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

In the matter of: )  
 )  
PETITION TO AMEND VARIOUS ) Supreme Court No. 20-\_\_\_\_\_  
RULES OF PROCEDURE RELATED )  
TO CREATING THE VERBATIM )  
RECORD OF JUDICIAL PROCEEDINGS )  
 )  
\_\_\_\_\_ )

Pursuant to Rule 28, Rules of the Supreme Court of Arizona, David K. Byers, Administrative Director, petitions this Court to approve the amendments to several rules of procedure contained in Appendix A. The changes are designed to allow courts to supplement the use of court reporters by expanding courts’ ability to use electronic recording technology to make a record of court proceedings. On October 24, 2019, these proposals were presented in the Report and Recommendations of the Arizona Task Force to Supplement Keeping of the Record by Electronic Means (dated August 30, 2019)<sup>1</sup> to the Arizona Judicial Council. The Council unanimously supported the report and recommendations.

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<sup>1</sup> Attached as Appendix B.

## **I. Grounds for Petition Approval.**

In recent years, and increasingly, there has been a decrease in the number of court reporters, resulting in significant vacancies. For example, a 2019 survey of Arizona’s superior courts revealed that of the 138 court reporter positions, 27.5 were vacant, many of which were longstanding vacancies. As another example, the 2018 Annual Report of the South Carolina Judicial Branch noted: “South Carolina is one of many states experiencing a shortage of court reporters. This established trend has been noted by industry experts for quite some time, and the South Carolina Judicial Branch works diligently to minimize the impact of the shortage on court proceedings.”<sup>2</sup>

Along with efforts to recruit and attract more court reporters, South Carolina has “incorporated digital recording as a supplemental measure in select courtrooms.” South Carolina is not alone in these efforts; a National Center for State Courts (NCSC) survey revealed that, nationwide, many courts have been successfully using electronic recording for several years to create the court record.

It is in this context that the Supreme Court of Arizona established the Arizona Task Force to Supplement Keeping of the Record by Electronic Means. Specifically, on May 21, 2019, Arizona Supreme Court Chief Justice Scott Bales issued Administrative Order No. 2019-49, establishing the task force. Noting that

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<sup>2</sup> South Carolina Judicial Branch 2018 Annual Report at 8. See <https://www.sccourts.org/whatsnew/SOJ2019/2019SCJBAAnnualReport.pdf>.

Arizona, consistent with nationwide trends, is experiencing a shortage and unavailability of court reporters, the administrative order states “[t]his situation may require courts to reschedule or delay scheduling judicial proceedings, negatively impacting the ability to secure a speedy trial, hearing, or other resolution and ultimately delaying the administration of justice to the parties, victims, and all involved in the legal system broadly. The shortage also impacts court reporters’ ability to transcribe the proceedings in a timely manner.”

“Given these issues,” the administrative order continues, “electronic recording technology has been deployed in many Arizona courts to supplement the use of a court reporter in making a record of court proceedings. Use of electronic recording technology is limited, however, by statutes and rules enacted at a time when such technology did not exist or was not available or dependable.” For these same reasons, courts are not afforded the flexibility, discretion, and authority to determine how the court record is made.

The administrative order also notes that transcript production is “one of the major factors contributing to delay in resolving appeals. Transcript production, which is required before any briefing can occur on appeal, can take months, delaying all types of appeals, including those where critical liberty interests are involved, such as criminal appeals and termination of parental rights appeals.”

Such delays are particularly significant where an individual is in custody awaiting resolution of criminal charges or, in juvenile court, a delinquency petition. But delays have a significant negative impact in other types of proceedings, including abuse and neglect (dependency) proceedings, where a child is in foster care pending resolution of the proceedings; family court matters, where child custody and the best interests of the child are cornerstone issues to be resolved; and civil litigation, where resolution of a claim for damages may have enormous consequences to the parties.

The Arizona Supreme Court’s strategic agenda – “Justice for the Future Planning for Excellence 2019-2024” – establishes a call to action. Goal 3 “Promoting Judicial Branch Excellence and Innovation” states the following in addressing “Keeping the Record:” “With a growing shortage of qualified court reporters at both the state and national level, courts are faced with the ever-increasing challenge of keeping an accurate record of court proceedings. Through emerging innovations, including digital recording and remote court reporting, we will take necessary steps to ensure courts continue to create a complete and accurate record for each and every case.” To achieve this goal, the strategic agenda added a target to “[m]odernize statutes, rules, and the administrative code permitting courts to create and maintain a complete and accurate court record

electronically to supplement court reporters and to reduce the time needed to produce a record and transcript for cases on appeal.”

The administrative order repeats the same call to action set forth in the strategic agenda and directs that “[t]he Task Force shall develop recommended changes to statutes, rules, and the Arizona Code of Judicial Administration to permit courts to create and maintain a complete and accurate court record electronically to supplement court reporters and to prevent delay in resolving disputes in the trial court and on appeal.” The task force was directed to consider the issues involved and to “submit its recommendations, together with recommended changes to statutes, rules, and the Arizona Code of Judicial Administration . . . for circulation for comment and for presentation to the Arizona Judicial Council . . . .” As noted above, the task force’s report and recommendations were presented to, and unanimously approved by, the Committee on Superior Court on September 6, 2019, the Superior Court Presiding Judges on October 22, 2019, and the Arizona Judicial Council on October 24, 2019.

## **II. Background.**

Appendix A contains changes, identified by the task force, to Arizona procedural rules to permit courts to create and maintain a complete and accurate court record electronically to supplement court reporters and to prevent delay in resolving disputes in the trial court and on appeal. Appendix A is intended to be

comprehensive based on what the task force identified, with verbiage additions underlined and verbiage removals stricken.

The task force considered numerous Arizona statutes, Arizona procedural rules, and the Arizona Code of Judicial Administration. As a result of this consideration, the task force elected not to identify changes where at least one of the following applied: (1) the current provision already contemplated electronic recording in the discretion of the court; or (2) the current provision did not address the issue of how the verbatim record of a court proceeding is captured and preserved.

Several limitations and caveats are essential to provide clarity about what the proposed rule changes do and do not address. First, the proposed rule changes deal with creating and maintaining a verbatim record of court proceedings. Unless arising in provisions that include both the judiciary and other governmental entities, these changes do not address law directing how a verbatim record is created and maintained in non-judicial proceedings, such as administrative agency or political subdivision proceedings.

Second, relatedly, the proposed changes do not address law directing how a verbatim record is created and maintained in court-adjacent proceedings, such as a deposition.

Third, the proposed changes do not alter when a verbatim record of court proceedings must be created and maintained. Instead, the changes deal with what

discretion a court has in deciding how (not whether) to create and maintain a verbatim record of court proceedings.

Fourth, the proposed changes would provide a court additional discretion in deciding how to create and maintain a verbatim record of court proceedings. The changes do not direct or suggest how a court should exercise discretion granted to it in deciding how to do so.

Fifth, the proposed changes would afford courts discretion to determine how the verbatim record of court proceedings should be created and maintained in all instances, including instances where current law does not afford such discretion. *See* Ariz. R. Sup. Ct. 30(b)(3). Adopting such changes, particularly as they apply to grand jury proceedings where no judicial officer is present, may implicate policy issues. However, determining how to handle such policy matters was beyond the scope of the charge of the task force and requires decision-making that is better left to courts at the local level.

### **III. Contents of the Proposed Rules.**

The proposed rule amendments are designed to allow courts to supplement the use of court reporters by expanding courts' ability to use electronic recording technology to make a record of court proceedings. To this end, the proposed rule amendments will provide courts with the discretion in granting or denying a

party's request to have a proceeding recorded by a court reporter and to determine how the verbatim record will be captured.

The proposed rule amendments will also provide courts with the discretion to use court reporters *or* electronic recording to capture the verbatim record in grand jury proceedings, capital case proceedings, felony jury trials, the initial determination of sexually violent person status, and requests for authorization of abortion without parental consent. Accordingly, the proposed amendments will allow a person authorized by the court to be present for grand jury proceedings to ensure that the verbatim record is captured. This provision can be attributed to the task force recognizing that if a court uses an electronic recording system to capture the verbatim record of grand jury proceedings in lieu of a court reporter, adequate quality controls must be in place to ensure that the record is properly captured.

The proposed rule amendments include amended verbiage in the corresponding rule comments to expand on and clarify the factors that should be considered when a court decides how the verbatim record of these court proceedings should be captured.

The proposed rule amendments also provide provisions for making the record in the absence of a court reporter, requiring courts to use an electronic recording system in accordance with procedures established by local rule. Nonetheless, if the court is using an electronic recording system to capture the verbatim record, the

proposed amendments would allow the parties to provide their own court reporter to also record the proceedings. Further, the proposed amendments identify which recording is the official record in a scenario where the court's court reporter records a proceeding, the court uses an electronic recording system, and/or a party has provided their own court reporter.

The proposed rule amendments also remove the requirement for a court reporter to attend preliminary hearings, but require the magistrate to ensure the ability to capture a verbatim recording of the proceeding.

The proposed rule amendments also include changes intended to update language for objectives not affecting the procedural substance of the rules. Among the amendments are the following categories of non-substantive changes:

- Amending “court reporter” to “certified reporter” for consistency in statute, rule, and the Arizona Code of Judicial Administration.
- Elimination of unnecessary descriptions of alternative means available for making and preserving a record and rewording rules for simplified reading.
- Elimination of outdated descriptors such as “audiotape.”

- Rules dealing with the mechanics of ordering transcripts from “reporters” were revised to accommodate those situations in which the transcript of an electronic recording may be prepared by someone other than a certified court reporter.

#### **IV. Conclusion**

For the foregoing reasons, petitioner respectfully requests that the Court circulate this petition for comment, pursuant to Supreme Court Rule 28, with the aim of adopting the proposed amendments as they appear here or as modified in light of comments received from the public.

Respectfully submitted this 9<sup>th</sup> day of January, 2020.

By /s/ David K. Byers  
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## Appendix A

### Proposed amendments

Deletions are shown by strikethrough. Additions are shown by underline.

### Rules of Civil Procedure

#### **43. Taking Testimony**

(a) through (f) No change

#### **(g) Preserving Recording of Court Proceedings.**

(1) *Transcripts and Other Recordings.* The official verbatim recording of any court proceeding is an official record of the court. The original recording must be kept by the person ~~who recorded it, a court-designated custodian, or the clerk in a place~~ designated by the court. The recording must be retained according to the records retention and disposition schedules adopted by the Supreme Court, unless the court specifies a different retention period.

(2) *Transcription.* If a ~~court-certified~~ reporter's verbatim recording is to be transcribed, the ~~court-certified~~ reporter who made the recording must be given the first opportunity to make the transcription, unless that ~~court-certified~~ reporter no longer serves in that position or is unavailable for any other reason.

#### **75. Hearing Procedures**

(a) through (e) No change

(f) **Record of Proceedings.** The arbitrator is not required to make a record of the hearing. If any party wants a ~~court-certified~~ reporter to transcribe the hearing, the party must pay for and provide the reporter. The reporter's charges are not considered costs in the action.

(g) No change

## **Rules of Criminal Procedure**

### **5.1 Right to a Preliminary Hearing; Waiver; Continuance**

(a) through (c) No change

(d) Hearing Demand. A defendant who is in custody may demand that the court hold a preliminary hearing as soon as practicable. In that event, the magistrate must set a hearing date and must not delay its commencement more than necessary to secure the attendance of counsel, ~~a court reporter, and necessary witnesses,~~ and ensure the ability to capture a verbatim recording of the proceeding.

### **5.2 Summoning Witnesses; Record of Proceedings**

(a) No change

(b) **Record of Proceedings.** The magistrate must make a verbatim record of the preliminary hearing. Proceedings may be recorded by a certified ~~court~~-reporter or by electronic or other means authorized by the ~~superior court~~-presiding judge of the superior court or an individual designated by the presiding judge of the superior court. ~~But if a party requests that a certified court reporter record the proceedings, the court must record the proceedings in that manner, unless the court is located in an area where a certified court reporter is not reasonably available.~~

### **5.6 Transmittal and Transcription of the Record**

(a) No change

(b) **Transcript Preparation and Filing.** If a party makes a written request and avows that there is a material need for a transcript, the court must order a certified ~~court~~-reporter or an authorized transcriber of an electronic recording to prepare a transcript. The ~~court~~ certified reporter or transcriber must file the transcript in the superior court no later than 20 days after the order's filing.

### **5.7 Preservation of Recording**

The clerk must retain and preserve any electronic recording of a preliminary hearing in the same manner as required for the original notes of a certified ~~court~~ reporter under Rule 28.1(c).

## 12.4 Who May be Present During Grand Jury Sessions

**(a) General.** Only the following individuals may be present during grand jury sessions:

- (1) the witness under examination;
- (2) counsel for a witness if the witness is a person under investigation by the grand jury;
- (3) a law enforcement officer or detention officer accompanying an in-custody witness;
- (4) prosecutors authorized to present evidence to the grand jury;
- (5) a certified ~~court~~ reporter or person authorized by the court to ensure the verbatim record is captured; and
- (6) an interpreter, if any.

**(b)** No change

## 12.7 Record of Grand Jury Proceedings

**(a) ~~Court Reporter~~Recording Arrangements.** The presiding or impaneling judge must ~~assign a certified court reporter make arrangements to record capture all~~ grand jury proceedings, except its deliberations. Any arrangements must ensure that no images of grand jurors are taken or captured.

**(b) Foreperson.** The foreperson must keep a record of how many grand jurors voted for and against an indictment, but must not record how each grand juror voted. If the grand jury returns an indictment, the foreperson's record of the vote must be transcribed ~~by the court reporter~~ and filed with the court no later than 20 days after the return of the indictment, and may be made available only to the court, the State, and the defendant.

