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**Correlation Table**

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Rule 1: Title and Application	Rule 1: Title and Scope of Rules
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Rule 3: Suspension of These Rules; Suspension of an Appeal	Rule 3: Suspension of rules Rule 9.1: Suspension of Appeal and Revestment of Jurisdiction in the Superior Court
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Rule 6: Motions	Rule 6: Motions
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Rule 10: Appeals in Expedited Election Matters	Rule 8.1: Appeals in Expedited Election Matters
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Rule 12: Notice Regarding Filing Fees and Deadlines; Case Management Statement	Rule 12: Notice to Appellant to Pay Fee and File Opening Brief; Docketing the Appeal; Filing of the Record; Docketing Statements
Rule 13: Content of Briefs	Rule 13: Briefs
Rule 13.1: Appendix	None
Rule 14: Length and Form of Briefs	Rule 14: Form, Size, and Length of Briefs
Rule 15: Due Dates; Filing and Service of Briefs	Rule 15: Filing of Briefs
Rule 16: Amicus Curiae	Rule 16: Amicus Curiae
Rule 17: Supplemental Citation of Legal Authority	Rule 17: Supplemental Citation of Legal Authority
Rule 18: Oral Argument	Rule 18: Oral Argument
Rule 19: Petition for Transfer to the Supreme Court	Rule 19: Petition for Transfer to Supreme Court
Rule 20: Notice of Decisions and Orders	Rule 20: Notice of Decisions and Orders
Rule 21: Attorneys’ Fees and Costs	Rule 21: Costs and Attorneys’ Fees
Rule 22: Motion for Reconsideration	Rule 22: Motion for Reconsideration
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Rule 30: AZ Appellate Settlement Conference Program	Rule 30: AZ Appellate Settlement Conference Program
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Rule 32: Websites, Filing Portals, and Forms	None

**Prefatory Comment to the 2015 Amendments**

The 2015 amendments to the Arizona Rules of Civil Appellate Procedure (“ARCAP”) represent the first global revision to these rules since their adoption in 1978. ARCAP amendments over the past 37 years typically addressed only a few rules or a single rule, leading to dissimilarities in the rules’ style, format, and nomenclature. Electronic filing provides opportunities for increased appellate court efficiency, but it also requires revisions to the former ARCAP.

These 2015 amendments include a “restyling” of the ARCAP, which employs consistent formatting conventions and terminology. Restyled rules avoid long sentences, ambiguous terminology (such as the word “shall”), and legal jargon. They also include informative titles and headings, and present procedural requirements more clearly and, if possible, in plain English.

The amended rules include some substantive changes, particularly with regard to electronic filing, and by simplifying the rules for preparing and transmitting the record on appeal. Certain Federal Rules of Appellate Procedure served as examples for several of the amended rules. However, the amended rules are specifically for Arizona practice rather than a verbatim adoption of the federal rules.

The wording of an amended rule may be very different, or only slightly different, from the rule that it replaces. The intent of these differences is to make the ARCAP more functional, and easier to understand and use. Prior case law continues to be authoritative, unless it would be inappropriate because of a new requirement or provision in these amended rules.

The amended rules incorporate substantive matters contained within comments to the former ARCAP, and these rules therefore remove almost all of those comments. Appellate litigants may continue to refer to comments to pre-2015 versions of the ARCAP, to the extent those comments still apply to these amended rules and if they are illuminating on a particular point or issue.

## **PART I: GENERAL PROVISIONS**

### **Rule 1. Title and Application**

**(a) Title.** These are the Arizona Rules of Civil Appellate Procedure. A rule may be cited as “ARCAP 00.”

**(b) Scope.** These rules govern procedures in civil appeals to the Arizona Court of Appeals and the Arizona Supreme Court.

**(c) Construction.** These Rules should be used and interpreted to achieve the just, speedy, and inexpensive resolution of civil appeals.

**(d) Who may appeal.** Any party aggrieved by a judgment may appeal as provided under Arizona law and by these Rules.

### **Comment to Rule 1**

For further guidance as to the jurisdiction and powers of the appellate courts, see A.R.S. § 12-120.21 (jurisdiction and venue of Court of Appeals); A.R.S. § 12-2102 (scope of appellate review); A.R.S. §§ 12-2101 and 12-2104 (powers of appellate court).

### **Rule 2. Definitions**

Terms used in these Rules have the following meanings. A term defined in the singular includes the plural.

“Appeal” is a case in an appellate court, other than a special action, which challenges a judgment of the superior court as permitted by law and by these Rules.

“Appellate clerk” means the clerk of an appellate court in which a case is pending.

“Appellate court” refers to the Arizona Supreme Court and the Arizona Court of Appeals.

“Appellant” is a party who commences an appeal. An appellant also may be a cross-appellee.

“Appellee” is a party who responds to an appeal. An appellee also may be a cross-appellant.

“Decision” is a written disposition of an appeal, as provided in Rule 20.

“Judgment” is an appealable order. A judgment may have the title of judgment, or it may have the title of order, decree, or another term.

“Motion” is a written request made by a party, other than in an appellate brief, for entry of a court order or for other relief.

“Party” includes a person, other than amicus curiae, whose name is in the caption of an appeal.

“Person” includes an individual, a business organization, and any other private or public entity.

“Stipulation” means a signed, written agreement that parties file with the court.

### **Rule 3. Suspension of These Rules; Suspension of an Appeal**

**(a) Suspension of Rules.** On its own or on a party’s motion, an appellate court – to expedite its decision or for other good cause – may in a particular case suspend any provision of these Rules, except as otherwise provided in Rule 4(b), and may order proceedings as the court directs.

**(b) Suspension of an Appeal.** An appellate court for good cause may suspend an appeal and re-vest jurisdiction in the superior court to allow the superior court to consider and determine specified matters. The appellate court's order suspending an appeal may include other terms and conditions, such as a date certain for automatic reinstatement of the appeal.

### **Rule 4. Filing Documents with an Appellate Court; Service**

**(a) Caption.** The first page of every document filed with an appellate court must contain a caption. The caption must contain the information shown in:

- (1) Form 4, for briefs.
- (2) Form 3, for other documents.

**(b) Document Format.** Unless an appellate court allows otherwise, every document that a party files with an appellate court, other than a document contained in an appendix to a brief or as an attachment to a motion, must be prepared as follows:

- (1) **Generally.** The text of every document must be black on a white background. Each page of a document must be 8 ½ by 11 inches.
- (2) **Typeface.** Text and quotations must be in a distinct and proportionately spaced typeface of 14 points. A proportionately spaced typeface has characters with different widths (for example, acceptable proportionately spaced typefaces are Book Antiqua and Times New Roman.)
- (3) **Line Spacing.** Text must be double-spaced, but headings, quotations, and footnotes may be single-spaced. A single-spaced quotation must be indented.
- (4) **Handwritten Documents.** Handwritten text must be printed and legible. It may not include cursive writing or script.
- (5) **Headings and Emphasis.** Headings must have underline, or be in italics or bold font. Underline, italics, or bold font also may be used for emphasis.

**(6) Case Names.** Case names and citation signals must be in italicized typeface. If handwritten, case names and citation signals must be underlined.

**(7) Margins and Page Numbers.** All margins must be at least 1 inch, and, except for the first page, the bottom margin must include a page number.

**(8) Footnotes.** Footnotes must be in a proportionately spaced typeface of at least 13 points. Footnotes may not appear in the space required for the bottom margin.

**(9) Page Word Limit.** A document must average no more than 280 words per page, including footnotes and quotations.

**(10) Paper Filings.** Documents filed pursuant to Rule 4.1 must be on white, opaque and unglazed paper; and text must appear on only one side of the paper.

**(c) Document Signatures.** The party filing a document must sign it, but if an attorney represents the party, the attorney must sign the document on behalf of the party. Rule 4.2(f) contains requirements for electronic signatures.

**(d) Filing with the Appellate Clerk.** Unless otherwise specified by these Rules, parties must file documents with the appellate clerk. The appellate clerk may not refuse to accept a document because it does not comply with these Rules, but in such circumstances an appellate court may enter an appropriate order, including one that requires corrective action or imposes a sanction. If a party timely submits a document for filing in an incorrect appellate court or appellate division, the appellate clerk must transmit that document to the proper court or division, and the appellate court will consider the filing timely.

**(e) Methods of Filing.** A party must file documents electronically as provided by Rule 4.2, unless permitted by Rule 4.1 to file paper documents.

**(f) Service of All Documents Required; Manner of Service.** Every person filing a document with an appellate court must serve a copy of the document on all other parties to the appeal. A party may serve documents by any means authorized by Rule 5(c) of the Arizona Rules of Civil Procedure.

**(g) Certificate of Service.** Every document filed with the appellate clerk must include a certificate of service that identifies the name or names of the person or persons served with the document, and the date and manner of service. The party, attorney for the party, or an agent of the party who served the document must sign the certificate of service, and may use an electronic signature as provided by Rule 4.2(f)(1). A certificate of service may appear at the end of the document or as an attachment, or the filing party may file the certificate as a separate document. The appellate clerk must permit a party to file a document without a certificate of service, but the party must file the certificate promptly thereafter.

**(h) Service on Attorney or Guardian Ad Litem.** Attorneys and guardians ad litem in the superior court will be deemed attorneys and guardians ad litem of the same parties in the appellate court until there has been a substitution or an authorized withdrawal. These attorneys or guardians ad litem must be served with notices, briefs, and all papers required by these Rules

until there is a substitution or authorized withdrawal, and until all other parties are properly notified of this change.

**(i) Service by the Clerk.** Appellate and superior court clerks must serve all parties to the appeal with copies of court notices and other papers prepared by the courts in connection with the appeal. Under Rule 4.2(h), appellate clerks may serve these documents electronically.

#### **Rule 4.1. Paper Filing**

**(a) When Required.** A document, a portion of a document or an exhibit must be filed in paper with an appellate court if it:

- (1)** Is filed in the superior court under seal or in a sealed case, or is filed with a request that the appellate court seal the document;
- (2)** Is filed in a proceeding requesting an order under A.R.S. § 36-2152 (Parental Consent Waiver Proceedings) and Supreme Court Rule 102; or
- (3)** Constitutes an application or supplemental application for waiver or deferral of any court fee or court cost under A.R.S. § 12-302, including any document that accompanies an application or supplement.

**(b) When Allowed.** The following persons may file in paper in the appellate court:

- (1)** A self-represented litigant;
- (2)** A party whom the court has determined is eligible for a deferral or waiver of court fees and costs under A.R.S. § 12-302, if the party provides a copy of the order granting the deferral or waiver of court fees to the appellate clerk at the time of filing a paper document;
- (3)** An attorney employed by an approved legal services organization representing a party who is unable to pay the applicable fee for electronic filing in a civil case. The Administrative Office of the Courts (“AOC”) will provide the Chief Justice, the Chief Judges of the Court of Appeals, and the appellate clerks with a list of legal services organizations approved under Rule 38, Rules of the Supreme Court of Arizona, and it will provide an updated list upon the addition or removal of an organization; or
- (4)** A party who for good cause obtains an exception from the appellate court to file paper documents.

A party permitted to file in paper may file documents electronically, as provided by Rule 4.2, if the party pays the applicable fee for electronic filing.

**(c) Filings; Number of Copies.** A party must file an original and one copy of paper briefs, special action petitions, responses, replies, motions, and all other papers in the Court of Appeals. A party must file an original and one copy of all paper filings in, or for, the Supreme Court,

including petitions for review and petitions for transfer to the Supreme Court. A party must file an original and one copy of any separate appendix.

**(d) Method of Filing.** A party may file a paper document by either delivering it or mailing it to the appellate clerk. Whether delivered or mailed, a document other than a brief is deemed filed when it is actually received by the appellate clerk. Rule 15 governs filing briefs by mail.

#### **Rule 4.2. Electronic Filing**

**(a) Generally.** A party who files a document electronically must ensure that the document is properly filed, and that it is complete and readable.

**(b) Portal.** Rule 32 contains the web addresses of Arizona appellate portals for electronic filing. An attorney or party must properly register on the portal before electronically filing a document. The portal may require payment of a fee in conjunction with an electronic filing.

