to ensure that the evidence is preserved.

### **Rule 12.26. Return of Indictment**

The foreperson must return an indictment in open court in the presence of the state grand jury and the Attorney General or the Attorney General’s designee. The assignment judge or court commissioner must order the indictment to be kept secret until the defendant is in custody or no one may disclose the indictment’s contents except if necessary to issue and execute a warrant or summons.

### **Rule 12.27. Disclosure of a Lack of Indictment**

If a state grand jury investigation ends or is terminated without the return of any indictments, the assignment judge may publicly disclose this fact in a minute entry if extraordinary circumstances exist and the furtherance of justice requires it.

**Note:**

Is the phase concerning extraordinary circumstances and furtherance of justice necessary?

**Rule 12.28. Challenge to State Grand Jury, Grand Juror, or Grand Jury Proceedings**

**(a) Grounds for Challenge.**

- (1) A state grand jury may be challenged only on the ground that the state grand jurors were not drawn or selected according to law or Rule 12.22.
- (2) An individual state grand juror may be challenged only on the ground that the juror is not qualified to sit on the state grand jury or on a particular matter.
- (3) A defendant may challenge the grand jury proceeding under Rule 12.9.

**(b) Method of Challenge.**

- (1) A challenge by the State to a state grand jury or a state grand juror must be directed to the assignment judge.
- (2) A defendant may not challenge a state grand jury or a state grand juror until after the indictment has been returned.
- (3) Any challenge made after the grand jurors are sworn must be in writing.

**(c) Relief.** If the court grants a motion under Rule 12.9(a), the Attorney General or the Attorney General's designee may proceed with the prosecution of the case by filing a complaint under Rule 2 or by resubmitting the matter to the same state grand jury or to another grand jury. The court must dismiss the case without prejudice unless a complaint is filed, or a grand jury consideration begins, within 15 days after the order is entered granting the motion under Rule 12.9(a).

**Rule 12.29. Expenses of Prospective and Selected State Grand Jurors**

**(a) Generally.**

- (1) A person called for prospective grand jury impanelment or a person serving on a state grand jury is entitled to reimbursement for lodging and meal expenses if.
  - (A) the session is held more than 50 miles from the person's residence; and
  - (B) the expense is incurred either:
    - (i) the night before the session; or

(ii) after the session, if the assignment judgment determines that the session did not end early enough to permit the person to return to his or her residence by a reasonable hour.

**(b) Limitation of Expenses.** The financial limitations on reimbursement of expenses are the same as those imposed by statute or regulation on employees of the State of Arizona.

**(c) Exceptional Circumstances.** In exceptional circumstances, the assignment judge may authorize reimbursement of an expense incurred by a prospective or serving state grand juror that is not otherwise authorized in this rule.



## **Rule 15. Disclosure**

### **Rule 15.1. The State's Disclosures**

**(a) Initial Disclosures in a Felony Case.** Unless a local rule provides or the court orders otherwise:

- (1) the State must make available to the defendant all reports containing information identified in (b)(3) and (b)(4) that the charging attorney possessed when the charge was filed; and
- (2) the State must make these reports available by the preliminary hearing or, if no preliminary hearing is held, the arraignment.

**(b) Supplemental Disclosure.** Except as provided in Rule 39(b), the State must make available to the defendant the following material and information within the State's possession or control:

- (1) the name and address of each person the State intends to call as a witness in the State's case-in-chief and any relevant written or recorded statement of the witness;
- (2) any statement of the defendant and any co-defendant;
- (3) all existing original and supplemental reports prepared by a law enforcement agency in connection with the charged offense;
- (4) the name and address of each expert who has examined a defendant or any evidence in the case, and the results of any completed physical examination, scientific test, experiment, or comparison. If the witness does not provide a written report, the disclosure must state:
  - (A) the subject matter on which the expert is expected to present evidence under Arizona Rules of Evidence 702, 703, or 705; and
  - (B) a summary of the facts and opinions to which the witness is expected to testify.
- (5) a list of all documents, photographs, and other tangible objects the State intends to use at trial or that were obtained from or purportedly belong to the defendant;
- (6) a list of the defendant's prior felony convictions the State intends to use at trial;
- (7) a list of the defendant's other acts the State intends to use at trial;

- (8) all existing material or information that tends to mitigate or negate the defendant's guilt or would tend to reduce the defendant's punishment;
- (9) whether there has been any electronic surveillance of any conversations to which the defendant was a party, or of the defendant's business or residence;
- (10) whether a search warrant has been executed in connection with the case; and
- (11) whether the case involved an informant, and, if so, the informant's identity, subject to the restrictions under Rule 15.4(b)(2).

(c) **Time for Supplemental Disclosures.** Unless the court orders otherwise, the State must disclose the material and information listed in (b) no later than:

- (1) in the superior court, 30 days after arraignment.
- (2) in a limited jurisdiction court, the first pre-trial conference, or 20 days after arraignment, whichever occurs first.

(d) **Prior Felony Convictions.** The State must make available to a defendant a list of prior felony convictions of each witness the State intends to call at trial and a list of the prior felony convictions the State intends to use to impeach a disclosed defense witness at trial:

- (1) in a felony case, at least 30 days before trial or 30 days after the defendant's request, whichever occurs first; and
- (2) in a misdemeanor case, at least 10 days before trial.

(e) **Disclosures upon Request.**

- (1) **Generally.** Unless the court orders otherwise, the State must make the following items available to the defendant for examination, testing, and reproduction within 30 days of a defendant's written request:
  - (A) any of the items specified in the list submitted under (b)(5);
  - (B) any 911 calls existing at the time of the request that the record's custodian can reasonably ascertain are related to the case; and
  - (C) any completed written report, statement, and examination notes made by an expert listed in (b)(1) and (b)(4) related to the case.
- (2) **Conditions.** The State may impose reasonable conditions, including an appropriate stipulation concerning chain of custody to protect physical evidence or to allow time for the examination or testing of any items.

**(f) Scope of the State’s Disclosure Obligation.** The State’s disclosure obligation extends to material and information in the possession or control of any of the following:

- (1) the prosecutor, other attorneys in the prosecutor’s office, and members of the prosecutor’s staff; or
- (2) any state, county, or municipal law enforcement agency that has participated in the investigation of the case; and
- (3) any other person who is under the prosecutor’s direction or control and participated in the investigation or evaluation of the case.

**(g) Disclosure by Court Order.**

(1) ***Disclosure Order.*** On defendant’s motion, a court may order any person to make available to the defendant material or information not included in this rule if the court finds:

- (A) the defendant has a substantial need for the material or information to prepare the defendant’s case; and
- (B) the defendant cannot obtain the substantial equivalent by other means without undue hardship.

(2) ***Modifying or Vacating Order.*** On the request of any person affected by the order, the court may vacate or modify an order if the court determines that compliance would be unreasonable or oppressive.

**(h) Disclosure of Rebuttal Evidence.** Upon receiving the defendant’s notice of defenses under Rule 15.2(b), the State must disclose the name and address of each person the State intends to call as a rebuttal witness, and any relevant written or recorded statement of the witness.

**(i) Additional Disclosures in a Capital Case.**

(1) ***Notice of Intent to Seek the Death Penalty.***

- (A) ***Generally.*** No later than 60 days after a defendant’s arraignment in superior court on a charge of first-degree murder, the State must provide notice to the defendant of whether the State intends to seek the death penalty.
- (B) ***Time Extensions.*** The court may extend the State’s deadline for providing notice by an additional 60 days if the parties file a written stipulation agreeing to the extension. If the court approves the extension, the case is considered a

capital case for all administrative purposes including, but not limited to, scheduling, appointment of counsel under Rule 6.8, and the assignment of a mitigation specialist. The court may grant additional extensions if the parties file written stipulations agreeing to them.

(C) *Victim Notification.* If the victim has requested notice under A.R.S. § 13-4405, the prosecutor must confer with the victim before agreeing to extend the deadline

(2) *Aggravating Circumstances.* If the State files a notice of intent to seek the death penalty, the State must, at the same time, provide the defendant with a list of aggravating circumstances that the State intends to prove in the aggravation phase of the trial.

(3) *Initial Disclosures.*

(A) *Generally.* No later than 30 days after filing a notice to seek the death penalty, the State must disclose the following to the defendant:

(i) the name and address of each person the State intends to call as a witness at the aggravation hearing to support each alleged aggravating circumstance, and any written or recorded statement of the witness;

(ii) the name and address of each expert the State intends to call at the aggravation hearing to support each alleged aggravating circumstance, and any written or recorded statement of the expert or other disclosure as required in (b)(4);

(iii) a list of all documents, photographs or other tangible objects the State intends to use to support each identified aggravating circumstance at the aggravation hearing; and

(iv) all material or information that might mitigate or negate the finding of an aggravating circumstance or mitigate the defendant's culpability.

(B) *Time Extensions.* The court may extend the deadline for the State's initial disclosures under (i)(3) or allow the State to amend those disclosures only if the State shows good cause or the parties stipulate.

(4) *Rebuttal and Penalty Phase Disclosures.* Within 60 days of receiving the defendant's disclosure under Rule 15.2(h)(1), the State must disclose the following to the defendant:

- (A) the name and address of each person the State intends to call as a rebuttal witness on each identified aggravating circumstance, and any written or recorded statement of the witness;
- (B) the name and address of each person the State intends to call as a witness at the penalty hearing, and any written or recorded statement of the witness;
- (C) the names and address of each expert the State intends to call at the penalty hearing, and any report the expert has prepared or other disclosure as required in (b)(4); and
- (D) a list of all documents, photographs or other tangible objects the State intends to use during the aggravation and penalty hearings.

**(j) Items Prohibited by A.R.S. § 13-3551, et seq.**

- (1) **Scope.** This rule applies to an item that cannot be produced or possessed under A.R.S. § 13-3551 et seq., but is included in the list disclosed under (b)(5).
- (2) **Disclosure Obligation.** The State is not required to reproduce the item or release it to the defendant for testing or examination except as provided by (j)(3) and (j)(4). The State must make the item reasonably available for inspection by the defendant, but only under such terms and conditions necessary to protect a victim's rights.
- (3) **Court-Ordered Disclosure for Examination or Testing.**
  - (A) **Generally.** The court may order the item's reproduction or its release to the defendant for examination or testing if the defendant makes a substantial showing that it is necessary for the effective investigation or presentation of a defense, including an expert's analysis.
  - (B) **Conditions.** A court must issue any order necessary to protect a victim's rights, document the chain of custody, or protect physical evidence.
- (4) **General Restrictions.** In addition to any court order issued, the following restrictions apply to the reproduction or release of any item to the defendant for examination or testing:
  - (A) the item must not be further reproduced or distributed except as the court order allows;
  - (B) the item may be viewed or possessed only by the persons authorized by the court order;

- (C) the item must not be possessed or viewed by the defendant outside the direct supervision of defense counsel, advisory counsel, or a defense expert;
- (D) the item must be delivered to defense counsel or advisory counsel, or if expressly permitted by court order, to a specified defense expert; and
- (E) the item must be returned to the State by a deadline set by the court.

## **Rule 15.2. The Defendant's Disclosures**

### **(a) Physical Evidence.**

- (1) **Generally.** At any time after the filing of an indictment, information or complaint, and upon the State's written request, the defendant must, in connection with the particular offense with which the defendant is charged:
  - (A) appear in a line-up;
  - (B) speak for identification by one or more witnesses;
  - (C) be fingerprinted, palm-printed, foot-printed, or voice printed;
  - (D) pose for photographs not involving a re-enactment of an event;
  - (E) try on clothing;
  - (F) permit the taking of samples of hair, blood, saliva, urine, or other specified materials that does not involve an unreasonable intrusion of the defendant's body;
  - (G) provide handwriting specimens; and
  - (H) submit to a reasonable physical or medical inspection of the defendant's body, but such an inspection may not include a psychiatric or psychological examination.
- (2) **Presence of Counsel.** The defendant is entitled to have counsel present when the State takes evidence under this rule.
- (3) **Other Procedures.** This rule supplements and does not limit any other procedures established by law.

### **(b) Notice of Defenses.**

- (1) **Generally.** By the deadline specified in (d), the defendant must provide written notice to the State specifying all defenses the defendant intends to assert at trial, including, but not limited to, alibi, insanity, self-defense, defense of others,

entrapment, impotency, marriage, insufficiency of a prior conviction, mistaken identity, and good character.

- (2) **Witnesses.** For each listed defense, the notice must specify each person, other than the defendant, that the defendant intends to call as a witness at trial in support of the defense.
- (3) **Signature and Filing.** Defense counsel—or if the defendant is self-represented, the defendant—must sign the notice and file it with the court.

(c) **Content of Disclosure.** At the same time the defendant files a notice of defenses under (b), the defendant must provide the following information:

- (1) the name and address of each person, other than the defendant, the defendant intends to call as a witness at trial, and any written or recorded statement of the witness;
- (2) the name and address of each expert the defendant intends to call at trial, the results of any physical examination of the defendant, and the results of any completed scientific test, experiment or comparison. If the witness does not provide a written report, the disclosure must state:
  - (A) the subject matter on which the witness is expected to present evidence under Arizona Rule of Evidence 702, 703, or 705; and
  - (B) a summary of the facts and opinions to which the witness is expected to testify.
- (3) a list of all documents, photographs, and other tangible objects the defendant intends to use at trial.

(d) **Time for Disclosures.** Unless the court orders otherwise, the defendant must disclose the material and information listed in (b) and (c) no later than:

- (1) in superior court, 40 days after arraignment, or within 10 days after the State's disclosure under Rule 15.1(b), whichever occurs first;
- (2) in a limited jurisdiction court, 20 days after the State's disclosure under Rule 15.1(b).

(e) **Additional Disclosures upon Request.**

- (1) **Generally.** Unless the court orders otherwise, the defendant must make the following items available to the State for examination, testing, and reproduction within 30 days of the State's written request:

(A) any of the items specified in the list submitted under (c)(3); and

(B) any completed written report, statement, and examination notes made by an expert listed in (c)(2) in connection with the particular case.

(2) **Conditions.** The defendant may impose reasonable conditions, including an appropriate stipulation concerning chain of custody to protect physical evidence or to allow time for the examination or testing of any items.

(f) **Scope of Disclosure.** A defendant's disclosure obligation extends to material and information within the possession or control of the defendant, defense counsel, staff, agents, investigators, or any other persons who have participated in the investigation or evaluation of the case and who are under the defendant's direction or control.

(g) **Disclosure by Court Order.**

(1) **Disclosure Order.** On the State's motion, a court may order any person to make available to the State material or information not included in this rule if the court finds:

(A) the State has a substantial need for the material or information for the preparation of the State's case;

(B) the State cannot obtain the substantial equivalent by other means without undue hardship; and

(C) the disclosure of the material or information would not violate the defendant's constitutional rights.

(2) **Modifying or Vacating Order.** The court may vacate or modify an order if the court determines that compliance would be unreasonable or oppressive.

(h) **Additional Disclosures in a Capital Case.**

(1) **Initial Disclosures.**

(A) **Generally.** Within 180 days after receiving the State's initial disclosure under Rule 15.1(i)(3), the defendant must disclose the following to the State:

(i) a list of all mitigating circumstances the defendant intends to prove;

(ii) the name and address of each person, other than the defendant, the defendant intends to call as a witness during the aggravation and penalty hearings, and any written or recorded statement of the witness;

(iii) the name and address of each expert the defendant intends to call during the aggravation and penalty hearings, and any written or recorded

statements of the expert or other disclosure as required in (c)(2), excluding any portions containing statements by the defendant; and

(iv) a list of all documents, photographs, or other tangible objects the defendant intends to use during the aggravation and penalty hearings.

(B) *Time Extensions.* The court may extend the deadline for the defendant's initial disclosures under (h)(1) or allow the defendant to amend those disclosures only if the defendant shows good cause or if the parties stipulate.

(2) *Later Disclosures.* Within 60 days of receiving the State's supplemental disclosure under Rule 15.1(i)(4), the defendant must disclose the following to the State:

(A) the name and address of each person the defendant intends to call as a rebuttal witness, and any written or recorded statement of the witness; and

(B) the name and address of each expert the defendant intends to call as a witness at the penalty hearing, and any report the expert has prepared.

### **Rule 15.3. Depositions**

(a) **Availability.** A party or a witness may file a motion requesting the court to order the examination of any person, except the defendant and those excluded by Rule 39(b), by oral deposition under the following circumstances:

(1) a party shows that the person's testimony is material to the case and that there is a substantial likelihood that the person will not be available at the time of trial; or

(2) a party shows that the person's testimony is material to the case or necessary to adequately prepare a defense or investigate the offense, that the person was not a witness at the preliminary hearing or at the probable cause phase of the juvenile transfer hearing, and that the person will not cooperate in granting a personal interview; or

(3) a witness is incarcerated for failing to give satisfactory security that the witness will appear and testify at a trial or hearing.

(b) **Follow-up Examination.** If a witness testifies at a preliminary hearing or probable cause phase of a juvenile transfer hearing, the court may order the person to attend and give testimony at a follow-up deposition if:

(1) the magistrate limited the person's previous testimony under Rule 5.3; and

(2) the person will not cooperate in granting a personal interview.

**(c) Motion for Taking Deposition; Notice; Service.**

- (1) ***Motion's Requirements.*** A motion to take a deposition must:
  - (A) state the name and address of the person to be deposed;
  - (B) show that a deposition may be ordered under (a) or (b);
  - (C) specify the time and place for taking the deposition; and
  - (D) designate any non-privileged documents, photographs, or other tangible objects that the person must produce at the deposition.
- (2) ***Order.*** If the court grants the motion, it may modify any of the moving party's proposed terms and specify additional conditions governing how the deposition will be conducted.
- (3) ***Notice and Subpoena.*** If the court grants the motion, the moving party must notice the deposition in the manner provided in Arizona Rule of Civil Procedure 30(b). The notice must specify the terms and conditions in the court's order granting the deposition. The moving party also must serve a subpoena on the deponent in the manner provided in A.R.S. § 13-4072.

**(d) Manner of Taking.**

- (1) ***Generally.*** Unless this rule provides or the court orders otherwise, the parties must conduct a deposition as provided in Rules 28(a) and 30 of the Arizona Rules of Civil Procedure.
- (2) ***Deposition by Written Questions.*** If the parties consent, the court may order that a deposition be taken on written interrogatories as provided in Rule 31 of the Arizona Rules of Civil Procedure.
- (3) ***Deponent Statement.*** Before the deposition, a party who possesses a statement of a deponent must make it available to any other party who would be entitled to the statement at trial.
- (4) ***Recording.*** A deposition may be recorded by other than a certified court reporter. If someone other than a certified court reporter records the deposition, the party taking the deposition must provide every other party with a copy of the recording within 14 days after the deposition, or no less than 10 days before trial, whichever is earlier.
- (5) ***Remote Means.*** The parties may agree or the court may order that the parties conduct the deposition by telephone or other remote means.

- (e) **The Defendant’s Right to Be Present.** A defendant has the right to be present at any deposition ordered under (a)(1) or (a)(3). If a defendant is in custody, the moving party must notify the custodial officer of the deposition’s time and place. Unless the defendant waives in writing the right to be present, the officer must produce the defendant at the deposition and remain with defendant until it is completed.
- (f) **Use.** A party may use a deposition in the same manner as former testimony under Rule 19.3(c).