**(c) Filing the Transcript and Minutes.** The ~~court reporter's~~ record of grand jury proceedings must be transcribed and the transcript must be filed with the superior court clerk no later than 20 days after return of the indictment, and may be made available only to the court, the State, and the defendant.

### **15.3 Depositions**

(a) through (c) No change

#### **(d) Manner of Taking.**

(1) *Generally.* Unless this rule provides or the court orders otherwise, the parties must conduct depositions in the manner provided in Rules 28(a) and 30 of the Arizona Rules of Civil Procedure.

(2) *Deposition by Written Questions.* If the parties consent, the court may order that a deposition be taken on written questions in the manner provided in Rule 31 of the Arizona Rules of Civil Procedure.

(3) *Deponent Statement.* Before the deposition, a party who possesses a statement of a deponent must make it available to any other party who would be entitled to the statement at trial.

(4) *Recording.* A deposition may be recorded by someone other than a certified court-reporter. If someone other than a certified court-reporter records the deposition, the party taking the deposition must provide every other party with a copy of the recording no later than 14 days after the deposition, or no later than 10 days before trial, whichever is earlier.

(5) *Remote Means.* The parties may agree or the court may order that the parties conduct the deposition by telephone or other remote means.

(e) through (f) No change

### **28.1 Duties of Clerk**

(a) through (b) No change

(c) **Court-Certified Reporter Notes.** Court-Certified reporters' notes must be retained under retention and destruction schedules established by the Supreme Court.

### **31.2 Notice of Appeal or Notice of Cross-Appeal**

(a) No change

**(b) Automatic Appeal for a Defendant Sentenced to Death.** As provided in Rule 26.15, when a defendant has been sentenced to death, the superior court clerk must file a notice of appeal on the defendant's behalf after the oral pronouncement of sentence. That notice constitutes a notice of appeal by the defendant with respect to all judgments entered and sentences imposed in that case. No later than 10 days after the notice of appeal is filed, the clerk must notify all assigned ~~court~~-certified reporters or transcribers that they are required to transmit their portions of the certified transcript to the Supreme Court clerk.

(c) through (h) No change

### **31.8. The Record on Appeal**

(a) No change

#### **(b) Certified Transcripts.**

(1) *Generally.* The record on appeal includes certified transcripts as follows:

(A) if the defendant is sentenced to death, the record on appeal must include a certified transcript of all recorded proceedings, including grand jury proceedings; and

(B) in all other cases, the record on appeal must include a certified transcript of the following proceedings:

(i) any voluntariness hearing or hearing to suppress the use of evidence;

(ii) all trial proceedings, excluding the record of voir dire unless a party specifically designates it;

(iii) any aggravation or mitigation hearing;

(iv) proceedings for the entry of judgment and sentence; and

(v) any probation violation proceeding.

(2) *Additions and Deletions.*

(A) By Appellant. No later than 30 days after filing a notice of appeal, the appellant may request from the certified ~~court~~-reporter or, if the record was made by electronic or other means, the court's designated transcript coordinator:

(i) a certified transcript of any proceeding not automatically included under (b)(1); and

(ii) to exclude from a certified transcript any portion of the proceedings the appellant deems unnecessary for a proper hearing of the appeal.

(B) By Appellee. No later than 30 days after the opening brief is filed, the appellee may request from the certified ~~court~~-reporter or, if the record was made by

electronic or other means, the court's designated transcript coordinator, a certified transcript of:

(i) any portion of a proceeding deleted by the appellant; and

(ii) a proceeding not automatically included under (b)(1).

(C) Untimely Request. For good cause shown, a party may request an addition to the record under (b)(2)(A) and (B).

(D) Notice to Other Parties. An appellant or appellee must serve any designation or request made under this rule on all other parties when the party submits the designation or request.

**(c) Authorized Transcriber: Time to Prepare, and Payment Arrangements for, Certified Transcripts.**

(1) *Generally.* Every transcript in the record on appeal must be prepared by an authorized transcriber. An “authorized transcriber” as used in this rule means a certified reporter or a transcriber under contract with an Arizona court. There may be multiple authorized transcribers for a single case.

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

(3) *Audio or Video Recording.* If the superior court created only an audio or audio-video recording of the proceeding, a party must order a certified transcript of the proceeding directly from an authorized transcriber. Unless the ordering party is an indigent defendant, the superior court will furnish the transcriber with a copy of the designated electronic recording upon receiving a notice from the transcriber that the transcriber has reached a satisfactory arrangement for payment. All parties to the appeal must cooperate with the transcriber by providing information that is necessary to facilitate transcription.

(4) *Time to Prepare.* The authorized transcriber must prepare the certified transcript promptly upon receiving a notice of appeal either:

(A) by the State; or

(B) by the defendant if the notice indicates that the defendant was represented by appointed counsel when found guilty or when sentenced.

(5) *Non-Indigent Defendant.* No later than 5 days after filing a notice of appeal or after the denial of a request during the appeal to proceed as indigent, a non-indigent defendant must make payment arrangements with the authorized transcriber for the certified transcript. The authorized transcriber then must promptly prepare the certified transcript. The authorized transcriber must notify the appellate court if the defendant fails to make satisfactory payment arrangements within the prescribed time.

(6) *Additions and Deletions.* The authorized transcriber must promptly add or delete any portions requested by the parties. Non-indigent defendants must pay for all portions of the record on appeal and certified transcripts that they have designated or requested.

(d) through (g) No change

## **Rules of the Supreme Court**

### **30. Verbatim Recording of Judicial Proceedings**

(a) No change

#### **(b) Use of Court Reporting Resources.**

1. Request for certified reporter. Any party to any action in superior court may request that any proceeding in that action be recorded by a certified court reporter. The court ~~shall~~ may grant the request if it is made at least three days prior to the proceeding to be recorded unless a different time frame has been established by local rule.

2. Making the record in the absence of a ~~timely request for a court-certified~~ reporter. ~~Except as provided in (3) below, i~~n the absence of a timely request for a certified court reporter, the record will be made in a manner within using an electronic recording system to record the sound discretion of the court proceeding as established by local rule.

3. ~~Proceedings requiring~~ If the court is using an electronic recording system to record the proceedings, a party has the right to provide a certified court reporter to also record the proceedings. The following proceedings shall be recorded by a party providing the certified court reporter must bear the cost. The official record, however, is the record designated by and not solely by electronic means, unless this requirement is waived by the parties and the court approves the waiver: as set forth in section (b)(4) of this rule.

a. ~~Grand jury proceedings;~~

b. ~~All proceedings in a first degree murder case, pursuant to A.R.S. § 13-1105, once the intention to seek the death penalty notice has been filed;~~

c. ~~Felony jury trials;~~

- d. ~~Initial determinations of sexually violent person status, pursuant to A.R.S. § 36-3706;~~  
e. ~~Proceedings on a request for authorization of abortion without parental consent, pursuant to A.R.S. § 36-2152.~~

4. Official record. When an ~~Arizona~~ court's certified court-reporter records a proceeding in a superior court that is simultaneously recorded by electronic recording equipment, the court's certified reporter's record shall be the official record. For a proceeding not recorded by a court's certified reporter, the official record is the transcript prepared by an authorized transcriber as defined in Rule 30(a)(2)(b) or (c). The transcript in any case certified by the court's certified reporter or other authorized transcriber as defined in Rule 30(a)(2)(a)-(c) shall be deemed prima facie a correct statement of the testimony taken and proceedings had. No transcripts of the proceedings of the court shall be considered as official except those made from the records certified by the court's certified reporter or other authorized transcriber as defined in Rule 30(a)(2)(b) or (c), unless otherwise ordered by the court.

#### [200620] COMMENT

**Rule 30(a).** This rule is not intended to prevent a party from retaining a transcriber, at the party's expense, to prepare an unofficial transcript of all or part of a proceeding. An unofficial transcript cannot be referenced or used in any court proceeding.

**Rule 30(b)(1).** Nothing in this rule precludes the court from granting a party's untimely request for a certified reporter.

**Rule 30(b)(2).** In the absence of a timely request for a certified court reporter, tThe court may approve use of a certified court reporter, audio or video recording to capture the record of court proceedings. In exercising its discretion under subsection (B), giving due deference to the parties' preference of how proceedings should be captured, the court may should consider the following factors when requiring the presence of the court's certified reporter or otherwise designating the official record: unique demands of the preservation of the official court record by a certified reporter in grand jury proceedings, felony jury trials, particularly first degree murder cases in which the State filed a death penalty notice, initial determinations of sexually violent person status, and proceedings on a request for authorization of abortion without parental consent. Moreover, the court should

consider the availability of a certified reporter; the probability that a transcript will be requested; the number of litigants; convenience of the parties and the court's schedule; sufficiency of another form of record to convey the substance of the matters discussed at the proceeding; whether testimonial evidence will be presented at the proceeding; presence of non-native English speakers as witnesses or parties; the likelihood that technical or otherwise difficult terminology will be used; the need for formal or informal proceedings; the need for a real-time transcript; the likelihood that daily transcripts will be required; and any other factor which in the interests of justice warrants a particular form of record, or as otherwise required to serve the interests of justice.

## **75. Jurisdiction; Definitions**

(a) No change

(b) **Definitions.** The following definitions shall apply in unauthorized practice of law proceedings.

1. All definitions in Rule 31(a)(2) shall apply.
2. "Bar counsel" means staff counsel employed by the state bar or volunteer counsel appointed to represent the state bar in discipline and other proceedings. "Chief bar counsel" means that person employed by the state bar to administer the discipline and disability system under the direction of the executive director.
3. "Charge" means any allegation of misconduct or incapacity of a lawyer or misconduct or incident of unauthorized practice of law brought to the attention of the state bar.
4. "Committee" means the Attorney Discipline Probable Cause Committee of the Supreme Court of Arizona.
5. "Complainant" means a person who initiates a charge or later joins in a charge to the state bar against a non-lawyer regarding the unauthorized practice of law. The state bar or any bar counsel may be a complainant.
6. "Complaint" means a formal complaint prepared and filed in the superior court pursuant to these rules.
7. "Court" means Supreme Court of Arizona.
8. "Costs" means all sums taxable as such in a civil action.
9. "Expenses" means all obligations in money, other than costs, necessarily incurred by the state bar in the performance of their duties under these rules. Expenses shall include, but are not limited to, administrative expenses, necessary expenses of bar counsel or staff, charges of expert witnesses, charges of ~~court~~

certified reporters and authorized transcribers and all other direct, provable expenses.

10. “Order” means an order signed by the superior court or the supreme court in unauthorized practice of law matters.

11. “Record” means the complaint and other documents that commence formal unauthorized practice of law proceedings, and every later-filed document or exhibit.

12. “Respondent” is any person subject to the jurisdiction of the court against whom a charge is received for violation of these rules.

13. “State bar” means the State Bar of Arizona created by rule of this court.

14. “State bar file” means the original of every document, recording and transcript of testimony or exhibit created or received by the state bar in relation to an unauthorized practice of law proceeding, but shall not include work product of bar counsel and working files of state bar staff.

15. “Unauthorized practice of law counsel” means staff or bar counsel employed by the state bar appointed to represent the state bar in unauthorized practice of law proceedings.

16. “Unauthorized practice of law proceeding” means any action involving a respondent pursuant to the rules relating to the unauthorized practice of law.

## **78. Initial Proceedings**

(a) No change

**(b) Screening and Investigation.** Upon the commencement of an unauthorized practice of law proceeding against a respondent, the matter shall proceed as provided in this section.

1. *Screening.* Unauthorized practice of law counsel shall evaluate all information coming to his or her attention, in any form, by charge or otherwise alleging the respondent engaged in unauthorized practice of law. If the allegations, if true, would not constitute unauthorized practice of law under these rules, the matter shall be dismissed. If the information alleges facts which, if true, would constitute unauthorized practice of law, unauthorized practice of law counsel shall conduct an investigation.

2. *Investigation.* All investigations shall be conducted by unauthorized practice of law counsel, volunteer bar counsel, or staff investigators. Unauthorized practice of law counsel may request information through an investigative subpoena pursuant to Rule 78(b)(4). Following an investigation, unauthorized practice of law counsel may dismiss the matter; enter into a consent to cease and desist agreement with the

respondent pursuant to Rule 78(c); or file a complaint in superior court seeking injunctive relief, assessment of costs and expenses, and restitution. Unauthorized practice of law counsel shall not commence a superior court proceeding until the respondent is afforded an opportunity to respond in writing to the charge. Respondent shall have twenty days from notice of the request for information to respond.

3. *Failure of Respondent to Provide Information; Deposition.* When a respondent has failed to comply with any request for information made pursuant to these rules for more than thirty days, unauthorized practice of law counsel may notify respondent that failure to so comply within ten days may necessitate the taking of the deposition of the respondent pursuant to subpoena.

A. *Venue.* Any deposition conducted after the expiration of that ten day period and necessitated by the continued failure to cooperate by the respondent may be conducted at any place within the State of Arizona.

B. *Imposition of Costs.* When a respondent's failure to cooperate results in a deposition being conducted pursuant to the preceding subsection (b)(3)(A), the respondent shall be liable for the actual costs of conducting the deposition, including but not limited to service fees, certified ~~court~~-reporter fees, travel expenses and the cost of transcribing the deposition, regardless of the ultimate disposition of the unauthorized practice of law proceeding. Upon application of chief bar counsel to the committee, itemizing the costs and setting forth the reasons necessitating the deposition, and after giving the respondent ten days to respond, the committee shall, by order, assess such costs as appear appropriate against the respondent. An order assessing costs under this rule may be appealed to the superior court.