**(c) Format.** Text documents must be in searchable .pdf, .odt, or .docx format. A document may not exceed the size limits required by the portal, but it may be broken up into multiple filings to accommodate such a limit. A filer may scan and file a document that requires a notary if the scan contains the notary's original signature and seal. A party may file an official record of a court or government body if the scanned copy contains the court or body's official stamp or seal of authenticity. A party may satisfy a court rule that requires the attachment of a document or exhibit by electronically attaching within the same submission either a scanned image or an electronic copy in an approved format.

**(d) Bookmarks.** A document filed electronically with the appellate clerk may include bookmarks. A bookmark is a linked reference to another page within the same document. A document reference that is incapable of bookmarking may be made accessible by a hyperlink.

**(e) Hyperlinks.** A document filed electronically with the appellate clerk may include hyperlinks. A hyperlink is an electronic link in a document to another document, or to a website. Material that is not included with a filing, although made accessible by a hyperlink, is not part of the official court record.

#### **(f) Signature and Authorization.**

**(1) Signature.** All electronic filings must be signed. A person may sign an electronic document by placing the symbol “/s/” on the signature line above the person's name. An electronic signature has the same force and effect as an ink signature on paper.

**(2) Authorization.** The appellate court will treat a filing that uses a person's registration information as a filing made or authorized by that person.

**(3) Filings by Multiple Parties.** A person electronically filing a document containing more than one signature – such as a stipulation – may sign on behalf of other parties only if such person has actual authority to do so. The person may indicate such authority either by attaching a scanned document confirming that authority and containing the signatures

of the other persons; or, after obtaining the other party's consent, inserting "/s/ (name) with permission" as the electronic signature of any non-filing party.

**(g) Time of Filing.** An electronically filed document will be deemed filed on the date and time that it is received by the appellate clerk, as shown on a later email notification from the portal or as displayed within the portal. An electronically filed document will not be deemed filed if the portal fee or any filing fee is not paid.

**(h) Electronic Service by the Appellate Clerk.** An appellate clerk may electronically serve documents on a party's attorney of record. An appellate clerk may also electronically serve a self-represented party who has filed Form 5 providing an email address and written consent to electronic service at that email address. Electronic service of documents by the appellate clerk is complete upon transmission.

## **Rule 5. Computing and Modifying Deadlines**

**(a) Computing Time.** Rules 6(a) and 6(e) of the Arizona Rules of Civil Procedure govern the computation of any time period set by these Rules, a court order, or statute.

**(b) Modifying Deadlines.** A party seeking modification of a deadline in the appellate court must obtain a court order, and an appellate court for good cause may shorten or extend the time for doing any act required by these Rules, a court order, or an applicable statute. But a court may not shorten or extend the time for filing a notice of appeal, except as provided by Rule 9(f).

### **Comment to Rule 5**

Consistent with Rule 6(e) of the Arizona Rules of Civil Procedure, 5 calendar days are not added to the prescribed time when papers are served, distributed or delivered by the court.

## **Rule 6. Motions**

**(a) Generally.** A party may apply for an order or other relief by filing a motion. The motion must be in the form required by Rule 5. A motion must state with particularity the basis for any requested order or other relief. Any party may file a response to a motion within 10 days after service of the motion. The moving party may file a reply memorandum within 5 days after service of a response. The reply must be strictly confined to the rebuttal of points made in the response. An affidavit, declaration or other satisfactory evidence must support a motion stating facts that are not in the record, or of which the appellate court may not take judicial notice.

### **(b) Motions for Procedural Orders.**

**(1) Availability and Content.** A motion for a procedural order is one that does not substantially affect the rights of the parties or the ultimate disposition of the appeal. An appellate court may rule on a motion for a procedural order, including a motion for an extension of time, at any time, without awaiting a response from another party.

**(2) Granting Motion and Later Review.** A single judge of the appellate court may grant a motion for a procedural order. An appellate court may also authorize its clerk to act on specified types of procedural motions. A party adversely affected by the grant of a procedural motion may file a motion within 15 days of the entry of the order requesting rehearing, vacation or modification of the order. An appellate court on its own motion may review any action of a single judge or appellate clerk on a procedural motion.

## **PART II: APPEAL FROM A JUDGMENT**

### **Rule 7. Stay of Proceedings to Enforce a Judgment**

**(a) Supersedeas Bond.** A supersedeas bond is a bond filed in the superior court, as provided by this Rule and by applicable statutes, which stays enforcement of, or execution upon, a judgment while an appeal is pending. The appellant may file a supersedeas bond before or after filing a notice of appeal. An appellant may not obtain a supersedeas bond in a case involving the custody of children, or the payment of spousal maintenance or child support.

**(1) Setting the Bond by Stipulation or Motion.** The amount of the bond may be determined by stipulation or motion. Filing a motion under this Rule temporarily stays enforcement of, or execution on, the judgment, with the same effect as described in Rule 7(b), until the superior court has set the bond amount and provided appropriate time for posting the bond. The superior court will promptly hold a hearing on a motion. The superior court may enter any further order, in lieu of or in addition to the bond, which may be appropriate to preserve the status quo or the effectiveness of the judgment.

**(2) Setting the Amount of the Bond Ex Parte.** The superior court may determine the amount of the bond ex parte if the appellant submits a motion with an affidavit:

**(A)** Stating that the appellant has made a good faith attempt to obtain a stipulation from the other parties; and

**(B)** Describing the appellant's efforts, if any, to give notice, or the reasons why it is not feasible under the circumstances to give the other parties an opportunity to be heard before the setting of bond.

**(3) Amount of the Bond.** The amount of the bond must be the lowest of the following:

**(A)** The total amount of damages awarded, excluding punitive damages;

**(B)** Fifty per cent of the appellant's net worth; or

**(C)** Twenty-five million dollars.

The appellant must prove net worth by a preponderance of the evidence.

**(4) Exceptions.**

(A) Notwithstanding Rule 7(a)(3), the superior court may require an appellant to post a bond in an amount up to the full amount of the judgment if an appellee proves by clear and convincing evidence that the appellant is intentionally dissipating assets outside the ordinary course of business to avoid payment of a judgment.

(B) The superior court also may lower the bond amount to an amount that will not cause an appellant substantial economic harm if the appellant proves by clear and convincing evidence that the appellant is likely to suffer substantial economic harm if required to post a bond in the amount set under Rule 7(a)(3).

(C) In determining the amount of the bond, the superior court may consider whether there is other security for the judgment, or whether the sheriff or the court has custody of any property in controversy.

**(5) Objections to the Bond.** Any party may file objections within 10 days after the appellant serves notice of the bond, specifying reasons why the bond is erroneous or defective, or why the surety is unqualified. If the court made an ex parte determination of the bond amount, a party other than the appellant also may object to the sufficiency of the amount. A party waives any errors, defects, or insufficiencies in a supersedeas bond that are not timely specified in the objection. The superior court will hold a hearing within 10 days after service of objections.

**(6) Notice of Filing.** The superior court clerk will serve a notice on all other parties if the appellant files a supersedeas bond.

**(b) Effect of a Stay.** If an appellant files a supersedeas bond as stipulated or as ordered by the superior court, and if the appellant has complied with all other conditions imposed by the superior court, then this Rule automatically stays enforcement of, and execution on, the judgment and all proceedings related to the execution on the judgment. If the superior court has already issued execution upon the judgment, the superior court clerk will promptly give notice to the sheriff and will recall the execution, and there may not be any further execution on the judgment pending the appeal's resolution. If another party has recorded a judgment lien before the filing of a supersedeas bond, that party must record a release of the lien.

**(c) Power of an Appellate Court to Enter a Stay.** This Rule does not limit the power of an appellate court, or of an appellate judge or a justice, to stay proceedings during the pendency of an appeal. An appellate court or an appellate judge or justice may suspend, modify, restore, or grant an injunction during the pendency of an appeal; may enter any order appropriate to preserve the status quo; or may enter any order to preserve the effectiveness of the decision that the appellate court will enter. A party requesting an order under this Rule, however, must first request the order in the superior court.

**(d) Judgment Against a Surety.** A surety who provides a supersedeas bond under this Rule submits to the jurisdiction of the superior court. The surety irrevocably appoints the superior court clerk as the surety's agent on whom a party may serve any papers affecting the surety's liability on the bond. A party may enforce the surety's liability by motion and is not required to

file an independent action against the surety. The party seeking enforcement must serve the superior court clerk with the motion and any notice of the motion required by the superior court, and the clerk must then promptly mail or otherwise deliver copies to the surety if the clerk knows the surety's address.

### **Rule 8. Appeal and Cross-Appeal – How Taken**

**(a) Filing a Notice of Appeal.** A party to a judgment of the superior court may take an appeal by filing a notice of appeal with the clerk of the superior court that entered the judgment. The party must file the notice of appeal within the time provided by Rule 9(a).

**(b) Filing a Notice of Cross-Appeal.** A party to a judgment of the superior court may take a cross-appeal by filing a notice of cross-appeal with the clerk of the superior court that entered the judgment, but must do so within the time provided by Rule 9(b).

**(c) Content of the Notice of Appeal or Cross-Appeal.** The notice of appeal or cross-appeal must:

- (1) Include the caption of the case, with the superior court case number;
- (2) Identify the party or parties taking the appeal;
- (3) Designate the judgment or portion of the judgment from which the party is appealing;
- (4) Identify the court to which the party is appealing; and
- (5) Be signed by the attorney for the party who is taking the appeal, or by the party if the party has no attorney.

Form 1 is a form for the notice of appeal or notice of cross-appeal.

**(d) Payment of Filing Fee.** An appealing party must pay the required statutory filing fee to the superior court clerk when filing a notice of appeal or a notice of cross-appeal, unless the party is exempt or a superior court judge has waived or deferred the fee.

**(e) Judgment for Jury Fees.** A notice of appeal from an appealable judgment also is an appeal from any related judgment for jury fees, regardless of whether the notice designates the judgment for jury fees.

**(f) Joint or Consolidated Appeals or Cross-Appeals.** Two or more parties may join in an appeal or cross-appeal from a judgment if they have similar interests and a joinder is practicable. They may join in an appeal or cross-appeal by filing a joint notice of appeal, and they may then proceed as a single appellant. On its own or upon motion or stipulation, an appellate court also may consolidate multiple appeals.

**(g) Superior Court Clerk's Service of a Notice of Appeal or Cross-Appeal.** Upon the filing of a notice of appeal or cross-appeal, the superior court clerk must promptly serve a copy of the

notice on every party to the superior court judgment. The clerk's notice of service must include the filing date of the notice of appeal or cross-appeal, the names of the parties served with the clerk's notice, and the date and manner of service. The death of a party or of an attorney for a party will not affect the sufficiency of service of the clerk's notice.

**(h) Appellate Court Jurisdiction.** Failure of an appellant to perform an act other than timely filing a notice of appeal does not affect the appellate court's jurisdiction, but the failure may be grounds for other appropriate appellate court action, including dismissal of the appeal.

## **Rule 9. Appeal and Cross-Appeal – When Taken**

**(a) Time for Filing a Notice of Appeal.** To appeal a judgment a party must file a notice of appeal under Rule 8 no later than 30 days after the entry of the judgment from which the appeal is taken, except as provided in this Rule 9 or unless the law provides a different time.

**(b) Time for Filing a Notice of Cross-Appeal.** To cross-appeal a judgment a party must file a notice of cross-appeal under Rule 8 no later than 20 days after appellant's filing of a notice of appeal.

**(c) Filing Before Entry of Judgment.** A notice of appeal filed after the superior court announces a decision or order – but before the entry of the judgment or order – is treated as filed on the date of and after the entry of the judgment or order.

**(d) Extension of Time on Death of a Party.** If a party dies during the time the party is entitled to take an appeal, the party's personal representative may file a notice of appeal within 90 days after the party's death.

### **(e) Effect of Post-Judgment Motion on Notice of Appeal; Amended Notice of Appeal**

**(1)** If a party timely files in the superior court any of the following motions, the time to file an appeal for all parties begins to run from the filing of a signed written order with the superior court clerk disposing of the last such remaining motion:

**(A)** For judgment under Rule 50(b) of the Arizona Rules of Civil Procedure;

**(B)** To amend or make additional factual findings under Rule 52(b) of the Arizona Rules of Civil Procedure or Rule 82(B) of the Arizona Rules of Family Law Procedure, whether or not granting the motion would alter the judgment;

**(C)** To alter or amend the judgment under Rule 59(l) of the Arizona Rules of Civil Procedure or Rule 84 of the Arizona Rules of Family Law Procedure;

**(D)** Denying a motion for new trial under Rule 59(a) of the Arizona Rules of Civil Procedure 59(a) or Rule 83(A) of the Arizona Rules of Family Law Procedure; or

(E) For relief under Rule 60 of the Arizona Rules of Civil Procedure or Rule 85 of the Arizona Rules of Family Law Procedure, if the motion is filed no later than 15 days after entry of the judgment.