#### **Rule 15.4. Disclosure Standards**

##### **(a) Statements.**

- (1) **Definition of a “Statement.”** In Rule 15, the term “statement” includes:
- (A) a writing prepared, signed or otherwise adopted or approved by a person;
  - (B) a recording of a person’s oral communications or a transcript of the communication; or
  - (C) a written record or summary of a person’s oral communications.
- (2) **Definition of a “Writing.”** A “writing” consists of words or their equivalent in physical, electronic, or other form.
- (3) **Exclusion of Superseded Notes.** Handwritten notes are not a statement if they were substantially incorporated into a document or report within 30 calendar days of their creation, or were preserved electronically, mechanically, or by verbatim dictation.

##### **(b) Materials Not Subject to Disclosure.**

- (1) **Work Product.** A party is not required to disclose legal research or records, correspondence, reports, or memoranda to the extent they contain the opinions, theories, or conclusions of the prosecutor or defense counsel, members of their respective legal or investigative staff, or law enforcement officers.
- (2) **Informants.** A party is not required to disclose the existence or identity of an informant who will not be called to testify if:
- (A) disclosure would result in substantial risk to the informant or to the informant’s operational effectiveness; and
  - (B) a failure to disclose will not infringe on the defendant’s constitutional rights.
- (c) **Failure to Call a Witness or Raise a Defense.** At trial, a party may not comment on the fact that a witness’s name or a defense is on a list furnished under Rule 15, yet not

called or raised, unless the court allows the comment after finding that inclusion of the witness's name or the defense constituted an abuse of the applicable disclosure rule.

**(d) Use of Materials.** Any materials furnished to a party or counsel under Rule 15 must not be disclosed to the public, and may only be disclosed to the extent necessary for the proper conduct of the case.

**(e) Requests for Disclosure.** All requests for disclosure must be made to the opposing party.

**(f) Filing of Papers; Exception for Misdemeanors and Petty Offenses Filed in Limited Jurisdiction Courts.** For misdemeanor and petty offenses triable in limited jurisdiction courts, parties must not file materials disclosed under Rules 15.1 and 15.2, or notices of their service, unless the court orders otherwise or they are filed as attachments or exhibits to other documents relevant to the determination of an issue before the court.

## COMMENT

**Rule 15.4(a).** It is intended that an attorney's actual trial notes, such as his outline of questions to ask a witness will be encompassed within the work product exception of Rule 15.4(b)(1), even though they fall within the definition of statement.

## Rule 15.5. Excision and Protective Orders

### (a) A Court's Discretion to Deny, Defer or Regulate Disclosure.

(1) **Witness Identity.** For good cause, a court may grant a request to defer disclosing a witness's identity for a reasonable period of time, but no later than 5 days before trial.

(2) **Other Matters.** A court may order that other disclosures required by Rule 15 be denied, deferred, or regulated if it finds that:

(A) disclosure would result in a risk or harm outweighing any usefulness of the disclosure to any party; and

(B) the risk cannot be eliminated by a less substantial restriction of discovery rights.

**(b) A Court's Discretion to Authorize Excision.** If the court finds that only a portion of material or other information is subject to disclosure under Rule 15, it may enter an order authorizing the disclosing party to excise the portion that is not subject to disclosure.

- (c) **Protective and Excision Order Proceedings.** If a party files a motion seeking a protective or excision order or requesting the court to determine whether any material or other information is subject to disclosure, the court may conduct an in camera inspection of the material. Counsel for all parties have the right to be heard on the matter before any in camera inspection is conducted.
- (d) **Preserving the Record.** If the court orders that any portion of any material or information is not subject to disclosure under Rule 15, the entire text of the material or information must be sealed and preserved in the record for appeal.
- (e) **Claims of Privilege or Protection.** A party who redacts a portion of a disclosed document must clearly identify the redaction and state the legal basis, if it is not clear from the context.

#### **Rule 15.6. Continuing Duty to Disclose; Final Disclosure Deadline; Extension**

- (a) **Continuing Duties.** The parties' duties under Rule 15 are continuing duties without awaiting a specific request from any other party.
- (b) **Additional Disclosures.** Any party who anticipates a need to provide additional disclosure within 30 days before trial must immediately notify both the court and all other parties of the circumstances and when the party will make the additional disclosure.
- (c) **Final Deadline for Disclosure.** Unless otherwise permitted, all disclosure required by Rule 15 must be completed at least 7 days before trial.
- (d) **Disclosure After the Final Deadline.**
  - (1) ***Motion to Extend Disclosure.*** If a party seeks to use material or information that was disclosed less than 7 days before trial, the party must file a motion to extend the disclosure deadline and to use the material or information. The moving party also must file a supporting affidavit setting forth facts justifying an extension.
  - (2) ***Order Granting Motion.*** The court must extend the disclosure deadline and allow the use of the material or information if it finds the material or information:
    - (A) could not have been discovered or disclosed earlier with due diligence; and
    - (B) was disclosed immediately upon its discovery.
  - (3) ***Order Denying Motion or Granting Continuance; Sanctions.*** If the court finds that the moving party has failed to establish facts sufficient to justify an extension under (d)(2), it may:

- (A) deny the motion to extend the disclosure deadline and deny the use of the material or information; or
- (B) extend the disclosure deadline and allow the use of the material or information and, if it extends the deadline, the court may impose any sanction listed in Rule 15.7 except preclusion or dismissal.

**(e) Extension of Time for Completion of Testing.**

- (1) **Motion.** Before the final disclosure deadline in (c), a party may move to extend the deadline to permit the completion of scientific or other testing. The motion must be supported by an affidavit from a crime laboratory representative or other scientific expert stating that additional time is needed to complete the testing or a report based on the testing. The affidavit must specify how much additional time is needed.
- (2) **Order.** If a motion is filed under (e)(1), the court must grant reasonable time to complete disclosure unless the court finds that the need for the extension resulted from dilatory conduct or neglect, or that the request is being made for an improper reason by the moving party or a person listed in Rule 15.1(f) or 15.2(f).
- (3) **Extending Time.** If the court grants a motion under (e)(2), the court may extend other disclosure deadlines as necessary.

**Rule 15.7. Disclosure Violations and Sanctions**

- (a) **Motion.** Any party may move to compel disclosure or request an appropriate sanction for a disclosure violation of Rule 15 or both. Any motion to compel disclosure or for sanctions must include a separate statement that the moving party has personally consulted with opposing counsel and has made good faith efforts to resolve the matter. Any motion filed without the separate statement will not be heard or scheduled for a hearing.
- (b) **Order.** If the court finds that a party violated a disclosure obligation under Rule 15, it must order disclosure as necessary and impose an appropriate sanction, unless the court finds that:
  - (1) the failure to comply was harmless; or
  - (2) the party could not have disclosed the information earlier with due diligence and the party disclosed the information immediately upon its discovery.

(c) **Sanctions.** In considering an appropriate sanction for nondisclosure or untimely disclosure, a court must determine the significance of the information not timely disclosed, the violation's impact on the overall administration of the case, the sanction's impact on the party and the victim, and the stage of the proceedings when the party ultimately made the disclosure. Available sanctions include, but are not limited to:

- (1) precluding or limiting a witness, the use of evidence, or an argument supporting or opposing a charge or defense;
- (2) dismissing the case with or without prejudice;
- (3) granting a continuance or declaring a mistrial if necessary in the interests of justice;
- (4) holding in contempt a witness, a party, or a person acting under the direction or control of a party;
- (5) imposing costs of continuing the proceeding; or
- (6) any other appropriate sanction.

**Rule 15.8. Disclosure Before a Plea Agreement Expires or Is Withdrawn; Sanctions**

(a) **Disclosure Obligation.** If the State has filed an indictment or information in superior court and extends a plea offer to a defendant, the State must disclose to the defendant when it makes the offer the items listed in Rule 15.1(b) to the extent that it possesses the required information and has not previously made such a disclosure.

(b) **Violation.** If the State makes the disclosure less than 30 days before the offer expires or is withdrawn, a court may sanction the State under (c) unless the State shows that the prosecutor reasonably believed, based on newly discovered information, that an offer should be withdrawn because it was contrary to the interests of justice.

(c) **Effect on Other Required Disclosures.** This rule does not affect any disclosure obligation otherwise imposed by law. While a plea offer is pending, the prosecutor must continue to comply with Rule 15.6, but additional disclosures under that rule do not extend the 30-day period specified in (b). Disclosure of evidence after the offer expires or is withdrawn, including the results of any scientific testing, does not violate this rule if the evidence did not exist, or the State was not aware of it, when the State extended the offer.

(d) **Sanctions.** On a defendant's motion alleging a violation of this rule, the court must consider the impact of any violation of (a) on the defendant's decision to accept or reject a plea offer. If the court finds that the State's failure to provide a required

disclosure materially affected the defendant's decision and if the State declines to reinstate the lapsed or withdrawn plea offer, the court—as a presumptive minimum sanction—must preclude the admission at trial of any evidence not disclosed as required by (a).

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

- (a) Appointment.** On application, if the court finds that such assistance is reasonably necessary to adequately present a defense at trial or at sentencing, the court may appoint an investigator, expert witnesses, and/or mitigation specialist for an indigent defendant at county or city expense.
- (b) Ex Parte Proceeding.** A defendant may not make an ex parte request under this rule without showing a need for confidentiality. The court must make a verbatim record of any ex parte proceeding, communication, or request, which must be available for appellate review.
- (c) Mitigation Specialist.** As used in this rule, a “mitigation specialist” is a person qualified by knowledge, skill, experience, or other training as a mental health or sociology professional to investigate, evaluate, and present psycho-social and other mitigation evidence.
- (d) Capital Case.** In a capital case, a defendant should make any motion for an expert or mitigation specialist no later than 60 days after the State makes its disclosure under Rule 15.1(i)(3).

## **Rule 18. Trial by Jury; Waiver; Selection and Preparation of Jurors**

### **Rule 18.1. Trial by Jury**

**(a) By Jury.** The number of jurors required to try a case and render a verdict is specified in A.R.S. § 21-102.

**(b) Waiver.**

- (1) Generally.** The defendant may waive the right to a trial by jury if the State and the court consent. If the State and the court agree, a defendant also may waive the right to have a jury determine aggravation or the penalty in a capital case.
- (2) Voluntariness.** Before accepting a defendant's waiver of a jury trial, the court must address the defendant personally, inform the defendant of the defendant's right to a jury trial, and determine that the defendant's waiver is knowing, voluntary, and intelligent.
- (3) Form of Waiver.** A defendant's waiver of a jury trial must be in writing or on the record in open court.
- (4) Withdrawal of Waiver.** With the court's permission, a defendant may withdraw a waiver of jury trial, but a defendant may not withdraw a waiver after the court begins taking evidence.

**Note: Consider keeping portions of the 2007 comments to Rule 18.1(a).**

#### **COMMENT [AMENDED 2007]**

**Right to Jury.** A defendant's right to trial by jury in Arizona can be summarized briefly:

- (1) A defendant has a right to a jury trial when charged with a serious offense (*i.e.*, an offense which carries a sentence more severe than 6 months in jail and a \$300 fine, or conviction of which connotes an unusual degree of "moral turpitude"). Ariz. Const. Art. 2, § 23; Rothweiler v. Superior Court of Pima County, 100 Ariz. 37, 410 P.2d 479, 16 A.L.R. 1362 (1966); O'Neill v. Mangum, 103 Ariz. 484, 445 P.2d 843 (1968).
- (2) A defendant has a statutory right to a jury trial upon demand when charged with a low misdemeanor in justice courts, but the right is deemed waived if not seasonably asserted. Ariz. Rev. Stat. Ann. § 22-320 (1956).
- (3) A defendant has a statutory right to jury in a municipal court only when charged with violation of a state statute triable before a jury under common law, Ariz. Rev. Stat. Ann. § 22-425 (1956); State ex rel. DeConcini v. City Court of Tucson, Pima County, 9

Ariz.App. 522, 454 P.2d 192 (1969), unless the offense is sufficiently serious to be constitutionally cognizable. *Rothweiler v. Superior Court of Pima County, supra.*

**Rule 18.1(a).** By proclamation of the Governor the following Constitutional Amendments relating to juries became effective on December 1, 1972: article 2, section 23, Constitution of Arizona; Section 23. The right of trial by jury shall remain inviolate. Juries in criminal cases in which a sentence of death or imprisonment for thirty years or more is authorized by law shall consist of twelve persons. In all criminal cases the unanimous consent of the jurors shall be necessary to render a verdict. In all other cases the number of jurors (not less than six) and the number required to render a verdict shall be specified by law.

See Ariz.Rev.Stat. Ann. § 21-102 (Supp.1972).

See *Williams v. Florida*, 90 S.Ct. 1893, 399 U.S. 78, 26 L.Ed.2d 446 (1970).

**Rule 18.1(b).** Rule 18.1(b) states the conditions on defendant's waiver of jury contained in Ariz.Const. Art. 6, § 17 (Supp.1971) consent of the court and the prosecutor. This is also the formulation of Federal Rules of Criminal Procedure, Rule 23(a).

See *State v. Crowley*, 111 Ariz. 308, 528 P.2d 834 (1974).

See Form 20.

### **Rule 18.2. Additional Jurors**

As deemed necessary, the court may empanel jurors in excess of the number required to render a verdict as it deems necessary. All jurors are deemed trial jurors until alternate jurors are designated under Rule 18.5(h).

### **Rule 18.3. Jurors' Information**

**(a) Information Provided to the Parties.** Before conducting voir dire examination, the court must furnish each party with a list of the names of the prospective jurors on the panel called for the case. The list must include each prospective juror's zip code, employment status, occupation, employer, residency status, education level, prior jury duty experience, and any prior felony conviction within a specified time established by the jury commissioner or the court.

**(b) Confidentiality.** The court must obtain and maintain juror information in a manner and form approved by the Supreme Court, and this information may be used only for the purpose of jury selection. The court must keep all jurors' home and business telephone numbers and addresses confidential and may not disclose them unless good cause is shown.

## **Rule 18.4. Challenges**

- (a) **Challenge to the Panel.** Any party may challenge the panel on the ground that its selection involved a material departure from the requirements of law. Challenges to the panel on this ground must be in writing, specify the factual basis for the challenge, and make a showing of prejudice to the party. A party must make, and the court must decide, a challenge to a panel before the examination of any individual prospective juror.
- (b) **Challenge for Cause.** On motion or on its own, the court must excuse a prospective juror from service in the case if there is a reasonable ground to believe that the juror cannot render a fair and impartial verdict. A challenge for cause may be made at any time, but the court may deny a challenge if the party was not diligent in making it.
- (c) **Peremptory Challenges.**
- (1) **Generally.** The court must allow both parties the following number of peremptory challenges:
    - (A) 10, if the offense charged is punishable by death;
    - (B) 6, in all other cases tried in superior court; and
    - (C) two, in all cases tried in limited jurisdiction courts.
  - (2) ***If Several Defendants Are Tried Jointly.*** If there is more than one defendant, each defendant is allowed one-half the number of peremptory challenges allowed to one defendant. The State is not entitled to any additional peremptory challenges.
  - (3) ***Agreement Between the Parties.*** The parties may agree to exercise fewer than the allowable number of peremptory challenges.

## **COMMENT**

**Rule 18.4(b).** This section replaces the catalog of fifteen grounds in the 1956 Arizona Rules of Criminal Procedure, Rule 219. The omission of the list is intended to direct the attention of attorneys and judges to the essential question--whether a juror can try a case fairly. A challenge for cause can be based on a showing of facts from which an ordinary person would imply a likelihood of predisposition in favor of one of the parties.

In addition, a juror may be challenged who:

- (1) has been convicted of a felony;
- (2) lacks any of the qualifications prescribed by law to render a person a competent juror;

- (3) is of such unsound mind or body as to render him incapable of performing the duties of a juror;
- (4) is related by consanguinity or affinity within the fourth degree to the person alleged to be injured by the offense charged, or on whose complaint the prosecution was instituted, or to the defendant;
- (5) stands in the relationship of guardian and ward, attorney and client, master and servant, or landlord and tenant, or is an employee of or member of the family of the defendant, or of the person alleged to be injured by the offense charged or on whose complaint the prosecution was instituted;
- (6) has been a party adverse to the defendant in a civil action, or has complained against or been accused by him in a criminal prosecution;
- (7) has served on the grand jury which found the indictment, or on a coroner's jury which inquired into the death of a person whose death is the subject of the indictment or information;
- (8) has served on the trial jury which has tried another person for the offense charged in the indictment or information;
- (9) has been a member of the jury formerly sworn to try the same charge and whose verdict was set aside, or which was discharged without a verdict after the case was submitted to it;
- (10) has served as a juror in a civil action brought against the defendant for the act charged as an offense;
- (11) is on the bond of the defendant or engaged in business with the defendant or with the person alleged to be injured by the offense charged or on whose complaint the prosecution was instituted;
- (12) is a witness on the part of the prosecution or defendant or has been served with a subpoena or bound by an undertaking as such;
- (13) has a state of mind in reference to the action or to the defendant or to the person alleged to have been injured by the offense charged or on whose complaint the prosecution was instituted, which will prevent him from acting with entire impartiality and without prejudice to the substantial rights of either party;
- (14) if the offense charged is punishable by death, entertains conscientious opinions which would preclude his finding the defendant guilty, in which case he shall neither be permitted nor compelled to serve as a juror; or

(15) does not understand the English language sufficiently well to comprehend the testimony offered at the trial.

This section also permits a challenge for cause to be made whenever the cause appears. Under Rule 18.4(b), the trial court may deny the challenge if not seasonably made, but there is no absolute time limitation imposed by rule. Once the trial has commenced the prosecutor may be unable, because of double jeopardy, to invoke the right to challenge, unless there are sufficient alternate jurors to enable the trial to continue with one less juror.

### **Rule 18.5. Procedure for Jury Selection**

- (a) Swearing the Jury Panel.** All members of the jury panel must swear or affirm that they will truthfully answer all questions concerning their qualifications.
- (b) Calling Jurors for Examination.** The court may then call to the jury box a number of prospective jurors equal to the number to serve plus the number of alternates plus the number of peremptory challenges that the parties are permitted. Alternatively, and at the court's discretion, all members of the panel may be examined.
- (c) Inquiry by the Court; Brief Opening Statements.** Before examining the prospective jurors, the court must identify the parties and their counsel, briefly outline the nature of the case, and explain the purpose of the examination. The court must then ask any necessary questions about the prospective jurors' qualifications to serve in the case. With the court's permission and before voir dire examination, the parties may present brief opening statements to the entire jury panel or the court may require the parties to do so.
- (d) Voir Dire Examination.** In courts of record, voir dire examination must be conducted on the record. The court must conduct a thorough oral examination of the prospective jurors and control the voir dire examination. Upon request, the court may allow the parties a reasonable time, with other reasonable limitations, to conduct a further oral examination of the prospective jurors. However, the court may limit or terminate the parties' voir dire on grounds of abuse. Nothing in this rule precludes submitting written questionnaires to the prospective jurors, in addition to oral examination.
- (e) Scope of Examination.** The court must ensure the reasonable protection of the prospective jurors' privacy. Questioning must be limited to inquiries designed to elicit information relevant to asserting a possible challenge for cause or enabling a party to intelligently exercise the party's peremptory challenges.
- (f) Challenge for Cause.** Challenges for cause must be on the record and made out of the hearing of the prospective jurors. If the court grants a challenge for cause, it must

excuse the affected prospective juror. If insufficient prospective jurors remain on the list, the court must add a prospective juror from a new panel. All challenges for cause must be made and decided before the court may call on the parties to exercise their peremptory challenges.