4. *Investigative Subpoenas.* During the course of an investigation and prior to the filing of a complaint, unauthorized practice of law counsel may obtain issuance of a subpoena to compel the attendance of witnesses, the production of pertinent books, papers and documents, and answers to written interrogatories, by filing a written request with the chief bar counsel or the chair or vice-chair of the committee. A copy of the request, which shall contain a statement of facts to support the requested subpoena, shall be provided to respondent or respondent's counsel, if represented. Upon receipt of a request for subpoena, a party may, within five days of service by first class mail, file a written objection with the committee. The committee may rule on the objection without oral argument.

5. *Dismissal by Unauthorized Practice of Law Counsel.* After conducting an investigation, unauthorized practice of law counsel may dismiss an unauthorized practice of law proceeding if there is no probable cause to determine that unauthorized practice of law occurred. Unauthorized practice of law counsel shall provide complainants with a right-to-sue letter upon dismissal of the charge.

(c) No change

## **125. Defining Minute Entry, Order, Ruling, and Notice; Party Responsibility**

**(a) Minute entry.** A minute entry is the memorialization, electronic or otherwise, either by form or narrative of events occurring during a court proceeding or of matters required to be performed by statute or rule. It is not intended to be a verbatim record of the court proceeding. A court proceeding includes those matters heard in chambers when one or more parties are present or represented by counsel. In addition to the date and starting and ending times of a proceeding and the identity of the certified court-reporter, alternative recording method and operator, or the absence thereof, a minute entry shall include all official acts occurring during the proceeding, which may consist of any or all of the following as applicable:

- (1) nature of the hearing;
- (2) appearances of counsel and parties;
- (3) identification and admission of exhibits;
- (4) administration of oaths and to whom administered;
- (5) names of witnesses who are called to testify;
- (6) parties' motions;
- (7) findings of fact and conclusions of law by the court as required by law or rule;
- (8) court rulings, orders, decisions and notices to the parties made in the course of the proceeding;
- (9) verdicts; and/or
- (10) any other matter directed by the court.

Nothing in this rule shall be read to require minute entries in any proceeding or to inhibit innovations or programs that would eliminate minute entries.

**(b) through (e)** No change

## **Arizona Rules of Civil Appellate Procedure**

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

**(a) through (e)** No change

**(f) Preparation of the Record on Appeal.**

(1) *Index.* The superior court clerk must prepare an index of the record and transmit the index and the superior court's record to the appellate court within 5 business days after the notice of appeal is filed.

(2) *Transcripts; Stipulated Record.*

(A) The appellant must promptly order and ask the ~~court~~-certified reporter or authorized transcriber to expedite the preparation of any transcripts necessary for determination of the appeal.

(B) No later than one business day after filing the notice of appeal in the superior court, the appellant must notify every other party of the portions of every transcript of court proceedings that the appellant intends to include in the record on appeal. If any other party considers a transcript of additional portions of the proceedings to be necessary, that party must notify the appellant and all other parties within one business day of the additional portions to be included in the record on appeal. If the appellant declines to order those additional portions, that other party may order them, or may instead request an appropriate order from the superior court judge who entered the judgment.

(C) The party that orders a transcript must make payment arrangements with the ~~court~~-certified reporter or authorized transcriber, and upon receipt of the transcript, must promptly file it with the appellate court and serve other parties with a copy.

(D) If necessary, a party may request the appellate court to order expedited preparation of the record.

(E) In lieu of transcripts, the parties may agree on a stipulated record and submit copies of the stipulated record to the appellate court.

(g) through (j) No change

## 11. The Record on Appeal

(a) No change

**(b) Transcripts of Oral Proceedings.** A transcript of an oral proceeding in the superior court must be prepared by a certified ~~court~~-reporter or by an authorized transcriber. A party that wants the record on appeal to include a transcript of an oral proceeding that was not previously filed as a part of 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 the proceeding directly from an authorized transcriber. The superior court must furnish the transcriber with a copy of the designated electronic recording upon receipt of a notice from the transcriber that the transcriber has reached 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 and Other Parties' Transcript Designations.**

(1) *What to Order.*

(A) The appellant must order transcripts of superior court proceedings not already in the official record that the appellant deems necessary for proper consideration of the issues on appeal.

(B) 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 transcripts of all proceedings containing evidence relevant to that judgment, finding or conclusion.

(C) A complete transcript of superior court proceedings does not need to include juror qualifications, jury impaneling, opening statements, or argument of counsel to the jury, unless appellant will raise an issue concerning one of those proceedings.

(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 is later.

(3) *Notice of Transcript Order and Statement of Issues on Appeal.* Within 15 days after filing the notice of appeal, or within 15 days after entry of an order disposing of the last timely remaining motion under Rule 9(e), whichever is later, the appellant must file in the superior court and serve on the other parties the following:

(A) A notice of transcript order that either: (i) states that the appellant has ordered a complete transcript of superior court proceedings; (ii) identifies the particular proceedings for which the appellant has ordered transcripts; or (iii) states that the appellant has not ordered any transcripts; and

(B) If the appellant orders less than a complete transcript of superior court proceedings, a statement of the issues that the appellant intends to raise on appeal.

(4) *Designation of Additional Transcripts; Notice of Intention Not to Order; Response.*

(A) Designation of Additional Transcripts. If another party considers a transcript of a proceeding necessary for proper consideration of the issues on appeal, and if the appellant has not ordered the transcript, the other party must file in the superior court, and serve on the appellant and all other parties, a designation of the additional transcript as part of the record on appeal. This designation must be filed and served within 10 days after service of the appellant's notice and statement under Rule 11(c)(3).

(B) Notice of Intention Not to Order. If the appellant does not intend to order a transcript designated by another party, the appellant must file in the superior court and serve on the other parties a notice stating that intention. This notice must be filed and served within 5 days after the service of a designation under Rule 11(c)(4)(A). If the appellant does not timely file and serve such a notice of intention, the appellant must order the transcript designated by the other party.

(C) Response to a Notice of Intention Not to Order. If the appellant timely files and serves a notice of intention not to order under Rule 11(c)(4)(B), the party that designated the transcript must respond within 5 days by:

(i) Filing and serving a notice withdrawing the designation;

(ii) Ordering the designated transcript, making arrangements for payment under Rule 11(c)(5), and filing and serving a notice identifying the transcript that was ordered; or

(iii) Filing a motion in the superior court for an order that would require the appellant to order, and to pay for, the designated transcript. The superior court may enter such an order upon a finding that it is in the interests of justice.

(5) *Payment*. When 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.

(6) *Cross-Appellant*. When used in this Rule 11(c), the term “appellant” includes a cross-appellant, and the term “notice of appeal” includes a notice of cross-appeal.

(d) through (h) No change

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

(a) through (c) No change

### **(d) Delivery and Filing of Transcripts.**

(1) *Delivery and Filing*. If the ordering party has made payment, within 30 days after the date of a party's order the ~~court~~-certified reporter or authorized transcriber must provide the ordering party with a certified electronic transcript, or with a

certified paper transcript if one was requested by the ordering party. Within 5 days after receipt of a certified transcript, the ordering party must file it with the appellate clerk.

(2) *Extension of Time.* If a reporter or transcriber cannot complete a transcript within 30 days after a party's order, the ordering party may request the appellate clerk to grant additional time for the reporter or transcriber to provide it. Under Rule 15(e)(1), the unavailability of a transcript may be a basis for an extension of time to file a brief.

(3) *Service on Other Parties.* Within 5 days after receipt of a certified transcript from the reporter or transcriber, the ordering party must serve a copy of the transcript on all other parties. An ordering party that receives an electronic transcript must serve the transcript in either electronic or paper format, as requested by the other parties.

(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) to include additional transcripts of superior court proceedings in the record on appeal.

## **Rules of Procedure for Direct Appeals from Decisions of the Corporation Commission to the Arizona Court of Appeals**

### **7. Record on Direct Appeal of Commission Decisions or Orders**

(a) through (e) No change

**(f) Transcript Defined; Several Appeals; Inability to Provide Timely Transcript.** “Transcript” for purposes of this rule shall refer to a ~~reporter's transcript prepared by a certified reporter or authorized transcriber~~. When more than one direct appeal is taken from the same Commission decision, a single transcript shall be prepared. If a transcript cannot be obtained within the time limitations provided in this rule for transmission of the Commission record, application for relief may be made by the Commission to the Court of Appeals.

(g) No change

## **Rules of Procedure for Direct Appeals from Decisions of the Governing Bodies of Public Power Entities**

## **7. Record on Direct Appeal of Decisions or Orders**

(a) through (e) No change

**(f) Transcript Defined; Several Appeals; Inability to Provide Timely Transcript.** “Transcript” for purposes of this rule shall refer to a ~~reporter's transcript prepared by a certified reporter or authorized transcriber~~. When more than one direct appeal is taken from the same Governing Body decision, a single transcript shall be prepared. If a transcript cannot be obtained within the time limitations provided in this rule for transmission of the record, application for relief may be made by the Governing Body to the Court of Appeals.

(g) No change

## **Arizona Rules of Family Law Procedure**

### **8. Telephonic Appearances and Testimony**

(a) No change

**(b) Appearance of a Party at a Non-Evidentiary Proceeding.** The court may allow a party to appear telephonically at a non-evidentiary proceeding if each person will be audible to every other person participating in the proceeding, including the judge, and, if applicable, to the ~~court~~ certified reporter or an electronic recording system.

(c) through (f) No change

### **12. Court Interviews of Children**

(a) through (b) No change

**(c) Record of the Interview.**

(1) *Generally.* Unless the parties stipulate otherwise on the record or in writing, the court must record the interview, either by having a ~~court-certified~~ certified reporter transcribe it or by recording it ~~through another retrievable and perceivable by electronic-medium means~~. However, any interview conducted by a judicial officer must be recorded.

(2) *Sealing*. For good cause and after considering the child's best interests, the court may seal from the public all or part of the record of the interview.

(3) *Availability to the Parties*. The parties may stipulate that the court not provide them with a record of the interview. If a party makes a request for recording, the court must make the record available to the parties not later than 14 days before the hearing at which the court will consider the interview, unless the court finds good cause for a different deadline.

(d) No change

## **18. Preserving a Recording of a Court Proceeding**

(a) No change

(b) **Transcription**. If a ~~court-certified~~ reporter's verbatim recording will be transcribed, the ~~court-certified~~ reporter who made the recording must be given the first opportunity to make the transcription, unless that ~~court-certified~~ reporter no longer serves in that position or is unavailable for any other reason.

## **57. Depositions by Oral Examination**

(a) No change

(b) **Notice of a Deposition; Method of Recording; Deposition by Remote Means; Deposition of an Entity; Other Formal Requirements**.

(1) *Notice Generally*. Unless all parties agree or the court orders otherwise, a party who wants to depose a person must serve written notice to every other party at least 10 days before the date of the deposition. The notice must state the date, time, and place of the deposition and, if known, the deponent's name and address. If the deponent's name is unknown, the notice must provide a general description sufficient to identify the person or the particular class or group to which the person belongs.

(2) *Producing Materials*. If a subpoena for documents, electronically stored information, or tangible things has been or will be served on the deponent, the materials designated for production in the subpoena must be listed in the deposition notice or in an attachment to the notice. A deposition notice to a deponent who is a party to the action may be accompanied by a separate request under Rule 62 to produce documents, electronically stored information, or tangible things at the deposition. The procedures under Rule 62 apply to any such request.

(3) *Method of Recording.*

(A) Permitted Methods. Unless all parties agree or the court orders otherwise, testimony under oath or affirmation must be recorded by a certified reporter and in addition may be recorded by audio or audiovisual means.

(B) Notice of Method of Recording. With at least two days' written notice to the deponent and other parties, any party may designate another method for recording the testimony in addition to a certified reporter. Unless the parties agree or the court orders otherwise, that party bears the expense of the additional recording.

(C) Transcription. Any party may request that the testimony be transcribed. If the testimony is transcribed, the party who originally noticed the deposition is responsible for the cost of the original transcript. Any other party may, at its expense, arrange to receive a certified copy of the transcript.

(4) *By Remote Means.* The parties may agree, or the court may order that a deposition be taken by telephone or other remote means. The deposition takes place where the deponent answers the questions, but an Arizona certified ~~court~~ reporter may record the testimony in Arizona. If the deponent is not in the officer's physical presence, the officer may nonetheless place the deponent under oath or affirmation with the same force and effect as if the deponent was in the officer's physical presence.

(5) *Notice or Subpoena Directed to an Entity.* In a deposition notice or subpoena, a party may name as the deponent a public or private corporation, a limited liability company, a partnership, an association, a governmental agency, or other entity, and must then describe with reasonable particularity the matters for examination. The named entity must then designate one or more officers, directors, managing agents, or other persons who consent to testify on its behalf. If the entity designates more than one person to testify, it must set out the matters on which each designated person will testify. Each designated person must testify about information known or reasonably available to the entity. This subpart does not preclude a deposition by any other procedure allowed by these rules.

**(c) Examination and Cross-Examination; Record of the Examination; Objections; Conferences Between Deponent and Counsel.**

(1) *Examination and Cross-Examination.* The examination and cross-examination of a deponent must proceed as they would at trial under the Arizona Rules of Evidence including Rule 615. Parties may not make evidentiary objections, including relevance objections. Any party not present within 30 minutes after the time specified in the notice of deposition waives any objection that the deposition was taken without the party's presence. After putting the deponent under oath or affirmation, the certified ~~court~~-reporter personally--or a person acting in the

presence and under the direction of the officer--must record the testimony by the method(s) designated under Rule 57(b)(3).

