

Hon. Fred Newton, Presiding Judge
Superior Court in Coconino County
Chairman of the Committee on Superior Court
County Courthouse
200 North San Francisco
Flagstaff, AZ 86001
(928) 779-6598

IN THE SUPREME COURT OF THE STATE OF ARIZONA

In the Matter of:)
RULES 4(d) and 58(b), ARIZONA RULES)
OF CIVIL PROCEDURE, RULES 7.6, 10.1,)
16.3, 26.7, 32.5, 32.9, 35.5, 35.6 AND 35.7,)
ARIZONA RULES OF CRIMINAL) Supreme Court R. No.
PROCEDURE; RULE 7, RULES OF) 2005 - _____
PROCEDURE FOR SPECIAL ACTIONS;)
and RULE 12(c), SUPERIOR COURT RULES)
OF APPELLATE PROCEDURE - CIVIL)
_____)

**PETITION TO AMEND VARIOUS RULES OF PROCEDURE
RELATING TO MINUTE ENTRIES**

Pursuant to Rule 28 of the Rules of the Supreme Court, Hon. Fred Newton, Chair of the Committee on Superior Court, petitions the Supreme Court to approve the amendments to rules contained in the attached Appendix A, that will update and conform various rules to the recently-established Supreme Court Rule 125 and Rule 5(j) of the Arizona Rules of Civil Procedure. These new rules were approved by the Court in June, 2004 and became effective December 1, 2004.

GROUND FOR APPROVAL OF PETITION

This petition is the result of a multi-year effort by the Minute Entry Reform Workgroup, an ad hoc workgroup of the Committee on Superior Court. The workgroup began in January 2001 with a review of current customs and practices among attorneys and the superior and appellate courts relating to drafting, distribution and use of minute entries. As a result of the workgroup's examination of the issues, this Court approved an initial proposal to adopt a rule (Supreme Court Rule 125) that would define the term "minute entry" and distinguish it from other types of clerk- or court-created case documents. The second part of the proposal was designed to reduce the number of minute entries created and distributed by clerks by requiring civil litigants to file proposed orders along with their stipulations (ARCivPro 5(j)(2)(A)&(B)).

The amendments proposed in this petition are needed to complete the workgroup's goal of eliminating unnecessary minute entries, eliminating the distribution of minute entries when some other more efficient form of notice to the parties will suffice, and encouraging parties to provide the court with forms of order in lieu of relying on clerks to create minute entries.

The amendments to rules appearing in Appendix A fall into three categories:

1. The following rules would be amended to conform to the newly-adopted Supreme Court Rule 125:

- Civil Rules 4(d), and 58(b);
- Criminal Rules 7.6, 10.1 (Comment), 16.3 (f), 26.7(c), 32.5, and 32.9;
- Special Action Rule 7; and
- Superior Court Rules of Appellate Procedure -Civil 12(c).

2. The amendments proposed for Criminal Rules 35.5 (Comment), 35.6, and 35.7 will expand the policy established under newly-adopted Civil Rule 5(j)(2) of encouraging the parties to provide a proposed form of order and the means for distributing it to other parties while also relieving the clerk of the obligation to create a minute entry recording the order.

3. The amendment proposed for Criminal Rule 35.6 will update language to specifically permit clerks to file and distribute minute entries electronically.

Respectfully submitted, this ___ day of _____, 2005.

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APPENDIX A

RULES OF CIVIL PROCEDURE

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

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

Explanation of proposed change: These types of hearings occur

rarely, and therefore, clerks have not developed a form to be used in these proceedings. It is not unreasonable to expect the moving party to bring a proposed form of order as we now require for stipulations under new Rule 5(j)(2). Also in keeping with Rule 5(j)(2), if the proposed order is signed, that should relieve the clerk of the need to create a minute entry.

2. Rule 58(b). Remittitur; procedure; effect on right of appeal

1. A party in whose favor a verdict or judgment has been rendered may, in open court, or in writing filed with the clerk, remit any part of the verdict or judgment. ~~The~~ A remittitur announced in open court shall be entered ~~on the judgment docket and~~ in the minutes, and execution shall thereafter issue for the balance only of the judgment after deducting the amount remitted.

2. The remittitur shall not affect the right of the opposite party to appeal from the judgment, and for that purpose the amount of the original judgment shall be considered the amount in controversy.

Explanation of proposed change: *A remittitur announced in open court*

would properly be entered in a minute entry as that term is defined in new Supreme Court Rule 125. The proposed amendment will clarify that it is properly "entered in the minutes" only if it is announced orally in open court. If the judge takes the issue under advisement, it should be memorialized, consistent with Rule 125, in an order or ruling signed by the judge. The term "judgment docket" is stricken as archaic. The concept harkens back to the era when over-sized docket books were maintained by clerks. In the modern era, clerks no longer keep separate judgment dockets, and this function has been incorporated into automated case management systems.

RULES OF CRIMINAL PROCEDURE

3. Rule 7.6. Transfer and Disposition of Bond

(a) and (b) [no change to text]

c. Forfeiture Procedure.

(1) Notice and Hearing. If at any time it appears to the court that the released person has violated a condition of an appearance bond, it shall issue a bench warrant for the person's arrest and send a copy of the

~~minute entry evidencing the issuance of such bench warrant to the surety within ten days after the issuance of the warrant. The court shall also set a hearing within a reasonable time not to exceed 120 days requiring the parties and any surety to show cause why the bond should not be forfeited. The court shall provide notice of the hearing to the parties and any surety by mailing copies of the minute entry to the addresses previously provided by the parties to the court.~~

(2) [no change to text]

(d) and (e) [no change to text]

Explanation of proposed change: This amendment is consistent with the effort to reduce paperwork by permitting the warrant to stand on its own without an accompanying minute entry. The changes proposed for the last sentence are needed to comply with new Rule 125 that distinguishes such notices from minute entries.