**(g) Exercise of Peremptory Challenges.** After examining the prospective jurors and completing all challenges for cause, the parties must exercise their peremptory challenges on the list of prospective jurors by alternating strikes, beginning with the State, until the peremptory challenges are exhausted or a party elects not to exercise further challenges. Failure of a party to exercise a challenge in turn operates as a waiver of the party's remaining challenges, but it does not deprive the other party of that party's full number of challenges. If the parties fail to exercise the full number of allowed challenges, the court will strike the jurors on the bottom of the list of prospective jurors until only the number to serve, plus alternates, remain.

**(h) Selection of Jury; Alternate Jurors.**

**(1) Trial Jurors.** After the completion of the procedures in (g), the prospective jurors remaining in the jury box or on the list of prospective jurors constitute the trial jurors.

**(2) Selection of Alternates and Instruction.** Just before the jury retires to begin deliberations, the clerk must determine by lot the alternate juror or jurors. When the jury retires to deliberate, the alternate or alternates may not participate, but the court must instruct the alternate juror or jurors to continue to observe the admonitions to jurors until the court informs them that a verdict has been returned or the jury has been discharged.

**(3) Replacing a Deliberating Juror.** If the court excuses a deliberating juror due to the juror's inability or disqualification to perform the required duties, the court may substitute an alternate juror to join the deliberations, choosing the alternate from among the qualified alternates in the order previously designated. If an alternate joins the deliberations, the court must instruct the jury to begin its deliberations anew.

**(i) Deliberations in a Capital Case.**

**(1) Retaining Alternates.** In a capital case, alternate jurors not selected to participate in the guilt phase deliberations must not be excused if the jury returns a guilty verdict of first-degree murder. This rule governs their continued participation in the case.

**(A) Aggravation Phase.** During the aggravation phase, the alternate jurors must listen to the evidence and argument presented to the jury. When the jury

retires to deliberate on aggravation, the alternate or alternates may not participate, but the court must instruct the alternates to continue to observe the admonitions to jurors until the court informs the alternates that they are discharged.

- (B) *Penalty Phase.* If the jury returns a verdict finding one or more aggravating factors, the alternate jurors must listen to the evidence and argument presented at the penalty phase. When the jury retires to deliberate on the penalty, the alternate or alternates may not participate, but the court must instruct the alternates to continue to observe the admonitions to jurors until the court informs the alternates that they are discharged.

(2) ***Replacing a Deliberating Juror.***

- (A) *Generally.* If a deliberating juror is excused during either the aggravation or penalty phases due to the juror's inability or disqualification to perform required duties, the court may substitute an alternate juror to join the deliberations, choosing from among the qualified alternates in the order previously designated.

- (B) *Scope of Deliberations.* If an alternate or alternates are substituted during the aggravation or penalty deliberations, the jurors must begin their deliberations anew only for the phase that they are currently deliberating. The jurors may not deliberate anew a verdict already reached and entered.

**Note: Consider retaining the RULE 18.5(B), COMMENT TO 1995 AMENDMENT shown below, which distinguishes the ‘strike and replace’ and ‘struck’ methods of juror selection.**

**COMMENT**

**Rule 18.5(b)**

Prior to a 1995 amendment, Rule 18.5(b) was read to require trial judges to use the traditional “strike and replace” method of jury selection, where only a portion of the jury panel is examined, the remaining jurors being called upon to participate in jury selection only upon excusal for cause of a juror in the initial group. A juror excused for cause leaves the courtroom, after which the excused juror's position is filled by a panel member who responds to all previous and future questions of the potential jurors.

As currently drafted, the trial judge is allowed to use the “struck” method of selection if the judge chooses. This procedure is thought by some to offer more advantages than the “strike and replace” method. See T. Munsterman, R. Strand and J. Hart, *The Best Method of Selecting Jurors*, *The Judges' Journal* 9 (Summer 1990); A.B.A. Standards Relating to

Juror Use and Management, Standard 7, at 68-74 (1983); and “The Jury Project,” Report to the Chief Judge of the State of New York 58-60 (1994).

The “struck” method calls for all of the jury panel members to participate in voir dire examination by the judge and counsel. Following disposition of the for cause challenges, the juror list is given to counsel for the exercise of their peremptory strikes. When all the peremptory strikes have been taken and all issues under *Batson v. Kentucky*, 476 U.S. 79, 106 S.Ct. 1712, 90 L.Ed.2d 69 (1986) and other legal issues arising therefrom have been resolved, the clerk calls the first eight or twelve names, as the law may require, remaining on the list, plus the number of alternate jurors thought necessary by the judge, who shall be the trial jury.

**Rules 18.5(d)** also permits the court to examine individual jurors outside the presence of other potential jurors in appropriate cases (*e.g.*, ones which concern unusually sensitive subjects or which are surrounded by a great deal of publicity), when the prospective juror might be embarrassed to confess his true opinion before an audience or when one juror's statements concerning the case might color the entire jury's outlook.

The court should instruct counsel that voir dire is permitted to enable counsel to ask questions seeking relevant information from jurors, but not to ask questions intended to raise arguments to the jurors. The court should be particularly sensitive to the prejudice that can arise from voir dire by an unrepresented defendant.

**Rule 18.5(f).** The court should consider challenges for cause outside jurors' hearing to minimize any resentment or bias.

### **Rule 18.6. Jurors' Conduct**

**(a) Oath.** Each juror must take the following oath:

“Do you swear (or affirm) that you will give careful attention to the proceedings, follow the court's instructions, including the admonition, and render a verdict in accordance with the law and evidence presented to you, so help you God?”

If a juror affirms, the clause “so help you God” must be omitted. In justice court cases, the court should give jurors the oath prescribed by A.R.S. § 22-322.

**(b) Preliminary Instructions.** After the jury is sworn, the court must instruct the jury concerning its duties, its conduct, the order of proceedings, the procedure for submitting written questions to witnesses or the court as set forth in Rule 18.6(d), and legal principles that will govern the proceeding. Instructions should be as readily understandable as possible by individuals unfamiliar with the legal system.

**(c) Juror Note Taking and Notebooks.**

- (1) ***Juror Note Taking.*** The court must instruct the jurors that they may take notes. The court must provide materials suitable for this purpose.
- (2) ***Juror Notebooks.*** To aid the jurors in performing their duties, the court may authorize the parties to provide the jurors with notebooks containing documents and exhibits.
- (3) ***Juror Access.*** Jurors must have access to their notes and notebooks during recesses and deliberations. In a capital case, the jurors must have access to their notes from the trial and all phases of the proceeding until the jury renders a penalty verdict or is dismissed.
- (4) ***Disposal of Juror Notes.*** When the jury is discharged, all juror notes, including deliberation notes, must be promptly collected and destroyed.

(d) **Juror Questions.** Jurors must be instructed that they are permitted to submit to the court written questions directed to witnesses or to the court and that the court will give the parties an opportunity to object to those questions outside the jury's presence. Despite this general rule, the court may prohibit or limit the submission of questions to witnesses for good cause.

(e) **Additional Communications.** During the course of the trial, the court must provide additional instructions to the jury as necessary. All communications between the judge and members of the jury panel must be in writing or on the record.

## COMMENTS

**Rule 18.6(d).** Note taking should be permitted by the jury but the confidentiality of the notes should be emphasized to the jurors and the notes themselves quickly destroyed after the trial, to prevent their use to impeach or otherwise to discredit the proceeding. See ABA, Standards Relating to Trial by Jury, § 4.2 (Approved Draft, 1968).

In trials of unusual duration or involving complex issues, juror notebooks are a significant aid to juror comprehension and recall of evidence. Notebooks may contain: (1) a copy of the preliminary jury instructions, (2) jurors' notes, (3) witnesses' names, photographs and/or biographies, (4) copies of key documents and an index of all exhibits, (5) a glossary of technical terms, and (6) a copy of the court's final instructions.

**Rule 18.6(e).** The court should instruct that any questions directed to witnesses or the court must be in writing, unsigned and given to a designated court officer. The court should further instruct that, if a juror has a question for a witness, or the court, the juror should hand it to the bailiff during a recess, or if the witness is about to leave the witness stand, the juror should signal to the bailiff. The court should also instruct the jury that they are not to discuss the questions among themselves but rather each juror must decide

independently any question he or she may have for a witness. If the court determines that the juror's question calls for admissible evidence, the question should be asked by court or counsel in the court's discretion. Such question may be answered by stipulation or other appropriate means, including but not limited to additional testimony upon such terms and limitations as the court prescribes. If the court determines that the juror's question calls for inadmissible evidence, the question shall not be read or answered. If a juror's question is rejected, the jury should be told that trial rules do not permit some questions to be asked and that the jurors should not attach any significance to the failure of having their question asked.

**Rule 25. Procedure After a Verdict or Finding of Guilty Except Insane**

After a verdict or finding under A.R.S. § 13-502 of guilty except insane, the court must commit the defendant to a secure mental health facility under the procedures provided in A.R.S. § 13-3994.



## **Rule 36.**

### **Rule 36. Local rules**

~~A superior or a limited jurisdiction court may adopt a local rule if it complies with Supreme Court Rule 28.1.~~



## **Rule 41. Forms**

### **Rule 41. Forms**

Arizona courts are required to use Form 2 (arrest warrant). The other forms in the following Appendix are recommended for use in Arizona courts and are sufficient to meet the requirements of these rules. All forms must comply with the formatting requirements of Rule 1.6.

### **Forms**



**Form 3(a). Summons: Ten-Print Fingerprint Required**

\_\_\_\_\_ **COURT** \_\_\_\_\_ **County,**  
**Arizona**

STATE OF ARIZONA Plaintiff

[CASE/COMPLAINT  
NO.]

SUMMONS

-vs-

\_\_\_\_\_

Defendant (FIRST, MI, LAST)

(Ten-print  
Fingerprint  
Required)

TO:

**YOU ARE ORDERED**

to appear at [name of entity and address] \_\_\_\_\_

*(Required for all felonies, domestic violence, sexual or DUI offenses)* \_\_\_\_\_ between the hours of \_\_\_ a.m./p.m. at any time prior to your court appearance date to be photographed and ten-print fingerprinted.

**YOU ARE SUMMONED** to appear before this court for the following reason:

*[(List reason for summons; e.g., filing of indictment, information or complaint (list charges or other reasons)).*

**YOU ARE ORDERED TO REPORT** on \_\_\_\_\_, 20 \_\_\_\_ at \_\_\_\_\_ a.m./p.m.

**LOCATED AT:** \_\_\_\_\_

\_\_\_\_\_

---

**IF YOU FAIL TO APPEAR AS ORDERED, A WARRANT MAY BE ISSUED FOR YOUR ARREST.**

Date: \_\_\_\_\_

Judicial Officer

**Requests for reasonable accommodation for persons with disabilities must be made to the court by parties at least 3 working days in advance of a scheduled court proceeding.**

**CERTIFICATE OF PERSONAL SERVICE**

I swear that I personally served this summons as follows:

Date Received: \_\_\_\_\_ Date Served: \_\_\_\_\_ Time Served: \_\_\_\_\_

Person Served: \_\_\_\_\_

Location Where Served: \_\_\_\_\_

\_\_\_\_\_ County.

\_\_\_\_\_  
\_\_\_\_\_  
Officer Serving Summons

---

**CERTIFICATE OF SERVICE BY MAILING**

I certify that a copy of this document was sent by Registered or Certified mail, return receipt requested, to the defendant at the above-listed address.

Dated: \_\_\_\_\_

CLERK

**Form 3(b). Summons: Fingerprint Not Required**

\_\_\_\_\_ County, Arizona  
**COURT**

STATE OF ARIZONA Plaintiff

[CASE/COMPLAINT NO.]

-vs-

**SUMMONS**

**(Fingerprint Not  
Required)**

Defendant (FIRST, MI, LAST)

TO: \_\_\_\_\_

**YOU ARE SUMMONED** to appear before this court for the following reason:

*[(List reason for summons; e.g., filing of indictment, information or complaint (list charges or other reasons)].*

**YOU ARE ORDERED TO REPORT** on \_\_\_\_\_, 20\_\_ at \_\_\_ a.m./p.m.

**LOCATED AT:** \_\_\_\_\_

**IF YOU FAIL TO APPEAR AS ORDERED, A WARRANT MAY BE ISSUED FOR YOUR ARREST.**

Date: \_\_\_\_\_

\_\_\_\_\_  
Judicial Officer

**Requests for reasonable accommodation for persons with disabilities must be made to the court by parties at least 3 working days in advance of a scheduled court proceeding.**

**CERTIFICATE OF PERSONAL SERVICE**

I swear that I personally served this summons as follows:

Date Received: \_\_\_\_\_ Date Served: \_\_\_\_\_ Time Served: \_\_\_\_\_

Person Served: \_\_\_\_\_

Location Where Served: \_\_\_\_\_

\_\_\_\_\_ County.

\_\_\_\_\_  
Officer Serving Summons

---

**CERTIFICATE OF SERVICE BY MAILING**

I certify that a copy of this document was sent by Registered or Certified mail, return receipt requested, to the defendant at the above-listed address.

Dated: \_\_\_\_\_

\_\_\_\_\_  
CLERK

Form 3(b)



Defendant's Name \_\_\_\_\_ DOB \_\_\_\_\_ Booking No. \_\_\_\_\_ Case No. \_\_\_\_\_

**C. OTHER INFORMATION (Check if applicable)**

1.  Defendant is presently on probation, parole or any other form of release involving other charges or convictions.  
Explain: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

2. List any prior:  
Arrests: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Convictions: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Failures to Appear (FTA): \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Protective Orders: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

3. There is an indication of:  
 Alcohol Abuse  Other Substance Abuse  
 Mental Health Issues  Physical Illness  
 Developmental Disability  
Explain: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

4. Defendant is employed by: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
Phone: \_\_\_\_\_  
How long: \_\_\_\_\_

5. Defendant resides at: \_\_\_\_\_  
\_\_\_\_\_  
With Whom: \_\_\_\_\_  
How Long: \_\_\_\_\_  
Alternate address for court notification: \_\_\_\_\_  
\_\_\_\_\_

6. Facts to indicate defendant will flee if released: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

7. Reasons to oppose an unsecured release: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

8.  Defendant speaks a language other than English  
Language spoken: \_\_\_\_\_  
 American Sign Language  
 Defendant requested an interpreter

**D. CIRCUMSTANCES OF THE OFFENSE**

1.  Defendant used firearm or other weapon  
Type: \_\_\_\_\_

2.  Defendant injured someone.  
Explain: \_\_\_\_\_

3.  Medical attention was necessary  
Nature of injuries: \_\_\_\_\_

4.  Defendant threatened someone  
Nature of threats: \_\_\_\_\_

5. Did the offense involve a child victim?  Yes  No  
If yes, was DCS notified?  Yes  No

6. If property offense  
a. Value of property taken/damaged: \_\_\_\_\_  
b.  Property was recovered

6 7. Names of co-defendant(s), if any: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**E. CRIME(S) AGAINST PERSONS**

1. Relationship of defendant to victim: \_\_\_\_\_

2.  Victim(s) and defendant reside together.

3. Law enforcement learned of the situation by  Victim  
 Third Party  Officer observation

4.  Previous incidents involving these same parties  
Explain: \_\_\_\_\_  
\_\_\_\_\_

5. Defendant is currently the subject of:  
 Order of Protection  
 Injunction against Harassment  
 Other court order: \_\_\_\_\_

Defendant's Name \_\_\_\_\_ DOB \_\_\_\_\_ Booking No. \_\_\_\_\_ Case No. \_\_\_\_\_

6.  Likelihood of inappropriate contact with victim(s)  
Explain: \_\_\_\_\_

7.  Victim(s) expressed an opinion on defendant's release.  
Explain: \_\_\_\_\_

4. State whether defendant was under the influence of alcohol or drugs at the time of the offense  
 Yes  No  Unknown  
Type of substance: \_\_\_\_\_

**F. DOMESTIC VIOLENCE DEFENDANT ISSUES**

- Access to or use of weapons
- Children/Vulnerable adults present
- Crime occurred in public
- Control/ownership/jealousy issues
- Depression
- Frequency/intensity of Domestic Violence increasing
- Kidnapping
- Potential for multiple violations of court orders
- Prior history of Domestic Violence
- Prior Protective Order
- Recent separations
- Stalking behavior
- Threats of homicide/suicide/bodily harm
- Violence against children, vulnerable adults or animals

Explain: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**G. CIRCUMSTANCES OF ARREST**

1. Did defendant attempt to:  
 Avoid arrest  Resist arrest  Self Surrender  
Explain: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

2.  Defendant was armed when arrested  
Type of weapon: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

3.  Evidence of the offense was found in defendant's possession  
Explain: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**H. DRUG OFFENSES**

1. If the defendant is considered to be a drug dealer, state the supporting facts: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

2. State quantities and types of illegal drugs directly involved with offense \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

- Methamphetamine was involved:
- Drug field test was positive
- Defendant admission of drug type: \_\_\_\_\_
- Approximate monetary value of drugs: \_\_\_\_\_

3. State whether money was seized  
 Yes  No  
Amount: \_\_\_\_\_

**If this is a fugitive arrest, complete the affidavit as required by the Uniform Criminal Extradition Act (ARS 13-3841 et seq.)**

I certify that the information presented is true to the best of my knowledge:

\_\_\_\_\_  
Date  
\_\_\_\_\_  
Departmental Report #

\_\_\_\_\_  
Arresting Officer/Agency/ Serial No.  
\_\_\_\_\_  
Duty Phone No.

# Form 4(b). Release Questionnaire/Defendant

COURT _____	County, Arizona	
State of Arizona Plaintiff -vs- _____ Defendant (FIRST, MI, LAST)	[CASE/COMPLAINT NO.]  Booking No. _____	<b>RELEASE QUESTIONNAIRE</b> (To be completed by Defendant)

Alias(es) \_\_\_\_\_

The following information is for the purpose of determining the conditions under which you may be released at this time. You are not required to answer any question if you feel the answer might be harmful to you. The answers you give to the following questions will be used by the court for the purpose of determining the conditions of your release. However, your answers will be checked against the information supplied by the police, and with the references you yourself give on the form. Any discrepancies may result in higher bail or harsher conditions of release. **Any information you give may be used against you in this or any other matter.**

### General Background

#### 1. Background and Residence

Full Name: \_\_\_\_\_

Sex \_\_\_\_\_ Race \_\_\_\_\_ Date of Birth \_\_\_\_\_

Place of Birth [city, state, country] \_\_\_\_\_

Have you served in the military services of the United States?  Yes  No

Present Citizenship \_\_\_\_\_

If you are not a United States of America citizen, how long have you been in this country? \_\_\_\_\_

Do you need the court to provide an interpreter to help you communicate and to understand what is being said?  Yes  No

If so, what language are you most comfortable speaking?  
 Spanish  American Sign Language  Other language: \_\_\_\_\_

Are you homeless?  Yes  No

Present Address \_\_\_\_\_

How long have you lived at the above address? \_\_\_\_\_

Telephone No. ( ) \_\_\_\_\_ Cell No. ( ) \_\_\_\_\_

Where else have you lived in the past year and for how long?

