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IN THE SUPREME COURT OF THE STATE OF ARIZONA

In the Matter of

SUPREME COURT No. R-05-0030

RULES 4(d) and 58(b), ARIZONA RULES OF
CIVIL PROCEDURE, RULES 7.6, 10.1, 16.3,
26.7, 32.9, 35.5, 35.6 and 35.7, ARIZONA
RULES OF CRIMINAL PROCEDURE; RULE 7,
RULES OF PROCEDURE FOR SPECIAL
ACTIONS; and RULE 12(c), SUPERIOR COURT
RULES OF
APPELLATE PROCEDURE – CIVIL

MARICOPA COUNTY ATTORNEY'S
SUPPLEMENT TO COMMENT TO
PROPOSED AMENDMENTS TO
RULES RELATED TO MINUTE
ENTRIES

The Maricopa County Attorney hereby supplements his comment on the proposed amendments to Rules 4(d) and 58(b), Arizona Rules of Civil Procedure, Rules 7.6, 10.1, 16.3, 26.7, 32.9, 35.5, 35.6 and 35.7, Arizona Rules of Criminal Procedure; Rule 7, Rules of Procedure for Special Actions; and Rule 12(c), Superior Court Rules of Appellate Procedure – Civil, related to minute entries.

The suggested revisions in the supplement would allow local justice partners to adopt business practices that take into consideration both the issuance costs of the court's rulings and the rapid, reliable distribution of those rulings to interested parties and the public. Strict prohibitions against either minute entries or orders are certain to impede progress toward the expansion of E-Filing and electronic access to court documents.

For example, during Maricopa County's attempts to expand E-Filing to criminal cases this year,

1 the Clerk of the Court was unable to accept the standard separate proposed orders accompanying
2 motions that were part of MCAO's standard document generation system and that had been in use for
3 many years. To solve this kind of problem, the justice partners needed to be free to consider every
4 alternative, including the substitution of minute entries for orders.

5 Also in Maricopa County, minute entries are posted on a public website soon after issuance
6 whereas orders are not. The advantages of public access to court rulings should not be reduced or
7 impeded by rules whose intended purpose focuses primarily on cost assignment . Even when some
8 duplication of orders and minute entries exists, such duplication should be tolerated when notice to the
9 parties and the public is of paramount importance.

10 The Maricopa County Attorney's Office believes that economy, prompt access to court rulings,
11 and work-flow efficiency can best be served by allowing the local justice partners to determine the
12 appropriate assignment of minute entries and orders.

13 Respectfully submitted this ___ day of August, 2006.

14
15 ANDREW P. THOMAS
16 MARICOPA COUNTY ATTORNEY

17 BY: _____
18 PHILIP J. MACDONNELL
19 CHIEF DEPUTY

20
21 Copies of the foregoing
22 delivered this ___ day of August, 2006, to:

23 Clerk of Supreme Court (Original and 6 copies)

24 Honorable Fred Newton, Presiding Judge
25 Superior Court in Coconino County and
26 Chairman of the Committee on Superior Court
27 County Courthouse
28 200 North San Francisco
Flagstaff, AZ 86001

SUPPLEMENT

1 1. Rule 4(d). Process; By Whom Served

2 Service of process shall be by a sheriff, a sheriff's deputy, a private process server registered with the
3 clerk of the court pursuant to subpart (e) of this Rule, or any other person specially appointed by the
4 court, except that a subpoena may be served as provided in Rule 45. Service of process may also be
5 made by a party or that party's attorney where expressly authorized by these Rules. A private process
6 server or specially appointed person shall be not less than twenty-one (21) years of age and shall not be
7 a party, an attorney, or the employee of an attorney in the action whose process is being served. Special
8 appointments to serve process shall be requested by motion to the presiding Superior Court judge and
9 the court's ruling shall be recorded by minute entry or by a proposed form of order. If the proposed form
10 of order is signed, no minute entry need issue. Special appointments shall be granted freely, are valid
11 only for the cause specified in the motion, and do not constitute an appointment as a registered private
12 process server.
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16 2. Rule 58(b). Remittitur; procedure; effect on right of appeal

17 1. A party in whose favor a verdict or judgment has been rendered may, in open court, or in writing
18 filed with the clerk, remit any part of the verdict or judgment. The remittitur shall be entered ~~on the~~
19 ~~judgment docket and~~ in the minutes when announced in open court or recorded by minute entry or
20 order if not announced in open court, and eExecution shall thereafter issue for the balance only of the
21 judgment after deducting the amount remitted.
22