(2) *Objections.* A certified ~~court~~ reporter must note on the record any objection made during the deposition--whether to evidence, to a party's, deponent's, or counsel's conduct, to the officer's qualifications, to the manner of taking the deposition, or to any other aspect of the deposition. An objection must be stated concisely, in a nonargumentative manner, and without suggesting an answer to the deponent. Unless requested by the person who asked the question, an objecting person must not specify the defect in the form of a question or answer. Counsel may instruct a deponent not to answer--or a deponent may refuse to answer--only when necessary to preserve a privilege, to enforce a limit ordered by the court, or to present a motion under Rule 57(d)(3). Otherwise, the deponent must answer, and the testimony is taken subject to any objection.

(3) *Conferences Between Deponent and Counsel.* The deponent and his or her counsel may not engage in continuous and unwarranted conferences off the record during the deposition. Unless necessary to preserve a privilege, the deponent and his or her counsel may not confer off the record while a question is pending.

(d) through (g) No change

## **69. Binding Agreements**

(a) **Validity.** An agreement between the parties is valid and binding on the parties if:

- (1) the agreement is in writing and signed by the parties personally or by counsel on a party's behalf;
- (2) the agreement's terms are stated on the record before a judge, commissioner, judge pro tempore, or ~~court~~ certified reporter; or
- (3) the agreement's terms are stated in an audio recording made before a mediator or a settlement conference officer appointed by the court.

(b) through (c) No change

## **73. Family Law Conference Officer**

(a) through (b) No change

(c) **Procedures.**

(1) *Conducting a Conference.* The conference officer should conduct the proceedings in an informal manner but must give the parties an opportunity to present their positions. The conference officer may record the proceedings by ~~audiotape~~ electronic means or by a ~~court-certified~~ reporter. A party represented by an attorney has the right to have the attorney present at the conference.

(2) *Agreements.* If the parties agree on issues raised during the conference, the conference officer may prepare a stipulation, consent decree, consent judgment, written agreement, or order for signature by the parties or their attorneys. If the parties are unable to agree on all issues, the conference officer may assist the parties in preparing a partial agreement and any documents necessary to effectuate that agreement. The conference officer must forward these documents to the assigned judge for approval and signature.

(3) *Exceptions.* A conference officer may not conduct a hearing required by statute, including a denial of parenting time, license suspension, UCCJEA, or establishment or modification of legal decision-making.

(d) No change

## **Arizona Rules of Protective Order Procedure**

### **18. Record of Hearings**

A judicial officer must cause all contested protective order hearings and, where practicable, all *ex parte* hearings to be recorded electronically or by a ~~court-certified~~ reporter. An appeal from a contested hearing that was not electronically recorded or otherwise reported results automatically in a new hearing in the original trial court.

## **Arizona Rules of Probate Procedure**

### **12. Telephonic and Video Attendance and Testimony**

(a) No change

**(b) When Permitted.** Parties and their attorneys are expected to appear in open court for court proceedings unless the court, in its discretion, permits telephonic attendance under this rule. The court may allow a person to telephonically attend, or testify at, a proceeding if both of the following are true:

(1) the person can be heard by every other person participating in the proceeding, including the judicial officer and, if applicable, the ~~court~~-certified reporter or an electronic recording system; and

(2) no party will be unfairly prejudiced by the telephonic attendance or testimony.

(c) through (h) No change

## **22. Settlement Conference**

(a) through (d) No change

(e) **Record.** Settlement discussions are not recorded by a ~~court~~-certified reporter or an electronic recording system. If the parties reach a settlement, the terms of the settlement must either be placed on the record and entered in the minutes or be included in a writing signed by the parties.

(f) through (g) No change

## **Rules of Procedure for the Juvenile Court**

### **1. Applicability; Definitions; Required Format of Stipulations, Motions and Orders**

(A) through (B) No change

(C) For the purposes of these rules, an “authorized transcriber” is a certified ~~court~~ reporter or a transcriber under contract with an Arizona court.

(D) No change

### **81. Consent to Adopt**

(A) No change

(B) **Procedure.** At the hearing, the person seeking to give consent is responsible for the following:

1. Providing the court with proof of identification which shall include a photograph of the person so that the court can verify the identity of the person before taking a consent to adopt;
2. Making arrangements for the presence of a certified ~~court~~-reporter at the hearing if one is required to effectuate an out-of-state adoption; and
3. Providing the court with copies of the consents for signature if required, which shall include an additional copy for the court. All copies for signature shall be accompanied by self-addressed, stamped envelopes if the person consenting will request that the court mail the consents to the state where the adoption will occur.

(C) through (D) No change

#### **104. Time Within Which an Appeal May be Taken and Notice Thereof; Preparation of Certified Transcript and Record on Appeal**

(A) through (B) No change

(C)(1) Within two business days following the filing of a notice of appeal, the clerk of the superior court shall serve copies of the notice of appeal on all parties or their counsel; on each certified ~~court~~-reporter who reported any juvenile court proceeding that is part of the certified transcript as defined by subsection D.2. of this rule or the court's designated transcript coordinator, if the record was made by electronic or other means, and on the clerk of the court of appeals. The clerk of the superior court shall include with the copy of the notice of appeal served on the clerk of the court of appeals a copy of the order from which the appeal is taken and the names of the persons who were sent a copy of the notice of appeal.

(2) No later than 10 calendar days after the clerk of the superior court has served copies of the notice of appeal pursuant to subsection (C)(1) of this rule, any party to the proceeding from which the appeal arises or any fiduciary who appeared in the proceeding on behalf of a party thereto may file with the clerk of the superior court and serve on all persons on whom service was made under subsection (C)(1) of this rule a notice stating that the party or fiduciary does not intend to participate actively in the appeal and instead adopts and agrees in advance to be bound by the appellate positions, filings, representations, actions, and omissions of another party or parties, who shall be specifically identified. A notice under this subsection may not be used or relied upon as a substitute for a notice of appeal, notice of cross-appeal, petition for review, or cross-petition for review. By filing a notice under this subsection, a party or fiduciary does not waive the right to continue to receive service of orders, notices, or other documents issued by the juvenile court or the

appellate court, or motions, briefs, notices, or other documents filed by any other party in connection with the appeal. Filing a notice under this subsection does not relieve a party or fiduciary of the obligation to serve upon the remaining parties, or other persons or entities entitled by law or court rule to receive them, any motions, briefs, notices, or other documents filed by the party or fiduciary in the juvenile court or the appellate court in connection with the appeal.

**(D)** No change

**(E)** No later than five days after filing the notice of appeal the appellant may file with the clerk of the superior court and serve a pleading entitled “designation of record” (1) requesting that the clerk of the superior court add to the record on appeal specifically identified subpoenas or praecipes, or specifically identified studies, reports or medical or psychological evaluations, or compilations of such studies, reports or evaluations, prepared as required by statute, court rule or order for the use of the juvenile court in the proceedings resulting directly or indirectly in the order from which the appeal is taken and not otherwise part of the record; (2) requesting that the clerk of the superior court delete from the record specifically identified items otherwise automatically included in the record on appeal; and (3) requesting that one or more certified ~~court~~ reporters or the court's designated transcript coordinator, if the record was made by electronic or other means, add to the transcript any proceeding or part thereof not automatically included, and to exclude from the transcript any portion thereof otherwise automatically included. The appellant shall serve the designation of record on all parties, on each ~~court~~ certified reporter who reported a designated portion of the proceedings, and on the court's designated transcript coordinator, if the record was made by electronic or other means.

**(F)**(1) No later than 12 days after the filing of the notice of appeal any appellee may file with the clerk of the superior court and serve a pleading entitled “supplemental designation of record” (1) requesting that the clerk of the superior court add to the record on appeal specifically identified subpoenas or praecipes, or specifically identified studies, reports or medical or psychological evaluations, or compilations of such studies, reports or evaluations, prepared as required by statute, court rule, or order for the use of the juvenile court in the proceedings resulting directly or indirectly in the order from which the appeal is taken and not otherwise part of the record, or any specifically identified items deleted by appellant's designation of record; and (2) requesting that one or more ~~court~~ certified reporters or authorized transcribers add to the transcript any proceeding or part thereof deleted by appellant's designation of record or not automatically part

of the transcript as defined in Rule 104(D)(2). The supplemental designation of record shall be served on all parties and on each affected ~~court~~-certified reporter and authorized transcriber.

(2) If any dispute arises about whether the record discloses what actually occurred in the juvenile court, it shall be submitted to and resolved by the juvenile court. If anything material to any party to the appeal is omitted from or misstated in the record, the parties by stipulation, the juvenile court, either before or after the record is transmitted to the appellate court, or the appellate court on motion or on its own initiative, may direct that the omission or misstatement be corrected, and if necessary that a supplemental record be certified and transmitted. All other questions concerning the form and content of the record shall be presented to the appellate court.

(G) No change

(H) The ~~court~~-certified reporter or reporters or authorized transcribers shall prepare the original certified transcript and one copy for each party to the appeal who has not filed a notice pursuant to subsection C.2. of this rule promptly upon receiving a notice of appeal filed by a governmental entity or a notice of appeal stating that the appellant was proceeding with appointed counsel in the juvenile court when the final order that is the subject of the appeal was filed.

(I) No later than five days after the filing of the notice of appeal or five days after the denial of a request to proceed with appointed counsel, an appellant who is not proceeding with appointed counsel shall make arrangements with the certified ~~court~~-reporter or authorized transcriber to pay for the transcript. The certified ~~court~~ reporter or authorized transcriber shall immediately notify the appellate court in writing if an appellant fails to make satisfactory arrangements within the prescribed time. When satisfactory payment arrangements are made, the certified ~~court~~-reporter or authorized transcriber shall promptly prepare the certified original transcript and one copy for each party to the appeal who has not filed a notice pursuant to subsection C.2. of this rule.

(J) No change

## **105. Docketing of Appeal; Transmission and Filing of Record on Appeal; Filings in Juvenile Court after Commencement of Appeal**

(A) No change

(B) The ~~court~~-certified reporter or reporters or authorized transcriber shall file the completed certified transcript with the clerk of the court of appeals, marked with the number assigned to the appeal by the court of appeals, no later than

- (1) 30 days after the filing of a notice of appeal by a governmental agency or of a notice of appeal stating that appellant proceeded with appointed counsel in the juvenile court when the final order that is the subject of the appeal was filed, or
- (2) 30 days after service of an order of the presiding judge of the juvenile court appointing counsel to represent the appellant on appeal, or
- (3) 30 days after the appellant makes satisfactory arrangements to pay for the certified transcript, whichever event first occurs. At the time of filing the certified transcript, the ~~court~~-certified reporter or reporters or authorized transcriber shall serve one copy of the certified transcript on each appellant and each appellee who has not filed a notice pursuant to 104(C)(2). The ~~court~~-certified reporter or reporters or authorized transcriber shall contemporaneously file notice of service of the certified transcript with the appellate court, reflecting when, upon whom, and by what means service was made. Service of certified transcript copies shall be made in the manner prescribed by any applicable local rule or administrative order, or otherwise in accordance with the prevailing custom in the juvenile court from which the appeal originates.

(C) If the certified transcript is not timely filed with the clerk of the court of appeals, the noncomplying ~~court~~-certified reporter or reporters or authorized transcriber shall be subject to such orders or sanctions as the court of appeals deems appropriate in its discretion.

(D) through (G) No change

## **106. Briefing, Consideration and Disposition in the Court of Appeals**

(A) through (D) No change

(E) The appellate court, upon motion of the appellee, or upon its own initiative after notice to all parties, may dismiss an appeal for any legal cause including want of prosecution, unless an affected party makes a showing of good cause why the appeal should not be dismissed. The clerk of the court of appeals shall give prompt notice of dismissal of an appeal to the parties, the clerk of the superior court, and if the certified transcript has not yet been filed, to the appropriate ~~court~~-certified reporter or reporters or the court's designated transcript coordinator.

(F) through (H) No change

## **Superior Court Rules of Appellate Procedure—Civil**

### **1. Scope of Rules; Definitions**

(a) No change

(b) All appeals from the limited jurisdiction courts shall be on the record. The record may be made by a certified ~~court~~-reporter or other electronic means approved by the Supreme Court. A trial de novo shall not be granted when a party who had opportunity to request that a verbatim record of the limited jurisdiction court proceedings be made, failed to do so.

(c) through (g) No change

(h) For the purposes of these rules, an “authorized transcriber” is a certified ~~court~~-reporter or a transcriber under contract with an Arizona court.

## **Superior Court Rules of Appellate Procedure—Criminal**

### **1. Scope; Definitions**

(a) through (e) No change

(f) For the purposes of these rules, an “authorized transcriber” is a certified ~~court~~-reporter or a transcriber under contract with an Arizona court.

### **2. Record of Proceedings**

(a) A record in the trial court shall be made by a certified ~~court~~-reporter or other electronic means approved by the Supreme Court.

(b) through (d) No change

## **Rule of Procedure for Judicial Review of Administrative Decisions**

## 5. Record on Appeal

(a) through (c) No change

**(d) Preparation and Certification of Transcript.** The transcript of the administrative hearing, or designated portions thereof, must be included in the record on appeal if requested by appellant in the notice of appeal or in writing filed by any other party within 10 days after that party is served with a notice of appeal.

1. A party requesting a transcript not already contained in the administrative record of a hearing stenographically reported by a ~~court~~-certified reporter must make satisfactory arrangements with the reporter for payment of the cost of the transcript. That party must file the original transcript with the superior court within 30 days of the request.

2. A party requesting a transcript not already contained in the administrative record of a hearing created by recording must obtain a copy of the tape recording from the agency that conducted the hearing and cause a written transcript to be prepared at the requesting party's expense. The requesting party must file the transcript with the clerk of the superior court within 30 days of the request.