(2) If a party files notice of appeal before the timely filing of one of the motions identified in Rule 9(e) or if a notice of appeal is filed during the pendency of such a motion, the appellant must notify the appellate court and the appeal will be suspended until the motion is decided. The appellant must notify the appellate court when all such motions have been decided, and the notice of appeal will be reinstated as of the date of the entry of the order disposing of the last remaining motion.

(3) A party intending to appeal an order entered by the superior court after the filing of a notice of appeal must file a notice of appeal or an amended notice of appeal under Rule 8 within the time prescribed by Rule 9, measured from the entry of the order disposing of the last such remaining motion.

**(f) Reopening the Time to File an Appeal for Lack of Notice of Entry of Judgment.** The superior court may reopen the time for filing a notice of appeal for a period of 14 days after the date when its order to reopen is entered, but only if all of the following conditions are satisfied:

(1) The court finds that the moving party did not receive notice under Rule 58(e) of the Arizona Rules of Civil Procedure of the entry of judgment or order sought to be appealed within 21 days after entry;

(2) The motion is filed within 30 days after the expiration of the time for appeal, or within 7 days of receipt of the notice, whichever is earlier; and

(3) The court finds that no party would be prejudiced.

## **Rule 10. Appeals in Expedited Election Matters**

**(a) Scope.** This Rule governs appeals in election matters designated by statute for expedited appellate review. Other provisions of these Rules apply to expedited election appeals to the extent they are not inconsistent with this Rule, or to the extent that this Rule does not expressly vary those other provisions.

**(b) Filing a Notice of Appeal in the Superior Court.** A party may appeal only from a signed final order of a superior court judge, but a party may file a notice of appeal as provided in Rule 9(c). To appeal a judgment a party must file a notice of appeal of that judge's final order within the accelerated time provided by the applicable statute. The party must file the notice of appeal in the superior court in the county in which the proceeding occurred, and the notice must contain all of the information required by Rule 8(c).

**(c) Filing a Copy of the Notice of Appeal with the Appellate Court.** Within one business day after filing the notice of appeal in the superior court, the appellant must file with the appellate clerk:

- (1) A copy of the notice of appeal containing the stamped date of filing in the superior court;
- (2) A statement designating the case as an “*Expedited Election Matter*” and providing the names and contact information, including e-mail addresses, of counsel for each party and of any self-represented litigants; and
- (3) A copy of the superior court's final order that the appellant is appealing.

If a case originates outside the county in which the appellate clerk’s office is located, an appellant who is filing in paper pursuant to Rule 4.1 may satisfy this requirement by sending these documents by facsimile or electronic mail to the appellate clerk; and by filing a paper copy of the documents with the appellate clerk not later than the second business day after filing the notice of appeal.

**(d) Filing in the Appellate Court.** A party must appeal an expedited election case involving candidate nomination petitions directly to the Supreme Court. A party may appeal an expedited election case involving initiative and referendum directly to the Supreme Court if the issue on appeal is of substantial statewide importance, and if the issue would become moot before Supreme Court review if the party did not appeal directly to the Supreme Court. A party must appeal to the Court of Appeals any expedited election case involving recalls; county, city, or town initiatives or referenda; and appeals involving statewide initiatives and referenda that do not meet the criteria for appealing directly to the Supreme Court.

**(e) Fees.** The appellant must pay a docketing fee to the appellate clerk when filing a copy of the notice of appeal under Rule 10(c). If the case originates outside the county in which the appellate court is located, an appellant who is filing in paper pursuant to Rule 4.1 may pay the docketing fee when the appellant transmits the paper copy under Rule 10(c). The appellee must pay any required fees upon the appellee’s first appearance in the appellate court.

**(f) Preparation of Record on Appeal.** The superior court clerk must prepare an index of the record and transmit it to the appellate court within 5 business days of the filing date of the notice of appeal.

The appellant must promptly ask the court reporter to expedite the preparation of any transcripts necessary for determination of the appeal. No later than one business day after filing the notice of appeal, the appellant must notify the appellee of the parts of the transcript that the appellant intends to include in the record. If the appellee considers a transcript of other parts of the proceedings to be necessary, the appellee must notify the appellant and the reporter within one business day of the additional portions of the transcripts to be included. If necessary, the appellant may request the appellate court to order expedited preparation of the record. In lieu of the provisions here, the parties may agree on a stipulated record and submit copies of the stipulated record to the appellate court.

**(g) Scheduling Conference.** Simultaneously with filing the copy of the notice of appeal in the appellate court as required by Rule 10(c), the appellant must file a written request that the appellate court set an initial telephonic scheduling conference to determine the schedule for the

expedited proceedings. The parties must be prepared to address the following topics at the initial scheduling conference:

- (1) Any pending deadlines that might affect the schedule for briefing and disposition of the appeal, such as the deadline for printing ballots or a publicity pamphlet, or the date of the election;
- (2) Any request for a court order to facilitate the timely preparation of the record on appeal;
- (3) Any request to transfer the case to the Court of Appeals or to the Supreme Court;
- (4) The nature and number of issues on appeal;
- (5) Deadlines for the submission of the parties' briefs;
- (6) The format of pleadings and documents that the parties may file on appeal, including proposed word limits and whether briefing should be in the form prescribed by Rule 15; and
- (7) Whether the court should schedule oral argument.

**(h) Electronic Filing and Service Requirement.** Parties to an expedited election appeal are required to file documents electronically, as provided by Rule 4.2, unless the party has an exception for filing a paper document under Rule 4.1. A party who serves documents on another party by mail in an expedited election appeal must also serve the documents by electronic means, including e-mail or facsimile, or as agreed to by the parties. If the party on whom service is to be made does not have access to electronic mail or facsimile, then service must be by hand delivery or as the appellate court otherwise directs.

**(i) Motion for Reconsideration.** A party who seeks reconsideration of an appellate court decision in any election matter under this Rule must file a motion for reconsideration within 5 calendar days after the filing of the decision.

**(j) Petition for Review.**

**(1) Deadline for Filing.** To file a petition for review in any election matter governed by this Rule, a party must file a petition with the Supreme Court clerk within 10 calendar days after either the filing of a decision, or the date of a notice of determination by the Court of Appeals of a motion for reconsideration.

**(2) Cross-petition.** A party may file a cross-petition for review with the Supreme Court clerk within 10 calendar days after service of a petition for review. The petitioner or cross-petitioner must serve a copy of the petition or cross-petition and any appendices on all parties who have appeared in the Court of Appeals.

**(3) Response Deadline.** Any party's response to a petition or cross-petition for review must be filed within 10 calendar days after service.

**(4) Form.** The form and content of the petition, cross-petition, and responses shall comply with Rule 23.

**(5) Supplemental Briefs; Oral Argument.** If the Supreme Court grants review but its order does not provide for filing supplemental briefs or for oral argument, a party may file a request to allow one or both of these within 5 calendar days after the filing date of the order.

**(6) Modifying Deadlines.** The Supreme Court may extend or shorten these time limits for good cause.

### Comment to Rule 10

(1) This rule applies only to election-related cases designated by statute for expedited consideration on appeal, such as those arising under A.R.S. § 16-351(A) (candidate nomination petitions); A.R.S. § 19-208.04 (recall); A.R.S. § 19-122 (initiative and referendum petitions); and A.R.S. § 19-141 (initiative and referendum in counties, cities, and towns). Cases that do not involve a specific statutory provision requiring expedited proceedings are governed by other ARCAP provisions or the Rules of Procedure for Special Actions. Any effort to expedite an appeal in such cases requires a motion for expedited consideration under ARCAP Rule 6 or an appellate special action under Rule 7 of the Rules of Procedure for Special Action. In such cases, counsel are encouraged to consider the practices codified by subsections (c), (d) and (f) of this rule, which may be advisable.

(2) Under A.R.S. § 16-351(A), a notice of appeal in a nomination petition case must be filed not later than five calendar days after the superior court enters final judgment. See *Bohart v. Hanna*, 213 Ariz. 480, 143 P.3d 1021 (2006) (party appealing a decision concerning a nomination petition must file the notice of appeal within five calendar days); *Klebba v. Carpenter*, 213 Ariz. 91, 139 P.3d 609 (2006) (party appealing a decision concerning a nomination petition must obtain a written, signed judgment from the superior court within the ten-day period imposed by A.R.S. § 16-351(A)). Under A.R.S. § 19-122, a notice of appeal in mandamus cases involving initiatives and referenda must be filed not later than ten days after the superior court enters final judgment. Under A.R.S. § 19-208.04, a notice of appeal in a recall case must be filed not later than ten days after the superior court enters final judgment.

(3) Appeals in election matters involving a county, city, or town initiative or referendum should be filed in the Court of Appeals. See *Fleischman v. Protect Our City*, 214 Ariz. 406, 407-08 ¶ 7, 153 P.3d 1035, 1036-37 (2007). A party to the appeal may move pursuant to Rule 19 to transfer the case to the Supreme Court. Any such motion should be accompanied by a request for expedited consideration and should explain why transfer is appropriate.

This rule provides for expedited motions for reconsideration and petitions for review, but litigants remain responsible for requesting more expedited handling of their case if necessary to have the motion or petition considered before any election, ballot printing, or other deadline. Such requests should be made by motion under ARCAP Rule 6 or under Rule 7 of the Rules of Procedure for Special Actions.

## **Rule 11. The Record on Appeal**

**(a) Composition.** The record on appeal consists of:

**(1) The official record,** which includes documents, exhibits, minute entries, transcripts filed prior to the notice of appeal, other items filed with the superior court clerk, and the index prepared under Rule 11.1(a).

**(2) Transcripts or other narratives** of proceedings in the superior court ordered or prepared under this Rule.

**(b) Transcript of Oral Proceedings.** A transcript of oral proceedings in the superior court may be prepared by a certified court reporter or by an authorized transcriber. A party who wants the record on appeal to include a transcript of oral proceedings that is not already contained within the official record must order the transcript as follows:

**(1) Certified Transcript.** If a certified court reporter attended a proceeding in the superior court, a party must order a certified transcript of proceedings directly from that reporter.

**(2) Authorized Transcription.** If the superior court created only an audio or audio-video recording of the proceeding, a party must order a certified transcript of proceedings directly from an authorized transcriber. The superior court will furnish the transcriber with a copy of the designated electronic recording upon receipt of a notice from the transcriber that the transcriber has a satisfactory arrangement for payment. All parties to the appeal must cooperate with the transcriber by providing information that is necessary to facilitate transcription.

**(c) Appellant's Duty to Order Transcripts.**

**(1) What to Order.** The appellant must order transcripts of superior court proceeding necessary for the proper consideration of the issues on appeal.

**(2) When to Order.** The appellant must order transcripts directly from a certified court reporter or an authorized transcriber within 10 days after filing the notice of appeal or within 10 days after entry of an order disposing of the last timely remaining motion under Rule 9(e), whichever date is later.

**(3) Complete Transcript.** If the appellant will contend on appeal that a judgment, finding, or conclusion, is unsupported by the evidence or is contrary to the evidence, the appellant must include in the record a transcript of all evidence relevant to that judgment, finding, or conclusion. Unless the appellant will raise an issue concerning juror qualification, jury impaneling, opening statements, or argument of counsel to the jury, the appellant does not need to include transcripts of those proceedings.

**(4) Partial Transcript.** If the appellant orders less than a complete transcript as provided in Rule 11(c)(3):

(A) The appellant must – within the 10 days provided in Rule 11(c)(2) – file in the superior court a statement of the issues that the appellant intends to present on the appeal. The appellant must serve on the appellee a copy of this statement and a complete and accurate description of appellant’s partial transcript order.

(B) If the appellee considers it necessary to have a transcript of other parts of the proceedings, the appellee must, within 10 days after the service of appellant’s statement of the issues and partial transcript order, file and serve on the appellant a designation of additional parts to order.

