

Arizona Rules of Civil Appellate Procedure (ARCAP), Rule 23

Rule 23. Petition for Review

Text of Rule 23 effective January 1, 2012.

(a) Time for Filing; Cross-Petition; Extension of Time. Within 30 days after the Court of Appeals issues its decision, any party may file a petition for review with the clerk of the Supreme Court; provided that, if a motion for reconsideration has been filed, a petition for review may be filed within 15 days after the final disposition of the motion. A cross-petition for review may be filed with the clerk of the Supreme Court within 15 days after service of a petition for review. Motions to extend the time to file a petition for review shall be filed in the Supreme Court.

(b) Priority of Motion for Reconsideration. In the event of the timely filing of a petition for review prior to the disposition of a motion for reconsideration, further proceedings relating to the petition or cross-petition for review shall be stayed until the clerk of the Court of Appeals has sent notice of the court's ruling on the motion for reconsideration to the parties and to the clerk of the Supreme Court.

If a motion for reconsideration is granted, proceedings relating to the petition or cross-petition for review shall be further stayed until the clerk of the Court of Appeals has sent notice of the court's ruling on any motion for reconsideration of the decision upon reconsideration, or until the time for filing a motion for reconsideration of such decision upon reconsideration has expired.

In the event a petition or cross-petition has become moot by reason of the granting of a motion for reconsideration, the petitioner or cross-petitioner shall give immediate written notice of such mootness to the clerk of the Supreme Court.

(c) Form, Length and Contents. The petition and cross-petition for review shall comply with the provisions of Rule 6(c) unless such requirements are otherwise suspended and the parties shall be designated as in the Court of Appeals. Except by permission of the court (1) a petition for review prepared in a proportionately spaced typeface may not exceed 3500 words and may not have an average of more than 280 words per page, including footnotes and quotations; (2) a petition for review prepared in a monospaced typeface may not exceed 10 pages and may not have an average of more than 350 words per page including footnotes and quotations; and (3) a handwritten petition for review may not exceed 12 pages. The petition shall be accompanied by a certificate of compliance that states either (1) that the petition for review uses a proportionately spaced typeface of 14 points or more, is double spaced using a roman font and contains [blank] words, or (2) that the petition for review uses a monospaced typeface of no more than 10.5 characters per inch and does not exceed 10 pages, or (3) that the petition for review was handwritten and does not exceed 12 pages. A party preparing this certificate may rely on the word count of the processing system used to prepare the petition for review. A copy of the Court of Appeals' decision shall accompany the petition. Where the Court of Appeals' decision is simply an order declining to accept jurisdiction of a special action, a copy of the Superior Court's decision from which the petition for special action was taken shall also

accompany the petition. The petition and cross-petition shall contain concise statements of the following:

1. The issues which were decided by the Court of Appeals and that the petitioner wishes to present to the Supreme Court for review. The petition shall also list, separately and without argument, those additional issues that were presented to, but not decided by, the Court of Appeals and which may need to be decided if review is granted.
2. The facts material to a consideration of the issues presented to the Supreme Court for review with appropriate references to the record on appeal. No evidentiary matter shall be included unless material to a proper consideration of the issues presented, in which instance a reference shall be made to the record or page of the certified transcript where such evidence appears.
3. The reasons the petition should be granted, which may include, among others, the fact that no Arizona decision controls the point of law in question, a decision of the Supreme Court should be overruled or qualified, that conflicting decisions have been rendered by the Court of Appeals, or that important issues of law have been incorrectly decided.

If there are documents in the record on appeal that are necessary for a determination of the issues raised by the petition or cross-petition, the petitioner and cross-petitioner shall file, simultaneously with the petition and cross-petition, an appendix consisting only of such documents. In the case of a petition or cross-petition for review submitted in hard copy, if the appendices exceed 15 pages in length, such appendices shall be bound or fastened in the top margin by a two-pronged fastener and shall be submitted separately from the petition and the copy of the Appeals Court's decision or the cross-petition. No adhesive bindings or bindings using numerous holes shall be used. An original and two copies of any separately bound or fastened appendices shall be filed with the petition or cross-petition. If the petition or cross-petition for review is filed electronically, and if the appendices contain multiple documents, such documents shall be electronically bookmarked in the appendices' table of contents.