(e) No change

## Justice Court Rules of Civil Procedure

### 123. Depositions

**(a) Definition; before whom a deposition may be taken.** A deposition is an opportunity to question another party or a witness while the other party or witness is under oath. A deposition is taken out of court before an officer authorized to administer oaths, without a judge present. A court clerk or a certified ~~court~~-reporter in Arizona may administer oaths. An out-of-state deposition may be taken before an officer who is authorized to administer an oath by the law or by a court of that state. A deposition may be taken in a foreign country before an officer authorized to administer an oath by the law of the place where the examination is held.

Questions and answers at a deposition are recorded by a certified ~~court~~-reporter, or by another method that is agreed to by the parties. A deposition may not be recorded by a party, by a person who is a relative, a friend, or an employee of a party, by an attorney for a party or an employee or relative of an attorney for a party, or by a person who is financially interested in the lawsuit. [ARCP 28(a)-(c)]

(b) No change

**(c) Notice of deposition; deposition of a representative of a public or private entity.** At least ten (10) days before the date of the deposition, a notice of deposition must be provided to (“served on”) (1) the person who will be deposed and (2) the other parties to the lawsuit. The notice of deposition must state the name of the person who will be deposed; the location of the deposition; the date and starting time of the deposition; and the name of the person who will record the deposition and the method of recording. When a party deposes another party, a notice of deposition must also include the following language:

*“The Justice Court Rules of Civil Procedure allow a party to take the deposition of another party. A deposition is an opportunity to ask questions to another person while the person who is deposed is under oath. A deposition takes place out of court and a judge is not present. A deposition is recorded by a ~~court~~ certified reporter or by another method agreed to by the parties. A deposition may not take longer than four (4) hours, unless agreed to by the parties or unless ordered by the court.*

*“If you fail to appear for your deposition, the party who sent this notice may file a motion asking that the court order you to appear. If the court orders you to appear for your deposition, the court may also order that you pay the expenses, including attorneys' fees, incurred by the other party as a result of your failure to appear. If you fail to appear for your deposition after the court has ordered you to appear, the court may impose additional penalties against you, including an order that you may not introduce evidence of some or all of your claims or defenses in this lawsuit; if you are a plaintiff, that your lawsuit be dismissed; or if you are a defendant, that your answer be stricken and that judgment be entered against you.”*

A notice of deposition may be served on a public or private entity, such as a governmental body or agency, a corporation, or a partnership, whether or not the entity is a party to the lawsuit, and the notice may describe with reasonable specificity the topics that will be asked about during the deposition. The entity must then designate one or more of its officers, directors, or employees who have knowledge of the specified topics and who will appear at the deposition and testify concerning those subjects. [ARCP 30(b), (d)]

**d. Procedure.** The attendance of a witness who is not a party at a deposition may be required by serving the witness with a subpoena, as provided in Rule 137(b). A

party may be required to produce documents at a deposition pursuant to Rule 125. The party requesting the deposition must pay the cost of recording, unless the court orders or the parties agree otherwise.

The deposition must start within thirty (30) minutes of the time provided in the notice, and any party not present within thirty (30) minutes of the time provided in the notice of deposition waives any objection to the deposition starting without the party's presence. The officer specified in section (a) of this rule must administer the oath to the person who is deposed before the start of testimony. If a deposition is recorded by means other than a certified ~~court~~-reporter, the person operating the recording equipment must be sworn to fully and fairly record the proceeding. The person or persons recording the deposition will note the starting and ending times of the deposition, and the times of any breaks during the deposition.

Any objections at a deposition, including objections to a specific question, will also be recorded, and evidence is taken subject to the objections. Objections to the form of a question, or to the responsiveness of an answer, must be concise, and must not suggest answers to the person being deposed. Continuous or unwarranted off-the-record conferences with the person being deposed, following questions and before answers, are not permitted, and this conduct is subject to penalties under Rule 127(d).

The ~~court-certified~~ reporter or other person recording the deposition must identify and maintain any exhibits used at the deposition, although copies of original exhibits may be substituted by agreement of the parties. Before concluding the deposition, the ~~court-certified~~ reporter or other recorder must ask the witness if the witness would like an opportunity to review the transcript or recording to affirm its accuracy, or if the witness waives that right. A witness who asks to review the transcript or recording will have thirty (30) days after notification that the transcript or recording is available to review and to submit a statement concerning any inaccuracy of the transcript or recording, and a statement submitted by the witness to the ~~court-certified~~ reporter or other recorder within that time must be included with the transcript or recording of the deposition.

Upon motion, the court may impose an appropriate penalty under Rule 127(d) against any party, attorney, or witness who engages in unreasonable, groundless, abusive or obstructionist conduct at a deposition, or against a party or attorney who takes a deposition in bad faith, or to annoy or embarrass the person being deposed.  
**[ARCP 30(b)-(d), 32(d)]**

(e) No change

## **Rules of Procedure for Eviction Actions**

### **11. Initial Appearance and Trial Procedures**

**(a) In General.** All proceedings in eviction actions shall be recorded, either through a recording device or by a ~~court~~-certified reporter. On the date and at the time set for the initial appearance, and after announcing the name of the plaintiff and the defendant, the court shall:

(1) Call the case, identify the parties and any attorneys or representatives present and ascertain that they are properly authorized to represent the parties to the action. As provided by Arizona Supreme Court Rule 31, no property manager or other agent shall be allowed to represent a party unless he or she is the property owner, a sub lessor entitled to possession, or an attorney licensed to practice law and in good standing in Arizona.

(2) State or summarize the material allegations contained in the complaint.

(3) Ask the defendant whether the defendant contests the allegations contained in the complaint.

**(b) through (e)** No change

Appendix B



Report and Recommendations of  
the Arizona Task Force to  
Supplement Keeping of the Record  
by Electronic Means

August 30, 2019

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# Arizona Task Force to Supplement Keeping of the Record by Electronic Means

## MEMBERS

**Honorable Samuel A. Thumma, Chair**  
Judge, Arizona Court of Appeals, Division One

**Honorable Pamela Gates**  
Superior Court of Arizona in Maricopa  
County

**Mr. Rolf Eckel**  
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**Mr. Bob James**  
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Court Project Specialist

**Ms. Amy Love, Legislative Liaison**  
Intergovernmental Relations

# Report and Recommendations of the Arizona Task Force to Supplement Keeping of the Record by Electronic Means

August 30, 2019

## EXECUTIVE SUMMARY

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**A** Creation and Charge of the Task Force  
Arizona Supreme Court Chief Justice Scott Bales issued Administrative Order No. 2019-49, establishing the Arizona Task Force to Supplement Keeping of the Record by Electronic Means, on May 21, 2019. Noting that Arizona, consistent with nationwide trends, is experiencing a shortage and unavailability of court reporters, the administrative order states “[t]his situation may require courts to reschedule or delay scheduling judicial proceedings, negatively impacting the ability to secure a speedy trial, hearing, or other resolution and ultimately delaying the administration of justice to the parties, victims, and all involved in the legal system broadly. The shortage also impacts court reporters’ ability to transcribe the proceedings in a timely manner.”

“Given these issues,” the administrative order continues, “electronic recording technology has been deployed in many Arizona courts to supplement the use of a court reporter in making a record of court proceedings. Use of electronic recording

*“The Task Force shall develop recommended changes to statutes, rules, and the Arizona Code of Judicial Administration to permit courts to create and maintain a complete and accurate court record electronically to supplement court reporters and to prevent delay in resolving disputes in the trial court and on appeal.”*

Administrative Order No. 2019-49 (“Establishment of the Task Force to Supplement Keeping of the Record by Electronic Means”)

technology is limited, however, by statutes and rules enacted at a time when such technology did not exist or was not available or dependable.”

In describing its purpose, the administrative order directs that “[t]he Task Force shall develop recommended changes to statutes, rules, and the Arizona Code of Judicial Administration to permit courts to create and maintain a complete and accurate court record electronically to supplement court reporters and to prevent delay in resolving disputes in the trial court and on appeal.” The task force is directed to consider the issues involved and to submit this report and “recommendations, together with recommended changes to statutes, rules, and the Arizona Code of Judicial Administration, by September 1, 2019 for circulation for comment and for presentation to the Arizona Judicial Council on October 24, 2019.”

### *Overview of this Report*

This report begins with a summary of the membership of the task force, the process used to develop this report and these recommendations, and a summary of the recommendations themselves. The report then provides background information considered by the task force on the topic, with additional details available on the task force’s website: <https://www.azcourts.gov/cscommittees/Task-Force-to-Supplement-Keeping-of-the-Record-by-Electronic-Means>. The report includes, at Appendix 2, possible changes to statutes, rules, and the Arizona Code of Judicial Administration (sometimes referred to as the ACJA).

### *The Task Force and the Task Force Process*

Members of the task force were selected, quite intentionally, to represent a wide variety of different perspectives. Members include an urban superior court judge; an appellate court judge; a rural county attorney; public and private court reporters, who also serve in leadership in the Arizona Court Reporters Association; rural and urban superior court administrators; an urban director of public defense services; an attorney in private practice; a representative of county management designated by the County Supervisors’ Association as well as staff support from the Arizona Administrative Office of the Courts (AOC). The intent was to make sure the task force included diverse perspectives in its work while keeping the number of members manageable.

The task force held three face-to-face meetings - June 25, 2019; August 1, 2019 and August 26, 2019 - and met by telephone on August 29, 2019. During these meetings, the task force learned about and discussed various issues, gathered and shared relevant information, considered approaches to use and recommendations to make, and then discussed and refined this report. These discussions included gathering and discussing

information about a wide variety of topics related to keeping the court record, with a particular focus on electronic recording. That effort prompts the structure of this report, which consists of three substantive sections: (1) possible changes to statutes, rules, and the Arizona Code of Judicial Administration to afford local superior courts in individual counties, through their presiding judges adopting policies and procedures, flexibility to create and maintain a complete and accurate court record electronically to supplement court reporters and prevent delay in resolving disputes in the trial court and on appeal; (2) efforts in Arizona to attract, retain and further enhance the reach and capacity of court reporters and (3) suggested best practices to apply when electronic recording is used to help ensure that courts continue to create and maintain a complete and accurate court record regardless of how the record is prepared.

### *Summary of Task Force Report and Recommendations*

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1. As directed by the administrative order, the task force developed possible changes to statutes, rules, and the Arizona Code of Judicial Administration to permit courts to create and maintain a complete and accurate court record electronically to supplement court reporters and to prevent delay in resolving disputes in the trial court and on appeal. These changes, which are addressed in more detail below, are attached as Appendix 2.

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2. Given the current shortage and unavailability of court reporters in Arizona, numerous efforts are underway to help attract, retain and further enhance the reach and capacity of court reporters. Regardless of whether changes to statutes, rules, and the ACJA are implemented, these efforts - which are discussed in more detail below - should be continued.

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3. Best practices for electronic recording need to be enhanced and communicated to help ensure that courts continue to create and maintain a complete and accurate court record regardless of how the record is prepared. The ACJA contains helpful policy guidance for such practices. But particularly if electronic recording is used to create the court record in new areas and new ways, those standards should be enhanced to account for such new use. Moreover, those standards regularly should be

evaluated, at set intervals, to ensure that they account for changes in technology and any expansion of use of electronic recording to create the court record to help ensure that a complete and accurate court record is created and maintained.

A more detailed description of the background and reasoning supporting these recommendations follows.

## DISCUSSION

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### Background

“Production and preservation of a record of proceedings in a court of record are fundamental functions of the Judicial Branch.” This introductory sentence from Administrative Order 2019-49 repeats what has been the case in Arizona since territorial days, and for far longer elsewhere. Court reporters have been a key component of producing and preserving records of legal proceedings.

In recent years, and increasingly, there has been a decrease in the number of court reporters resulting in significant vacancies. As one example, the 2018 Annual Report of the South Carolina Judicial Branch noted: “South Carolina is one of many states experiencing a shortage of court reporters. This established trend has been noted by industry experts for quite some time, and the South Carolina Judicial Branch works diligently to minimize the impact of the shortage on court proceedings.”<sup>3</sup> Along with efforts to recruit and attract more court reporters, South Carolina has “incorporated digital recording as a

supplemental measure in select courtrooms.” South Carolina is not alone in these efforts; a National Center for State Courts (NCSC) survey revealed that, nationwide, many courts are using electronic recording to create the court record.

It is in this context that Arizona established the task force. The shortage and unavailability of court reporters in Arizona “may require courts to reschedule or delay scheduling judicial proceedings, negatively impacting the ability to secure a speedy trial, hearing, or other resolution and ultimately delaying the administration of justice to the parties, victims, and all involved in the legal system broadly. The shortage also impacts court reporters’ ability to transcribe the proceedings in a timely manner.”

The administrative order also notes that transcript production is “one of the major factors contributing to delay in resolving appeals. Transcript production, which is required before any briefing can occur on appeal, can take months, delaying all types of appeals, including those where critical liberty interests are involved, such as criminal appeals and termination of parental rights appeals.” These delays in transcript production

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<sup>3</sup> South Carolina Judicial Branch 2018 Annual Report at 8. See <https://www.sccourts.org/whatsnew/SOJ2019/2019SCJBAnnualReport.pdf>.

may be attributed to both court reporters and authorized transcribers.

Such delays are particularly significant where an individual is in custody awaiting resolution of criminal charges or, in juvenile court, a delinquency petition. But delays have a significant negative impact in other types of proceedings, including abuse and neglect (dependency) proceedings, where a child is in foster care pending resolution of the proceedings; family court matters (where child custody and the best interests of the child are cornerstone issues to be resolved) and in civil litigation, where resolution of a claim for damages may have enormous consequences to the parties.

To date, as noted in the administrative order, “[g]iven these issues, electronic recording technology has been deployed in many Arizona courts to supplement the use of a court reporter in making a record of court proceedings. Use of electronic recording technology is limited, however, by statutes and rules enacted at a time when such technology did not exist or was not available or dependable.” For these same reasons, courts are not afforded the flexibility, discretion, and authority to determine how the court record is made.