(C) If the appellant does not intend to order the additional parts designated under Rule 11(c)(4)(B), the appellant must so notify the appellee within 5 days after service of that designation. The appellee may then promptly order the additional transcripts, or may file a motion in the superior court for an order requiring the appellant to do so.

**(5) No Transcripts Ordered.** If no transcripts, other than those filed prior to the notice of appeal, are necessary for the appellate court to decide the issues on appeal, the appellant must file in the superior court a statement that appellant is not ordering transcripts.

**(6) Payment.** At the time of ordering transcripts, a party must make satisfactory arrangements with the certified court reporter or authorized transcriber for timely paying the cost of the transcripts the party has ordered.

**(d) Narrative Statement.** If no transcript of oral proceedings is available, the appellant may prepare and file a narrative statement of the evidence or proceedings from the best available means, including the appellant’s recollection. The appellant must file the narrative statement in the superior court within 30 days after filing the notice of appeal, and must serve it on the other parties. Any other party may file objections or proposed amendments to the narrative statement within 10 days after service. If the appellant does not file such a narrative statement within the specified time, the appellee may prepare and file such a narrative statement, and the appellant may file objections or proposed amendments to that statement within 10 days after service. The superior court will then consider the narrative statements of the appellant or the appellee, and any objections or proposed amendments, and it will settle and approve the narrative statement and will include it in the record transmitted to the appellate court under Rule 11.1.

**(e) Agreed Statement.** Instead of providing a transcript of oral proceedings to the appellate court, the parties may prepare an agreed statement that contains the evidence or proceedings that are essential to a decision of the issues presented by the appeal, and submit the statement to the superior court for settlement and approval. The agreed statement must include a statement of the issues the appellant intends to present on the appeal. The parties must file the agreed statement in the superior court within 30 days after filing the notice of appeal. The superior court judge may make such additions and corrections considered necessary to the issues presented by the appeal. The superior court clerk will then include the agreed statement, as corrected and modified by the judge, in the record transmitted to the appellate court under Rule 11.1.

**(f) Video or Audio Recording.** If the presentation of a superior court video or audio recording to the appellate court will serve the interests of expediency and economy, a party may file a recording with an appellate court under this Rule after obtaining an appellate court order allowing its filing. The party must file the recording in a format acceptable to the appellate court. The recording may include multiple proceedings, but the recording must appropriately identify each proceeding, and the duration of the recording may not exceed 30 minutes. The filing party is responsible for ordering and paying for the recording and copies, and must serve each opposing party with a copy of the recording.

**(g) Correction or Modification of the Record.**

**(1)** If anything material to either party is omitted from or misstated in the record by error or accident, the omission or misstatement may be corrected and a supplemental record may be certified and forwarded:

**(A)** On stipulation of the parties; or

**(B)** By the superior court before or after the record has been forwarded.

**(2)** If any difference arises about whether the record accurately discloses what occurred in the superior court, the difference must be submitted to and settled by that court and the record conformed accordingly.

**(3)** The parties must present all other questions as to the form and content of the record to the Court of Appeals.

**(h) Multiple Appeals from the Same Judgment.** If multiple parties take more than one appeal from the same judgment, the parties will prepare (or request the preparation of) a single certified transcript, authorized transcription, narrative statement or agreed-upon statement containing all the matter designated or agreed upon by the parties, without duplication.

**Rule 11.1. Transmitting the Record to the Appellate Court**

**(a) Official Documents; Index.** Within 10 days after a party files a notice of appeal, the superior court clerk must number the documents in the superior court file and prepare a numerical index of the documents (the “*index*.”) The superior court clerk must supplement the index if documents are filed after the notice of appeal. The superior court clerk must serve a copy of the index on every party to the superior court judgment within 25 days of the filing of the notice of appeal, and within 10 days after the clerk supplements the index, as appropriate, because of additional filings. In appeals from judgments that do not include a reference to Rule 54(c) of the Arizona Rules of Civil Procedure, the appellant must, and the appellee may, notify the superior court clerk of additional items that are pertinent to the appeal and that require transmission to the appellate court after the clerk’s initial transmission of the record.

**(b) Transmission by Superior Court Clerk.** Within 30 days after filing the notice of appeal, or within 10 days after entry of an order disposing of the last remaining timely motion under Rule

9(e), whichever is later, the superior court clerk must electronically transmit to the appellate clerk:

- (1) All documents filed in the superior court, including minute entries, notices of appeal and cross-appeal, and the index;
- (2) Every exhibit in paper, electronic, or photographic form, unless the size or bulk of an exhibit makes transmission cumbersome; and
- (3) Any other items requested by the appellate clerk.

If the superior court clerk is unable to transmit the items within the time set forth in Rule 11.1(b), the superior court clerk must notify the appellate court and the parties to the appealed judgment regarding when the clerk will transmit the record to the appellate court. The appellate court may order the superior court clerk to transmit the record, or a portion of the record, at an earlier time.

If the size or bulk of an exhibit makes transmission cumbersome, the superior court clerk must notify the appellate court and the parties to the appealed judgment of the exhibits not transmitted. The appellate court, or any party on motion to the appellate court, may request that the superior court clerk transmit specific exhibits in physical or other form, if those exhibits are necessary for a determination of issues raised in the appeal.

**(c) Delivery and Filing of Transcripts.**

- (1) **Filing.** If the ordering party has paid the reporter or transcriber charges, then within 30 days of the date of the party's order the court reporter or transcriber must file a certified electronic transcript with the superior court and notify the appellate court of the filing. At the same time as filing the transcript, the reporter or transcriber must provide the ordering party with a certified electronic copy of the filing, or with a certified paper copy if requested by the ordering party.
- (2) **Extension of Time.** If the transcript cannot be completed within 30 days of the transcript order, the ordering party may request the appellate clerk to grant additional time to complete it.
- (3) **Service on Other Parties.** Within 5 days after receipt of the transcript from the reporter or transcriber, the ordering party must serve a copy of the transcript on opposing parties. The ordering party must serve the transcript in either electronic or paper format, as requested by the opposing parties, and must make appropriate arrangements with the court reporter to facilitate an opposing party's request.
- (4) **Additional Transcripts.** A party may file a motion with the appellate court at any time before the appeal is at issue under Rule 15(b) for inclusion of any additional transcripts of superior court proceedings in the record on appeal.

**Rule 12. Notice Regarding Filing Fee and Deadlines; Case Management Statement**

**(a) Assignment of Appellate Case Number.** The appellate clerk will assign the appeal an appellate case number no later than 10 days after the receipt of those items listed in Rule 11.1(b). The appellate clerk will enter the appeal under the title the case had in the superior court. If the title does not contain the name of the appellant, the appellate clerk will add the name. The appellate clerk will designate the parties as they appear in the appellate court.

**(b) Notice of Appellant's Duties.** The appellate clerk will notify the parties to the appeal when the clerk assigns an appellate case number under Rule 12(a). The appellate clerk's initial notice to the parties will direct the appellant to:

- (1) Pay an appellate filing fee within 10 days of this initial notice;
- (2) File a case management statement within 20 days of this initial notice, and
- (3) File the opening brief within 60 days of this initial notice.

**(c) Notice of Appellee's and Cross-Appellant's Duties.** Upon receipt of the appellant's filing fee, the appellate clerk will notify the parties of payment and by a second notice will direct the appellee and any cross-appellant to:

- (1) Pay the appropriate appellate filing fee within 10 days of the second notice; and
- (2) File an answering brief or a combined answering brief and cross-appeal opening brief within 40 days of service of the opening brief.

A cross-appellant must file a case management statement within 30 days after service of the appellate clerk's second notice. An appellee who is not a cross-appellant is not required to file a case management statement, but may within 30 days after service of the appellate clerk's second notice file a statement to clarify, correct, or supplement an appellant's case management statement.

**(d) Case Management Statement.**

**(1) Filing and Service.** A party's case management statement must be completed and filed with the appellate clerk within the time provided by Rule 14(b) and (c). A party who files a case management statement must serve the statement on all other parties as provided by Rule 5.

**(2) Forms.** A case management statement must use the form provided by the appellate court division in which the appeal is pending. Forms of case management statements are available on the websites maintained by Division One and Division Two of the Court of Appeals, and in the office of the appellate clerk of each division. Rule 32 provides website addresses for Arizona appellate courts.

**(e) Dismissal Based on a Failure to Pay Fees.**

**(1) Obligation to Pay.** Parties must pay the appellate filing fee fixed by law to the appellate clerk within the time provided in Rules 12(b) and (c), unless the appellate court

has extended the time for paying the filing fee, the party is exempt from paying the fee, or a court order has waived the fee.

**(2) Sanctions for Nonpayment.** If an appellant fails to timely pay a required appellate filing fee, the appellate court may dismiss the appeal after providing notice to the parties. If an appellee fails to timely pay a required appellate filing fee, the appellate court may deem the case submitted solely on the record and the appellant's opening brief.

**(3) Cross-Appeal.** If the appellate court dismisses an appeal under this Rule, or the court otherwise deems the appeal abandoned, and a cross-appellant fails to timely pay a required appellate filing fee, the appellate court may deem the entire appeal abandoned.

### **PART III: APPELLATE BRIEFS**

#### **Rule 13. Content of Briefs**

**(a) Appellant's Opening Brief.** An appellant's opening brief must set forth under the following headings and in the following order all of the items listed below, except for items (3) and (10), which are optional.

**(1)** A “**table of contents**” with page references and, if the brief is filed electronically, with bookmarks to sections of the brief described in items (2) through (10) below.

**(2)** A “**table of citations**” that must alphabetically arrange and index the cases, statutes and other authorities cited in the brief, and which must reference the pages of the brief on which each citation appears.

**(3)** A short “**introduction.**”

**(4)** A “**statement of the case**” that must concisely state the basis of the appellate court's jurisdiction, the nature of the case, the course of the proceedings, and the disposition in the court from which the appeal is taken.

**(5)** A “**statement of facts**” that is relevant to the issues presented for review, with appropriate references to the record. Evidentiary matter must be material to the appellate court's proper consideration of the issues presented, and must include a reference to the index, exhibit, or page of the certified transcript, authorized transcription, narrative statement, or agreed-upon statement where such evidence appears. A party may combine a statement of facts with the statement of the case.

**(6)** A “**statement of the issues**” presented for review. The statement of an issue presented for review includes every subsidiary issue fairly comprised within the statement.

**(7)** An “**argument**” that must contain all of the following:

(A) Appellant’s contentions with supporting reasons for each contention, and with citations to legal authorities and portions of the record on which the appellant relies. The argument may include a summary.

(B) For each issue, locations in the record on appeal where the issue was raised and ruled on, and the applicable standard of appellate review. If a ruling complained of on appeal is one that required a party’s objection at trial to preserve a right of review, for example, a failure to admit or to exclude evidence or the giving of or refusal to give a jury instruction, appellant must state where the objection and ruling are located in the record.

(8) A “**notice under Rule 21(a)**,” if applicable, that the party intends to claim attorneys’ fees, which the party may include in the conclusion.

(9) A short “**conclusion**” stating the precise relief sought.

(10) An “**appendix**,” as provided in Rule 13.1.

**(b) Appellee’s Answering Brief.**

(1) **Generally.** The appellee’s answering brief must follow the requirements of Rule 13(a), except it does not need to include a statement of the case, a statement of facts, or a statement of the issues, unless the appellee finds the appellant’s statements to be insufficient or incorrect.

(2) **Scope of Issues.** The appellee’s brief may include in the statement of issues presented for review and in the argument any issue that was properly presented in the superior court without the need for a cross-appeal, and the appellate court may affirm the judgment based on any such grounds. An appellate court, however, may direct modification of a judgment that enlarges the rights of the appellee or lessens the rights of the appellant only if the appellee has filed a notice of cross-appeal.

(c) **Reply Brief.** If the appellant files a reply brief, it must be strictly confined to the rebuttal of points made in the appellee’s brief. A party may file additional briefs only with permission of the appellate court.

(d) **References to Parties.** In briefs and at oral argument, parties should minimize use of the terms “appellant” and “appellee.” For clarity, briefs should use the parties’ actual names or the designations used in the superior court or agency proceeding, or such descriptive terms as “the employee,” “the injured person,” “the taxpayer,” “the buyer.”

(e) **References to Case Law.** Citation of Arizona case law must be to the volume and page number and, if available, the paragraph number, of the official Arizona reporters. Citation of non-Arizona case law must be to the volume and page number of appropriate regional and federal reporters.

