



# Supreme Court

STATE OF ARIZONA

402 ARIZONA STATE COURTS BUILDING  
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RACHELLE M. RESNICK  
CLERK OF THE COURT

KATHLEEN E. KEMPLEY  
CHIEF DEPUTY CLERK

September 6, 2007

**RE: RULES 28.1(b), ARIZ.R.CRIM.P, et al**  
Arizona Supreme Court No. R-06-0028

GREETINGS:

The following action was taken by the Supreme Court of the State of Arizona on August 27, 2007, in regard to the above-referenced cause:

**ORDERED: Petition to Amend Rule 28.1(b), ARCrImP, Rule 94(h), ASCR & Rule 124(c) (2), ASCR = ADOPTED as modified, effective January 1, 2008.**

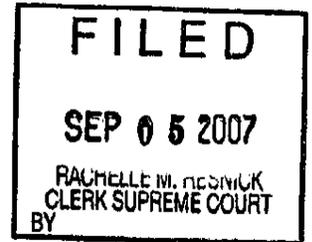
Rachelle M Resnick, Clerk

TO:

Michael K Jeanes, Clerk, Maricopa County Superior Court  
Juanita Mann, President, Arizona Association of Superior Court Clerks  
Stewart Bruner  
Final Rule Distribution List  
cf

**IN THE SUPREME COURT OF THE STATE OF ARIZONA**

Supreme Court No. R-06-0028



ORDER AMENDING  
RULE 28.1(b), ARIZONA RULES OF CRIMINAL PROCEDURE  
and  
RULES 94(h) and 124(c)(2), RULES OF THE SUPREME COURT

IT IS ORDERED that Rule 28.1(b), Arizona Rules of Criminal Procedure, and Rules 94(h) and 124(c)(2), Rules of the Supreme Court, be amended in accordance with the attachment hereto,\* effective as of January 1, 2008.

DATED in the City of Phoenix, Arizona at the Arizona Courts Building, this 5<sup>th</sup> day of September, 2007.

For the Court:

  
RUTH V. MCGREGOR  
Chief Justice

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

# ARIZONA RULES OF CRIMINAL PROCEDURE

\* \* \*

## Rule 28.1. Duties of the clerk

a. [No change in text.]

### b. Destruction of Certain Records.

(1) Effective January 1, 2008 for counties that maintain an electronic court record authorized by the Administrative Office of the Courts, originals of documents, instruments, books, papers, depositions, and transcripts in any criminal case may be destroyed, provided that the Clerk shall maintain for public use an exact replica of these items after destruction and a device for viewing it. The Clerk shall also maintain a photographic or electronic reproduction or image of the original record in a place and manner as will reasonably assure its permanent preservation.

(2) In counties that do not maintain an electronic court record authorized by the Administrative Office of the Courts, originals of documents, instruments, books, papers, depositions, and transcripts in any criminal case may be destroyed when the particular action or proceeding is no longer subject to modification, provided that the Clerk shall maintain for public use an exact replica of these items after destruction and a device for viewing it. The Clerk shall also maintain a photographic or electronic reproduction or image of the original record an appropriately stored exact replica of these items in a place and manner as will reasonably assure its permanent preservation. For purposes of destruction of the above items by the clerk, a case will not be considered "subject to modification":

~~(1)~~ (i) After the defendant has been acquitted or the charges dismissed with prejudice;

~~(2)~~ (ii) Sixty days after judgment and sentence have been entered, unless a notice of appeal or a post-trial motion has been filed;

~~(3)~~ (iii) Ninety days after denial of a post-trial motion or receipt of the mandate of the appellate court affirming a conviction, unless a petition for writ of certiorari has been filed with the United States Supreme Court;

~~(4)~~ (iv) Twenty-five days after a denial of certiorari or the mandate of the United States Supreme Court affirming a conviction, unless a petition

for rehearing has been filed;

(5) (v) Receipt of a denial by the United States Supreme Court of a petition for rehearing.

(6) (vi) One year after exhaustion of all state remedies if no petition for habeas corpus is filed or after the exhaustion of all federal remedies if a petition for a writ of habeas corpus has been filed.

c.-d. [No change in text.]

## RULES OF THE SUPREME COURT

\* \* \*

### Rule 94. Superior Court Clerks

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

(h) **Records Management.** All records in custody of the Clerk will be maintained according to this rule, Rule 29, Rules of the Supreme Court, and purge lists and retention and disposition schedules adopted by the Supreme Court.

(1) *Destruction of Original Case File Records.*

(A) Effective January 1, 2008, for counties that maintain an electronic court record authorized by the Administrative Office of the Courts, original case file records may be destroyed provided that the Clerk shall maintain for public use an exact replica of the record after purging and a device for viewing it. The Clerk shall also maintain a photographic or electronic reproduction or image of the original record in a place and manner as will reasonably assure its permanent preservation.

(B) In counties that do not maintain an electronic court record authorized by the Administrative Office of the Courts, original case file records may be destroyed when the particular action or proceeding is no longer subject to modification provided that the Clerk shall maintain for public use an exact replica of the record after purging and a device for viewing it. The Clerk shall also maintain a photographic or electronic reproduction or image of the original record an appropriately stored exact replica of the record in a place and manner as will reasonably assure its permanent preservation. An action or proceeding is considered no longer "subject to modification:"

(A) (i) Forty-five days after the action or proceeding was dismissed by stipulation or order, and no Notice of Appeal has been filed.

(B) (ii) Ninety days after the issuance of an order or judgment settling all issues between and among the parties; a stipulated judgment; an arbitration award; a decree of dissolution with no children; a satisfaction of court-ordered support payments (URESAs); an order of dismissal from court-ordered treatment; or a default judgment, and no Notice of Appeal has been filed.

(C) (iii) Thirty days after issuance of a decision, mandate or order, and the action or proceeding is no longer on appeal or the appeal time has lapsed and no appeal has been filed or is in process.

(2) [No change in text.]

\* \* \*

## **Rule 124. Electronic Filing, Delivery and Service of Documents**

*Effective January 1, 2008 for counties maintaining an electronic court record authorized by the Administrative Office of the Courts*

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

### **(c) Date and Effect of Electronic Filing.**

(1) [No change in text.]

(2) An electronically filed document constitutes the filing of the original written and signed paper under the rules governing practice and procedure in the courts of this state. The court may require the party to produce the original of an exhibit that has been filed electronically. An electronically filed document as it resides on the court's computer, ~~and print-outs of said document,~~ shall be considered the original document satisfying the best evidence rule set forth in Rule 1002, Arizona Rules of Evidence.

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

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