Along with the administrative order, the Arizona Supreme Court’s strategic

plan – “Justice for the Future Planning for Excellence 2019-2024” – echoes this same call. Goal 3 “Promoting Judicial Branch Excellence and Innovation” states the following in addressing “Keeping the Record:” “With a growing shortage of qualified court reporters at both the state and national level, courts are faced with the ever-increasing challenge of keeping an accurate record of court proceedings. Through emerging innovations, including digital recording and remote court reporting, we will take necessary steps to ensure courts continue to create a complete and accurate record for each and every case.” To achieve this goal, the strategic plan added a target to “[m]odernize statutes, rules, and the administrative code permitting courts to create and maintain a complete and accurate court record electronically to supplement court reporters and to reduce the time needed to produce a record and transcript for cases on appeal.”

This background and context provided the call to action for the task force.

#### *Task Force Meetings*

The task force met three times in person and once by telephone.

The first meeting on June 25, 2019 started with introductions, adoption of rules for conducting task force business, a discussion of the charge of the task force

and the timelines set forth in the administrative order. During this meeting, the task force learned more about the court reporter shortage nationwide but, in particular, in Arizona. A court reporter staffing survey illustrated the situation in the superior courts in Arizona's 15 counties. That survey revealed that five counties employ no court reporters. Of the remaining 10 counties, just two had no court reporter vacancies. All told, of the 132 authorized court reporter positions in these superior courts, 26.5 (or 20 percent) were vacant. The reported duration of those vacancies ranged from "1 Month," to "Continuous," to "5 years" and, in one county, "10 years."

This first meeting included a comparatively unstructured, open discussion of the issues involved from various perspectives. In the end, the task force identified several "to-do" items to investigate and report back at the next meeting, including: (1) circulating text of relevant statutes, rules, and portions of the ACJA; (2) obtaining additional information on the Request a Reporter program; (3) asking Mark Wilson, Certification and Licensing Division Director, to attend the next meeting to discuss court reporter licensing; (4) gathering information about what other states and jurisdictions may be doing in

addressing the issues; (5) surveying court reporter salaries in Arizona and (6) ensuring that court record retention schedules account for the work of the task force. During its work, the task force also learned that Arizona Revised Statutes section 12-224 governing, among other things, fees for transcripts, has not been updated since 1987, and the page rate has not been changed since the late 1970s.

After this first meeting, these "to-do" list items were researched and relevant information was provided to the task force in advance of, or at, the second meeting.

The second meeting on August 1, 2019 started with a recap of the prior meeting, including the charge of the administrative order. Director Mark Wilson presented, addressing court reporter licensure, as well as how new legislation regarding reciprocity may impact the court reporter licensing process, and answered questions from task force members.

The meeting then involved presentations from three different, but frequently overlapping, perspectives: (1) a national perspective; (2) a court reporter perspective and (3) a court management perspective. These thoughtful presentations included questions and suggestions from task force members and provided the foundation for a broader conversation about next steps for the task

force. At the close of this second meeting, a general consensus was discussed for the structure of this report and the next task force meetings were scheduled.

Between this second meeting and the third meeting on August 26, 2019, a first draft of this report was prepared (based on the discussions at the first two meetings) and circulated to the task force for review via email on August 8, 2019. The task force was asked to review that draft and provide suggestions and comments by close of business on August 19, 2019. Those comments were then incorporated into a second draft that was circulated to the task force on August 21, 2019, in anticipation of the third task force meeting on August 26, 2019.

This third in-person task force meeting focused largely on the concepts and text in the second draft report and recommendations. In response to a question raised at the August 1, 2019 meeting, the task force received information from Director Mark Wilson. In Arizona, certified reporters renew their certification every even year. In February 2018 there were 440 Arizona certified reporters at the time of renewal; 376 renewed, 53 did not renew and 11 went inactive. Currently, Arizona has 402 certified reporters. These numbers suggest that, during February 2018, 64 court reporters did not renew or went

inactive while since February 2018, 26 additional court reporters were certified.

At the end of this third in-person meeting, the task force approved, by a vote of 7-2, Section 2 (“Arizona Efforts to Attract, Retain and Further Enhance the Capacity of Court Reporters”) and Section 3 (“Suggested Best Practices When Electronic Recording is Used”) and related text, subject to the editorial prerogative to account for suggestions offered. Section 1 (“Possible Changes to Statutes, Rules, and the Arizona Code of Judicial Administration”) and Appendix 2 were then revised and recirculated on August 27, 2019 in advance of the last task force meeting.

The last task force meeting was held telephonically on August 29, 2019. The purpose of this meeting was to account for changes, suggestions and additions to the report discussed at the August 26, 2019 meeting. At this last meeting, the task force considered revised Section 1 and Appendix 2 recirculated on August 27, 2019. Additional changes to Appendix 2 were suggested and, after discussion, a motion was made and seconded to approve Appendix 2, with those additional changes.

That version of revised Appendix 2 would have required a written request to be made for grand jury proceedings to be transcribed. After discussion, a motion to

amend was made and seconded, and passed by a vote of 7-2, so that the motion to approve as amended did not include language in Appendix 2 changing the current requirement that a grand jury transcript be prepared where an indictment issues. After further discussion, the motion as amended passed by a vote of 6-3. After a discussion, a motion was made and seconded to approve Section 1 ("Possible Changes to Statutes, Rules, and the

Arizona Code of Judicial Administration") and related text, subject to the editorial prerogative to account for suggestions offered. That motion passed by a vote of 6-3. Revised versions of the documents were then circulated to task force members for any final proofreading issues later in the day.

This report and recommendations reflect the product of this deliberative process.

## Possible Changes to Statutes, Rules, and the Arizona Code of Judicial Administration

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Attached as Appendix 2 are changes, identified by the task force, to Arizona statutes, Arizona procedural rules, and the Arizona Code of Judicial Administration to permit courts to create and maintain a complete and accurate court record electronically to supplement court reporters and to prevent delay in resolving disputes in the trial court and on appeal. Appendix 2, which is intended to be comprehensive based on what the task force identified, is provided as directed by the administrative order.

In preparing Appendix 2, the task force considered numerous additional Arizona statutes, Arizona procedural rules and the ACJA. As a result of this consideration, the task force elected not to identify changes where at least one of the following applied: (1) the current provision already contemplated electronic recording in the discretion of the court; or (2) the current provision did not address the issue of how the verbatim record of a court proceeding is captured and preserved.

*Several limitations and caveats are essential to provide clarity about what Appendix 2 does and does not address.*

*First*, the changes in Appendix 2 deal with creating and maintaining a verbatim record of court proceedings. Unless arising in provisions that include both the judiciary and other governmental entities (such as agencies), these changes do not address law directing how a verbatim record is created and maintained in non-judicial proceedings, such as agencies or political subdivision proceedings.

*Second*, relatedly, the changes reflected in Appendix 2 do not address law directing how a verbatim record is created and maintained in court-adjacent proceedings such as a deposition.

*Third*, the changes reflected in Appendix 2 do not alter when a verbatim record of court proceedings must be created and maintained. Instead, the changes deal with what discretion a court has in deciding how (not whether) to create and maintain a verbatim record of court proceedings.

*Fourth*, if pursued and enacted, the changes reflected in Appendix 2 would provide a court additional discretion in deciding how to create and maintain a verbatim record of court proceedings. The changes do not direct or suggest how

a court should exercise discretion granted to it in deciding how to do so.

*Fifth*, consistent with the directives in the administrative order, Appendix 2 suggests changes that would afford courts discretion to determine how the verbatim record of court proceedings should be created and maintained in all instances, including instances where current law does not afford such discretion. *See* Ariz. R. Sup. Ct. 30(b)(3). Adopting such changes, particularly as they apply to “[g]rand jury proceedings” where no judicial officer is present, would implicate significant policy issues, which are beyond the scope of the charge of the task force, and quality control and training issues, some of which are addressed in the next part of this report.

*Finally, and to amplify on the prior paragraph, given the directive in the administrative order and the time and*

*deadline set for the task force, the issues discussed in this Report, and any resulting changes that may be pursued, implicate significant policy issues, which are beyond the scope of the charge of the task force.* The chair made this point throughout the work of the task force. Moreover, those policy issues were not the focus of the work of the task force. Instead, given the primary directive in the administrative order and the press of time, the task force focused on the important, but largely mechanical, task of identifying and capturing possible changes to statutes, rules, and the Arizona Code of Judicial Administration to permit courts to create and maintain a complete and accurate court record electronically to supplement court reporters and to prevent delay in resolving disputes in the trial court and on appeal.

## Arizona Efforts to Attract, Retain, and Further Enhance the Capacity of Court Reporters

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Nationwide efforts are underway to attract and recruit individuals to the court reporting profession to overcome the nationwide shortage. Two organizations in particular are making significant efforts in this area, namely the National Court Reporters Association (NCRA) and Project Steno.

In October 2016, NCRA launched an A to Z steno program,<sup>4</sup> launched online in 2018. This free program is open to anyone interested in learning the steno keyboard

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<sup>4</sup> <https://www.ncra.org/discoversteno>; <https://www.ncra.org/home/forms/learnsteno-a-to-z-intro-to-machine-shorthand-sign-up-form>, August 6, 2019.

once per week (three hours per session) for six to eight weeks. After those learning sessions, the program assists the individual with locating an educational institution the person can attend to become a court reporter.

More than 2,000 students have participated in the program in a comparatively short period of time. It is unclear, however, how many of these participants have gone on to seek to pursue a career in court reporting.

Project Steno is an organization formed in 2017. Its mission is to “promote the stenographic court reporting/captioning profession through social media and community outreach with the goal of building a robust pipeline of students into school and graduating them in two years.”<sup>5</sup>

Project Steno also offers a Basic Training program, similar to NCRA’s A to Z program. Participants who complete either the Basic Training Program or NCRA’s A to Z program are eligible for Project Steno’s tuition assistance. Project Steno partners with schools, provides coaching, and mentoring, and is working with the United States government to focus on recruiting military spouses into the court reporting profession.

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<sup>5</sup> <https://projectsteno.org/why-project-steno/>, August 6, 2019.

Project Steno also is present in vocational high schools and career educational programs. Over the past two years, the program has worked with high schools in four states and launched programs in high schools within these states.

The Arizona Court Reporters Association (ACRA) is taking action to expand court reporter services in Arizona. It has reinstated the Request a Reporter program, has notified its members and has notified outlying counties. This program allows counties to let ACRA know when there is a trial or other need for court reporting services that otherwise would be unmet. An email is sent by ACRA to its members and the need posted on ACRA’s Facebook page to try to secure a court reporter to provide services to meet that need.

Remote reporting also is a solution that ACRA referenced. This concept allows court reporters in different locations to provide contemporaneous reporting services. Remote video reporting is also currently in use in some Arizona courts.

In addition, ACRA is facilitating advertising to attract and retain court reporters in Arizona and providing transcription solutions.

Recent Arizona legislation, passed effective August 27, 2019, will allow

licensing reciprocity in Arizona, which includes court reporter licensing. This means that court reporters licensed in other states no longer have to pass the Registered Professional Reporter (RPR) licensing requirements for Arizona, which may be attractive to out-of-state court reporters seeking to relocate to Arizona. This legislation just became effective, meaning that it is too early to tell whether this reciprocity will result in more court reporters moving to Arizona. That said, given that there are approximately 400 certified court reporters in Arizona, even a small percentage increase in court reporters relocating to Arizona could have a significant benefit.

It is hoped that these significant efforts will yield results to lessen the shortage of court reporters in Arizona. Outside of Arizona, the shortage also is significant, with a stated unmet need for court reporters ranging from 5,000 - 6,000 nationwide. Court reporting schools have reported declining enrollments and 200 schools have closed in the last 20 years.

**Recommendations:**

1. Efforts should be made to encourage local community colleges to provide and expand court reporter programs.
2. Courts and court reporters are encouraged to work together to cover

courtroom calendars via workforce exchange, remote reporting from a dedicated location, utilizing the Request a Reporter program, etc.

3. Superior court administrators should ensure that licensing reciprocity information is included in job announcements and advertising.

4. Court reporters are encouraged to continue their community outreach and recruiting efforts.

\* \* \* \* \*

Along with these recommendations, the task force encourages efforts to ensure that the certification process for court reporters in Arizona be expedited as much as possible to avoid losing qualified candidates to other states during the process. Arizona has a stringent quality-control based certification process that is not shared by many other states. Although not suggesting any change to the showing required to obtain certification in Arizona, the expressed hope is that the time period required to consider applications for certification in Arizona is competitive with other states so that candidates do not receive certification more promptly in another state and decide to move there instead of moving to (or remaining in) Arizona.

Another suggestion discussed by the task force, and noted here, is to determine whether the time permitted for providing

trial transcripts for a court reporter might vary depending upon the number of trial days reported by that court reporter. To use a hypothetical, for transcript production, it may be that the rules should require a smaller number of days for a five-day trial than that for a 25-day trial.

In addition, the lack of prompt and timely notice to the court reporter(s) of the need for transcript(s), particularly for an appeal, is an issue that at times has caused transcript delay. Further addressing the processes involved to provide that notice, and ensuring that such notice is effective, could avoid such delay.

Finally, a task force member provided information about a California program that allows courts to appoint certified shorthand reporters to serve as official court reporter pro tempores when an official reporter is unavailable.<sup>6</sup> The task force encourages further research into this and other similar programs that provide these types of alternatives for consideration in Arizona.

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[http://www.lacourt.org/generalinfo/courtreporter/GI\\_R\\_E001.aspx](http://www.lacourt.org/generalinfo/courtreporter/GI_R_E001.aspx), August 27, 2019.