\_\_\_\_\_  
 \_\_\_\_\_

Where will you go if released today? \_\_\_\_\_

**2. Family**

Are you married/partnered If so, are you living with your spouse/partner? [ ] Yes [ ] No

Are you living with someone? Relationship: \_\_\_\_\_

How many other persons (including your children) are living with you? \_\_\_\_\_

How much do you contribute to their support? \_\_\_\_\_

Do you have regular contact with any other relatives? [ ] Yes [ ] No

Explain \_\_\_\_\_

\_\_\_\_\_

**3. Employment**

Are you presently employed? [ ] Yes [ ] No If not, what is your principal means of support?

Explain: \_\_\_\_\_

Employer's Name \_\_\_\_\_

Address: \_\_\_\_\_

Telephone No. (\_\_\_\_) \_\_\_\_\_

What is the nature of your job? \_\_\_\_\_

How long have you worked there? \_\_\_\_\_

**4. Criminal Record**

Do you have any previous criminal record? [ ] Yes [ ] No

Explain \_\_\_\_\_

\_\_\_\_\_

**5. Record of Appearance**

Have you ever been released on bail or other conditions pending trial? [ ] Yes [ ] No

Did you ever fail to appear as required? [ ] Yes [ ] No

Explain \_\_\_\_\_

\_\_\_\_\_

**6. Supervision**

Is there any organization or any person who might agree to supervise you and be responsible for your return to court as required? [ ] Yes [ ] No

Organization or person to contact \_\_\_\_\_

\_\_\_\_\_ ( )  
Address City State Zip Telephone

**7. Other Circumstances**

Are there any other matters (such as your health or illness in your family) which you feel the court should consider in making its decision? \_\_\_\_\_

**8. Verification**

Is there any other friend, relative, neighbor or other person who can be called as a reference to this information?

\_\_\_\_\_ ( )  
Name Address City State Zip Telephone

\_\_\_\_\_ ( )  
Name Address City State Zip Telephone

\_\_\_\_\_ ( )  
Name Address City State Zip Telephone

I certify, under penalty of perjury, that the information presented is true and correct to the best of my knowledge.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Defendant Signature  
Contact Telephone No. \_\_\_\_\_

**Form 5(a). Defendant's Financial Statement**

\_\_\_\_\_ County, Arizona

\_\_\_\_\_  
**COURT**

STATE OF ARIZONA Plaintiff

[CASE/COMPLAINT NO.]

-vs-

**DEFENDANT'S  
FINANCIAL  
STATEMENT**  
(Confidential)

Defendant (FIRST, MI, LAST)

**INSTRUCTIONS TO THE DEFENDANT:** You are to answer the following questions so the Judge can decide whether to appoint an attorney to represent you and/or, if a bond is required, how much it should be, or any other matter relating to indigence. Use care in filling in your answers. If you need more space for any answer, note such and write on the back of the page. If you knowingly give false or misleading information, you may be punished for contempt of court or subjected to prosecution for fraud or perjury.

1. Full name: \_\_\_\_\_

2. Check the appropriate box:  Single  Married, living w/ spouse  Married but separated  Divorced  Widowed  Partnered

3. In addition to yourself, how many other adults do you support? \_\_\_\_\_

How many children? \_\_\_\_\_

**INCOME:**

4. List below in Column 1 the money that you are paid or receive each month. If you are married and are living with your spouse, list below in Column 2 the money that your spouse is paid or receives each month. If you are separated, divorced, widowed, partnered or single, leave Column 2 blank.

	<b>Column 1</b>	<b>Column 2</b>
	<b>Amount paid to Me</b>	<b>Amount paid to Spouse</b>
	<b>Monthly</b>	<b>Monthly</b>
a. Wages, Salaries, Self Employment Income	\$ _____	\$ _____
b. Payroll deductions	\$ _____	\$ _____
c. Unemployment compensation	\$ _____	\$ _____
d. Welfare benefits	\$ _____	\$ _____
e. Disability benefits	\$ _____	\$ _____
f. Veteran's benefits	\$ _____	\$ _____
g. Social Security benefits	\$ _____	\$ _____
h. Worker's compensation	\$ _____	\$ _____
i. Accident benefits	\$ _____	\$ _____
j. Retirement benefits	\$ _____	\$ _____
k. Allotment checks	\$ _____	\$ _____
l. Interest	\$ _____	\$ _____
m. Dividends	\$ _____	\$ _____
n. Child support received	\$ _____	\$ _____
o. Alimony or maintenance received	\$ _____	\$ _____

p. Total of any other income received \$ \_\_\_\_\_ \$ \_\_\_\_\_  
 Source: \_\_\_\_\_

**TOTAL MONTHLY INCOME:** \$ \_\_\_\_\_ \$ \_\_\_\_\_

**ASSETS:**

5. **Cash:** List below the amounts of cash held or value of:

- a. Cash on you, your spouse, or in your joint property, and at home \$ \_\_\_\_\_
- b. \_\_\_\_\_ \$ \_\_\_\_\_  
 Cash in banks, credit unions, and elsewhere
- c. \_\_\_\_\_ \$ \_\_\_\_\_  
 Cash owed to you or to your spouse by others
- d. \_\_\_\_\_ \$ \_\_\_\_\_  
 Stocks and bonds; insurance policy cash values
- e. \_\_\_\_\_ \$ \_\_\_\_\_  
 Beneficial interest in a trust

6. **Personal Property:** List below any valuable personal property you own and have not listed above which is not needed by you or your family for day-to-day living.

- |                      |          |          |             |
|----------------------|----------|----------|-------------|
| a. Description _____ | \$ _____ | \$ _____ | \$ _____    |
|                      | (value)  | (owed)   | (net value) |
| b. Description _____ | \$ _____ | \$ _____ | \$ _____    |
|                      | (value)  | (owed)   | (net value) |
| c. Description _____ | \$ _____ | \$ _____ | \$ _____    |

(value) (owed) (net value)

7. **Auto:** Complete the following information about any motor vehicles (e.g.: cars, trucks, trailers, boats, airplanes, motorcycles) that you are buying, that you own, or in which you claim to have an interest.

a. Make, Year and Model \$ \_\_\_\_\_ \$ \_\_\_\_\_ \$ \_\_\_\_\_

(value) (owed) (net value)

b. Make, Year and Model \$ \_\_\_\_\_ \$ \_\_\_\_\_ \$ \_\_\_\_\_

(value) (owed) (net value)

8. **Real Estate:** Complete the following information about any real property (your home, other land, or buildings) that you are buying, that you own, or in which you claim to have an interest.

a. Location \$ \_\_\_\_\_ \$ \_\_\_\_\_ \$ \_\_\_\_\_

(value) (owed) (net value)

b. Location \$ \_\_\_\_\_ \$ \_\_\_\_\_ \$ \_\_\_\_\_

(value) (owed) (net value)

**TOTAL AVAILABLE ASSETS:** \$ \_\_\_\_\_

**EXPENSES:**

9. List below all monthly expenses **not already deducted** from your pay.

a. Rent or house payment \$ \_\_\_\_\_

b. Total cost of utilities (water, electric, gas, telephone, trash) \$ \_\_\_\_\_

- c. Food \$ \_\_\_\_\_
- d. Credit card payments \$ \_\_\_\_\_
- e. Installment loan payments \$ \_\_\_\_\_
- f. Charge account payments \$ \_\_\_\_\_
- g. Motor vehicle payments \$ \_\_\_\_\_
- h. Union dues \$ \_\_\_\_\_
- i. Medical care costs (doctors, dentists, medicine) \$ \_\_\_\_\_
- j. Child support and alimony \$ \_\_\_\_\_
- k. Cost of baby-sitter \$ \_\_\_\_\_
- l. Motor vehicle insurance, maintenance and gas \$ \_\_\_\_\_

10. Do you have any expenses (monthly or otherwise) not shown above? If yes, please list below.

- a. \_\_\_\_\_ (how often paid) \$ \_\_\_\_\_ (how much)
- b. \_\_\_\_\_ (how often paid) \$ \_\_\_\_\_ (how much)
- c. \_\_\_\_\_ (how often paid) \$ \_\_\_\_\_ (how much)

(how often paid) (how much)

**TOTAL MONTHLY EXPENSES:** \$ \_\_\_\_\_

11. Are any of your expenses past due? If yes, please list below.

a. \_\_\_\_\_ \$ \_\_\_\_\_

(how often paid) (how much)

b. \_\_\_\_\_ \$ \_\_\_\_\_

(how often paid) (how much)

c. \_\_\_\_\_ \$ \_\_\_\_\_

(how often paid) (how much)

12. Do you have an attorney to help you with this case?  Yes  No

If yes, what is his/her name: \_\_\_\_\_ If no, are you planning to hire your own attorney?  Yes  No

13. Do you want the Court to appoint an attorney (public defender) to help you with this case?  Yes  No

a. How much can you pay as a down payment for attorney fees? \$

b. How much can you pay each month for attorney fees? \$

14. **Oath under penalty of perjury:** I have truthfully and completely given the information in this statement. I have not knowingly concealed, or in any way misrepresented, my financial resources. I am aware that I may be held in contempt of court, or prosecuted for perjury if I have made any false statements or misrepresentation, or concealment, or if I continue to accept the services of a court appointed attorney after my financial condition has materially

changed without notifying my court appointed attorney. In any such case, I understand that this application may be used against me.

I hereby make these representations under **PENALTY OF PERJURY:**

Date: \_\_\_\_\_

Defendant Signature: \_\_\_\_\_

Witnessed by: \_\_\_\_\_

Social Security No.: \_\_\_\_\_

Form 5(a)

**Form 5(b). Motion for Appointment of Counsel**

\_\_\_\_\_ COURT [Precinct \_\_\_\_\_] \_\_\_\_\_ County, Arizona

STATE OF ARIZONA Plaintiff

[CASE/COMPLAINT NO.]

-vs-

**MOTION FOR  
APPOINTMENT  
OF COUNSEL**

Defendant (FIRST, MI, LAST)

**MOTION FOR APPOINTMENT OF COUNSEL**

Defendant moves for the appointment of Counsel and declares that Defendant's financial circumstances will not allow the hiring of a private attorney in this case.

Signature \_\_\_\_\_ Date \_\_\_\_\_ Phone No. \_\_\_\_\_

Address \_\_\_\_\_

**ORDER**

Motion for Court Appointed Counsel is granted.

(Check if applicable)

A financial assessment is ordered for a recommendation to the Court as to defendant's eligibility and any contribution amount to the cost of the court appointed attorney.

\$ \_\_\_\_\_ for financial assessment.

\$ \_\_\_\_\_ for contribution to the cost of the court appointed attorney.

Legal Services to be provided by \_\_\_\_\_

Phone No. \_\_\_\_\_

[ ] Motion for court appointed attorney is denied.

Judicial Officer \_\_\_\_\_

Date \_\_\_\_\_

Courtroom \_\_\_\_\_

Form 5(b)

**Form 6. Release Order**

\_\_\_\_\_ **COURT** \_\_\_\_\_ **County, Arizona**

STATE OF ARIZONA, Plaintiff

-vs-

**RELEASE**

**ORDER**

\_\_\_\_\_ Defendant (FIRST, MI, LAST)

\_\_\_\_\_ Booking Number

\_\_\_\_\_ Date of Birth

LINE #	COMPLAINT NO.	VIOLATION CODE	NF	OR	3P	BOND	BA	U	S	C
1						\$				
2						\$				
3						\$				
4						\$				
5						\$				

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

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

**MANDATORY AND STANDARD CONDITIONS OF RELEASE:**

[x] 1. Appear at \_\_\_\_\_ Court on: \_\_\_\_\_

Court name, and address or see attached sheet for Court location at \_\_\_\_\_ a.m. / p.m., Courtroom: \_\_\_\_\_ for \_\_\_\_\_ and attend all future court hearings.

2. Violate no federal, state or local criminal law.

3. Not leave the state of Arizona without written permission from the court.

Defendant may leave the state of Arizona provided defendant returns for court dates.

4. Diligently pursue any appeal if released from custody after judgment and sentence have been imposed.

5. Maintain contact with your attorney.

6. Provide a current address and phone number to the Court and to your attorney and immediately notify both of any changes.

7. Not threaten or initiate any type of contact with the alleged victim(s).

8. Not drive a motor vehicle without a valid driver's license in your possession.

**OTHER CONDITIONS OF RELEASE:**

9. Not threaten or initiate any type of contact with any person as specified here: \_\_\_\_\_

.

10. Not possess weapons as specified here: \_\_\_\_\_

.

11. Not consume any alcoholic beverages.

12.  Not go to scene of the alleged crime:

Not go to locations as specified here: \_\_\_\_\_

.

- 13. Comply with the assigned pretrial supervision program as specified here: \_\_\_\_\_
- 14. Comply with 3<sup>rd</sup> party custody release conditions as specified here: \_\_\_\_\_
- 15. Contact probation or parole officer. See 3<sup>rd</sup> party obligations on back
- 16. Electronic monitoring, if available, (Mandatory if charged with a felony offense under Chapters 14 or 35.1 of Title 13)
- 17. Other: \_\_\_\_\_

**CONSEQUENCES OF VIOLATING THIS ORDER: You have the right to be present at your trial and at all other proceedings in your case. If you fail to appear the court may issue a warrant for your arrest and/or hold the trial or proceeding in your absence. IF CONVICTED, YOU WILL BE REQUIRED TO APPEAR FOR SENTENCING. IF YOU FAIL TO APPEAR, YOU MAY LOSE YOUR RIGHT TO A DIRECT APPEAL.**

If you violate any condition of an appearance bond, the court may order the bond and any related security deposit forfeited to the State of Arizona. In addition, the court may issue a warrant for your arrest upon learning of any violation of the conditions of release. After a hearing, if the court finds that you have not complied with the release conditions, the court may modify the conditions or revoke the release altogether.

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

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

---

Current address where you live      Apt. No. Address where you receive mail if different from current address

( )

( )

Phone No.

Phone No.

X

X

Defendant Signature

Date

Judicial Officer

Date

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

**THIRD PARTY OBLIGATIONS**

**YOU MUST** comply with the following obligations if the defendant has been placed in your custody while the case is pending in court.

- A. Supervise the defendant in accordance with all of the release conditions.
- B. Make every effort to assure that the defendant is present for all scheduled court hearings.
- C. Make every effort to assure that the defendant will contact Indigent Defense Services to determine indigency status.
- D. Notify the court immediately in the event the defendant violates any conditions of release or disappears.

**As Third Party Custodian** appointed by the Court, I understand and accept these obligations.

( )

Third Party Custodian  
Signature

Date

Phone No.

Address

City      State      Zip

**WARNING**

**IF YOU WILLFULLY VIOLATE ANY OF THESE OBLIGATIONS, THE COURT MAY HOLD YOU IN CONTEMPT AND IMPOSE A JAIL SENTENCE, FINE OR BOTH, AND YOU MAY LOSE YOUR RIGHT TO APPEAL.**

**Form 7. Appearance Bond**

\_\_\_\_\_ **COURT** \_\_\_\_\_ **County, Arizona**

STATE OF ARIZONA,  
Plaintiff

[CASE/COMPLAINT  
NO.]

-VS-

**APPEARANCE**

**BOND**

Defendant (FIRST, MI,  
LAST)

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

**SECURED APPEARANCE BOND**

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

Depositor: \_\_\_\_\_

Address: \_\_\_\_\_

Phone Number: \_\_\_\_\_

**OR**

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

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

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

**ACKNOWLEDGEMENTS**

Date \_\_\_\_\_ ) Defendant  
State of Arizona ) Subscribed and sworn to before me on

) ss.

County of \_\_\_\_\_ ) \_\_\_\_\_

My Commission Expires \_\_\_\_\_ ) Notary Public

**Approved:**

\_\_\_\_\_ ) \_\_\_\_\_  
Date Surety or Authorized Agent

**Form 7. Attachment A**

\_\_\_\_\_ COURT [Precinct \_\_\_\_] \_\_\_\_\_ County, Arizona

**FORM 7 ATTACHMENT A**

**SPECIFICATION BY SURETY OF PROPERTY CERTIFIED IN APPEARANCE BOND**

\_\_\_\_\_, surety on the attached appearance bond certifies that he owns the following properties, subject to the stated exemptions and liabilities, and to the stated outstanding appearance bonds entered into by the defendant.

I. Properties, Less Exemptions and Liabilities.

<u>Items of Property</u>	<u>Value or Amount</u>
(1) _____	
Less _____	
Net _____	
(2) _____	
Less _____	
Net _____	
(3) _____	
Less _____	
Net _____	
(4) _____	
Less _____	
Net _____	
Total _____	\$ _____

Other Outstanding liabilities or Exemptions.

(1) _____	
(2) _____	
(3) _____	
(4) _____	
Total _____	\$ _____

Other Outstanding Appearance Bonds.

(1) _____	
(2) _____	
(3) _____	
(4) _____	
Total _____	\$ _____

II. Total Property in Excess of Liabilities, Exemptions, and Outstanding

Appearance Bonds (I less II and III). \_\_\_\_\_ \$ \_\_\_\_\_

Form 7-Attachment A

**Form 8. Notice of Right to Counsel and Waiver**

\_\_\_\_\_ County, Arizona

\_\_\_\_\_  
**COURT**

STATE OF ARIZONA Plaintiff

[CASE/COMPLAINT NO.]

-vs-

**NOTICE OF  
RIGHT TO COUNSEL  
AND WAIVER**

Defendant (FIRST, MI, LAST)

**READ THE ENTIRE FORM CAREFULLY BEFORE SIGNING IT**

You have elected to proceed without an attorney either because:

you do not want an attorney,

the Court has determined that you are not entitled to a court- appointed attorney and you choose not to retain one.

The purpose of this form is to notify you of your right to an attorney, of the ways in which an attorney can be important to you in this case, and also to allow you to give up your rights if you so choose.

I understand that I am charged with the following crime(s) under the laws of Arizona:

- \_\_\_\_\_ which is a class \_\_\_\_  felony  misdemeanor
- \_\_\_\_\_ which is a class \_\_\_\_  felony  misdemeanor
- \_\_\_\_\_ which is a class \_\_\_\_  felony  misdemeanor
- \_\_\_\_\_ which is a class \_\_\_\_  felony  misdemeanor
- \_\_\_\_\_ which is a class \_\_\_\_  felony  misdemeanor

I understand that if I am found guilty, I can be given a severe punishment, including incarceration  in the Arizona State Prison,  in the \_\_\_\_\_ County Jail,  a fine, or other penalty.

I understand that under the Constitutions of the United States and the State of Arizona, I have the right to be represented by an attorney at all critical stages of this criminal case: before trial, at trial itself, during proceedings to determine what sentence should be imposed if I am found

guilty, and for an appeal. I understand that, for certain offenses, if I am unable to obtain the services of an attorney without incurring substantial hardship to myself or to my family, one will be appointed for me at a reduced cost or at no cost to me.