23 2. The remittitur shall not affect the right of the opposite party to appeal from the judgment, and for that
24 purpose the amount of the original judgment shall be considered the amount in controversy.
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26 3. Rule 7.6. Transfer and Disposition of Bond

27 a. [No change to text]
28

b. [No change to text]

1
2 **c. Forfeiture Procedure.**

3 (1) *Notice and Hearing.* If at any time it appears to the court that the released person has violated a
4 condition of an appearance bond , it shall issue a bench warrant for the person's arrest and send a copy
5 of the minute entry or court order evidencing the issuance of such bench warrant to the surety within ten
6 days after the issuance of the warrant. The court shall also set a hearing within a reasonable time not to
7 exceed 120 days requiring the parties and any surety to show cause why the bond should not be
8 forfeited. The court shall provide notice of the hearing to the parties and any surety. ~~by mailing copies~~
9 ~~of the minute entry to the addresses previously provided by the parties to the court.~~

10
11 (2) *Forfeiture.* [No change to text]

12 **d. Exoneration.** [No change to text]

13 **e. Post-Forfeiture Notice.** [No change to text]

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15 **4. Rule 10.1. Change of judge for cause**

16 **a. Grounds.** [No change to text]

17 **b. Procedure.** [No change to text]

18 **c. Hearing.** [No change to text]

19
20 **COMMENT**

21 **Rule 10.1(a).** [No change to text]

22 **Rule 10.1(b).** [No change to text]

23 **Rule 10.1(c).** Ariz.Rules of Civil Procedure 42(f)(2)(D) requires the presiding judge [see
24 definition of "presiding judge" in Rule 1.4(b)] to provide a hearing on a motion for change of
25 judge for cause. If the challenged judge, after reviewing the motion, agrees with the moving
26 party that cause exists and all parties so stipulate the case may be reassigned without hearing
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following the procedures set forth in Rules 10.5(b) and 10.6.

The hearing judge will prepare a minute entry or issue an order stating ~~his~~ his or her conclusions, copies of which will be forwarded to the presiding judge and to the parties.

5. Rule 16.3. Procedure on omnibus hearings

a. Scope of Proceeding. [No change to text]

b. Form of Motions. [No change to text]

c. Rulings on Motions. [No change to text]

d. Taking of Evidence. [No change to text]

e. Record of Proceedings. [No change to text]

f. Minute Entry. At the conclusion of the hearing the court shall ensure that a written record is created and made available to parties ~~direct a minute entry~~ of the matters agreed upon.

6. Rule 26.7. Pre-sentencing hearing; request, purpose, pre-hearing conference

a. Request for a Pre-Sentencing Hearing. [No change to text]

b. Nature, Time and Purpose of the Pre-sentencing Hearing. [No change to text]

c. Pre-Hearing Conference. The court, on its own initiative or on motion of the parties, may hold a pre-hearing conference to ascertain and limit the matters in dispute or otherwise expedite the pre-sentencing hearing. The court may order the probation officer who prepared the presentence report to attend.

At such conference the court may postpone the date of sentencing for up to 10 days beyond the maximum extension permitted by Rule 26.3(b) and delay the pre-sentencing hearing accordingly, in order to allow the probation officer to investigate any matter specified by the court, or to refer the defendant for mental health examinations or diagnostic tests. The court shall ensure that a written

record is created and made available to parties ~~direct a minute entry~~ noting all decisions, agreements and orders made at a pre-hearing conference.

7. Rule 32.5. Contents of Petition

The defendant shall include every ground known to him or her for vacating, reducing, correcting or otherwise changing all judgments or sentences imposed upon him or her, and certify that he or she has done so. Facts within the defendant's personal knowledge shall be noted separately from other allegations of fact and shall be under oath. Affidavits, records, or other evidence currently available to the defendant supporting the allegations of the petition shall be attached to it. Legal and record citations and memoranda of points and authorities are required. In Rule 32 of-right and non-capital cases, the petition shall not exceed 25 pages. The response shall not exceed 25 pages, and any reply shall not exceed 10 pages. In capital cases, the petition shall not exceed 40 pages. The response shall not exceed 40 pages, and any reply shall not exceed 20 pages. A petition which fails to comply with this rule shall be returned by the court to the defendant for revision with a minute entry or order specifying how the petition fails to comply with the rule. A petition that has been revised to comply with the rule shall be returned by the defendant for refiling within 30 days after defendant's receipt of the non-complying petition. If the petition is not so returned, the court shall dismiss the proceedings with prejudice. The period for response by the state shall begin on the date a returned petition is refiled.

