

SUPREME COURT OF ARIZONA

In the Matter of) Arizona Supreme Court
) No. R-08-0001
CRIMINAL AND CIVIL SUPERIOR COURT)
RULES APPELLATE PROCEDURE AND)
RULE 29, CIVIL TRAFFIC RULE)
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_____)

**AMENDED ORDER AMENDING
RULE 7, SUPERIOR COURT RULES OF APPELLATE PROCEDURE - CIVIL,
RULES 6 and 7, SUPERIOR COURT RULES OF APPELLATE PROCEDURE -
CRIMINAL,
and
RULE 29, RULES OF PROCEDURE IN CIVIL TRAFFIC VIOLATION CASES**

A petition having been filed proposing to allow the superior court to remand a case for a new trial when the record is insufficient for appeal, and to clarify that restitution obligations are not stayed pending appeal, and comments having been received, upon consideration,

IT IS ORDERED that Rule 7, Superior Court Rules of Appellate Procedure - Civil, Rules 6 and 7, Superior Court Rules of Appellate Procedure - Criminal, and Rule 29, Rules of Procedure in Civil Traffic Violation Cases, be amended in accordance with the attachment hereto, effective January 1, 2009.

DATED this _____ day of September, 2008.

REBECCA WHITE BERCH
Vice Chief Justice

TO:

ATTACHMENT*

SUPERIOR COURT RULES OF APPELLATE PROCEDURE – CIVIL

Rule 7. Record on Appeal

(a)-(d) [No change in text.]

(e) Sufficiency of Record on Appeal; Trial de Novo. If it appears to the trial court that the record is insufficient for an appeal on the record, the trial court may, on its own motion or on motion of a party, reset the matter for a new trial within 45 days from such determination. In such event, any appeal rights shall begin to run from the entry of a judgment or order following the new trial. In cases where it appears that the record is insufficient, the preference shall be for a new trial at the trial court level. Notwithstanding the foregoing, cases summarily transferred to the superior court for trial de novo or determined by the superior court to have an insufficient record may be remanded to the original trial court for a new trial or hearing in lieu of a trial de novo in the superior court. Unlike the parties in a trial de novo held in the superior court, the parties in a case remanded pursuant to this rule for a new trial in the original trial court shall have the rights of appeal as provided by statute or rule for all litigants following a trial or the entry of an appealable judgment or order.

(f) [No change in text of current subsection (e).]

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SUPERIOR COURT RULES OF APPELLATE PROCEDURE – CRIMINAL

Rule 6. Bond on Appeal

a.-b. [No change in text.]

c. Execution of sentence shall be stayed pending appeal when defendant posts bond pursuant to Rule 7.2, Arizona Rules of Criminal Procedure, or when the appeal is taken on defendant's own recognizance. “Sentence” shall include any fine, jail term, or other penalty, including a term of probation, imposed by the court. Notwithstanding the foregoing, an order requiring the payment of restitution shall not be stayed, but during the pendency of the appeal restitution payments shall be paid to, and held by, the clerk of court.

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Rule 7. Record on Appeal

* Changes or additions in text are indicated by underscoring and deletions from text are indicated by ~~strikeouts~~.

a.-f. [No change in text.]

g. If it appears to the trial court that the record is insufficient for an appeal on the record , the trial court may, on its own motion or on motion of a party, reset the matter for a new trial within 45 days from such determination. In such event, any appeal rights shall begin to run from the entry of a judgment or order following the new trial. In cases where it appears that the record is insufficient, the preference shall be for a new trial at the trial court level. Notwithstanding the foregoing, cases summarily transferred to the superior court for trial de novo or determined by the superior court to have an insufficient record may be remanded to the original trial court for a new trial or hearing in lieu of a trial de novo in the superior court. Unlike the parties in a trial de novo held in the superior court, the parties in a case remanded pursuant to this rule for a new trial in the original trial court shall have the rights of appeal as provided by statute or rule for all litigants following a trial or the entry of an appealable judgment or order.

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RULES OF PROCEDURE IN CIVIL TRAFFIC VIOLATION CASES

Rule 29. Record on Appeal; Contents of Record

(a)-(c) [No change in text.]

(d) If it appears to the trial court that the record is insufficient for an appeal on the record , the trial court may, on its own motion or on motion of a party, reset the matter for a new trial within 45 days from such determination. In such event, any appeal rights shall begin to run from the entry of a judgment or order following the new trial. In cases where it appears that the record is insufficient, the preference shall be for a new trial at the trial court level. Notwithstanding the foregoing, cases summarily transferred to the superior court for trial de novo or determined by the superior court to have an insufficient record may be remanded to the original trial court for a new trial or hearing in lieu of a trial de novo in the superior court. Unlike the parties in a trial de novo held in the superior court, the parties in a case remanded pursuant to this rule for a new trial in the original trial court shall have the rights of appeal as provided by statute or rule for all litigants following a trial or the entry of an appealable judgment or order.

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