I understand that the services of an attorney can be of great value, for example: in determining if the charges against me are sufficient as a matter of law; whether the procedures used in investigating the charges and obtaining evidence against me, including the lawfulness of any search, seizure or police questioning; if an act I may have committed actually amounts to the crime for which I am charged; if I have any other valid defense to the charges; if I am found guilty, whether I should be placed on probation, be required to pay a fine, or be sentenced to a term of incarceration; or if appellate review would be justified. I understand that, if I am found guilty of the offense charged, the Court may sentence me to a term of incarceration, even though I have given up my right to an attorney.

**RIGHT TO AN ATTORNEY AT ANY TIME**

I understand that I can change my mind about having an attorney at any time by asking the judge to appoint an attorney for me or by hiring my own attorney. I also understand that I will not be entitled to repeat any part of the case already held or to delay scheduled court proceedings based solely on changing my mind about having an attorney.

**CERTIFICATION AND WAIVER**

I certify that I have read and understand all of the above, and I hereby waive my right to an attorney in this case, and to have an attorney appointed at a reduced cost or at no cost to me, for eligible offenses, if I cannot afford one.

**DO NOT SIGN THIS FORM UNLESS YOU HAVE READ IT COMPLETELY, OR HAD IT READ TO YOU AND UNDERSTAND IT FULLY.**

**DO NOT SIGN THIS FORM IF YOU WANT AN ATTORNEY.**

Dated \_\_\_\_\_ Defendant \_\_\_\_\_ Interpreter \_\_\_\_\_

**FINDING**

After advising the defendant of the dangers and disadvantages of self-representation, the Court finds that the defendant's waiver of counsel is knowing, voluntary, and intelligent.

Dated \_\_\_\_\_ Judicial Officer's Signature \_\_\_\_\_



**Form 9. Notice of Appearance**

\_\_\_\_\_ County, Arizona

\_\_\_\_\_  
**COURT**

\_\_\_\_\_  
STATE OF ARIZONA Plaintiff

\_\_\_\_\_  
[CASE/COMPLAINT NO.]

-vs-

**NOTICE  
OF  
APPEARANCE**

\_\_\_\_\_  
Defendant (FIRST, MI, LAST)

\_\_\_\_\_  
Pursuant to Rule 6.3, Rules of Criminal Procedure, I hereby enter my appearance on behalf of the above-named Defendant for all further proceedings in this case, including the filing of a Notice of Appeal, if required.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Attorney's Signature

\_\_\_\_\_  
Attorney's Name (please print)

\_\_\_\_\_  
Attorney's Bar Number

\_\_\_\_\_  
Firm Name

\_\_\_\_\_  
Address

\_\_\_\_\_  
City State Zip

---

Telephone Number

Form 9

**Form 10. Waiver of Preliminary Hearing**

\_\_\_\_\_ County, Arizona

\_\_\_\_\_  
**COURT**

STATE OF ARIZONA Plaintiff

[CASE/COMPLAINT NO.]

-vs-

**WAIVER OF  
PRELIMINARY  
HEARING**

Defendant (FIRST, MI, LAST)

**WAIVER OF PRELIMINARY HEARING**

You are entitled to a preliminary hearing on the charge(s) against you unless charged by grand jury indictment. The purpose of this form is to notify you of your rights and of the ways in which the hearing could benefit you, and to allow you to give up your rights if you so choose. Read the entire form carefully before signing it.

**RIGHT TO PRELIMINARY HEARING**

I understand that I am charged with the crime(s) of

\_\_\_\_\_  
which is a felony under the law of Arizona and that if I am found guilty I can be given a severe punishment, including jail, prison, a fine, probation, or other penalties.

I understand that the Arizona Constitution provides that, if I am charged by means other than a grand jury indictment, I have a right to a preliminary hearing at which a magistrate, without making any determination of my guilt or innocence, will decide whether there is sufficient evidence against me to establish probable cause to try me on these charges. I understand that I have a right to a lawyer at the preliminary hearing and that, if I am unable to obtain the services of a lawyer without incurring substantial hardship to myself or to my family, one will be furnished for me free of charge.

I understand that the prosecutor would be required to present witnesses and evidence against me at such a hearing to demonstrate that there is probable cause to try me on the charges and that I would have the right to cross-examine such witnesses and to present evidence of my innocence. I understand that if the prosecutor failed to show probable cause to try me, the charge(s) against me would be dismissed, although the prosecutor may choose to re-file the charges.

I understand that giving up my right to a preliminary hearing gives the state the right to try me for the offense(s) charged without any determination of probable cause by a magistrate.

**CERTIFICATION AND WAIVER**

I certify that I have read and understand all of the above, and I hereby waive my right to a preliminary hearing in this case.

**DO NOT SIGN THIS FORM UNLESS YOU HAVE READ IT COMPLETELY, OR HAD IT READ TO YOU AND UNDERSTAND IT FULLY.**

**DO NOT SIGN THIS FORM IF YOU WANT A PRELIMINARY HEARING.**

---

Date

Defendant

I have explained the significance of the preliminary hearing to the defendant, and I consent to waiver of a preliminary hearing in this case.

---

Defense Attorney

Bar Number

I consent to waiver of a preliminary hearing in this case.

---

Prosecutor

Bar Number

Form 10

**Form 11. Bind-Over Order**

\_\_\_\_\_ County, Arizona

**COURT**

STATE OF ARIZONA Plaintiff

[CASE/COMPLAINT NO.]

-vs-

**BIND-OVER  
ORDER**

Defendant (FIRST, MI, LAST)

**ORDER HOLDING DEFENDANT TO ANSWER BEFORE THE SUPERIOR COURT**

The Court ORDERS the defendant \_\_\_\_\_ to respond before the Superior Court in \_\_\_\_\_ County, Arizona to the listed charges:

- I find that there is probable cause to believe that the above offense(s) has/have been committed and that the defendant committed them.
- The defendant waived a preliminary hearing on the felony charge(s).
- The court requests that the above misdemeanors be associated with the felony charge(s) set forth above.

Date

Signature of Judicial Officer

\_\_\_\_\_  
Printed Name and Title of Judicial Officer

Form 11

**Form 12. Transmittal Certification**

\_\_\_\_\_ County, Arizona

**COURT**

STATE OF ARIZONA Plaintiff

[CASE/COMPLAINT NO.]

-vs-

**TRANSMITTAL  
CERTIFICATION**

Defendant (FIRST, MI, LAST)

**ORDER HOLDING DEFENDANT TO ANSWER BEFORE THE SUPERIOR COURT**

I hereby certify that the enclosed items constitute a true and complete record of the preliminary proceedings held in the above-entitled case appearing in Docket No. \_\_\_\_\_, at page \_\_\_\_.

The following items are included:

- The original complaint, including amendments;
- The supporting affidavits of the following witnesses:

\_\_\_\_\_

\_\_\_\_; \_\_\_\_\_

- The arrest warrant or summons;
- The defendant's release questionnaire;
- The defendant's financial statement and request for appointment of counsel;
- A copy of the release order;
- The defendant's appearance bond;
- Security deposited with the appearance bond: \_\_\_\_\_

\_\_\_\_; \_\_\_\_\_

- Defendant's waiver of counsel;
- Order appointing counsel;
- Waiver of preliminary hearing;
- Exhibits and items of physical evidence introduced at the preliminary hearing:

\_\_\_\_; \_\_\_\_\_

- Order holding the defendant to answer in superior court;
- Audio or video record of preliminary hearing, if any;
- Other: \_\_\_\_\_

\_\_\_\_\_

---

Date

Signature of Judicial Officer

---

Printed Name and Title of Judicial Officer

Form 12

**Form 13(a). Indictment**

\_\_\_\_\_ County, Arizona

**COURT**

STATE OF ARIZONA Plaintiff

[CASE/COMPLAINT NO.]

-vs-

**INDICTMENT  
Felony / Misdemeanor**

Defendant (FIRST, MI, LAST)

The Grand Jurors of \_\_\_\_\_ County, Arizona, accuse [name of defendant] \_\_\_\_\_  
on this \_\_\_\_ day of \_\_\_\_\_, charging that in \_\_\_\_\_ County, Arizona:

[List and describe each charge or count]

\_\_\_\_\_  
[Foreperson writes "A True Bill"]

\_\_\_\_\_  
Date

[NAME OF PROSECUTING AGENCY]

By \_\_\_\_\_

Deputy County Attorney (or Other Title)

By \_\_\_\_\_

Foreperson of the Grand Jury

Form 13(a)



**Form 13(b). Grand Jury Minutes**

\_\_\_\_\_ County, Arizona

**COURT**

---

STATE OF ARIZONA Plaintiff

[CASE/COMPLAINT NO.]

-vs-

**GRAND JURY  
MINUTES**

Defendant (FIRST, MI, LAST)

---

**GJ No.** \_\_\_\_\_

At a session of the Grand Jury of the County of \_\_\_\_\_ held this \_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_, the above defendant being accused of the crime(s) of: \_\_\_\_\_

[List each charge or count]

Based upon the following witnesses:

Name	I.D. #/	Agency / Address	Date Appeared
_____			

[List each witness:]

Having appeared before the Grand Jury and having given testimony under oath before the Grand Jury, which testimony was reported by \_\_\_\_\_, Reporter of the Grand Jury, on the day(s) that such testimony was given; the Grand Jury with \_\_\_ members present, and only members of the Grand Jury present, deliberated upon evidence and with \_\_\_ jurors voting, by a vote of \_\_\_ to \_\_\_ returned a true bill, or took the following action:

\_\_\_\_\_  
Clerk of the Grand Jury

\_\_\_\_\_  
Date

Form 13(b)

**Form 14. Information**

\_\_\_\_\_ County, Arizona

**COURT**

STATE OF ARIZONA Plaintiff

[CASE/COMPLAINT NO.]

-vs-

**INFORMATION**

Defendant (FIRST, MI, LAST)

\_\_\_\_\_

The \_\_\_\_\_ [Name / of Prosecuting Agency] \_\_\_\_\_, accuses \_\_\_\_ [Defendant]  
on this \_\_\_\_\_ [date] \_\_\_\_\_, charging that in  
\_\_\_\_\_ County, Arizona: \_\_\_\_\_

[List and describe each charge or count]

[NAME OF PROSECUTING AGENCY]

By \_\_\_\_\_

[County Attorney / or Other Title]

\_\_\_\_\_  
Date

Form 14

**Form 15(a). Notice of Appointment of Mental Health Expert (Pre-Screen)**

\_\_\_\_\_ County, Arizona  
**COURT**

STATE OF ARIZONA Plaintiff

[CASE/COMPLAINT NO.]

-vs-

**NOTICE OF  
APPOINTMENT OF  
MENTAL HEALTH  
EXPERT (PRE-  
SCREEN)**

Defendant (FIRST, MI, LAST)

The Court having been presented with a motion under Rule 11.2, Rules of Criminal Procedure, for an examination to determine whether the defendant is competent, or to investigate the defendant's mental condition at the time of the offense,

**IT IS HEREBY ORDERED** appointing \_\_\_\_\_ as a mental expert, to prepare and send to this Court a written report of the expert's opinion and findings as to whether reasonable grounds for a mental health examination exist.

**IT IS FURTHER ORDERED** that if the defendant is not in custody, defense counsel is to contact the expert at [telephone number] \_\_\_\_\_ within two (2) working days of this order to schedule a time for the defendant's examination and use due diligence to secure the defendant's attendance at the examination.

**IT IS FURTHER ORDERED** that the prosecutor and defense counsel provide to the expert at [address] \_\_\_\_\_ the motion to have defendant's mental condition examined, copies of police reports, previous mental health reports and any other appropriate material for the screening examination.

**IT IS FURTHER ORDERED** that payment of the cost of the examination of the defendant is the responsibility of the \_\_\_\_\_ pursuant to A.R.S. § 13-4505.

**IT IS FURTHER ORDERED** that a prescreen hearing will be held in this court on the \_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_, at \_\_\_\_\_ a.m./p.m.

**IT IS FURTHER ORDERED** that at least \_\_\_\_ days prior to the prescreen hearing date the expert will submit the written report to the Court, which will seal the original and provide a copy to defense counsel.

Defense counsel shall provide a redacted copy of the report to the Court and the prosecutor's office within a reasonable time after receipt.

\_\_\_\_\_  
Signature of Judicial Officer

\_\_\_\_\_  
Date

\_\_\_\_\_  
Defense Attorney (please print name)

\_\_\_\_\_  
Prosecutor (please print name)

\_\_\_\_\_  
Telephone No.

\_\_\_\_\_  
Bar No.

\_\_\_\_\_  
Telephone No.

\_\_\_\_\_  
Bar No.

\_\_\_\_\_  
Mailing Address

\_\_\_\_\_  
Mailing Address

\_\_\_\_\_  
City State Zip

\_\_\_\_\_  
City State Zip

Form 15(a)

**Form 15(b). Rule 11 Order and Stipulation**

\_\_\_\_\_ County, Arizona

**COURT**

STATE OF ARIZONA Plaintiff

[CASE/COMPLAINT NO.]

**RULE 11**

-vs-

**ORDER  
AND  
STIPULATION**

Defendant (FIRST, MI, LAST)

**ORDER**

A Motion having been filed requesting relief under Rule 11.2, Rules of Criminal Procedure, and the Court having made a factual determination that reasonable grounds exist for an examination of the defendant pursuant to said Rule.

**IT IS HEREBY ORDERED** that the cause be transferred to the Superior Court of in \_\_\_\_\_ County for further proceedings pursuant to and in conformance with Rule 11, Rules of Criminal Procedure.

**DONE IN OPEN COURT** this \_\_\_ day of \_\_\_\_\_, 20\_\_

\_\_\_\_\_  
Signature of Judicial Officer

\_\_\_\_\_  
Date

**STIPULATION**

Both counsels stipulate to the appointment of only one mental health expert.

\_\_\_\_\_  
Prosecutor

/ \_\_\_\_\_  
Bar No.

\_\_\_\_\_  
Defense Attorney

/ \_\_\_\_\_  
Bar No.

\_\_\_\_\_  
Address

Telephone No.

Form 15(b)

**Form 15(c). Notice of Appointment of Mental Health Expert-Competency**

\_\_\_\_\_ County, Arizona

**COURT**

STATE OF ARIZONA Plaintiff

[CASE/COMPLAINT NO.]

-vs-

Defendant (FIRST, MI, LAST)

**NOTICE OF  
APPOINTMENT OF  
MENTAL HEALTH  
EXPERT  
(COMPETENCY)**

The Court, having granted the motion for competency examination pursuant to Rule 11.2, Rules of Criminal Procedure, and the defendant having been charged with:

**IT IS HEREBY ORDERED**

appointing

and

as mental health experts, to prepare and send to the Court a written report of the experts' opinions and findings as to the defendant's competency to stand trial (i.e. the defendant's ability to understand the nature of the proceedings and to assist counsel in the preparation of the defense.) If a mental health expert finds the Defendant is incompetent to stand trial at this time, an opinion shall also be rendered as to:

- (A) The mental disease, defect or disability which is the cause of the Defendant's incompetency;
- (B) Whether there is a substantial probability the Defendant will become competent within a reasonable period of time;
- (C) The most appropriate form and place of treatment in this state, based on the defendant's therapeutic needs and potential threat to public safety;
- (D) The defendant's prognosis; and
- (E) Whether the defendant is incompetent to refuse treatment and should be subject to involuntary treatment.



**Form 15(d). Notice of Appointment of Mental Health Expert-Mental Condition at Time of Offense**

\_\_\_\_\_ County, Arizona  
**COURT**

STATE OF ARIZONA Plaintiff

[CASE/COMPLAINT NO.]

-VS-

Defendant (FIRST, MI, LAST)

**NOTICE OF  
APPOINTMENT OF  
MENTAL HEALTH  
EXPERT (MENTAL  
CONDITION AT  
TIME OF OFFENSE)**

The Court having found a reasonable basis to support a plea of insanity pursuant to Rule 11.2, Rules of Criminal Procedure and the defendant having been charged with: \_\_\_\_\_

\_\_\_\_\_;

**IT IS HEREBY ORDERED**

appointing

\_\_\_\_\_ and

as mental health experts, to prepare and send to the Court a written report of the experts' opinions as to the defendant's mental condition at the time of the offense. The report shall include:

- (A) An opinion as to the mental status of the defendant at the time of the offense;
- (B) If the expert determines that the defendant suffered from a mental disease, defect or disability at the time of the offense, the relationship of the disease, defect or disability to the alleged offense.

**IT IS FURTHER ORDERED** that if the defendant is not in custody, the defense attorney is to contact the experts at [names and phone numbers] \_\_\_\_\_ within two (2) working days of this order to schedule a time for the defendant's examination and use due diligence to secure the defendant's attendance at the examination.

**IT IS FURTHER ORDERED** that the prosecutor and the defense attorney provide to the experts at [addresses] \_\_\_\_\_ the motion to have defendant's mental condition examined, copies of police reports, previous mental health reports and any other appropriate material for the examination.

**IT IS FURTHER ORDERED** that payment of the cost of the examination of the defendant is the responsibility of the \_\_\_\_\_ pursuant to ARS § 13-4505.

**IT IS FURTHER ORDERED** that a hearing will be held in \_\_\_\_\_ court on the \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_ at \_\_\_\_\_ a.m./p.m.

**IT IS FURTHER ORDERED** that the experts will submit the written reports at least 10 days prior to the hearing date to \_\_\_\_\_ which will seal the originals and provide copies to the defense attorney. The defense attorney shall provide redacted copies of the reports to the court and the prosecutor's office within 24 hours of receipt.

\_\_\_\_\_  
Signature of Judicial Officer

\_\_\_\_\_  
Date

\_\_\_\_\_  
Defense Attorney (please print name)

\_\_\_\_\_  
Prosecutor (please print name)

\_\_\_\_\_  
Telephone No.

\_\_\_\_\_  
Bar No.

\_\_\_\_\_  
Telephone No.

\_\_\_\_\_  
Bar No.

\_\_\_\_\_  
Mailing Address

\_\_\_\_\_  
Mailing Address

\_\_\_\_\_  
City State Zip

\_\_\_\_\_  
City State Zip

Form 15(d)

**Form 16. Reserved**

**Form 17. Waiver of Right to be Present at Deposition**

\_\_\_\_\_ County, Arizona

**COURT**

STATE OF ARIZONA Plaintiff

[CASE/COMPLAINT NO.]

-vs-

**WAIVER OF  
RIGHT TO BE  
PRESENT AT  
DEPOSITION**

Defendant (FIRST, MI, LAST)

**READ THE ENTIRE FORM CAREFULLY BEFORE SIGNING**

**Instructions:** The purpose of this form is to advise you of your right to be present at a deposition held for the purpose of obtaining testimony which may be used at your trial, and to allow you to give up that right if you so choose. Read the entire form carefully before signing it.

**RIGHT TO BE PRESENT AT DEPOSITION**

I understand that I am charged with the crime of

\_\_\_\_\_ which is a [ ] misdemeanor [ ] felony under the law of Arizona, and that if I am found guilty I can be given severe punishment, including incarceration [ ] in the Arizona State Prison, [ ] in the

\_\_\_\_\_ County Jail, [ ] a fine, or other penalty.

