

**Hon. George T. Anagnost
Peoria Municipal Court
8401 West Monroe St.
Peoria AZ 85345
(Tel 623 773 7420)**

ARIZONA SUPREME COURT

In Re)	No.
)	
SCRAP CRIMINAL and)	Rule 28 Petition re Amendments
SCRAP CIVIL and)	to Superior Court Rules Appellate
CIVIL TRAFFIC RULE,)	Procedure (“SCRAP”) Criminal
RULE 29)	and Civil and Civil Traffic Rule 29
_____)	

This petition proposes four changes to the Superior Court Rules of Appellate Procedure (“SCRAP”), Criminal, two changes to SCRAP Civil, and a conforming change to Civil Traffic Rule 29.

Regarding the SCRAP Criminal Rules, the changes would:

- (1) improve the efficiency of the perfection and remand procedures by allowing the trial court sua sponte (or on motion of a party), to reset a trial (or hearing) de novo where the record is insufficient to allow the appeal to proceed further;
- (2) adopt verbiage from the Maricopa County Local Rule 9.10 (e) to make explicit the superior court’s authority to remand to the trial court level for a trial de novo when it appears that the record is insufficient;
- (3) regarding the meaning of stay of “sentence” during the pendency of a criminal appeal, clarify that, similar to ARCrImP, Rule 26.1 (b), the word “sentence” includes probation, so that, pending appeal, any penalty arising from a finding of guilt is suspended; and

(4) conform the rules to *State v. Hansen*, CR 05-0520 - 2007, to make clear that restitution obligations are not stayed pending appeal, and restitution payments should continue to be paid to the clerk of court pending appeal.

Regarding SCRAP Civil, similar to the trial de novo changes to SCRAP Criminal, amend the civil appeal rules to allow the trial court to:

- (1) set a trial de novo when it appears the record is insufficient for the appeal; and
- (2) also allow the superior court to remand for a trial de novo.

Regarding Civil Traffic Rule 29, the change would include a provision allowing the trial court on its own motion to order a new hearing if the record is insufficient.

Proposed rule changes are “underlined”.

SCRAP Criminal Rule 7 Record on Appeal, Trial de Novo

[Existing subparagraphs a – f - no changes]

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

appeal as provided by statute or rule for all litigants following a trial or appealable judgment or order.

SCRAP Criminal Rule 6 Bond on Appeal, Stay of Sentence

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

SCRAP Civil Rule 12 Disposition of Appeals, Trial de Novo

[subparagraphs a – d, no change]

(e) If it appears to the trial court that the record is insufficient, the trial court may on its own motion, or on motion of a party, reset the matter for trial de novo within 45 days from such determination. In such event, any appeal rights shall restart from such trial de novo. In cases where it appears that the record is insufficient, the preference shall be for a trial de novo at the trial court level. notwithstanding the foregoing, cases summarily transferred to the superior court for trial de novo or determined by the superior court to have an insufficient record may be remanded to the original trial court for a new trial or hearing in lieu of a trial de novo in the superior court. Unlike trials de novo held in the superior court, the parties in a case remanded for trial de novo in the original trial court pursuant to this rule, shall have the rights of

appeal as provided by statute or rule for all litigants following a trial or appealable judgment or order.

Civil Traffic Rule 29

[Subparagraphs a – c – no change]

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

Respectfully submitted January 4, 2008.

*Hon. George T.
Anagnost*
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[Original filed electronically this date]