**(f) Briefs in Cases Involving Cross-Appeals.** If a cross-appeal has been filed, the combined briefs under Rule 15(a)(4) must include in the statement of issues presented for review those issues that are presented in the cross-appeal.

**(g) Briefs Involving Multiple Appellants or Appellees.** In cases involving more than one appellant or more than one appellee, including consolidated cases, multiple parties may join in a single brief, or an appellant or appellee may adopt by reference any part of the brief of another. Parties having contentions in common must make a good faith effort to join in a single brief. If there is a contention common to other parties, the filing party must make a good faith effort to adopt by reference the pertinent part of the previously filed brief of another party. The parties in a joint appeal under Rule 8(f) must file a joint brief.

**(h) Briefs of Amicus Curiae or Intervenor.** An intervenor is a person not a party to a judgment who the appellate court allows to participate in an appeal under Rule 24 of the Arizona Rules of Civil Procedure. A brief of amicus curiae or an intervenor must comply with Rule 13(a)(1), (2), (6), (7), and (9). A brief of amicus curiae must also comply with the requirements of Rule 16.

### **Rule 13.1. Appendix**

**(a) Applicability.** A party may file an appendix with the party's brief in the Arizona Supreme Court and in Division One of the Court of Appeals. A party's appendix in the Arizona Supreme Court or Division One must be filed by the same method – paper or electronic – as the party's brief. An electronically filed brief in Division Two of the Court of Appeals must include electronic links to the record on appeal rather than an appendix, as provided in Division Two's policy and as set forth on its website. A party may file a paper appendix in Division Two only when filing a paper brief.

**(b) Content of the Appendix.** The appendix may include portions of the record cited in the briefs that are necessary to decide an issue on appeal. The appendix may include any decision, judgment, findings of fact or conclusions of law challenged on appeal, or portions of the record or transcripts. If the appellate court's determination of issues on appeal requires the interpretation of constitutional provisions, statutes, rules, regulations, contracts, etc., relevant portions that are not contained in the brief may be included in the appendix.

**(c) Table of Contents.** If there is more than a single item in the appendix, the appendix must begin with a table of contents that identifies each document, transcript, or exhibit included in the appendix. The table of contents must identify items in both of the following ways.

**(1)** The table of contents must identify where each item is located in the record – by item number in the clerk's index (see Rule 11.1(a)), by transcript date, or by exhibit number, as appropriate.

**(2)** The table of contents also must identify the item's location in the appendix by page number or tab number.

A party's brief that complies with these two requirements – instead of citing to the record – may refer to the appendix by page number, by volume number and page number, or by tab number and page number, as appropriate.

**(d) Appendix Filed Electronically.** A party who files a brief electronically may file as a single document a combined brief and appendix, with the appendix following the brief, but a combined filing cannot exceed the size limits of the filing portal. Otherwise, a party may electronically file a separate appendix.

**(1) Page Numbering.** The pages in an appendix must include sequential numbers. An appendix page number should match the electronic page number of the viewing software. If a party files a combined brief and appendix, the first page of the appendix must include a number sequential to the last page of the brief. For a separately filed appendix, the numbers should start with the first page of the appendix table of contents.

**(2) Multiple Volumes.** If a separate appendix is more than one volume, numbering should restart for each volume and include an identifier that distinguishes each volume (e.g., APPV1-001, APPV2-001).

**(3) Bookmarks and Hyperlinks.** Each item in the appendix table of contents must include a bookmark or hyperlink to the item in the appendix.

**(e) Appendix Filed in Paper.**

**(1) Page numbering.** Pages of the appendix must include sequential numbers, beginning with the appendix table of contents. Alternatively, a paper appendix may use tabs that are numbered or labeled to correspond to the record number, exhibit number, or transcript date of each item described in the appendix table of contents.

**(2) Combined filing.** A party who files a brief in paper form may combine and file an appendix as part of the brief, if the appendix does not exceed 15 pages. If combined, the appendix must be located after the brief, and a blank page of distinctive color must separate the last page of the brief from the first page of the appendix.

**(3) Separate filing.** A party who files a paper appendix exceeding 15 pages must file it separately from the brief. A party must securely bind an appendix that is filed separately from the brief (for example, the pages of the appendix may be clipped or banded), but the binding must not perforate the pages of the appendix using devices such as staples or two-pronged fasteners. A party must file an original and one copy of any separately bound appendix at the time of filing the brief.

## **Rule 14. Length and Form of Briefs**

**(a) Length of Briefs.**

**(1) Opening Briefs and Answering Briefs** must not exceed 14,000 words, or 40 pages if handwritten.

(2) **Reply Briefs** must not exceed 7,000 words, or 20 pages if handwritten.

(3) **Combined Briefs Involving a Cross-Appeal.** The length of each separate portion in combined briefs involving a cross-appeal must not exceed the number of words or pages that each of the separate briefs may contain.

(4) **Amicus Curiae Briefs** must not exceed 12,000 words. A response to an amicus brief must not exceed 12,000 words.

(5) **Exclusions from Limits.** The above word and page limits do not include the cover page, the caption, the table of contents, the table of citations, the date and signature block, a certificate of service, a certificate of compliance, or any appendix.

(6) **Certificate of Compliance.** Every brief must include a certificate that confirms compliance with the above word or page limit. Form 2 is a template certificate of compliance. A party preparing a certificate of compliance may rely on the word count of the word processing system used to prepare the brief if it counts the required words including any footnotes.

(b) **Form.** Paper and electronic briefs must comply with the format requirements of Rule 5(b) and (c). The first page of a brief must include a caption that is substantially the same as shown in Form 5.

(c) **Briefs Filed in Paper.** A party permitted to file a brief in paper must adhere to the following requirements:

(1) A party must securely bind the brief (for example, the pages of the brief may be clipped or banded), but the binding must not perforate the pages of the brief using devices such as staples or two-pronged fasteners.

(2) The brief must have a separate cover page that contains the caption.

## **Rule 15. Due Dates; Filing and Service of Briefs**

### **(a) Time for Filing a Brief.**

(1) **Opening Brief.** The appellant must file an opening brief within 60 days after the appellate clerk mails an initial notice under Rule 12(b). If an appellant does not timely file an opening brief, the appellate court on motion of a party or on its own motion may dismiss the appeal.

(2) **Answering Brief.** The appellee must file an answering brief within 40 days after service of the appellant's brief. If the appellee does not timely file an answering brief, the appellate court may deem the appeal submitted for decision based on the opening brief and the record.

**(3) Reply Brief.** The appellant may file a reply brief within 20 days after service of the answering brief. In lieu of filing a reply brief, the appellant may file a notice that the appellant will not be filing a reply brief.

**(4) Combined Brief on Cross-Appeal.** A cross-appealing party must file a combined answering brief on appeal and opening brief on cross-appeal within 40 days after service of the appellant's opening brief. The appellant/cross-appellee must then file a combined reply brief on appeal and answering brief on cross-appeal within 40 days after service of the combined answering brief on appeal/opening brief on cross-appeal.

**(5) Reply Brief on Cross-Appeal.** The cross-appellant may file a reply brief within 20 days after service of the cross-appellee's combined brief. The reply brief must address only the issues raised by the cross-appeal. In lieu of filing a reply brief, the cross-appellant may file a notice that the cross-appellant will not be filing a reply brief.

**(6) Amicus Curiae Brief.** An amicus curiae must file its brief in the time provided by Rule 16.

**(7) Response to Amicus Curiae Brief.** A party's response to an amicus curiae brief is optional. If the amicus curiae files a brief with the consent of the parties, or if a government entity or agency files the amicus brief, a party has 20 days after service of the amicus brief to file a response. If the appellate court grants a motion for leave to file an amicus brief that has been lodged with the appellate court, a party has 20 days from entry of that order to file a response.

**(8) Intervenor's Brief.** An intervenor must file a brief within the time specified in the appellate court's order permitting intervention.

**(b) "At Issue."** The appeal will be deemed to be "at issue" upon the filing deadline for a final reply brief.

**(c) Manner of Filing Briefs.**

**(1) Electronic Filing.** A party must file a brief electronically unless there is an exception under Rule 6. Electronic filing of a brief is timely only if the appellate clerk actually receives it within the time allowed for filing.

**(2) Paper Filing.** A party may file a paper brief only if Rule 6 permits it. The filing of a paper brief is timely if:

**(A)** The filing party mails the brief to the appellate clerk and places the brief in the mail within the time allowed for filing;

**(B)** The filing party gives the brief to a third-party commercial carrier (other than a same-day delivery service) within the time allowed for filing, for the carrier's delivery to the appellate clerk within 3 calendar days;

(C) The filing party hand-delivers the brief to the appellate clerk within the time allowed for filing and the clerk files it.

If a brief is filed under Rule 15(c)(2)(A) or (B), it must be accompanied by a separate signed certification indicating the date of delivery to, or pick up by, either the carrier or the United States Postal Service.

**(d) Service of Briefs.** A party must serve a brief on other parties to the appeal, as provided by Rule 4(f). The party serving the brief must file a certificate of service with the appellate clerk, as provided by Rule 4(g). A party who files a paper brief must serve two copies of the brief on every separately represented party. If a party files an electronic brief that includes bookmarks or hyperlinks, the party must serve on the other parties to the appeal an electronic copy of the brief in a reasonably usable format, such as a CD-ROM, that contains functional bookmarks or hyperlinks.

**(e) Extension of Time to File a Brief.**

**(1) Transcript Unavailability.** If a party moves to extend the time for filing a brief based on unavailability of a transcript, the party's motion must:

(A) Certify that the party timely ordered and made payment arrangements for a transcript under Rule 11;

(B) Provide the reason for the reporter's or transcriber's inability to have the transcript completed; and

(C) State the reporter's or transcriber's estimated date of completing and filing the transcript.

If the appellate court grants the motion to extend time based on the unavailability of a transcript, it will extend the time for filing the brief to 30 days after the estimated filing date of the transcript.

**(2) Extensions for Other Reasons.** A party's motion or the parties' stipulation to extend the time for filing a brief for any reason other than the unavailability of a transcript must comply with Rule 5(b).

**Rule 16. Amicus Curiae**

**(a) Purpose of Amicus Curiae.** An amicus curiae is not a party to the appeal. The amicus curiae brief should not advocate a particular party's case, but the brief should assist the appellate court. An appellate court normally allows amicus curiae briefs if:

(1) A party has incompetent representation or no representation at all;

(2) The amicus curiae has an interest in another case that the decision in the present case may affect; or

(3) The amicus curiae can provide information, perspective, or argument that can help the appellate court beyond the help that the parties' lawyers provide.

**(b) Requirements for Filing.**

(1) **Allowance.** An applicant may file an amicus curiae brief only if:

(A) The brief is filed with the written consent of the parties and states that on the cover; or

(B) The applicant is the State of Arizona or an officer or agency thereof, or is a county, city, or town; or

(C) The applicant submits the brief with permission of the appellate court granted by motion.

(2) **Motion to File.** If an applicant seeks to file an amicus curiae brief by motion, the applicant must lodge the brief with the motion. The motion must identify the interest of the applicant, state that the applicant has read the relevant brief, petition or motion, and state the reasons why the appellate court's acceptance of applicant's amicus curiae brief would be desirable.

(3) **Disclosure of Sponsor.** An amicus curiae brief must clearly identify the group or organization sponsoring the brief, and the interests of the sponsoring entity in the outcome of the appeal. The brief must also identify persons or entities, other than members of the sponsoring group or organization, who provided financial resources for the preparation of the brief.

(4) **Other Requirements.** Briefs filed by amicus curiae, and other documents filed by amicus curiae, must comply with the form, formatting, filing, certification of compliance, and service requirements applicable to briefs and other documents filed by the parties.

**(c) Time to File or Submit an Amicus Brief in the Court of Appeals.** A party filing an amicus curiae brief in the Court of Appeals in a case that is not a special action must file the brief, or lodge the brief with a motion, within 21 days of the deadline for filing the final reply brief.

**(d) Time to File an Amicus Brief in the Supreme Court.** An applicant seeking to file an amicus curiae brief in the Supreme Court must file the brief as provided by this Rule.