8. Rule 32.9. Review

- a. Motion for Rehearing; Response; Reply. [No change to text]**
- b. Disposition When Motion Granted. [No change to text]**
- c. Petition for Review. [No change to text]**
- d. Stay Pending Review. [No change to text]**

1 **e. Filing of the Record.** In Rule 32 of-right and non-capital cases, within 45 days after the receipt of
2 the notice of filing of a petition for review, the record, including the trial court file and the reporter's
3 transcript, shall be transmitted to the appellate court.

4 In capital cases, the record of the post-conviction proceedings shall not be transmitted to the appellate
5 court unless requested by that court. If requested by the appellate court, the record shall consist of
6 copies of the notice of post-conviction relief, the petition for post-conviction relief, response and reply,
7 all motions and responsive pleadings filed and all minute ~~entry~~ entries and orders issued in the post-
8 conviction proceedings, plus the reporter's transcript and any exhibits admitted by the trial court in the
9 post-conviction proceedings.
10

11 **f. Disposition When Petition Granted.** [No change to text]

12 **g. Reconsideration and Review of Appellate Court Decision.** [No change to text]

13 **h. Return of the Record.** [No change to text]
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15 **9. Rule 35.3. Requests: form, content, right of reply and hearing**

16 Unless otherwise specified in these rules, all requests shall be in writing, served upon all other parties,
17 and filed with the court.
18

19 **COMMENT**

20 [No change to text]

21 The Maricopa County Attorney's Office would request that no additional to text be added to the
22 Comment in order to expand Rule 5(j)(2) to criminal cases.
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25 **10. Rule 35.6. Notice of orders**

26 Immediately upon the entry of any order in a criminal case, other than in open court, the clerk or a
27 designee shall mail to all parties a copy thereof either by U.S. mail, electronic mail, or attorney drop
28

1 box. If the court has signed a proposed form of order, a minute entry may also be issued when it would
2 serve the interests of public access or timely notice to parties.

3 **COMMENT**

4 [No change to text]

5
6 **11. Rule 35.7. Proposed orders**

7 Any proposed order shall be prepared as a separate document and shall not be included as an integral
8 part of a motion, stipulation, or other document. The proposed order shall be prepared in accordance
9 with this subsection, and Rule(s) 10(d) and 5(j)(2) of the Rules of Civil Procedure, except that if a
10 proposed order is signed, a minute entry may issue.~~and~~ The proposed order shall contain the following
11 information as single spaced text on the first page of the document:
12

13 (1) [No change to text]

14 (2) [No change to text]

15 (3) [No change to text]

16 (4) [No change to text]

17 (5) [No change to text]

18
19 There shall be at least two lines of text on the signature page. Proposed orders shall not be filed or
20 docketed by the Clerk of Court until after judicial review and decision to file, modify or reject.
21

22 **Rule 7. Special Appellate Court Provisions**

23 (a) [No change to text]

24 (b) [No change to text]

25 (c) [No change to text]

26 (d) [No change to text]

(e) [No change to text]

(f) [No change to text]

(g) If in a special action relief is granted by the Supreme Court or by a Court of Appeals, the order granting relief shall take such form as the court directs, but in every such case the decision of the court shall be given in writing and the grounds of decision shall be stated. If in a special action brought in the Supreme Court or a Court of Appeals relief is denied, the decision of the Court may be made by minute entry or order in the record of that court, and no written opinion shall be required.

(h) [No change to text]

(i) [No change to text]

(j) [No change to text]

Rule 12. Disposition of Appeals

(a) [No change to text]

(b) [No change to text]

(c) **Form of Decision.** The Superior Court shall make its ruling ~~upon the minutes of the court in~~ writing. A copy of such ~~minutes~~ ruling shall be transmitted by the clerk of the Superior Court to the trial court and to the parties. The ~~minutes~~ ruling and the trial court record shall be transmitted by the clerk of the Superior Court to the trial court within 30 calendar days after the expiration of the time for the filing of a motion for rehearing or the Superior Court files its order finally disposing of the case, whichever occurs later, unless a notice of appeal is filed.

(d) **Entry of Judgment; Enforcement of Judgment.** [No change to text]