4. Rule 10.1. Change of judge for cause

(a) through (c) [no change to text]

COMMENT

* * *

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

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

Explanation of proposed change: This amendment targets a Comment to this rule and is needed to update language consistent with changes made by new Rule 125. Regardless of past practices, judges should no longer be preparing minute entries as originally stated in this Comment. Preparation of minute entries is a clerk function.

5. Rule 16.3. Procedure on omnibus hearings

(a) through (d) [no change to text]

e. Record of Proceedings. All proceedings at the omnibus hearing shall be reported verbatim.

~~f. Minute Entry. At the conclusion of the hearing the court shall direct a minute entry of the matters agreed upon.~~

Explanation of proposed change: Subsection (f) is unnecessary, and the language of this subsection arguably conflicts with Rule 125. The judge does not prepare the minute entry and neither should the judge "direct" that it be prepared. A courtroom clerk is required to attend any hearing at which a verbatim record is made; therefore there is no need to reference creation of a minute entry. The courtroom clerk typically uses a form for pretrial conferences in criminal cases. A minute entry will be created along with the court reporter's record.

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

(a) and (b) [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 direct a minute entry noting all decisions, agreements and orders made at a pre-hearing conference.~~

Explanation of proposed change: This amendment is based on the same reasoning supporting the proposed amendment to Criminal Rule 16.3.

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~~ an 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.

Explanation of proposed change: This amendment is needed to comply with new Supreme Court Rule 125. The proper form of notice to the petitioner will be an "order," rather than a "minute entry" or "notice" as those terms are defined in Rule 125.

8. Rule 32.9 Review [in post-conviction relief proceedings]

(a) through (d) [no change to text]

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

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

(f) through (h) [no change to text]

Explanation of proposed change: The term "minute entry orders" is archaic and the proposed amendment is intended to bring this rule into line with new Supreme Court Rule 125.

9. Proposed new Comment under Rule 35.5. Service and filing

Unless otherwise specified in these rules, the manner and sufficiency of

service and filing of motions, requests, petitions, applications, and all other pleadings and documents shall be governed by Rule 5 of the Rules of Civil Procedure.

COMMENT

* * *

Rule 5(j)(2) of the Arizona Rules of Civil Procedure was added in 2004 to reduce the clerks' burden of producing and distributing minute entries by requiring counsel to submit with their stipulations and motions proposed forms of orders along with a sufficient number of copies to be conformed and pre-addressed stamped envelopes for each party to the action. This subdivision of the rule, like other provisions in Rule 5, is to be followed by attorneys in criminal cases, unless otherwise provided for by the presiding judge.

Explanation of proposed change: This new comment is intended to expand the practice promoted by new Civil Rule 5(j)(2) to the criminal arena and will alert criminal practitioners to the new practice.

10. Rule 35.6 Notice of orders

Immediately upon the entry of any order in a criminal case, other than in

open court, the clerk or a designee shall mail to all parties a copy thereof either by U.S. mail, electronic mail, or attorney drop box. If the court has signed a proposed form of order submitted by a party, no minute entry shall issue.

Explanation of proposed change: The added reference to additional means of delivery reflects current practices and expands clerks' options. The last sentence is intended to reinforce the practice established by Civil Rule 5(j)(2), which attorneys are asked to follow under the amendments proposed for Criminal Rules 35.5 and 35.7.

11. Rule 35.7. Proposed orders

Any proposed order shall be prepared as a separate document and shall not be included as an integral part of a motion, stipulation, or other document.

The proposed order shall be prepared in accordance with this subsection and ~~Rule~~ Rules 5(j)(2) and 10(d) of the Rules of Civil Procedure, and shall contain the following information as single spaced text on the first page of the document:

(1) through (5) [no change to text]

There shall be at least two lines of text on the signature page. Proposed

orders shall not be filed or docketed by the Clerk of Court until after judicial review and decision to file, modify or reject. If the court has signed a proposed form of order submitted by a party, no minute entry shall issue.

Explanation of proposed change: This amendment will work in tandem with the proposed amendments to the other subsections of Criminal Rule 35 included herewith to complete the expansion of the practice under new Rule 5(j)(2) to the criminal arena. The added language is taken from Civil Rule 5(j)(2)(A)&(B).

RULES OF PROCEDURE FOR SPECIAL ACTIONS

12. Rule 7 Special Appellate Court Provisions

(a) through (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 in the record of that court~~ order, and no written opinion shall be required.

(h) through (j) [no change to text]

Explanation of proposed change: This amendment updates the rule to accommodate new Supreme Court Rule 125 and respects the distinction set forth in Supreme Court Rule 111(a)(3), “[a]n order is any disposition of a matter before the court other than by opinion or memorandum decision.”

SUPERIOR COURT RULES OF APPELLATE PROCEDURE B CIVIL

13. Rule 12 Disposition of Appeals

(a) and (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) [no change to text]

Explanation of proposed change: This amendment is neutral as to the form the court's ruling will take, and permits the ruling to be by minute entry, in the case of rulings announced in open court, or some other form if the ruling were to be issued from chambers. These rulings are typically taken under advisement and not announced in open court.