(1) **Briefs Filed Before a Decision by the Supreme Court to Grant Review.** Unless otherwise ordered by the Supreme Court, an applicant may file (or, if by motion, lodge) an amicus curiae brief in support of a petition for review or a response to a petition for review no later than 21 days after the filing of the response to the petition for review. An amicus curiae brief must comply with the form and length requirements of Rules 4(b) and 23(d) exclusive of any appendix.

**(2) Briefs Filed After the Supreme Court Grants Review.** After the Supreme Court has granted review, and unless otherwise ordered, amicus curiae may file (or, if by motion, lodge) a brief no later than 10 days after the date ordered by the Court for the parties to file supplemental briefs in its order granting review. An amicus curiae brief must not exceed the page limitation imposed for the parties' supplemental briefs.

**(e) Time to File an Amicus Curiae Brief in a Special Action.** An applicant seeking to file an amicus curiae brief relating to a special action petition must file the brief as expeditiously as possible after the filing of the special action petition, as provided in Rule 7(g) of the Rules of Procedure for Special Actions.

**(f) Petitions for Review.** Amicus curiae may participate in a petition for review as provided by this Rule and by Rule 23.

### **Rule 17. Supplemental Citation of Legal Authority**

**(a) When Appropriate.** Pertinent and significant legal authority may come to the attention of a party after the party has filed a brief, or after the appellate court has heard oral argument but before its decision. Under these circumstances, the party may supplement legal authority that the party previously presented in the party's briefing by filing with the appellate court a list of supplemental citations of legal authority.

**(b) Form.** The list of supplemental citations must clearly identify the page numbers of the party's brief that the party intends to supplement, and the relevant pages of the supplemental authorities. The party must further state concisely, and without argument, the legal proposition supported by a supplemental citation.

## **PART IV: APPELLATE COURT PROCEDURES AND DECISIONS**

### **Rule 18. Oral Argument**

**(a) Request for Oral Argument.** An appellate court may schedule a case for oral argument if a party files a separate request for oral argument within 10 days after the final reply brief's due date, or within 10 days after the date when the appellant actually files the reply brief, whichever is later. A party who believes that the court should allow extended oral argument must state the reasons as part of the request. If the court appellate grants a request for oral argument, or if the court orders oral argument on its own initiative, the appellate clerk will notify the parties of the time and place for oral argument, and the allocation of time for each side. The appellate clerk will provide the notice at least 20 days before the date set for oral argument.

**(b) Factors.** Notwithstanding a party's request under Rule 18, an appellate court may decide an appeal without oral argument if the court determines that:

(1) The appeal is frivolous;

(2) The court has recently decided in another case the dispositive issues presented; or

(3) The briefs and record adequately present the facts and legal arguments, and oral argument would not significantly aid the decisional process.

The appellate clerk must give the parties prompt written notice if the appellate court determines that submission of a case will occur without the requested oral argument.

(c) **Amicus Curiae.** Amicus curiae may participate in the oral argument only on motion and with the appellate court's permission.

## **Rule 19. Petition for Transfer to the Supreme Court**

(a) **Grounds for Transfer.** An appeal pending in the Court of Appeals may be transferred to the Supreme Court if:

- (1) The appeal requests overruling or qualifying a decision of the Supreme Court;
- (2) There are conflicting Court of Appeals decisions concerning an issue on appeal; or
- (3) Other extraordinary circumstances justify transfer.

(b) **Transfer on Petition of a Party.** A party to a case that is pending before the Court of Appeals may request the Supreme Court to transfer the case by filing a petition with the Supreme Court clerk on or before the date the appeal is at issue.

(c) **Transfer on Petition by the Court of Appeals.** The chief judge of the division of the Court of Appeals in which the appeal is pending may request transfer of the case by filing a petition with the Supreme Court at any time after the appeal is at issue.

(d) **Form of a Petition.** A petition filed under Rule 19 (b) or (c) must be no more than 4 pages and must be in the form required by Rule 4(a) – (c). It must concisely explain why the Supreme Court should take jurisdiction of the case. The petitioner must serve a copy of the petition on each of the parties. The Supreme Court clerk will promptly transmit a copy of a petition for transfer to the appellate clerk of the appropriate division of the Court of Appeals.

(e) **Response to Petition.** A party may file a response to a petition to transfer within 5 days after service of the petition. The length of a response and its form must be the same as required for a petition under Rule 19(d).

(f) **Transfer on Motion of the Supreme Court.** The Supreme Court may order the transfer of a case pending before the Court of Appeals to the Supreme Court. It may also transfer a case filed in the Supreme Court to the Court of Appeals.

(g) **No Additional Fees.** No appellate court will charge additional fees for transfers under this Rule.

## **Rule 20. Notice of Decisions and Orders**

When an appellate court enters a decision or an order, the appellate clerk must promptly notify all parties by mail or electronic delivery. The notice must state the date the court filed the decision or order, and the appellate clerk must include with the notice a copy of the decision or order, or a hyperlink to the decision or order. The appellate clerk must note the date of mailing or electronic delivery in the appellate court's docket.

## **Rule 21. Attorneys' Fees and Costs**

**(a) Claim for Attorneys' Fees.** A party who intends to claim attorneys' fees incurred on appeal or on review must give notice of such intention in the time and manner set forth in this Rule.

**(1) Notice Required.** A party who intends to claim attorneys' fees must give notice of the claim in the briefs on appeal, or by filing and serving a written motion of the claim before oral argument or submission of the appeal. Any party who intends to claim attorneys' fees on a petition for review or a cross-petition must give notice of that claim in the petition or cross-petition for review, or in the response to a petition or cross-petition.

**(2) Content of Notice.** A notice under this Rule must specifically state the statute, rule, decisional law, contract, or other authority for an award of attorneys' fees. If a party fails to comply with this requirement, the appellate court may decline to award fees on that basis. This Rule only establishes the procedure for claiming attorneys' fees and does not create any substantive right to them.

**(3) Claim Made in the Superior Court.** The appellate court may consider a notice of a claim for attorneys' fees made in the superior court as satisfying the notice requirements of this Rule, if no party is prejudiced by doing so.

## **(b) Statement of Fees and Costs; Timing; Objections.**

**(1) Timing.** Within 10 days after the appellate clerk has given notice of a decision, a party requesting attorneys' fees or costs must file in the appellate court an itemized and verified statement of attorneys' fees and costs on appeal or review.

**(2) Attorneys' Fees.** The statement must include any factors relevant to a decision to award fees and the determination of a reasonable fee. The itemized statement of fees must include the following:

- (A)** The dates on which each person for whom fees are claimed performed services;
- (B)** The time each person expended for each task on each date;
- (C)** A description of the service;
- (D)** The identity of the person performing the service; and

(E) Whether the fee is fixed or contingent, and if hourly, the applicable rate for each person.

**(3) Costs.** The statement must itemize taxable costs. The cost of preparing paper briefs and appendices must be the amount the party actually and necessarily spent, but must not exceed the sum of two dollars per page.

**(4) Objections and Determination.** Objections to the statement of attorneys' fees and costs must be filed within 10 days after service of the statement. If no objections are timely filed, the appellate court may award attorneys' fees and tax costs. If objections are timely filed, the requesting party may reply within 5 days after service. The appellate court will then determine the amount of attorneys' fees and costs without further hearing or argument.

**(c) Pending Petition for Review.** The Court of Appeals retains jurisdiction to rule on a timely filed statement of attorneys' fees or taxable costs notwithstanding the filing of a petition for review. If the Court of Appeals awards attorneys' fees or costs after the filing of a petition for review, a party that timely objected to the statement may file a motion with the Supreme Court to review the party's objections to the award when considering the petition. The motion must include a copy of the order of the Court of Appeals granting fees or costs. The party in whose favor the Court of Appeals awarded attorneys' fees or costs may file a response within 10 days after service of that motion.

**(d) Vacation, Reversal or Modification.** If the Supreme Court vacates, reverses, or modifies the Court of Appeals' decision, a party entitled to attorneys' fees and costs may file in the Supreme Court a statement of attorneys' fees and costs incurred in the Court of Appeals. The statement must meet the requirements of Rule 21(a) and (b). Any objections or reply must be filed within the times stated in Rule 21(b)(4). The Supreme Court clerk or the Supreme Court may determine the amounts of fees and costs, or the Supreme Court may remand the case to the Court of Appeals for that purpose.

**(e) Mandate.** The appellate clerk must include in the mandate separate statements of the amount of attorneys' fees awarded and costs taxed on appeal. The mandate must include the amounts of attorneys' fees awarded and costs taxed in the Supreme Court and in the Court of Appeals.

## **Rule 22. Motion for Reconsideration**

**(a) Purpose and Necessity.** A motion for reconsideration requests the appellate court to consider whether its decision contained erroneous determinations of fact or law. A party need not file a motion for reconsideration in the Court of Appeals before filing a petition for review under Rule 23.

**(b) Required Showing.** A motion for reconsideration must state with particularity the points of law or fact that the party believes the appellate court has overlooked or misunderstood, or any changes in legal or factual circumstances that may entitle the party to relief.

**(c) Filing.** A party desiring reconsideration of a decision must file a motion for reconsideration in the appellate court within 15 days after the court files its decision. A motion to extend this

deadline must be filed in the appellate court that issued the decision. A party may amend a motion for reconsideration only with the appellate court's permission.

**(d) Response.** A party may not file a response to a motion for reconsideration unless requested by the appellate court to do so, but the appellate court will not ordinarily grant the motion without requesting the opposing party to file a response.

**(e) Form and Length.** A motion for reconsideration or a response to a motion must comply with the provisions of Rule 4(a) – (c). A motion for reconsideration or response to a motion may not exceed 3,500 words (including footnotes and quotations), or, if handwritten, may not exceed 12 pages (including footnotes and quotations). A certificate of compliance, as provided in Form 2, must accompany a motion for reconsideration or a response. A party preparing this certificate may rely on the word count of the processing system used to prepare the motion or response.

**(f) Motions Not Permitted.** Unless permitted by specific appellate court order, no party may file a motion for reconsideration of an order denying a motion for reconsideration, of an order denying a petition for review, or of an order declining to accept jurisdiction of a petition for special action.

### **Rule 23. Petition for Review**

**(a) Purpose.** A petition for review requests the Supreme Court to review a decision of the Court of Appeals.

**(b) Place and Time for Filing.**

**(1) Place for Filing.** A party may file a petition, a cross-petition, or a motion to extend the time for filing a petition or cross-petition, with the Supreme Court clerk.

**(2) Filing Fee.** The Supreme Court clerk may refuse to accept a filing under this Rule that is tendered without payment of the required filing fee.

**(3) Timing.** A party must file a petition for review within 30 days after the Court of Appeals issues its decision, unless a party filed a timely motion for reconsideration in the Court of Appeals, and in that event, a party must file a petition for review within 15 days after final disposition of the motion. A party may file a cross-petition for review within 15 days after service of a petition for review.

**(c) Stay Pending Motion for Reconsideration.** A petition for review is automatically stayed if the petition is filed before the Court of Appeals decides a motion for reconsideration. The stay remains in effect until the Court of Appeals clerk notifies the parties and the Supreme Court clerk of its denial on that motion. The time for filing a response to the petition for review, or a cross-petition, is computed as if the filing of that petition occurred on the date the stay is lifted, as described in the preceding sentence.

If the Court of Appeals grants a motion for reconsideration, the stay remains in effect until the Court of Appeals has made a final disposition. If a petition or cross-petition becomes moot

because of the final disposition of a motion for reconsideration, the petitioner or cross-petitioner must immediately file a written notice with the Supreme Court Clerk to this effect.

**(d) Form and Length.** The caption of the petition must designate the parties as they were designated in the caption of filings in the Court of Appeals. The form requirements of Rules 4(a)–(c) and the length limitations of Rule 22(e), including the necessity of a certificate of compliance as shown in Form 2, apply to a petition for review

**(e) Contents.** A copy of the Court of Appeals’ decision must accompany the petition. If 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 that was the subject of the special action must accompany the petition for review. In addition, the petition or cross-petition must contain concise statements of the following:

(1) The issues that were decided by the Court of Appeals that the petitioner is presenting for Supreme Court review. The petition must also list, separately and without argument, additional issues presented to, but not decided by, the Court of Appeals that the Supreme Court may need to decide if it grants review.

(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 may be included if it is not material to proper consideration of the issues. If evidentiary matter is material, the party must include a reference to the record or page of the certified transcript where that evidence appears.