## Suggested Best Practices When Electronic Recording is Used

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Operation of a credible, reliable and accurate electronic recording (ER) program requires adoption of governing policies, procedures and a clear delineation of job responsibilities, both for court staff and transcription services. The Conference of State Court Administrators (COSCA) has advocated that courts “develop standards for topics including equipment, operation, security, storage, backup, retrieval, transcription and certification, redaction, retention, custody and public access.”<sup>7</sup>

To this end, the NCSC has published a comprehensive set of recommendations and minimum standards for digital recording programs, addressing the following areas:

- Governance, organization and structure;
- Ownership of the official record;
- Access to digital recordings;
- Oversight of digital recording monitors;
- Procedures and best practices;
- Signage;

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<sup>7</sup> Lee Suskin & Daniel J. Hall, “Making the Record Utilizing Digital Electronic Recording,” National Center for State Courts and State Justice Institute, September 2013, pg 6. See [https://www.ncsc.org/Services-and-Experts/Court-reengineering/~/\\_media/Files/PDF/Services%20and%20Experts/Court%20reengineering/09012013-making-the-digital-record.ashx](https://www.ncsc.org/Services-and-Experts/Court-reengineering/~/_media/Files/PDF/Services%20and%20Experts/Court%20reengineering/09012013-making-the-digital-record.ashx).

- Opening colloquy;
- Procedures for courtroom monitors;
- Procedures for attorneys and courtroom participants;
- Transcription and delivery of the record;
- Access to recordings;
- Preparation and distribution of the transcript;
- State court practices and rules on management of transcript production;
- Equipment and technology standards;
- Digital recording format standards;
- Digital recording system specifications;
- Courtroom equipment, electrical connections, and wiring;
- Chambers equipment, electrical connections, and wiring;
- The record and transcription; and
- Facilities design recommendations.<sup>8</sup>

The Arizona Supreme Court has adopted administrative policies and procedures (ACJA § 1-602: Digital Recording of Court Proceedings)

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<sup>8</sup> *Id.* at 9-51.

governing many, but not all, of the foregoing areas of electronic recording, including:

- Technical requirements: equipment standards, annotation, playback, storage and back-up;
- Operational requirements: staffing, equipment checks, security, transcription and records management; and
- Best practices: procurement, staff training, alternative means of making the record in the event of equipment failure and public access fees.

These ACJA provisions, which govern ER currently authorized in Arizona, need to be communicated and complied with (and likely enhanced) if the use of ER expands in Arizona's courts.

### **Recommendations:**

Given the critical importance of creating and maintaining the court record, recommendations to identify and implement best practices when ER is used include:

1. Expanding the Arizona Supreme Court's policy on Digital Recording of Court Proceedings set forth in ACJA § 1-602 to encompass all applicable areas of the foregoing minimum standards promulgated by the NCSC and update the Arizona Manual of Transcript

Procedures to reflect changes in transcript production and how the record is captured.

2. Implementing measures to ensure full implementation of the Arizona Supreme Court's policies and procedures governing electronic recording through:

- Designation of court staff to serve as courtroom monitors;
- Checklists for systems maintenance and operation, transcription services and record management;
- Specialized job descriptions for electronic recording program staff;
- Develop and implement training programs to account for and enhance skills sets identified in specialized job descriptions for individuals involved in all aspects of electronic recording systems;
- Periodic certification of electronic recording systems by local courts, periodic quality control and assessments and annual re-certification of electronic recording systems: and
  - Revocation of the local court's discretion to allow electronic recording if standards are not met.

The Arizona Supreme Court's administrative policy governing criminal court hearings conducted via video communications (ACJA § 5-208) is instructive in terms of system equipment maintenance, serving as a possible model for the oversight of electronic recording systems in the trial courts. Specifically, the policy (ACJA § 5-208(C)) expressly requires that courts conducting such video hearings certify - on an annual basis - that the video system meets operational standards. A checklist is also provided for the annual system certification process. CHECKLIST and CERTIFICATION ACJA § 5-208.

3. Court employees and contractors involved in the operation of the electronic recording program and/or transcription services must comply with governing statutes, court rules and policies. The NCSC recommends that courts adopt a code of "conduct and confidentiality" for staff and contractors, similar to that of the Code of Professional Ethics adopted by the American Association of Electronic Reporters and Transcribers (AAERT).<sup>9</sup>

It is recommended that separate governing codes of conduct be developed as applicable to the work of court staff and contract employees. For court staff

working in the electronic recording program, the provisions of the Arizona Supreme Court's Code of Conduct for Judicial Employees (ACJA § 1-303) may well suffice. That said, the Arizona Supreme Court has established specialized codes of conduct governing court reporters (ACJA § 7-206(J)) and court interpreters (Administrative Order No. 2015-98), which may be instructive in this analysis.

It is recommended that a separate code of conduct be developed to govern the work of contract employees who provide transcription or electronic monitoring services. The recommended expansion of the Arizona Supreme Court's policy on Digital Recording of Court Proceedings should include a provision requiring adoption of the recommended code of conduct for contract employees in all vendor contracts for electronic recording services.

It is also recommended that education efforts regarding ER include all involved in the judicial system, including court staff, counsel, parties and judicial officers. To that end, best practices information should be included in judicial training and in Bench books promulgated by the Administrative Office of the Courts for use by judicial officers.

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<sup>9</sup> Lee Suskin & Daniel J. Hall, "Making the Record Utilizing Digital Electronic Recording," National Center for State Courts and State Justice Institute, September 2013, Appendix E, pgs 45-46.

APPENDIX 1—Administrative Order

IN THE SUPREME COURT OF THE STATE OF ARIZONA

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In the Matter of:	)	
	)	
ESTABLISHMENT OF THE TASK	)	Administrative Order
FORCE TO SUPPLEMENT KEEPING	)	No. 2019 - 49
OF THE RECORD BY ELECTRONIC	)	
MEANS	)	
	)	

---

Production and preservation of a record of proceedings in a court of record are fundamental functions of the Judicial Branch. Arizona Revised Statutes and Arizona Rules of Procedure require that courts produce a verbatim record of certain judicial proceedings.

Consistent with trends nationwide, several Arizona counties are experiencing a shortage and unavailability of court reporters. This situation may require courts to reschedule or delay scheduling judicial proceedings, negatively impacting the ability to secure a speedy trial, hearing, or other resolution and ultimately delaying the administration of justice to the parties, victims, and all involved in the legal system broadly. The shortage also impacts court reporters' ability to transcribe the proceedings in a timely manner.

Delays in transcript production also are one of the major factors contributing to delay in resolving appeals. Transcript production, which is required before any briefing can occur on appeal, can take months, delaying all types of appeals, including those where critical liberty interests are involved, such as criminal appeals and termination of parental rights appeals.

Given these issues, electronic recording technology has been deployed in many Arizona courts to supplement the use of a court reporter in making a record of court proceedings. Use of electronic recording technology is limited, however, by statutes and rules enacted at a time when such technology did not exist or was not available or dependable.

Therefore, pursuant to Article VI, Section 3, of the Arizona Constitution,

IT IS ORDERED that the Task Force to Supplement Keeping of the Record by Electronic Means is established as follows:

1. **Purpose.** The Task Force shall develop recommended changes to statutes, rules, and the Arizona Code of Judicial Administration to permit courts to create and maintain a

complete and accurate court record electronically to supplement court reporters and to prevent delay in resolving disputes in the trial court and on appeal.

2. **Membership.** The individuals listed in Appendix A are appointed as members of the Task Force effective immediately and ending November 30, 2019. The Chief Justice may appoint additional members as may be necessary.
3. **Meetings.** The Task Force shall meet at the discretion of the Chair. All meetings shall comply with the public meeting policy of the Arizona Judicial Branch, Arizona Code of Judicial Administration § 1-202: Public Meetings.
4. **Recommendations.** The Task Force shall submit its recommendations, together with recommended changes to statutes, rules, and the Arizona Code of Judicial Administration, by September 1, 2019 for circulation for comment and for presentation to the Arizona Judicial Council on October 24, 2019.

Dated this 21st day of May, 2019.

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SCOTT BALES  
Chief Justice

Attachment: Appendix A

**APPENDIX A**

**MEMBERSHIP LIST**

**TASK FORCE TO SUPPLEMENT KEEPING OF THE RECORD BY ELECTRONIC  
MEANS**

*Chair*

Honorable Samuel A. Thumma, Chief Judge  
Arizona Court of Appeals, Division One

*Members*

**Honorable Pamela Gates**

Superior Court of Arizona in Maricopa  
County

**Mr. Rolf Eckel**

Court Administrator  
Superior Court of Arizona in Yavapai  
County

**Mr. Bob James**

Deputy Court Administrator  
Superior Court of Arizona in Maricopa  
County

**Ms. Sheila Polk**

County Attorney  
Yavapai County

**Mr. Dean Brault**

Director of Public Defense Services  
Pima County

**Mr. Ed Gilligan**

Cochise County  
County Administrator

**Ms. Kate Roundy**

President  
Arizona Court Reporters Association

**Ms. Tracy Johnston**

President Elect  
Arizona Court Reporters Association

**Jacob Jones**

Attorney  
Snell & Wilmer, LLP

*AOC Staff*

**Ms. Marretta Mathes**

Court Project Specialist

**Ms. Amy Love, Legislative Liaison**

Intergovernmental Relations

# Possible Changes to Statutes, Rules, and the Arizona Code of Judicial Administration

## Arizona Revised Statutes

Arizona Revised Statutes Annotated
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Title 8. Child Safety (Refs & Annos)
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Chapter 2. Juvenile Court
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Article 3. Juvenile Proceedings (Refs & Annos)
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A.R.S. § 8-233. Record of proceeding

The provisions of title 12, chapter 2, article 3, ~~providing for~~regarding the appointment and oath of a ~~court~~certified reporter shall apply at any juvenile court hearing conducted by a judge.

Arizona Revised Statutes Annotated
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Title 12. Courts and Civil Proceedings (Refs & Annos)
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Chapter 2. Judicial Officers and Employees
--

Article 3. <del>Court</del> <u>Certified</u> Reporter (Refs & Annos)
--

A.R.S. § 12-221. Appointment and oath

~~Each~~A judge of the superior court ~~shall~~may appoint a ~~court~~certified reporter. Before entering upon ~~his~~the certified reporter's duties, the ~~court~~certified reporter

shall take and subscribe the official oath to be administered by ~~the~~a judge of the court.

A.R.S. § 12-223. Attendance at and report of proceedings; sale of transcripts

A. ~~The court~~When directed by the judge, the certified reporter shall attend court during the hearing of ~~all~~ matters before it ~~unless excused by the judge. He. The certified reporter~~ shall make stenographic notes of all oral proceedings before the court, but unless requested by court or counsel, ~~he~~the certified reporter need not make stenographic notes of arguments of counsel to a jury, nor of argument of counsel to the court in the absence of a jury.

B. Upon payment or tender of the fees therefor, ~~he~~the certified reporter, unless otherwise prohibited by law or order of the court, shall furnish to any person a typewritten transcript of all or any part of the proceedings reported by ~~him~~the certified reporter, and upon request, certify that such transcript is a correct and complete statement of such proceedings.

~~A.R.S. § 12-225. Appointment of deputies; compensation~~

~~A. The court reporter may employ deputies who shall be compensated by him.~~

~~B. When the reporter is prevented from performing his duties because of absence on public business, or when more than one judge is holding court at the same time in the county or any division thereof, the reporter may appoint a deputy to perform the services of reporter during the period and at the compensation the judge provides by order. Such compensation shall be a county charge.~~

Arizona Revised Statutes Annotated
Title 12. Courts and Civil Proceedings (Refs & Annos)
Chapter 3. Fees and Costs
Article 1. Fees in General (Refs & Annos)

A.R.S. § 12-302. Extension of time for payment of fees and costs; relief from default for nonpayment; deferral or waiver of court fees and costs; definitions

H. The following court fees and costs may be deferred or waived, except that the county shall pay the fees and costs in paragraphs 6, 7 and 78 of this subsection on the granting of an application for deferral or waiver and an applicant who has been granted a deferral shall reimburse the county for the fees and costs in paragraphs 6, 7 and 78 of this subsection:

1. Filing fees.
2. Fees for issuance of either a summons or subpoena.
3. Fees for obtaining one certified copy of a temporary order in a domestic relations case.
4. Fees for obtaining one certified copy of a final order, judgment or decree in all civil proceedings.
5. Sheriff, marshal, constable and law enforcement fees for service of process if any of the following applies:
  - (a) The applicant established by affidavit that the applicant has attempted without success to obtain voluntary acceptance of service of process.
  - (b) The applicant's attempt to obtain voluntary acceptance of service of process would be futile or dangerous.
  - (c) An order of protection or an injunction against harassment in favor of the applicant and against the party sought to be served exists and is enforceable.
6. The fee for service by publication if service is required by law and if the applicant establishes by affidavit specific facts to show that the applicant has exercised due diligence in attempting to locate the person to be served and has been unable to do so.
7. ~~Court~~Certified reporter's fees for the preparation of court transcripts if the ~~court~~certified reporter is employed by the court.

8. [Authorized transcriber's fees for the preparation of court transcripts if the authorized transcriber is employed by the court.](#)

9. Appeal preparation and filing fees at all levels of appeal and photocopy fees for the preparation of the record on appeal pursuant to sections 12-119.01, 12-120.31 and 12-2107 and section 12-284, subsection A.

Arizona Revised Statutes Annotated

Title 21. Juries (Refs & Annos)

Chapter 2. Jurors

Article 4. Misconduct by or Involving Jurors (Refs & Annos)

A.R.S. § 21-235. Recording, listening to, observing proceedings unlawful;  
classification

A. A person who knowingly, by any means whatsoever, records all or part of the proceedings of any grand jury while it is in session or listens to or observes the proceedings of any grand jury of which he is not a member while such jury is in session is guilty of a class 2 misdemeanor.