I understand that the Rules of Criminal Procedure allow depositions to be taken in criminal cases in certain situations, and that during a deposition a witness is asked questions under oath. I understand that testimony given by the witness at the deposition is recorded and may be used at the trial. I understand that I am entitled to be present at such proceedings in order to be able to confront the witnesses against me and to help my attorney prepare questions to ask them to test the truthfulness of their testimony.

I understand that by giving up my right to be present at a deposition I consent to the use of testimony given at the deposition later during my trial in all situations in which it would be admissible if I had been present at the deposition.

**CERTIFICATION AND WAIVER**

**DO NOT SIGN THIS FORM UNLESS YOU HAVE READ IT COMPLETELY OR HAD IT READ TO YOU AND YOU UNDERSTAND IT FULLY. DO NOT SIGN THIS FORM IF YOU WANT TO BE PRESENT AT THE DEPOSITION.**

After reading and understanding all the above, I hereby give up my right to be present at  the deposition of  any deposition in this case. \_\_\_\_\_

\_\_\_\_\_  
Date

\_\_\_\_\_  
Defendant

I have explained to the defendant the significance of a deposition and the right to be present at its taking and consent to defendant's waiver of the right to be present.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Defense Attorney

Form 17

**Form 18(a). Felony Plea Agreement-Non-Capital**

\_\_\_\_\_ COURT \_\_\_\_\_ County, Arizona

STATE OF ARIZONA Plaintiff

[CASE/COMPLAINT NO.]

-vs-

Defendant (FIRST, MI, LAST)

**FELONY  
PLEA  
AGREEMENT  
(Non-Capital)**

The defendant agrees to plead guilty / no contest to \_\_\_\_\_ committed on or about \_\_\_\_\_.

This crime is a  dangerous  non-dangerous,  repetitive  non-repetitive offense under the criminal code.

Terms: On the following understandings, terms and conditions:

\_\_\_ 1. The crime carries a presumptive sentence of \_\_\_ years; a minimum sentence of \_\_\_ years; and a maximum sentence of \_\_\_ years. Probation is / is not available. A maximum amount of restitution for economic loss to the victim not to exceed the amount specified in paragraph 2 and waiver of extradition for probation revocation procedures may be required. The maximum fine that can be imposed is \$150,000 plus a surcharge of \_\_\_ + \_\_\_. Special conditions regarding the sentence imposed by statute (if any) are:

None

If sentenced to a term of imprisonment, the defendant shall also be sentenced to a term of community supervision equal to one-seventh of the prison sentence to be served consecutively to the actual period of imprisonment. If the defendant fails to abide by the conditions of community supervision, the defendant can be required to serve the remaining term of community supervision in prison.

Other: \_\_\_\_\_

\_\_\_ 2. The parties stipulate to the following additional terms, subject to court approval at sentencing as set forth in paragraph 7: \_\_\_\_\_

\_\_\_ 3. The following charges are dismissed, or if not yet filed, shall not be brought against the defendant. \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_ 4. This agreement serves to amend the complaint, indictment, or information to charge the offense to which the defendant pleads, without the filing of any additional pleading. However, if the plea is rejected by the court or withdrawn by either party, or if the conviction is subsequently reversed, the original charges and any charges that are dismissed by reason of this plea agreement are automatically reinstated.

\_\_\_ 6<sup>1</sup>. Unless this plea is rejected by the court or withdrawn by either party, the defendant hereby gives up any and all motions, defenses, objections or requests which he or she has made or raised, or could assert hereafter, to the court's entry of judgment against him or her and imposition of a sentence upon him or her consistent with this agreement. The defendant acknowledges by entering this agreement that he or she will have no right to direct appeal (ARS 13-4033) and that the only available review is pursuant to Rule 32, Rules of Criminal Procedure.

\_\_\_ 7. If after accepting this plea agreement the court concludes that any of its provisions regarding the sentence or the terms and conditions of probation are inappropriate, it can reject the plea. If the court decides to reject the plea agreement provisions regarding sentencing, it must give both the State and the defendant each an opportunity to withdraw from the plea.

\_\_\_ 8. If the court decides to reject the plea agreement provisions regarding sentencing and neither the State nor the Defendant elects to withdraw the plea agreement, then any sentence either stipulated to or recommended herein in paragraph 2 is not binding upon the court, and the court is bound only by the sentencing limits set forth in paragraph 1 and the applicable statutes.

\_\_\_ 9. I understand that if I am not a citizen of the United States, my decision to go to trial or enter into a plea agreement may have immigration consequences. Specifically, I understand that pleading guilty or no contest to a crime may affect my immigration status. Admitting guilt may result in deportation even if the charge is later dismissed. My plea or admission of guilt could result in my deportation or removal, could prevent me from ever being able to get legal status in the United States, or could prevent me from becoming a United States citizen. I understand that I am not required to disclose my legal status in the United States to the court.

\_\_\_ 10. I have read and understand the provisions of all pages of this agreement. I have discussed the case and my constitutional rights with my attorney. I understand that by pleading (guilty) (no contest) I will be giving up my right to a determination of probable cause, to a trial [ ] by jury [ ] by a judge [ ] by jury on facts used to aggravate a sentence, to confront, cross-examine, and compel the attendance of witnesses, to present witnesses on my behalf; my right to remain silent, my privilege against self-incrimination, the presumption

of innocence and right to direct appeal. I agree to enter my plea as indicated above on the terms and conditions set forth herein. I fully understand that, as part of this plea agreement, if I am granted probation by the court, the terms and conditions thereof are subject to modification at any time during the period of probation in the event that I violate any written condition of my probation. I understand that if I violate any of the written conditions of my probation, my probation may be terminated and I can be sentenced to any term or terms stated above in paragraph 1.

I have personally and voluntarily placed my initials beside each of the above paragraphs and signed the signature line below to indicate that I read, or had read to me, understood and approved all of the previous paragraphs in this agreement, both individually and as a total binding agreement. My plea is voluntary and not the result of force, or threat, or promises other than those contained in the plea agreement.

**DO NOT SIGN THIS FORM UNLESS YOU HAVE READ IT COMPLETELY, OR HAD IT READ TO YOU AND UNDERSTAND IT FULLY.**

\_\_\_\_\_  
Date

\_\_\_\_\_  
Defendant

I have discussed this case with my client in detail and advised my client of his or her constitutional rights and all possible defenses. I believe that the defendant's plea is knowing, intelligent, and voluntary and that the plea and disposition are consistent with law.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Defense Attorney

I have reviewed this matter and concur that the plea and disposition set forth herein are appropriate and are in the interests of justice.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Prosecutor

1 So in original.

**Form 18(b). Misdemeanor Plea Agreement**

\_\_\_\_\_ COURT \_\_\_\_\_ County, Arizona

STATE OF ARIZONA Plaintiff

[CASE/COMPLAINT NO.]

-vs-

**MISDEMEANOR  
PLEA  
AGREEMENT**

Defendant (FIRST, MI, LAST)

The defendant agrees to plead guilty / no contest to the following offense(s):

\_\_\_\_\_ [ ] class misdemeanor [ ] petty/civil traffic offense

\_\_\_\_\_ [ ] class misdemeanor [ ] petty/civil traffic offense

\_\_\_\_\_ [ ] class misdemeanor [ ] petty/civil traffic offense

\_\_\_\_\_ [ ] class misdemeanor [ ] petty/civil traffic offense on the following understandings, terms and conditions:

1. The Defendant agrees to a sentence of: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

2. The following charges are dismissed, or if not yet filed, shall not be brought against the defendant. \_\_\_\_\_  
\_\_\_\_\_

3. This agreement, serves to amend the complaint, indictment, or information to charge the offense to which the defendant pleads, without the filing of any additional pleading. However, if the plea is rejected by the court or withdrawn by either party, or if the conviction is subsequently reversed, the original charges and any charges that are dismissed by reason of this plea agreement are automatically reinstated.

4. Unless this plea is rejected by the court or withdrawn by either party, the defendant hereby waives and gives up any and all motions, defenses, objections or requests which he or she has made or raised, or could assert hereafter, to the court's entry of judgment against him or her and imposition of a sentence upon him or her consistent with this agreement. The defendant acknowledges by entering this agreement he or she will have no

right to direct appeal (ARS 13-4033) and the only available review is pursuant to Rule 32, Rules of Criminal Procedure.

5. If the court decides to reject the proposed sentencing in the plea agreement after accepting the defendant's plea, it must give each party an opportunity to withdraw from the plea.

6. If the court decides to reject the plea agreement provisions regarding sentencing and neither the State nor the Defendant elects to withdraw the plea agreement, then any sentence either stipulated to or recommended herein is not binding upon the court, and the court is bound only by the sentencing limits set forth in the applicable statutes.

7. I understand that if I am not a citizen of the United States, my decision to go to trial or enter into a plea agreement may have immigration consequences. Specifically, I understand that pleading guilty or no contest to a crime may affect my immigration status. Admitting guilt may result in deportation even if the charge is later dismissed. My plea or admission of guilt could result in my deportation or removal, could prevent me from ever being able to get legal status in the United States, or could prevent me from becoming a United States citizen. I understand that I am not required to disclose my legal status in the United States to the court.

8. I have read and understand the provisions of all pages of this agreement. I have discussed the case and my constitutional rights with my attorney. I understand that by pleading (guilty) (no contest) I will be giving up my right to a determination of probable cause, to a trial [ ] by jury [ ] by a judge, to confront, cross-examine, and compel the attendance of witnesses, to present witnesses on my behalf; my right to remain silent, my privilege against self-incrimination, the presumption of innocence and right to direct appeal. I agree to enter my plea as indicated above on the terms and conditions set forth herein. I fully understand that, as part of this plea agreement, if I am granted probation by the court, the terms and conditions thereof are subject to modification at any time during the period of probation in the event that I violate any written condition of my probation. I understand that if I violate any of the written conditions of my probation, my probation may be terminated and I can be sentenced up to the maximum term.

I have personally signed the signature line below to indicate that I read, or had read to me, understood and approved all of the previous paragraphs in this agreement, both individually and as a total binding agreement. My plea is voluntary and not the result of force, or threat, or promises other than those contained in the plea agreement.

**DO NOT SIGN THIS FORM UNLESS YOU HAVE READ IT COMPLETELY, OR HAD IT READ TO YOU AND UNDERSTAND IT FULLY.**

\_\_\_\_\_

\_\_\_\_\_  
Date

\_\_\_\_\_  
Defendant

I have discussed this case with my client in detail and advised my client of his or her constitutional rights and all possible defenses. I believe that the defendant's plea is knowing, intelligent, and voluntary and that the plea and disposition are consistent with law.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Defense Attorney

I have reviewed this matter and concur that the plea and disposition set forth herein are appropriate and are in the interests of justice.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Prosecutor

**Form 19. Guilty/No Contest Plea Proceeding**

\_\_\_\_\_ COURT [Precinct \_\_\_\_\_] \_\_\_\_\_ County, Arizona

---

STATE OF ARIZONA Plaintiff

[CASE/COMPLAINT NO.]

-vs-

**GUILTY/NO  
CONTEST  
PLEA PROCEEDING**

Defendant (FIRST, MI, LAST)

---

Defendant appears personally and expresses a desire to plead guilty or no contest to the charges indicated and I find the following facts:

1. Defendant understands the nature of the charges as indicated: \_\_\_\_\_
2. Defendant appears:  with counsel  without counsel, (waiver of counsel with file) and understands the following:
3. Defendant has entered into a:  plea agreement, and consents to its terms;  plea to the court.
4. Defendant understands the range of penalties to be: (state minimum and maximum possible sanctions).
5. If arrested on a subsequent offense, defendant may be charged with a more serious offense and associated penalties.
6. The Court has advised the defendant that this guilty plea may result in a violation of probation or parole.
7. Defendant was advised of the following: If you are not a citizen of the United States, pleading guilty or no contest to a crime may affect your immigration status. Admitting guilt may result in deportation even if the charge is later dismissed. Your plea or admission of guilt could result in your deportation or removal, could prevent you from ever being able to get legal status in the United States, or could prevent you from becoming a United States citizen.
8. Defendant understands that the following constitutional rights are given up by changing the plea:
  - a. Right to plead not guilty and require the State to prove guilt beyond a reasonable doubt.
  - b. Right to a trial  by jury  by a judge  by jury on facts used to aggravate a sentence.
  - c. Right to assistance of an attorney at all stages of the proceeding, including appeal. In some cases, the defendant may be eligible for a court- appointed attorney at a reduced cost or at no cost, if the defendant cannot afford one.

- d. Right to confront the witnesses against the defendant and to cross- examine them as to the truthfulness of their testimony.
  - e. Right to present evidence in the defendant's own behalf and to have the court compel the defendant's chosen witnesses to appear and testify free of charge.
  - f. Right to remain silent, not to incriminate oneself, and to be presumed innocent unless/or until proven guilty beyond a reasonable doubt.
  - g. Right to a direct appeal.
9. Defendant wishes to give up these constitutional rights after having been advised of them.
  10. A basis in fact exists for believing the defendant guilty of the offenses charged.
  11. The plea is voluntary and not the result of force or threat, or promises other than those contained in the plea agreement.
  12. Defendant may file a Rule 32 petition for post-conviction relief and if denied may file a petition for review.

On the basis of these findings, I conclude that the defendant knowingly, voluntarily, and intelligently pleads:  guilty  no contest\* to the above charges, and I accept this plea.

\* Rule 17.1c, Rules of Criminal Procedure states that a plea of no contest may be accepted only after due consideration of the views of the parties and the interest of the public in the effective administration of justice.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of Judicial Officer

I certify that the judge personally advised me of the nature of the charges, the range of penalties, and my constitutional rights as indicated above. I understand the constitutional rights which I give up by entering this plea, and I desire to plead guilty or no contest as indicated above. I desire to proceed without an attorney, or if represented, my attorney's signature appears below.

Defendant: \_\_\_\_\_ Def. Counsel/Bar No.: \_\_\_\_\_ Interpreter: \_\_\_\_\_

Form 19

**Form 20. Waiver of Trial by Jury (Non-Capital)**

\_\_\_\_\_ County, Arizona

**COURT**

STATE OF ARIZONA Plaintiff

[CASE/COMPLAINT NO.]

-vs-

**WAIVER OF  
TRIAL BY JURY  
(Non Capital)**

Defendant (FIRST, MI, LAST)

**RIGHT TO TRIAL BY JURY**

The purpose of this form is to advise you of your right to trial by jury and to allow you to give up that right if you so choose.

**READ THE ENTIRE FORM CAREFULLY BEFORE SIGNING IT**

I understand that I am charged with the crime of

\_\_\_\_\_ which is a [ ] misdemeanor [ ] felony under the law of Arizona and that if I am found guilty I can be given severe punishment, including incarceration [ ] in the Arizona State Prison, [ ] in the

\_\_\_\_\_ County Jail, [ ] a fine, or other penalty.

I understand that I am entitled to a trial by jury on these charges and, if applicable, on facts used to aggravate any sentence. The right to a trial by jury means the right to have my guilt or innocence, or, if applicable, facts used to aggravate any sentence, decided by a group of citizens whose decision must be unanimous.

I understand that once I have made the decision to give up my right to a jury trial, I may change my mind only with the permission of the court, and may not change it at all once the trial has actually begun.

**CERTIFICATION AND WAIVER**

After reading and understanding all the above, I hereby waive my right to:

- trial by jury on guilt or innocence;
- trial by jury on facts used to aggravate any sentence.

**DO NOT SIGN THIS FORM UNLESS YOU HAVE READ IT COMPLETELY, OR HAD IT READ TO YOU AND UNDERSTAND IT FULLY.**

\_\_\_\_\_  
Date

\_\_\_\_\_  
Defendant

I have explained to the defendant the right to trial by jury and consent to the defendant's waiver of it.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Defense Attorney

I consent to waiver of trial by jury in this case.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Prosecutor

I approve of the waiver of the trial by jury in this case.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of Judicial Officer

Form 20

**Form 21. Application upon Discharge to: Restore Civil Rights, Withdraw Guilty Plea/Vacate Conviction (Set Aside), Restore Gun Rights**

\_\_\_\_\_ County, Arizona  
**COURT**

---

STATE OF ARIZONA Plaintiff  
-vs-

[CASE/COMPLAINT NO.]

**APPLICATION UPON  
DISCHARGE TO:**

**RESTORE CIVIL  
RIGHTS**

**WITHDRAW GUILTY  
PLEA / VACATE  
CONVICTION (SET  
ASIDE)**

**RESTORE GUN  
RIGHTS**

Defendant (FIRST, MI, LAST)

---

Having received an absolute discharge from a sentence of imprisonment, or having completed a period of probation, on [date]  
\_\_\_\_\_

, or having satisfied any other sanction or penalty, I apply for the following relief from conviction(s) of \_\_\_\_\_

---

entered in this court on [date] \_\_\_\_\_:

the restoration of my civil rights;

the vacation (set aside) of my conviction and dismissal of the information or indictment;

the withdrawal of my plea of guilty

the restoration of my gun / firearm rights.

Attached is my certificate of absolute discharge from the director of the department of corrections [applicable only to petitioners who have been imprisoned in the state prison].

Attached is my certificate of absolute discharge from the director of the federal bureau of prisons [applicable only to petitioners who have been imprisoned in a federal prison].

Attached is my affidavit of discharge from the judge who discharged me at the end of my term of federal probation.

Attached is other pertinent documentation.

---

Petitioner's Name Printed

Petitioner's Signature

Address

**AUTHORIZATION TO PROCEED ON BEHALF OF PETITIONER**

I authorize \_\_\_\_\_  Attorney,  Probation Officer, or  DOC Representative to petition the Superior Court in \_\_\_\_\_ County, to take the above-indicated action(s).

---

Date

Petitioner's Signature

Form 21

# Form 21(a). Application to Vacate Conviction under A.R.S. § 13-907.01

\_\_\_\_\_ Court \_\_\_\_\_ County, Arizona

<b>APPLICANT</b>     (Name/Address/Phone): _____	<b>CASE NO.</b>  _____  <b>APPLICATION</b>	<b>APPLICATION TO VACATE CONVICTION FOR A PRIOR OFFENSE UNDER A.R.S. § 13-907.01 AND SUPPORTING DECLARATION</b>
---	--	---

APPLICANT asks the court to vacate the conviction for the crime of Prostitution, under A.R.S. § 13-3214, committed prior to July 24, 2014. The conviction occurred on \_\_\_\_\_ in this court. This relief is sought under A.R.S. § 13-907.01. The law provides that any person so convicted may apply to the sentencing court to vacate the conviction. The applicant is entitled to relief if the applicant can establish by clear and convincing evidence that the applicant's participation in the offense was the direct result of having been a victim of sex trafficking pursuant to A.R.S. § 13-1307.

Explain how you were a victim of sex trafficking and, as a direct result, were convicted of prostitution:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

If additional information is required, you may attach additional pages on lined paper.

I state under penalty of perjury that the information I have provided on this form is true and correct.