(3) The reasons the petition should be granted, which may include, among others, that no Arizona decision controls the point of law in question, that a decision of the Supreme Court should be overruled or qualified, that there are conflicting decisions by the Court of Appeals, or that important issues of law have been incorrectly decided.

(4) If the party claims attorneys’ fees on appeal, the party must include the information required by Rule 21(a)(1) and (2).

**(f) Appendix.**

(1) **Necessity.** If there are documents in the record on appeal that are necessary for determination of the issues raised by the petition or cross-petition, the petitioner and cross-petitioner must file, simultaneously with the petition and cross-petition, an appendix that contains only those documents.

(2) **Form.** An appendix must comply with the requirements of Rule 13.1.

**(g) Service.** The petitioner or cross-petitioner must serve a copy of the petition or cross-petition and any appendix in the manner provided by Rule 4(f) on all parties who have appeared in the Court of Appeals.

**(h) Response and Reply.**

**(1) Timing and Necessity.** A party may respond to a petition or cross-petition by filing the response with the Supreme Court clerk within 30 days after service of the petition or cross-petition. A party's failure to file a response to a petition or cross-petition for review will not be treated as an admission that the Court should grant the petition or cross-petition.

**(2) Form and Length.** The response must comply with the form and length requirements of Rule 23(d). A response also must list, separately and without argument, any additional issues not listed by the petitioner that the parties presented to the Court of Appeals, which that court did not decide and which the Supreme Court may need to decide if it grants review.

**(3) Appendix.** The response may include an appendix as provided in Rule 23(f), but the appendix to the response may only include documents that were not within the appendix to the petition or cross-petition.

**(4) Reply.** The petitioner or cross-petitioner may not file a reply unless the Supreme Court issues an order specifically authorizing it, and then the petitioner or cross-petitioner must file the reply within the time set by that order.

**(i) Availability of Briefs.** When the Supreme Court clerk notifies the Court of Appeals clerk that a party has filed a petition for review:

**(1)** If the time for filing a motion for reconsideration has passed, and no party filed such a motion, or a party filed a motion that was decided by the court, the Court of Appeals clerk will make available to the Supreme Court the briefs the parties filed in the Court of Appeals. The Court of Appeals clerk must also make available other portions of the record requested by the Supreme Court or its staff attorneys.

**(2)** If a motion for reconsideration is pending in the Court of Appeals, the Court of Appeals clerk will make the briefs filed in the Court of Appeals available to the Supreme Court clerk upon final disposition of the motion.

**(j) Order Denying Review.** An order of the Supreme Court denying review will specify those justices of the Supreme Court, if any, who voted to grant review. The Supreme Court clerk will promptly notify the parties and the Court of Appeals clerk if the Supreme Court has denied all petitions and cross-petitions for review, and the Supreme Court clerk will return any original paper briefs to the Court of Appeals clerk.

**(k) Order Granting Review.** The Supreme Court clerk must promptly notify the parties and the Court of Appeals clerk if the Supreme Court grants a petition or cross-petition for review. A Supreme Court order granting review will specify the issue or issues that the Supreme Court will review. The Supreme Court may order the parties to file supplemental briefs, or it may set oral argument, or both. If an order granting review does not provide for supplemental briefs or oral argument, any party may file a motion specifying the reasons that supplementation or oral argument, or both, would be appropriate. A party must file this motion within 15 days after the Supreme Court clerk sends notice to the parties of the order granting review.

**(l) Availability of the Remaining Record.** The Court of Appeals clerk will make the remaining record available to the Supreme Court clerk upon notification that the Court has granted a petition or cross-petition for review.

**(m) Disposition.** If the Supreme Court grants review, it may decide the appeal in any manner specified in Rule 28(a). Additionally, the Supreme Court may do the following:

(1) Remand the appeal to the Court of Appeals for reconsideration in light of authority it identifies in its order.

(2) If issues were raised in, and not decided by, the Court of Appeals, it may consider and decide those issues, remand the appeal to the Court of Appeals to decide them, or dispose of those issues as it deems appropriate.

(3) If the parties by agreement resolve the appeal after a petition for review is filed, it may vacate the disposition of the Court of Appeals, or order designation of an opinion of the Court of Appeals as a memorandum decision.

#### **Rule 24. Appellate Court Mandates**

**(a) Definition.** “*Mandates*” are instructions from an appellate court commanding a superior court or agency to take further proceedings or to enter a certain disposition of a case.

**(b) Generally.** An appellate court will issue the mandate in an appeal as follows:

(1) If the parties did not file a motion for reconsideration or a petition for review, the Court of Appeals clerk will issue the mandate when the time for the filing that motion or petition expires.

(2) If a party filed a motion for reconsideration, the Court of Appeals clerk will issue the mandate after the appellate court disposes of the motion and the time for filing a petition for review expires.

(3) If a party filed a petition for review, the clerk of the Court of Appeals will issue a mandate 15 days after the receipt by the clerk of an order of the Supreme Court denying the petition for review.

(4) When the Supreme Court has filed any disposition that requires the issuance of a mandate, the Supreme Court clerk will issue the mandate 15 days after the filing of the disposition, or, if a party files a motion for reconsideration, 15 days after a final disposition of the motion.

**(c) Return of Papers.** The appellate clerk will return to the superior court clerk or other transmitting body any original portions of the record transmitted under Rule 11 to the appellate court. The appellate clerk may destroy copies of the record under rule or appellate court administrative order after the mandate’s issuance.

**(d) Stay of Mandate.**

**(1) Request for Stay.** A party may request an appellate court to stay issuance of the mandate pending application to the United States Supreme Court for a writ of certiorari:

**(A)** A party may file an application for a stay of issuance with the Arizona Supreme Court clerk within 15 days after the filing of the Court's opinion, memorandum decision, or order denying a motion for reconsideration.

**(B)** A party may file an application for a stay of issuance with the Court of Appeals clerk within 15 days after the Supreme Court enters an order denying a petition for review, or within 15 days in any other situation requiring the Court of Appeals to issue a mandate.

**(2) Duration.** A stay may not exceed 90 days unless the appellate court extends the time for good cause. If during the period of the stay a party files a notice with the appellate clerk stating that the party has filed a petition for a writ of certiorari, the stay will continue until the clerk receives notice from the United States Supreme Court of a denial of the writ or, in a case in which the United States Supreme Court grants the writ, that the United States Supreme Court has issued a mandate.

**(e) Mandates from the United States Supreme Court.** Upon receipt of a mandate from the United States Supreme Court, an Arizona appellate court will issue its own mandate to the superior court of the county that entered the original judgment. The appellate clerk's mandate will contain a verbatim recital of the United States Supreme Court mandate and command the superior court to take action as provided in the mandate.

**Rule 25. Sanctions**

An appellate court may impose sanctions on an attorney or party if it determines that an appeal or a motion is frivolous, an appeal or a motion is filed solely for the purpose of delay, or for an unreasonable violation of these Rules. An appellate court may impose sanctions that are appropriate in the circumstances of the case, or to discourage similar conduct in the future. Sanctions may include contempt, dismissal, or withholding or imposing costs or attorneys' fees.

**Rule 26. Voluntary Dismissal**

**(a) Dismissal by the Superior Court.** If the appellate clerk has not assigned an appellate case number under Rule 12(a), the superior court may dismiss the appeal on the filing of a stipulation signed by all parties, or on the appellant's motion with notice to all parties.

**(b) Dismissal by the Appellate Court.** An appellate clerk may dismiss an appeal if the parties pay whatever fees are due and file a signed stipulation requesting dismissal and specifying the terms for payment of costs. The clerk, however, may not issue a mandate or other process without an order from the appellate court. The appellant also may move to dismiss the appeal on such terms as the parties agree, or on terms fixed by the court.

## Rule 27. Substitution of Parties

**(a) Death of a Party.** If a party to an appeal dies while the appeal is pending, the decedent's personal representative may be substituted as a party on the personal representative's motion or on motion of any party. A party's motion must be served on the personal representative in accordance with Rule 4(f). If the decedent has no representative, any party may inform the appellate court of the death and the appeal may proceed as the appellate court directs.

**(b) Substitution for Other Reasons.** If a party's substitution is necessary for any reason other than death, the procedure described in Rule 27(a) applies.

### **(c) Public Officers:**

**(1) Identification of Party.** A public officer who is a party to an appeal in an official capacity may be described as a party by an official title rather than by name. But the appellate court may require the addition of the officer's name.

**(2) Automatic Substitution of Officeholder.** If a public officer is a party to an appeal in his or her official capacity and if the officer ceases to hold office during the pendency of the appeal, the appeal does not abate, and the officer's successor automatically substitutes as a party. Proceedings following the substitution are in the name of the substituted party, but the appellate court will disregard any misnomer that does not affect the substantial rights of the parties. The appellate court may enter an order of substitution at any time, but failure to enter such an order will not affect the substitution.

## Rule 28. Decisions; Publication of Opinions

**(a) Generally.** An appellate court's decision of an appeal will be in writing. The caption of a decision will contain the designation "*Opinion*," "*Memorandum Decision*," "*Decision Order*," or "*Order*."

**(1)** An "**opinion**" is a written disposition of an appeal intended for publication. Publication means that the appellate court will distribute the opinions for reporting by publishing companies in compliance with the provisions of A.R.S. § 12-107, § 12-108 and § 12-120.07.

**(2)** A "**memorandum decision**" is a written disposition of an appeal that is not intended for publication.

**(3)** A "**decision order**" or "**order**" is any disposition of a matter before the appellate court other than by opinion or memorandum decision.

**(b) Factors for Disposition by Opinion.** An appellate court will issue an opinion if a majority of the judges deciding the appeal determines that the court's disposition does one or more of the following:

**(1)** Establishes, alters, modifies or clarifies a rule of law;

- (2) Calls attention to a rule of law that is generally overlooked;
- (3) Criticizes existing law; or
- (4) Involves a legal or factual issue of unique interest or substantial public importance.

If a disposition includes a separate concurrence or dissent, and the author of the separate expression desires that it be published, then the disposition will be by opinion.

**(c) Partial Publication.** If the appellate court issuing a decision concludes that only a portion of its decision meets the criteria for publication, it may issue a portion of the decision as an opinion and the remainder as a separate memorandum decision.

**(d) Dissenting Vote on Denial of a Petition for Review.** If the Supreme Court denies a petition for review of an opinion and a justice voted to grant review, the caption of the Court of Appeals' published decision will report that justice's dissenting vote.

**(e) Depublication.** Notwithstanding other provisions of this Rule, the Supreme Court may enter an order that there be no publication of either the entirety of a Court of Appeals opinion, or a specified portion of an opinion.

**(f) Citations to Memorandum Decisions.** Memorandum decisions are not precedent and may not be cited in any court, except:

- (1) For the purpose of establishing a defense of res judicata, collateral estoppels, or the law of the case; or
- (2) To inform an appellate court of other memorandum decisions so that the court can decide whether to publish an opinion, grant a motion for reconsideration, or grant a petition for review.

Any party citing a memorandum decision under this Rule must attach the decision to the motion or petition that cites it.

**[Alternative section (f) if the Supreme Court adopts the rule amendment proposed by R-14-0004, but with conforming stylistic changes:**

**(f) Citations to Memorandum Decisions:** Memorandum decisions are not precedent and may not be cited in any court, except:

- (1) For the purpose of establishing a defense of res judicata, collateral estoppels, or the law of the case; or
- (2) To inform an appellate court of other memorandum decisions so that the court can decide whether to publish an opinion, grant a motion for reconsideration, or grant a petition for review; or
- (3) For the decision's persuasive value if filed on or after \_\_\_\_\_, 201\_.

Because a memorandum decision cited for its persuasive value is not precedent, it is not binding on any court of this state. A court need not distinguish or otherwise discuss a memorandum decision and a party has no duty to research or cite it. Any party citing a memorandum decision under this Rule must note in its citation that the decision is unpublished and attach a copy of it to the motion or petition in which such decision is cited.]

**(g) Motion for Publication.** A motion for publication of a memorandum decision must be filed within 15 days of the decision. Any response to the motion must be filed within 10 days after service of the motion.