Any petition for review presented for filing that does not substantially comply with this rule may, in the discretion of the clerk of the Supreme Court, be returned to the petitioner by the clerk with written instructions to the petitioner to file a proper petition within 30 days from the date on which the written instructions are sent to the petitioner.

(d) Availability of Partial Record Upon Filing of a Petition for Review.

1. *When No Motion for Reconsideration Is Pending.* When the clerk of the Court of Appeals is notified that a petition for review has been filed, if the time for filing a motion for reconsideration has passed and either no such motion has been filed or a motion has been filed and disposed of, the clerk shall make available to the clerk of the Supreme Court the briefs filed in the Court of Appeals.
2. *When a Motion for Reconsideration Is Pending.* If a motion for reconsideration is pending in the Court of Appeals when the clerk is notified that a petition for review has been filed, the clerk shall make the briefs filed in the Court of Appeals available to the

clerk of the Supreme Court when the motion for reconsideration has been denied, or if the motion is granted, upon disposition of any motion for reconsideration of the decision upon reconsideration or upon expiration of the time for filing a motion for reconsideration of such decision.

(e) Service and Response. The petitioner or cross-petitioner shall serve a copy of the petition or cross-petition and any appendices on all parties who have appeared in the Court of Appeals. Any party wishing to oppose the petition or cross-petition may file with the clerk of the Supreme Court a response within 30 days from the date upon which the petition or cross-petition for review is served. The response shall comply with the provisions of Rules 6(c) and 23(c) not otherwise suspended by any Administrative Order of the Supreme Court. If there are documents in the record on appeal that are necessary for a determination of the issues raised by the petition or cross-petition, the respondent shall file, simultaneously with a copy of the response, an appendix that complies with the requirements set forth in paragraph (c) of this rule, consisting only of such documents which were not included in the appendix filed with the petition or cross-petition. Failure to file a response shall not be considered an admission that the petition should be granted.

If a response is filed, the response shall list, separately and without argument, those additional issues, if any, that were presented to, but not decided by, the Court of Appeals, that were not listed by the petitioner, and that may need to be decided if review is granted.

No reply shall be filed by petitioner, unless the Court has so directed by specific order, in which event a reply may be filed within the time set by the Court.

(f) Order Granting Review. If the Supreme Court grants review, its order shall specify the issue or issues to be reviewed. The Supreme Court may order that the parties file additional briefs or that oral argument be heard, or both. If the order granting review does not provide for supplementation of briefs or for oral argument, either party may, within 15 days after the clerk sends notice of the Court's order, request the Court to do so by a motion specifying the reasons for supplementation or for oral argument, or both.

(g) Availability of Remaining Record. Upon notification by the clerk of the Supreme Court that a petition or cross-petition for review has been granted, the clerk of the Court of Appeals shall make the remaining record available to the clerk of the Supreme Court.

(h) Order Denying Review. If the Supreme Court denies review, its order shall specify those justices of the Supreme Court, if any, who voted to grant review. When all petitions and cross-petitions for review have been denied, the clerk of the Supreme Court shall so notify the clerk of the Court of Appeals and the parties, and shall return the original copies of the briefs and the petition or cross-petition for review to the clerk of the Court of Appeals.

(i) Dispositions.

(1) If an appeal is resolved by agreement of the parties after a petition for review by the Supreme Court is filed, the Supreme Court may order that the decision of the Court of

Appeals be vacated, or that any opinion of the Court of Appeals be redesignated as a Memorandum Decision.

(2) When review has been granted, the Supreme Court may remand the appeal to the Court of Appeals for reconsideration in light of authority identified in the Supreme Court's order.

(3) If issues were raised in, but not decided by, the Court of Appeals and review has been granted, the Supreme Court may consider and decide such issues, may remand the appeal to the Court of Appeals for decision of such issues, or may make such other disposition with respect to such issues as it deems appropriate.

(j) Amicus Curiae. The Supreme Court may permit participation by amicus curiae pursuant to the provisions of Rule 16 of these rules not otherwise suspended by any Administrative Order of the Supreme Court.