Date: \_\_\_\_\_ Signature \_\_\_\_\_  
Applicant

**CERTIFICATE OF MAILING**

I CERTIFY that I delivered or mailed a copy of this application to the prosecutor's office that prosecuted the case at the following address: \_\_\_\_\_

\_\_\_\_\_

Date: \_\_\_\_\_ Signature \_\_\_\_\_  
Applicant

**Form 22. Transmittal of Record on Appeal to Superior Court**

\_\_\_\_\_ COURT [Precinct \_\_\_\_\_] \_\_\_\_\_ County, Arizona

---

STATE OF ARIZONA Plaintiff [CASE/COMPLAINT  
NO.]

-vs-

**TRANSMITTAL  
CERTIFICATION  
APPEAL TO SUPERIOR  
COURT**

Defendant (FIRST, MI, LAST)

---

**RANSMITTAL OF RECORD ON APPEAL TO SUPERIOR COURT**

I hereby certify that the enclosed items constitute a true and complete record of the preliminary proceedings held in the above-entitled case appearing in Docket No. \_\_\_\_\_, at page \_\_\_\_\_.

The following items are included:

- The original complaint, including amendments;
- The arrest warrant, summons, or citation;
- The defendant's release questionnaire;
- The defendant's financial statement and request for appointment of counsel;
- If the defendant is or was in custody, a copy of the release order showing the conditions under which the defendant may be, or has been, released;
- The defendant's appearance bond;
- Security deposited with the appearance bond: \_\_\_\_\_
- Defendant's waiver of counsel;
- Order appointing counsel or written appearance of counsel;

Exhibits and items of physical evidence introduced at trial: \_\_\_\_\_  
\_\_\_\_\_

A copy of all proceedings had in the case, as shown by my docket;

Audiotape or videotape of trial, if any;

Other papers or items prepared in connection with the case: \_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of Judicial Officer

\_\_\_\_\_  
Printed Name and Title of Judicial Officer

Form 22

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

\_\_\_\_\_ **COURT** \_\_\_\_\_ **County, Arizona**

---

STATE OF ARIZONA,  
Plaintiff

[CASE/COMPLAINT  
NO.]

**NOTICE OF RIGHTS**

-vs-

**OF REVIEW AFTER**

**SUPERIOR COURT**

\*

**(Capital & Non-**

Defendant (FIRST, MI,  
LAST)

**Capital)**

---

\*In limited jurisdiction cases, see Superior Court Rules of Appellate Procedure--Criminal Form 1

**RIGHT TO APPEAL (CAPITAL)**

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

**RIGHT TO APPEAL (NON-CAPITAL)**

You have a right to appeal from a final judgment of conviction, from an order denying a post-trial motion, or from a sentence which is illegal or excessive. Arizona Constitution art. 2, sec. 24; A.R.S. § 13-4031. YOU DO NOT HAVE A RIGHT TO DIRECT APPEAL IF YOU HAVE PLED GUILTY OR NO CONTEST OR HAVE ADMITTED A VIOLATION OF CONDITIONS OF PROBATION OR HAVE FAILED TO APPEAR AT SENTENCING

CAUSING THE SENTENCING TO OCCUR MORE THAN 90 DAYS BEYOND THE DATE OF CONVICTION. IN THAT CASE, RELIEF MAY BE SOUGHT ONLY BY PETITION FOR POST-CONVICTION RELIEF. Rules 17.1, 17.2 and 27.8, Rules of Criminal Procedure, A.R.S. § 13-4033.

#### **IN ORDER TO EXERCISE YOUR RIGHT TO APPEAL**

1. You must file a NOTICE OF APPEAL (Form 24(a)) within 20 days of the entry of judgment and sentence. If you do not file a notice of appeal within 20 days you will lose your right to appeal. The entry of judgment and sentence occurs at the time of sentencing.
  2. To file a Notice of Appeal you should contact your lawyer, by letter, telephone or in person, telling him or her that you want to appeal. You can file the notice of appeal before you leave the courtroom on the day you are sentenced if you wish.
  3. If you do not have a lawyer, get copies of Form 5, Defendant's Financial Statement and Request for Appointment of Counsel and Form 24 (a), Notice of Appeal, either from the clerk of the court, jail, or the prison, fill them both out and file or send them to the clerk of the superior court in the county where you were tried and sentenced. They must arrive at the clerk's office within 20 days after you were sentenced.
  4. You should have a lawyer handle your appeal. If you choose to waive your right to appellate counsel, you must file a written notice no later than thirty days after filing the notice of appeal. If the notice of waiver is given before the notice of appeal is filed, or is filed with the notice of appeal, it must be filed in the trial court. If the notice of waiver is given after the notice of appeal is filed, it must be filed in the appellate court. If the trial court determines that you knowingly, intelligently, and voluntarily desire to waive the right to appellate counsel, you will be allowed to represent yourself on appeal. The court may appoint advisory counsel during any stage of the appellate proceedings.
- You must file a NOTICE OF APPEAL (Form 24(a)) within 20 days of the entry of judgment and sentence. If you do not file a notice of appeal within 20 days you will lose your right to appeal. The entry of judgment and sentence occurs at the time of sentencing.

#### **RIGHT TO POST-CONVICTION RELIEF (CAPITAL)**

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

## **RIGHT TO POST-CONVICTION RELIEF (NON-CAPITAL)**

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

In order to exercise your Post-Conviction Relief right;

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

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

2. To seek post-conviction relief, you must obtain a copy of Form 24(c) (Notice of Post-Conviction Relief), either from your attorney, the clerk of the court, or the jail or prison, fill it out and file or send it to the clerk of the Superior Court of the county where you were sentenced. The notice must arrive at the clerk's office within 90 days after you were sentenced or within 30 days after the issuance of the order and mandate affirming the judgment and sentence on direct appeal.

3. If you cannot afford to hire an attorney, you should execute the Affidavit of Indigency contained in the Notice of Post-Conviction Relief and request that an attorney be appointed to represent you.

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

### **RECEIPT BY DEFENDANT**

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

Date

\_\_\_\_\_  
Defendant

**Form 24(a). Notice of Appeal from Superior Court**

\_\_\_\_\_ County, Arizona  
**COURT**

---

STATE OF ARIZONA Plaintiff

[CASE/COMPLAINT NO.]

-vs-

**NOTICE OF  
APPEAL  
FROM SUPERIOR  
COURT\***

Defendant (FIRST, MI, LAST)

---

\* In limited jurisdiction cases, see Superior Court Rules of Appellate Procedure Form 2.  
**NOTICE OF APPEAL FROM SUPERIOR COURT**

**NOTICE IS HEREBY GIVEN** that \_\_\_\_\_ appeals from the

Following judgment(s) of guilt in the following case number(s); \_\_\_\_\_

Following sentence(s) imposed in the following case numbers(s); \_\_\_\_\_

Other: \_\_\_\_\_  
\_\_\_\_\_

entered in the Superior Court, in \_\_\_\_\_ County, on \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
Date

\_\_\_\_\_  
[Party filing for appeal] Defendant, Attorney for  
Defendant or Prosecutor

ATTACHMENT

(1) The name and address of the defendant or defendants who appeal or against whom the state appeals: \_\_\_\_\_

(2) The name and address of the attorney for the defendant or defendants: \_\_\_\_\_  
\_\_\_\_\_

(3) The name and address of any co-defendant at trial. (If the address is not known, so state): \_\_\_\_\_  
\_\_\_\_\_

(4) The defendant or defendants who appeal or against whom the state appeals [ ] were [ ] were not represented by counsel at the determination of guilt or at sentencing.

Form 24(a)

**Form 24(b). Notice of Post-Conviction Relief**

\_\_\_\_\_ County, Arizona

**COURT**

STATE OF ARIZONA Plaintiff

[CASE/COMPLAINT NO.]

-vs-

**NOTICE OF  
POST-CONVICTION  
RELIEF**

Defendant (FIRST, MI, LAST)

**NOTICE OF POST-CONVICTION RELIEF**

**Instructions:** When the notice is complete, file it with the clerk of the superior court of the county in which the conviction occurred.

A person unable to pay costs of this proceeding and to obtain the services of a lawyer without substantial personal or family hardship should indicate this by requesting counsel in Question 8 of this notice and execute the affidavit of indigency on page 3. In the event an attorney is not appointed, a Request for Preparation of Post-Conviction Relief Record form must be filed by the defendant if some portion of the record is needed and has not previously been obtained.

No issue which has already been raised and decided on appeal or in a previous petition for post-conviction relief may be used as a basis for a successive petition for post-conviction relief.

1. Defendant's Name: \_\_\_\_\_

Defendant's prison number (if any): \_\_\_\_\_

2. Defendant's address: \_\_\_\_\_

3. (A) Defendant was convicted of the following crimes: \_\_\_\_\_

\_\_\_\_\_

(B) Defendant was sentenced on \_\_\_\_\_, 20 \_\_\_\_, to a term of \_\_\_\_\_, commencing on \_\_\_\_\_, 20 \_\_\_\_, following a: \_\_\_\_\_

- Trial by jury
- Trial to Judge without a Jury
- Plea of Guilty
- Plea of No Contest
- Probation Revocation Admission
- Probation Revocation Violation Hearing in the Superior Court in \_\_\_\_\_ County with judicial officer \_\_\_\_\_ presiding.

(C) The file number of the case was CR--\_\_\_\_\_.

4. Defendant has taken the following actions to secure relief from his convictions or sentences:

- (A) Direct Appeal:  Yes  No
- (B) Previous Rule 32 Proceedings:  Yes  No

5. Defendant was represented by the following lawyers at: (provide name of counsel and counsel's address, if known)

Trial or change of plea: \_\_\_\_\_

Sentencing hearing: \_\_\_\_\_

Appeal (if any): \_\_\_\_\_

Previous Rule 32 proceedings (if any): \_\_\_\_\_

6. Is the defendant raising a claim of ineffective assistance of counsel?  Yes  No

7. Defendant is presently represented by a lawyer?  Yes  No

If yes, provide name and address: \_\_\_\_\_

\_\_\_\_\_

8. If you are not currently represented by a lawyer, do you want the court to appoint a lawyer for this proceeding?  Yes  No

**9 Respond to this section only if this is an untimely notice or the defendant has filed a previous Rule 32 petition in this case.**

(A) Is a claim pursuant to Rule 32.1(d), (e), (f), (g) or (h) being raised in this petition?  Yes  No

(B) If yes, state the specific exception:

- The defendant is being held in custody after the sentence imposed has expired.
- Newly discovered material facts exist which probably would have changed the verdict or sentence.
- The defendant's failure to file a timely notice of post-conviction relief or notice of appeal was without fault on the defendant's part.
- There has been a significant change in the law that would probably overturn the conviction or sentence.
- Facts exist which establish by clear and convincing evidence that the defendant is actually innocent.

(C) State the facts that support the claim and the reasons for not raising the claim in the previous petition or in a timely manner:

I am requesting post-conviction relief. I understand that I must include in my petition every ground for relief which is known and which has not been raised and decided previously. I also understand that failure to raise any known ground for relief in my petition will prohibit me from raising it at any future date.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Defendant

### AFFIDAVIT OF INDIGENCY

I have requested the appointment of a lawyer to represent me in post conviction proceedings. I swear under oath and penalty of perjury that I am indigent and because of my poverty I am financially unable to pay for the cost of a lawyer to represent me without incurring substantial hardship to myself or my family.

Date

\_\_\_\_\_  
Defendant

State of Arizona

)

Subscribed and sworn to or affirmed before me on:

)ss.

County of

)

\_\_\_\_\_  
Date

My Commission Expires

\_\_\_\_\_  
Notary Public

Form 24(b)

**Form 25. Petition for Post-Conviction Relief**

\_\_\_\_\_ County, Arizona

**COURT**

STATE OF ARIZONA                      Plaintiff [CASE/COMPLAINT NO.]

-vs-

**PETITION FOR  
POST-CONVICTION  
RELIEF**

Defendant (FIRST, MI, LAST)

**PETITION FOR POST-CONVICTION RELIEF**

Instructions: **In order for this petition to receive consideration by the court, you should first file Form 24(b).**

Each applicable question in Form 25 must be answered fully but concisely in legible handwriting or by typing. When necessary, an answer to a particular question may be completed on the reverse side of the page or on an additional blank page, making clear to which question such continued answer refers.

Any false statement of fact made and sworn to under oath in this petition could serve as the basis for prosecution and conviction for perjury. Therefore, exercise care to assure that all answers are true and correct.

**NO ISSUE WHICH HAS ALREADY BEEN RAISED AND DECIDED ON APPEAL OR IN A PREVIOUS PETITION MAY BE USED AS A BASIS FOR THIS PETITION.**

**TAKE CARE TO INCLUDE EVERY GROUND FOR RELIEF WHICH IS KNOWN AND WHICH HAS NOT BEEN RAISED AND DECIDED PREVIOUSLY, SINCE FAILURE TO RAISE ANY SUCH GROUND IN THIS PETITION WILL BAR ITS BEING RAISED LATER.**

When the petition is complete, mail it to the clerk of the court in which conviction occurred.

1. Petitioner's Name: \_\_\_\_\_

Petitioner's prison number (if any): \_\_\_\_\_

2. Petitioner is now:  On Parole  On Probation  Confined in

3. Petitioner is eligible for relief because of:

- The introduction at trial of evidence obtained pursuant to an unlawful arrest.
- The introduction at trial of evidence obtained by an unconstitutional search and seizure.
- The introduction at trial of an identification obtained in violation of constitutional rights.
- The introduction at trial of a coerced confession.
- The introduction at trial of a statement obtained in the absence of a lawyer at a time when representation is constitutionally required.
- Any other infringement of the right against self-incrimination.
- The denial of the constitutional right to representation by a competent lawyer at every critical stage of the proceeding.
- The unconstitutional suppression of evidence by the state.
- The unconstitutional use by the state of perjured testimony.
- An unlawfully induced plea of guilty or no contest.
- Violation of the right not to be placed twice in jeopardy for the same offense.
- The abridgement of any other right guaranteed by the constitution or the laws of this state, or the constitution of the United States, including a right that was not recognized as existing at the time of the trial if retrospective application of that right is required.
- The existence of newly-discovered material which require the court to vacate the conviction or sentence.  
[Specify when petitioner learned of these facts for the first time, and show how they would have affected the trial.]

- 
- The lack of jurisdiction of the court which entered the conviction or sentence.
  - The use by the state in determining sentence of a prior conviction obtained in violation of the United States or Arizona constitutions.
  - Sentence imposed other than in accordance with the sentencing procedures established by rule and statute.
  - Being held beyond the term of sentence or after parole or probation has been unlawfully revoked.
  - The failure of the judge at sentencing to advise petitioner of his right to appeal and the procedures for doing so.
  - The failure of petitioner's attorney to file a timely notice of appeal after being instructed to do so.
  - The obstruction by state officials of the right to appeal.
  - Any other ground within the scope of Rule 32, Rules of Criminal Procedure (please specify):
- 

4. The facts in support of the alleged error(s) upon which this petition is based are contained in Attachment A.

[State facts clearly and fully; citations or discussions of authorities need not be included].

---

---

5. Supporting Exhibits:

A. The following exhibits are attached in support of the petition:

Affidavits [Exhibit(s) # \_\_\_\_\_]

Records [Exhibit(s) # \_\_\_\_\_]

Other supporting evidence [Exhibit(s) # \_\_\_\_\_]

B. No affidavits, records or other supporting evidence are attached because

---

6. Petitioner has taken the following actions to secure relief from his convictions or sentences:

A. Direct Appeal:  Yes  No (If yes, name the courts to which appeals were taken, date, number, and result.)

---

B. Previous Rule 32 Proceedings:  Yes  No (If yes, name the court in which such petitions were filed, dates, numbers, and results, including all appeals from decisions on such petitions.)

---

C. Previous Habeas Corpus or Special Action Proceedings in the Courts of Arizona:  Yes  No (If yes, name the courts in which such petitions were filed, dates, numbers, and results, including all appeals from decisions on such petitions.)

---

D. Habeas Corpus or Other Petitions in Federal Courts:  Yes  No (If yes, name the districts in which petitions were filed, dates, court numbers--civil action or miscellaneous, and results, including all appeals from decisions on such petitions.)

---

7. The issues which are raised in this petition have not been finally decided nor raised before because: (State facts.)

---

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8. Because of the foregoing reasons, the relief which the petitioner desires is:

A.  Release from custody and discharge.

B.  A new trial.

C.  Correction of sentence.

D.  The right to file a delayed appeal.

E.  Other relief (specify):

---

---

I declare under penalty of perjury that the information contained in this form and in any attachments is true to the best of my knowledge or belief.

Date

---

Defendant

Form 25

**Form 26. Request for Preparation of Post-Conviction Relief Record**

\_\_\_\_\_ County, Arizona

**COURT**

STATE OF ARIZONA Plaintiff

[CASE/COMPLAINT NO.]

-vs-

**REQUEST FOR  
PREPARATION OF  
POST-CONVICTION  
RELIEF RECORD**

Defendant (FIRST, MI, LAST)

**REQUEST FOR PREPARATION OF POST-CONVICTION RELIEF RECORD**

The defendant has filed a Notice of Post-Conviction Relief in the above-entitled cause and requests, pursuant to Rule 32.4(d), Arizona Rules of Criminal Procedure, the preparation of the following portions of the court record and transcripts for review. The defendant has not previously received the documents requested.

**SUPERIOR COURT RECORD**

- Instruments
- Minute Entries
- Presentence Report
- Criminal History
- Rule 11 Reports

**TRANSCRIPTS**

**PROBATION VIOLATION**

- Probation Revocation:
- Admission of Violation
- Violation Hearing
- Predisposition Hearing, if any
- Disposition Hearing

**CHANGE OF PLEA**

- Change of Plea
- Presentence Hearing, if any
- Sentencing

**TRIAL**

- All Pretrial Motions (except deletions)
- Voir Dire
- Opening Arguments
- Closing Arguments
- All Trial Proceedings (from calling of the case to the verdict)
- Trial or Admission of Prior Conviction(s)
- All Post-Trial Motions (except deletions)
- Presentence Hearing, if any
- Sentencing

**DELETIONS**

- Motions to Continue by Defendant
- Hearings Dealing with Release Conditions
- Pretrial Conferences
- Arraignments
- Mistrried Cases
- Stipulated Rule 11 Hearings

Dated this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Defendant or Attorney for Defendant

Copy of the foregoing  
Mailed this \_\_\_\_ day of  
\_\_\_\_\_, 20\_\_ to:

Form 26

**Form 27(a). Subpoena**

\_\_\_\_\_ COURT [Precinct \_\_\_\_] \_\_\_\_\_ County, Arizona

STATE OF ARIZONA Plaintiff [CASE/COMPLAINT NO.]

-vs-

**SUBPOENA**

Defendant (FIRST, MI, LAST)

**SUBPOENA**

TO: \_\_\_\_\_

**YOU ARE HEREBY ORDERED** to appear at \_\_\_ a.m. / p.m. on \_\_\_\_\_, 20 \_\_\_\_, at

\_\_\_\_\_ and to remain there until excused to give testimony  
address

on behalf of \_\_\_\_\_ and to bring with you: \_\_\_\_\_

.

**IF YOU FAIL TO APPEAR AS ORDERED, A WARRANT MAY BE ISSUED FOR YOUR ARREST.**

Given under my hand and seal. \_\_\_\_\_, 20 \_\_\_\_.