### **Rule 28.1. Availability of Tax Memorandum Decisions**

The respective appellate court websites must post any Tax Memorandum Decision that addresses, in the discretion of the issuing appellate court, substantive or significant procedural issues. The website will post the Tax Memorandum Decision as required by law, and in a manner that prominently indicates that a Tax Memorandum Decision is not binding legal precedent and that a citation to the decision is not permitted except as provided under Rule 28.

### **Rule 29. Accelerated Appeals**

**(a) Scope.** This Rule provides an optional procedure for accelerated disposition of an appeal by the Court of Appeals. Where they are inconsistent with provisions of other Rules, the provisions of this Rule apply.

**(b) Designation.** The appellate court may enter an order designating an appeal “accelerated” by stipulation or motion.

**(1) By Stipulation.** If all parties agree to an accelerated appeal, they may file a stipulation with the Court of Appeals in a form prescribed by the court. The parties must file the stipulation within 15 days after the appellate clerk mails the initial notice required under Rule 12(b).

**(2) By Motion.** After an appeal is at issue as defined in Rule 15(b), the appellate court on its own motion, with notice, or on motion of a party, may order that the appeal be accelerated. Any party may file an objection within 10 days of service of the appellate court’s notice or a motion, and an opposing party may file a response within 10 days of service of the objection.

**(c) Briefs.** Rules 13 and 14 govern briefs in accelerated appeals, unless the parties stipulate before the filing of the appellant’s brief to file summary briefs. If the parties have stipulated to summary briefs, neither brief may exceed 3,500 words, or 10 pages if handwritten. The argument in a summary brief must contain only an outline of each argument, consisting of a summary statement of the argument and a list, without elaboration, of the authorities and the specific pages relied on. If the parties have a stipulation to file summary briefs, neither the stipulation nor a motion may modify these provisions.

**(d) Oral Argument and Expedited Decision.** If a party requests oral argument under Rule 18 and the appellate court grants the request, the appellate court will hear the argument within 90 days from the date of entry of an order under Rule 29(b), or within 90 days of when the appeal is at issue under Rule 15(b). The appellate court will decide the appeal within 3 days after oral argument. If the parties do not request oral argument, the appellate court will dispose of an accelerated appeal within 90 days of an order under Rule 29(b), or within 90 days of when the appeal is at issue, whichever is later.

**(e) Summary Decision.** The Court of Appeals may decide an accelerated appeal by an order that summarily states the basis for the disposition. The court also may give an oral decision from the bench following oral argument in addition to providing a summary written order.

**(f) Petitions for Review.** If a party files a petition for review in an accelerated appeal, the Supreme Court will give priority to the petition.

**(g) Discretion of the Court.** An appellate court at any time may remove an appeal from accelerated disposition if it concludes that the appeal is not appropriate for accelerated treatment.

## **PART V: SETTLEMENT**

### **Rule 30. Arizona Appellate Settlement Conference Program**

The Arizona Appellate Settlement Conference Program (the “program”) provides an alternative process for resolving certain civil appeals and for enhancing public confidence in the appellate court system. The program’s objectives are to provide parties to an appeal a procedure to:

- (1) Realistically explore settlement of the entire case or issues in the case;
- (2) Limit and simplify issues on appeal; and
- (3) Aid the speedy and just resolution of the appeal.

Every appeal filed in the Arizona Court of Appeals under these Rules is eligible for the program. The program is available at no additional court cost to the parties beyond the normal appellate filing fees.

Each division of the Court of Appeals may establish its policy for participation in the program or objecting to participation; assignment of cases to the program; selection of appellate mediators; and other procedures including settlement conferences. Each policy must provide that:

- (1) All proceedings in this program are confidential, are not discoverable, and are inadmissible in evidence in any judicial proceeding. A party to an appeal selected for the program likewise may not communicate to a third person any information that he or she discusses or learns of in the course of the program, except to the extent required by law or compelled by process.

(2) Appellate mediators, settlement conference attorneys and all other court employees involved in the program are absolutely immune from suit for all conduct in the course of their official duties.

(3) Any person who participates as an appellate mediator must not later participate in any way in the consideration or disposition of the appeal on its merits.

Appellate Settlement Conference Program policies for each division must be published on the division's website, and be available at the office of the appellate clerk.

### **Rule 31. Notice of Settlement**

The attorney for a party and any party unrepresented by an attorney must give the appellate court clerk prompt notice of the settlement of any pending appeal or other matter. An appellate court may impose sanctions against an attorney or a party for any unreasonable delay in giving such notice to the appellate clerk.

## **PART VI: MISCELLANEOUS**

### **Rule 32. Websites, Filing Portals, and Forms**

(a) **Websites.** Information concerning the appellate courts is available on their respective websites:

(1) Arizona Supreme Court:

<http://www.azcourts.gov/azsupremecourt.aspx>

(2) Arizona Court of Appeals, Division One:

<http://azcourts.gov/coal/Home.aspx>

(3) Arizona Court of Appeals, Division Two:

<http://www.appeals2.az.gov/>

(b) **Filing Portals.** The appellate courts have the following portals for electronic filing:

(1) For the Arizona Supreme Court and Division One of the Court of Appeals:

[www.azturbocourt.gov](http://www.azturbocourt.gov)

(2) For Division Two of the Court of Appeals:

[www.appeals2.az.gov/e-filer/login.cfm](http://www.appeals2.az.gov/e-filer/login.cfm)

(c) **Forms Included in the Appendix to These Rules.**

**Form 1:** Notice of appeal or cross-appeal [Rule 8(c)]

**Form 2:** Certificate of compliance [Rule 14(a)(6), Rule 22(e) and Rule 23(d)]

**Form 3:** Caption [Rule 4(a)]

**Form 4:** Caption of a brief [Rule 14(b)]

**Form 5:** Consent for electronic service by the appellate clerk [Rule 4(h)]

**(d) Authority of the Administrative Director.** The Administrative Director of the Administrative Office of the Courts has authority to:

(1) Add, delete, or change addresses of appellate websites listed in Rule 32(a) and filing portals listed in Rule 32(b), as necessary.

(2) Modify forms listed in Rule 32(c) in response to changes in state laws or procedures, to make other necessary administrative amendments or technical corrections, or to add or delete forms, as appropriate.

**Form 1: Notice of Appeal or Notice of Cross-Appeal**

Attorney or Party Name  
Law Firm Name (if any)  
State Bar No. (if any)  
Mailing Address  
City, State, Zip Code  
Telephone Number  
Email Address (if required)  
Attorney for \_\_\_\_\_ (party name)

SUPERIOR COURT OF ARIZONA

\_\_\_\_\_ COUNTY

Plaintiff(s)/Petitioner	)	Case number _____
	)	
v.	)	<input type="checkbox"/> <b>Notice of Appeal</b>
	)	
Defendant(s)/Respondent	)	<input type="checkbox"/> <b>Notice of Cross-Appeal</b>
	)	

**[Use paragraph 1, 2, or 3 as applicable.]**

**1. If the appeal is from the entire Judgment**

Notice is hereby given that the \_\_\_\_\_ [name of party or parties]  appeals or  cross-appeals to the Arizona Court of Appeals from the judgment entered in this case on the \_\_\_ day of \_\_\_\_\_ 20\_\_\_. This judgment  contains  does not contain language pursuant to Rule 54(c) of the Arizona Rules of Civil Procedure.

Dated this \_\_\_ day of \_\_\_\_\_, 20\_\_

\_\_\_\_\_  
Signature of  Attorney or  Self-Represented Party

Certificate of Service

**2. If the appeal is from a part of the Judgment**

Notice is hereby given that the \_\_\_\_\_ [name of party or parties]  appeals or  cross-appeals to the Arizona Court of Appeals from the following part of the Judgment entered in this case on the \_\_\_ day of \_\_\_\_\_ 20\_\_\_. [Specify here the part of the Judgment the party is appealing. \_\_\_\_\_ ]

Dated this \_\_\_ day of \_\_\_\_\_, 20\_\_

\_\_\_\_\_  
Signature of  Attorney or  Self-Represented Party

Certificate of Service

**3. If the appeal is from an Order**

Notice is hereby given that the \_\_\_\_\_ [name of party or parties]  appeals or  cross-appeals to the Arizona Court of Appeals from the Order made and entered in this case on the \_\_\_ day of \_\_\_\_\_ 20\_\_. [Briefly describe here the Order that the party is appealing. \_\_\_\_\_ ]

Dated this \_\_\_ day of \_\_\_\_\_, 20\_\_

\_\_\_\_\_  
Signature of  Attorney or  Self-Represented Party

Certificate of Service

**Form 2: Certificate of Compliance**

Certificate of Compliance

1. This certificate of compliance concerns:

- A brief, and is submitted under Rule 14(a)(6)
- A motion for reconsideration, and is submitted under Rule 22(e)
- A petition or cross-petition for review, and is submitted under Rule 23(d)
- An amicus curiae brief, and is submitted under Rule 16(b)(4)

2. The undersigned certifies that the brief/motion for reconsideration/petition or cross-petition for review to which this Certificate is attached:

- Uses proportionately spaced type of at least 14 points, is double spaced, and contains \_\_\_\_ words  
or
- Contains \_\_\_\_ handwritten pages

3. The document to which this Certificate is attached  does not, or  does exceed the word or page limit that is set by Rule 14, Rule 22, or Rule 23, as applicable.

\_\_\_\_\_  
Signature of  Attorney or  Self-Represented Party

\_\_\_\_\_  
Printed Name of Attorney or Self-Represented Party

**Form 3: Caption**

Attorney or Party Name  
Law Firm Name (if any)  
State Bar No. (if any)  
Mailing Address  
City, State, Zip Code  
Telephone Number  
Email Address (if required)  
Attorney for \_\_\_\_\_ (party name)

ARIZONA COURT OF APPEALS

DIVISION \_\_

ROBERT RED,	)	No. 1-CA-CV-15-0000
	)	
Petitioner/Appellee,	)	Maricopa County Superior Court
	)	No. FC-2014-999999
v.	)	
	)	
ROBERTA RED,	)	PETITIONER'S MOTION TO
	)	EXTEND TIME FOR FILING
	)	OPENING BRIEF
Respondent/Appellant.	)	

**Form 4: Caption of a Brief**

ARIZONA COURT OF APPEALS

DIVISION \_\_

THE TOWN OF CACTUS, a political )  
subdivision of the State of Arizona; ABC )  
HOMES, INC., an Arizona corporation; )  
ROBERT RED AND ROBERTA RED, )  
husband and wife, )

No. 1-CA-CV 15-0000  
Maricopa County Superior Court  
No. CV 2013-999999

Plaintiffs/Appellants, )

v. )

ARIZONA DEPARTMENT OF )  
ELECTRONICS (“ADE”), an agency of the )  
State of Arizona, and BILL BOBB, in his )  
capacity as Director of ADE )

Defendants/Appellees. )

----- )  
MOUNTAIN VIEW PRODUCTS, INC., a )  
Montana corporation, )

Intervenor. )

\_\_\_\_\_ )

ANSWERING BRIEF OF DEFENDANT/APPELLEE ADE AND BOBB

David Done  
Greater Phoenix Law Firm  
State Bar No. 000000  
P.O. Box 000  
Phoenix, Arizona 85090  
(602) 999-9999  
Attorney for ADE and Bobb

**Form 5: Consent for Electronic Service by the Appellate Clerk**

Party Name  
Mailing Address  
City, State, Zip Code  
Telephone Number

ARIZONA COURT OF APPEALS

DIVISION \_\_\_\_

	)	Appellate case number _____
	)	
Appellants	)	Superior Court case number _____
	)	
v.	)	Consent to Electronic Service by the
	)	Appellate Clerk
	)	
Appellees	)	

The undersigned self-represented party to this appeal, pursuant to Rule 4.2(h) of the Arizona Rules of Civil Appellate Procedure, consents to electronic service of court documents by the appellate clerk. The appellate clerk may serve the undersigned at the following electronic mailing address: \_\_\_\_\_. The undersigned is responsible for maintaining this email address, and for checking it on a regular basis.

This consent is effective when it is filed with the appellate clerk. The undersigned understands that this consent is voluntary. The undersigned further understands that this consent remains in effect until the undersigned files a written withdrawal of consent with the appellate clerk. This consent form does not constitute consent to electronic service on the undersigned by another party.

Dated this \_\_ day of \_\_\_\_\_, 20\_\_

\_\_\_\_\_  
Printed Name of Self-Represented Party

\_\_\_\_\_  
Signature of Self-Represented Party