\_\_\_\_\_ Clerk of the Court

\_\_\_\_\_ By \_\_\_\_\_

Party / Attorney for party requesting subpoena

Deputy Clerk

**Requests for reasonable accommodation for persons with disabilities must be made to the court by parties at least 3 working days in advance of a scheduled court proceeding.**

CERTIFICATE OF SERVICE

The undersigned swears (or affirms) that he / she is qualified to serve this subpoena and did so by showing the original to and informing the witness of its contents and by delivering a copy thereof as follows:

Date received \_\_\_\_\_ Date served \_\_\_\_\_ Time served \_\_\_\_\_

Person served \_\_\_\_\_

Location served \_\_\_\_\_

\_\_\_\_\_ County

Person Serving Subpoena

Form 27(a)

**Form 27(b). Subpoena - Alternative, Standby**

\_\_\_\_\_ County, Arizona

**COURT**

STATE OF ARIZONA Plaintiff

[CASE/COMPLAINT NO.]

-vs-

**SUBPOENA  
(Alternative--Stand  
by)**

Defendant (FIRST, MI, LAST)

**SUBPOENA  
(Alternative - - Stand by)**

TO: \_\_\_\_\_

**YOU ARE HEREBY ORDERED** to stand by to appear upon 30 minutes prior notice at any time between \_\_\_ a.m. / p.m. on \_\_\_\_\_, 20 \_\_\_\_, at [Address]\_\_\_\_\_ and to remain there until excused by the judge conducting the proceeding, to give testimony on behalf of \_\_\_\_\_ and to bring with you: \_\_\_\_\_

**YOU ARE FURTHER ORDERED** to state on the copy of this subpoena to be returned to the issuing party, a telephone number or numbers at which you can be reached at any time between 9:00 a.m. and 5:00 p.m. between the times noted above telephone numbers: (\_\_\_\_)\_\_\_\_\_. If you are unable to supply such numbers, **YOU ARE ORDERED** to appear at the time first mentioned above.

**IF YOU FAIL TO APPEAR AS ORDERED, A WARRANT MAY BE ISSUED FOR YOUR ARREST.**

Given under my hand and seal. \_\_\_\_\_, 20 \_\_\_\_.

\_\_\_\_\_ Clerk of the Court

\_\_\_\_\_ By \_\_\_\_\_

Party / Attorney for party requesting subpoena

Deputy Clerk

**Requests for reasonable accommodation for persons with disabilities must be made to the court by parties at least 3 working days in advance of a scheduled court proceeding.**

**CERTIFICATE OF SERVICE**

The undersigned swears (or affirms) that he / she is qualified to serve this subpoena and did so by showing the original to and informing the witness of its contents and by delivering a copy thereof as follows:

Date received \_\_\_\_\_ Date served \_\_\_\_\_ Time served \_\_\_\_\_

Person served \_\_\_\_\_

Location served

\_\_\_\_\_  
County \_\_\_\_\_

\_\_\_\_\_  
Person Serving Subpoena

Form 27(b)

**Form 28. Telephonic Guilty Plea/No Contest Plea Proceedings**

\_\_\_\_\_ County, Arizona

**COURT**

STATE OF ARIZONA Plaintiff

[CASE/COMPLAINT NO.]

-vs-

**TELEPHONIC  
GUILTY/NO  
CONTEST  
PLEA PROCEEDING**

Defendant (FIRST, MI, LAST)

Defendant appears personally and expresses a desire to plead guilty or no contest to the charges indicated and I find the following facts:

1. Defendant understands the nature of the charges as indicated:
  - Driving or in actual physical control of a motor vehicle while under the influence of intoxicating liquor/toxic vapor/drugs.
  - Driving or in actual physical control of a motor vehicle with an alcohol concentration of .08 percent or more within 2 hours of driving or being in actual physical control.
  - Driving or in actual physical control of a motor vehicle with an alcohol concentration of .15 percent or more within 2 hours of driving or being in actual physical control.
  - Driving or in actual physical control of a motor vehicle with any illegal drug or its metabolite in the defendant's body.
  - Driving or in actual physical control of a commercial vehicle with an alcohol concentration of .04 percent or more.
  - Other: \_\_\_\_\_
2. Defendant appears:  with counsel  without counsel, (waiver of counsel with file) and understands the following:
3. Defendant has entered into a:  plea agreement, and consents to its terms;  plea to the court.
4. Defendant understands the range of penalties to be:
  - Class 1 misdemeanor: a \$2500 fine, 6 months jail, and/or 3 years probation, plus surcharges and fees.
  - Class 1 misdemeanor: a \$2500 fine, 6 months jail, and/or 5 years probation, plus surcharges and fees.
  - Class 2 misdemeanor: a \$750 fine, 4 months jail, and/or 2 years probation, plus surcharges and fees.

Class 3 misdemeanor: a \$500 fine, 30 days jail, and/or 1 year probation, plus surcharges and fees.

Other: \_\_\_\_\_

5. If arrested on a subsequent offense, defendant may be charged with a more serious offense and associated penalties.
6. The Court has advised the defendant that this guilty plea may result in a violation of probation or parole.
7. Defendant was advised of the following: If you are not a citizen of the United States, pleading guilty or no contest to a crime may affect your immigration status. Admitting guilt may result in deportation even if the charge is later dismissed. Your plea or admission of guilt could result in your deportation or removal, could prevent you from ever being able to get legal status in the United States, or could prevent you from becoming a United States citizen.
8. Defendant understands that the following constitutional rights are given up by changing the plea:
  - a. Right to plead not guilty and require the State to prove guilt beyond a reasonable doubt.
  - b. Right to a trial  by jury  by a judge.
  - c. Right to assistance of an attorney at all stages of the proceeding, including appeal. In some cases, the defendant may be eligible for a court- appointed attorney at a reduced cost or at no cost, if the defendant cannot afford one.
  - d. Right to confront the witnesses against the defendant and to cross- examine them as to the truthfulness of their testimony.
  - e. Right to present evidence in the defendant's own behalf and to have the court compel the defendant's chosen witnesses to appear and testify free of charge.
  - f. Right to remain silent, not to incriminate oneself, and to be presumed innocent unless/or until proven guilty beyond a reasonable doubt.
  - g. Right to a direct appeal.
9. Defendant wishes to give up these constitutional rights after having been advised of them.
10. A basis in fact exists for believing the defendant guilty of the offenses charged.
11. The plea is voluntary and not the result of force or threat, or promises other than those contained in the plea agreement.
12. Defendant may file a Rule 32 petition for post-conviction relief and if denied may file a petition for review.

I CERTIFY that I have read and that I understand all of the matters cited above. I wish to give up my constitutional rights, including my right to a trial by jury and my right to an attorney, and to plead guilty to the charge(s) of:

\_\_\_\_\_

Dated: \_\_\_\_\_

Defendant

\_\_\_\_\_

Address

\_\_\_\_\_

(\_\_\_\_) \_\_\_\_\_

Telephone Number

I CERTIFY that the above named defendant personally appeared before me, and acknowledge that he or she read all of the foregoing information and identified himself or herself to me \_\_\_\_\_ (drivers license # and/or a picture ID) and that I have affixed a print of the defendant's right index finger to this document. \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Dated: \_\_\_\_\_

\_\_\_\_\_  
Officer Name and Badge Number

\_\_\_\_\_  
Law Enforcement Agency

\_\_\_\_\_  
Address

\_\_\_\_\_  
(\_\_\_\_) \_\_\_\_\_

\_\_\_\_\_  
Telephone

**AFFIDAVIT OF RESIDENCY**

Pursuant to Rule 17.1, Arizona Rules of Criminal Procedure, I request to resolve my pending criminal misdemeanor case(s) in through a telephonic plea proceeding. I swear under oath and penalty of perjury, that:

(1) I am not a resident of the State of Arizona, that I am a resident of the County of \_\_\_\_\_ in the State of \_\_\_\_\_, or (2) I reside more than 100 miles from the Court.

\_\_\_\_\_  
Defendant (print name)

\_\_\_\_\_  
Defendant's Signature

State of \_\_\_\_\_

County of \_\_\_\_\_

I hereby certify that \_\_\_\_\_ personally appeared before me. IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal this \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

Notary Public \_\_\_\_\_

Commission Expires \_\_\_\_\_

I CERTIFY that I have personally advised the defendant telephonically:

1. Of the nature of the charges against him or her.
2. Advised the defendant of all constitutional rights which defendant waived by pleading guilty.
3. Ascertained that the defendant wished to give up the constitutional rights of which he or she has been advised.
4. Inquired as to the defendant's probation or parole status.

The court finds a basis in fact for believing the defendant is guilty of the offenses charged and, that the defendant's plea of guilty is voluntary and not the result of force, threats or promises other than those contained in a plea agreement.

On the basis of these findings, I conclude that the defendant knowingly, voluntarily and intelligently pleads guilty to the above charges, and I accept his or her plea.

Dated: \_\_\_\_\_

Judge

Defendant:

Def. Counsel/Bar No.:

Interpreter:

Form 28

## Form 28(a). Instructions for Completing the Form for Entering a “Guilty/No Contest Plea by Mail”

Warning: The submission to the court of a completed form to enter a “guilty/no contest plea by mail” will have important legal consequences.

- Please read these instructions completely and carefully. If you do not follow these procedures correctly and completely, your plea by mail may not be accepted by the court, and you may be required to appear in court in-person.
- Read Rule 17.1(a)(4) of the Arizona Rules of Criminal Procedure and/or consult a lawyer if you have any additional questions after reading these instructions.

Note: You must have a copy of the complaint charging you with a crime to complete the form.

### **You must complete the following items on the plea by mail form.**

- (1) Enter the name of the court where the complaint was filed (for example, Phoenix Municipal, Ajo Justice).
- (2) Enter the name of the county where the court is located.
- (3) Enter your first name, middle name, and last name exactly as they appear on the complaint.
- (4) Enter the court's case number.
- (5) Print your full legal name (which can be different than your name on the complaint.)
- (6) Check whether you are pleading guilty or no contest. Check only one box.
- (7) Provide the reasons why you have an “undue hardship” in paragraph 12. An undue hardship is something that makes it difficult for you to personally appear in court, such as an illness, physical incapacity, a substantial distance to travel, or you are incarcerated (that is, you are currently in jail.) You may enter a plea by mail only if you have an “undue hardship”. If you do not have an “undue hardship”, you must personally appear in court.
- (8) Provide any information you would like the judge to consider before you are sentenced. You may attach additional pages if needed to provide complete information. You may also attach any other documents or statements you'd like the judge to consider before you are sentenced.
- (9) & (10). **You must sign and date the plea by mail form in front of a notary public.** You must have identification to show the notary. The notary public will add his or her stamp or seal and the notary's signature to show that the notary personally witnessed you sign the plea by mail form. Your signature confirms that you have read and understand the plea by mail form as well as these instructions, or that they have been read to you and that you understand them. If you do not read or speak English, please contact the court and request the assistance of an interpreter. If you have a lawyer, your lawyer must also sign the form and provide a State Bar number. Please note that only an attorney who is licensed to practice law in Arizona may sign the form.
- (11) & (12). You must provide your complete mailing address and a telephone number. The court will mail a copy of the judgment of conviction to you.

**READ THE PLEA BY MAIL FORM ON THE FOLLOWING PAGES CAREFULLY. DO NOT SIGN THE FORM OR SEND IT TO THE COURT IF YOU HAVE QUESTIONS ABOUT ANYTHING IN THE FORM, OR ABOUT THE LEGAL CONSEQUENCES OF A PLEA BY MAIL.**

(1) \_\_\_\_\_

COURT (2)

\_\_\_\_\_ County, Arizona

---

STATE OF ARIZONA Plaintiff

[CASE/COMPLAINT NO.]

**GUILTY/NO**

-versus-

**CONTEST**

(4)

**PLEA BY MAIL**

(3) \_\_\_\_\_

**and**

Defendant's name (first, middle, and  
last names)

**JUDGMENT OF**

**CONVICTION**

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1. I (5) \_\_\_\_\_ (print your full legal name) am the defendant in this case. I have a copy of the criminal complaint in this case, and I have read and I understand the charges filed against me. I hereby agree to plead (check only one): (6) Guilty No Contest to the criminal offense(s) alleged in the complaint. If there is more than one offense alleged in the complaint, I am pleading guilty or no contest to each of the criminal offenses in the complaint.

2. I admit to a factual basis for the offense(s) set forth in the complaint (that is, if my case went to trial, the facts would show that I did what I am charged with doing). I consent to the entry of judgment on my plea as indicated in paragraph 1 above.

3. I understand that the court will determine the sentence pursuant to my plea, and that I am responsible for satisfying all of the penalties that are imposed by the court. I further understand that the court may reject my plea by mail if any of the following are true:

- my case involves a victim;
- the court will impose a jail term, unless I am sentenced to time served, or unless I am currently in jail and the jail time that is imposed would not extend the length of my current jail sentence;
- the court will impose a term of probation;
- my fingerprint is required to be on the sentencing document;
- a plea by mail would not be in the interests of justice; or
- I have not described in paragraph 12 below any undue hardship that justifies my plea by mail.

4. I understand that the range of penalties for misdemeanor and petty offenses are as follows:

Class 1 misdemeanor: a \$2500 fine, 6 months jail, and/or 3 years probation, plus surcharges and fees.

Class 2 misdemeanor: a \$750 fine, 4 months jail, and/or 2 years probation, plus surcharges and fees.

Class 3 misdemeanor: a \$500 fine, 30 days jail, and/or 1 year probation, plus surcharges and fees.

Petty offense: not more than a \$300 fine, plus surcharges and fees.

The maximum fine amounts are higher for enterprises.

5. If I am arrested on another offense in the future, I know that as the result of my plea in this case, I may be charged with a more serious offense that has more severe penalties.

6. If I am presently on probation or parole, I know that this guilty or no contest plea may result in a violation of my probation or parole.

7. I know that if I am not a citizen of the United States, pleading guilty or no contest to a crime may affect my immigration status. Admitting guilt may result in deportation even if the charge is later dismissed. My plea or admission of guilt could result in deportation or removal, could prevent me from ever being able to get legal status in the United States, or could prevent me from becoming a United States citizen.

8. I understand that by entering my plea of guilty or no contest by mail I am giving up all of the following constitutional rights:

a. The right to plead not guilty and to require the State to prove guilt beyond a reasonable doubt.

b. The right to a trial, and depending on the charge(s) against me, a right to a trial by jury.

c. The right to assistance of an attorney at all stages of the proceeding, including appeal. If I cannot afford one, I may be eligible for a court-appointed attorney at a reduced cost or at no cost.

d. The right to confront the witnesses against me and to cross-examine them as to the truthfulness of their testimony.

e. The right to present evidence in my own behalf and to have the court compel my chosen witnesses to appear and to testify free of charge.

f. The right to remain silent, not to incriminate myself, and to be presumed innocent unless/or until proven guilty beyond a reasonable doubt.

g. The right to a direct appeal.

9. I give up the right to be present at the time of sentencing.

10. My plea is voluntary and not the result of force, threat, or promises.

11. I understand that I may file a petition for post-conviction relief in accordance with Rule 32 of the Arizona Rules of Criminal Procedure, and if it is denied I may file a petition for review.

12. I wish to enter my plea by mail because my personal appearance in court would be an undue hardship for the following reasons: (Explain the hardship, such as illness, physical incapacity, substantial distance to travel, or incarceration, fully and in detail. Attach additional pages if needed.)

(7) \_\_\_\_\_

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13. I would like the court to consider the following information in determining an appropriate sentence (attach additional pages if needed):

(8) \_\_\_\_\_

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I have read the instructions for completing this plea by mail form, or these instructions have been read to me. I have completely read this plea by mail form, or it has been completely read to me. I understand this plea form, and I am voluntarily signing it below. I understand that the court will mail a copy of its judgment to me, and that I will be responsible for fulfilling the penalties and the sentence imposed by the court.

(9) Dated: \_\_\_\_\_

(10) \_\_\_\_\_

Defendant's Signature

\_\_\_\_\_

(11) \_\_\_\_\_

(if any) Defense Counsel Signature/AZ Bar

#Defendant's Telephone Number

(12) \_\_\_\_\_

Defendant's Complete Mailing Address

**THIS SECTION IS FOR COURT USE ONLY:**

I hereby certify that personally appeared before me.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal this day of \_\_\_\_\_ 20\_\_\_\_.

Notary Public Signature \_\_\_\_\_ State of \_\_\_\_\_

My Commission Expires \_\_\_\_\_ County of \_\_\_\_\_

**THIS SECTION IS FOR COURT USE ONLY:**

**ACCEPTANCE OF PLEA AND JUDGMENT OF CONVICTION**

I CERTIFY that I have personally reviewed the defendant's statements set forth in this Guilty/No Contest Plea by Mail form. The court finds a basis in fact for believing the defendant is guilty of the offense(s) charged, and that the defendant's plea of guilty or no contest is voluntary and intelligent. I accept the defendant's plea and find that the defendant is guilty of the following offense or offenses alleged in the complaint:

\_\_\_\_\_, a violation of A.R.S. § \_\_\_\_\_, committed on \_\_\_\_\_.

(and, if applicable) \_\_\_\_\_

The defendant is sentenced as follows: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

Dated: \_\_\_\_\_

Judge

I CERTIFY that a copy of this document was mailed to defendant at the address shown above on this date: \_\_\_\_\_ by (Clerk's name or initials): \_\_\_\_\_

**Form 29. Entry of Not Guilty Plea and Advisements**

\_\_\_\_\_ **COURT** \_\_\_\_\_ **County, Arizona**

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STATE OF ARIZONA,  
Plaintiff

[CASE/COMPLAINT  
NO.]

-vs-

**ENTRY OF  
NOT GUILTY PLEA  
AND ADVISEMENTS**

Defendant (FIRST, MI,  
LAST)

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1. A plea of not guilty is hereby entered on the defendant's behalf to the following charge(s): \_\_\_\_\_

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2. The parties are notified that the next court appearance in this matter is for \_\_\_\_\_, on \_\_\_\_\_, 20 \_\_\_\_, at \_\_\_\_ a.m., before Judge \_\_\_\_\_, located at \_\_\_\_\_, Arizona.

3. The defendant is advised that the defendant has the right to be present at all future proceedings. If the defendant fails to appear for any proceeding other than sentencing, that proceeding may be held regardless of the defendant's absence, the defendant may be charged with an offense for failure to appear, and a bench warrant may be issued for the defendant's arrest. If the defendant fails to appear for trial, trial may be held in the defendant's absence and the defendant may be convicted and sentenced.

4. The Defendant is advised that, if convicted, the defendant will be required to appear for sentencing. If the defendant chooses not to appear, and the defendant's absence prevents the defendant from being sentenced within ninety days from the conviction, the defendant may lose the right to a direct appeal.

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

6. The defendant is further advised that discovery is available from the Prosecutor's office, as provided in rule 15.1, Rules of Criminal Procedure.

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

8. The defendant has requested an interpreter:  Spanish  Other Language \_\_\_\_\_

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

Dated: \_\_\_\_\_

\_\_\_\_\_

Defendant

\_\_\_\_\_

Address

\_\_\_\_\_

( )

\_\_\_\_\_

Telephone Number

Dated: \_\_\_\_\_

\_\_\_\_\_

Defense Attorney

Bar No.