B. This section does not prohibit:

1. The prescribed activities of the court, [which includes the court's use of an electronic recording system](#), the prosecuting officer, a ~~court~~certified reporter designated by the court, or an interpreter designated by the court.
2. The taking of notes by a grand juror in connection with and solely for the purpose of assisting him in the performance of his duties as such juror.
3. The appearance, for the purposes of giving the testimony, of a witness.
4. The appearance, for the purpose of presenting evidence when permitted pursuant to section 21-412, of a person being investigated and his counsel.

Arizona Revised Statutes Annotated

Title 21. Juries (Refs & Annos)

Chapter 4. Grand Juries

Article 1. General Provisions (Refs & Annos)

A.R.S. § 21-411. Appointment of reporter; transcript

A. The presiding judge of the superior court or an individual designated by the presiding judge of the superior court may ~~shall~~ appoint a ~~regularly appointed court certified~~ reporter or direct the use of an electronic recording system to record the proceedings before the grand jury, except the deliberations of the grand jury. The reporter's notes or electronic recording containing the proceedings from which an indictment is returned shall be transcribed, any exhibits shall be secured, and the transcript shall be filed with the clerk of the superior court not later than twenty days following the return of the indictment, unless the court otherwise orders. Such transcript shall be made available to the prosecuting officer and the defendant. The transcript or electronic recording, or a portion of the transcript or electronic recording, may be denied to a defendant by the court upon a showing of extraordinary circumstances by a prosecuting officer. The reporter's notes or electronic recording which are not transcribed as provided in this section shall be ~~filed with~~ secured by the clerk of the superior court and impounded and shall be transcribed only when ordered by the presiding judge of the superior court; or an individual designated by the presiding judge of the superior court.

B. The ~~reporter and typists~~ persons who transcribe the reporter's notes or electronic recording of grand jury proceedings shall be sworn by the foreman ~~or,~~ acting foreman, clerk of superior court, the presiding judge of the superior court, or an individual designated by the presiding judge of the superior court not to disclose any testimony or the name of any witness except to the county attorney or other prosecuting officer or when testifying in court.

Arizona Revised Statutes Annotated

Title 36. Public Health and Safety (Refs & Annos)

Chapter 5. Mental Health Services

Article 5. Court-Ordered Treatment (Refs & Annos)

A.R.S. § 36-539. Conduct of hearing; record; transcript

A. The medical director of the evaluation agency shall issue instructions to the physicians or the psychiatric and mental health nurse practitioner of the evaluation agency who is treating the proposed patient to take all reasonable precautions to ensure that at the time of the hearing the proposed patient shall not be so under the influence of or so suffer the effects of drugs, medication or other treatment as to be hampered in preparing for or participating in the hearing. If the proposed patient is being treated as an inpatient by the evaluation agency, the court at the time of the hearing shall be presented a record of all drugs, medication or other treatment that the person has received during the seventy-two hours immediately before the hearing.

B. The patient and the patient's attorney shall be present at all hearings, and the patient's attorney may subpoena and cross-examine witnesses and present evidence. The patient may choose to not attend the hearing or the patient's attorney may waive the patient's presence. The evidence presented by the petitioner or the patient shall include the testimony of two or more witnesses acquainted with the patient at the time of the alleged mental disorder, which may be satisfied by a statement agreed on by the parties, and testimony of the two physicians who participated in the evaluation of the patient, which may be satisfied by stipulating to the admission of the evaluating physicians' affidavits as required pursuant to section 36-533, subsection B. The physicians shall testify as to their personal observations of the patient. They shall also testify as to their opinions concerning whether the patient is, as a result of mental disorder, a danger to self or to others or has a persistent or acute disability or a grave disability and as to whether the patient requires treatment. Such testimony shall state specifically the nature and extent of the danger to self or to others, the persistent or acute disability or the grave disability. If the patient has a grave disability, the physicians shall testify concerning the need for guardianship or conservatorship, or both, and whether or not the need is for immediate appointment. Other persons who have participated in the evaluation of the patient or, if further treatment was requested by a mental health treatment agency, persons of that agency who are directly involved in the care of the patient shall testify at the request of the court or of the patient's attorney. Witnesses shall testify as to placement alternatives appropriate and available for the care and treatment of the patient. The clinical record of the patient

for the current admission shall be available and may be presented in full or in part as evidence at the request of the court, the county attorney or the patient's attorney.

C. If the patient, for medical or psychiatric reasons, is unable to be present at the hearing and cannot appear by other reasonably feasible means, the court shall require clear and convincing evidence that the patient is unable to be present at the hearing and on such a finding may proceed with the hearing in the patient's absence.

D. The requirements of subsection B of this section are in addition to all rules of evidence and the Arizona rules of civil procedure, not inconsistent with subsection B of this section.

E. A verbatim record of all proceedings under this section shall be made ~~by stenographic means by a court reporter if a written request for a court reporter is made by any party to the proceedings at least twenty-four hours in advance of such proceedings. If stenographic means are not requested in the manner provided by this subsection, electronic means shall be directed by the presiding judge. The stenographic notes or electronic tape~~ and shall be retained as provided by statute.

F. A patient who has been ordered to undergo treatment may request a certified transcript of the hearing. To obtain a copy, the patient shall pay for a transcript or shall file an affidavit that the patient is without means to pay for a transcript. If the affidavit is found true by the court, the expense of the transcript is a charge on the county in which the proceedings were held, or, if an intergovernmental agreement by the counties has required evaluation in a county other than that of the patient's residence, such expense may be charged to the county of the patient's residence or in which the patient was found before evaluation.

Arizona Revised Statutes Annotated
Title 36. Public Health and Safety (Refs & Annos)
Chapter 6. Public Health Control
Article 6. Tuberculosis Control (Refs & Annos)

A.R.S. § 36-727. Hearings; procedure; confidentiality

A. The afflicted person or, if a minor or incapacitated person, the afflicted person's parent or guardian and that person's attorney have the right to be present at all hearings, subject to any conditions or procedures that are deemed appropriate or necessary by order of the court to protect the health and safety of all participants. The afflicted person may waive any appearance before the court.

B. If the afflicted person is unable or unwilling to be present at the hearing or the hearing cannot be reasonably conducted where the afflicted person is being treated or confined or cannot be reasonably conducted in the afflicted person's presence, the court shall enter a finding and may proceed with the hearing on the merits of the petition.

C. The court may impose conditions or procedures that it deems necessary to protect the health and safety of all participants in the hearing and to ensure humane treatment with due regard to the comfort and safety of the afflicted person and others. These measures may include video or telephonic conference appearances. If necessary the court shall provide language interpreters and persons skilled in communicating with vision impaired and hearing impaired persons pursuant to applicable law.

D. Parties to the proceedings may present evidence and subpoena and cross-examine witnesses. The evidence presented may include the testimony of experts on infectious diseases or public health matters or a physician who performed an examination or evaluation of the afflicted person. The petitioner may prove its case on the affidavit or affidavits filed in support of the initial petition. The clinical record of the afflicted person for the current admission shall be available and may be presented in full or in part as evidence at the request of the court, the afflicted person or the afflicted person's attorney or any party in interest.

E. At the hearing the court shall be advised of any drugs known to have been administered to the afflicted person before the hearing that would affect the afflicted person's judgment or behavior.

F. Persons appointed to conduct an examination and evaluation of the afflicted person shall make their reports in writing to the court. The reports shall include a recommendation as to the least restrictive alternative measures available to the court.

G. A verbatim record of all proceedings under this section shall be made ~~by stenographic or electronic means. The stenographic notes or electronic tape~~ and shall be retained as provided by statute.

H. The court hearing shall not be open to the public and all records, notices, exhibits and other evidence are confidential and shall not be released to the public. The court may order any portion released or a public hearing to be held on a request from the afflicted person or, if a minor or incapacitated person, the afflicted person's parent or guardian or the afflicted person's attorney. The court's records and exhibits are available to the petitioner, the afflicted person, the department, the tuberculosis control officer, the local health officer or a legal representative of any of these persons or agencies.

I. An afflicted person who is ordered by the court to undergo examination, monitoring, treatment, isolation or quarantine or, if a minor or incapacitated person, the afflicted person's parent or guardian may request a certified transcript of the hearing. To obtain a copy the person shall pay for the transcript or shall file an affidavit that the afflicted person cannot afford to pay for a transcript. If the affidavit is found true by the court, the court shall charge the expense of the transcript to the county in which the proceedings were held. If an intergovernmental agreement by the counties has required an evaluation in a county other than that of the afflicted person's residence, this expense may be charged to the county of the afflicted person's residence or in which the afflicted person was found before the evaluation.

Arizona Revised Statutes Annotated
Title 38. Public Officers and Employees (Refs & Annos)
Chapter 3. Conduct of Office
Article 3. Records (Refs & Annos)

A.R.S. § 38-424. Use of ~~tape recorders or other recording devices~~ certified reporters; electronic means; exception

This state or any agency of this state, including the judiciary, and each political subdivision of this state, including any courts of law, may for any purpose use ~~tape recorders or other recording devices~~ electronic means in lieu of reporters or

stenographers. ~~This section does not apply if the matter to be recorded arises out of~~ for court proceedings and either party ~~requests that~~ may provide a ~~court~~ certified reporter or stenographer ~~be in addition to the electronic means used~~ by courts to record the proceedings. The official record, however, is the record prepared by the court as established by the procedural rules established by the Supreme Court.

**Consistent with these changes, change “court reporter” to “certified reporter” as applicable where used in any other statutes, rules, or Arizona Code of Judicial Administration provisions.**

**A.R.S. § 8-323. Juvenile hearing officer; appointment; term; compensation; hearings; required attendance; contempt**  
[no changes]

**A.R.S. § 12-224. Salary; fees for transcripts; free transcripts; office supplies**  
[no changes]

**A.R.S. § 13-4102. Order for examination; notice; proof of service**  
[no changes]

**A.R.S. § 12-143. Payment of salaries and other expenses; providing facilities; judicial employees.**  
[no changes]

**A.R.S. § 13-3952. Compensation of ~~court~~ certified reporter appearing at preliminary hearing; fees for transcribing notes**  
[no changes]

**A.R.S. § 23-674. Procedure in rendering decisions and orders; rights of parties; representation**  
[no changes]

**A.R.S. § 26-1028. Detail or employment of reporters and interpreters.**

[no changes]

**A.R.S. § 26-1054. Record of trial**

[no changes]

**A.R.S. § 32-3632. Hearing and judicial review; costs and fees; appeal**

[no changes]

**A.R.S. § 32-4001. Scope of chapter**

[no changes]

**A.R.S. § 32-4003. Reporter certification; violation**

[no changes]

**A.R.S. §32-4004. Board of certified reporters**

[no changes]

**A.R.S. § 32-4006. Enforcement and disciplinary procedures**

[no changes]

**A.R.S. § 32-4022. Examination; requirements; exemption**

[no changes]

**A.R.S. § 32-4041. Revocation or suspension of certificate**

[no changes]

**A.R.S. § 38-317. Compensation of impeachment personnel**

[no changes]

**A.R.S. § 36-539. Conduct of hearing; record; transcript**

[no changes]

**A.R.S. § 40-360.04. Hearings; procedures**

[no changes]

A.R.S. § 41-324. ~~Court~~Certified reporters; notarial acts  
[no changes]

A.R.S. §41-1092.07. Hearings  
[no changes]

A.R.S. § 48-704. Hearing on objections  
[no changes]

A.R.S. § 48-1034. Objections; hearing on formation  
[no changes]

A.R.S. § 49-287.06. Allocation hearing  
[no changes]

# Arizona Procedural Rules

## Rules of the Supreme Court of Arizona

### Rule 30. Verbatim Recording of Judicial Proceedings

(a) [no changes]

(b) Use of Court Reporting Resources.

1. Request for certified reporter. Any party to any action in superior court may request that any proceeding in that action be recorded by a certified ~~court~~ reporter. The court ~~shall~~may grant the request if it is made at least three days prior to the proceeding to be recorded unless a different time frame has been established by local rule.

2. Making the record in the absence of a ~~timely request for a court certified~~ reporter. ~~Except as provided in (3) below, in~~In the absence of a ~~timely request for a certified court~~ reporter, the record will be made ~~in a manner within~~using an electronic recording system to record the ~~sound discretion of the court~~proceeding as established by local rule.

3. ~~Proceedings requiring~~ If the court is using an electronic recording system to record the proceedings, a party has the right to provide a certified court reporter to also record the proceedings. The following proceedings shall be recorded by a party providing the certified reporter must bear the cost. The official record, however, is the record designated by the court reporter and not solely by electronic means, unless as set forth in section (b)(4) of this rule requirement is waived by the parties and the court approves the waiver:

~~a. Grand jury proceedings;~~

~~b. All proceedings in a first degree murder case, pursuant to A.R.S. § 13-1105, once the intention to seek the death penalty notice has been filed;~~

~~c. Felony jury trials;~~

~~d. Initial determinations of sexually violent person status, pursuant to A.R.S. § 36-3706;~~

~~e. Proceedings on a request for authorization of abortion without parental consent, pursuant to A.R.S. § 36-2152.~~

4. Official record. When ~~an Arizona~~ a court's certified ~~court~~ reporter records a proceeding in a superior court that is simultaneously recorded by electronic recording equipment, the ~~court~~ court's certified reporter's record shall be the official record. For a proceeding not recorded by a court's certified reporter, the official record is the transcript prepared by an authorized transcriber as defined in Rule 30(a)(2)(b) or (c). The transcript in any case certified by the court's certified reporter or other authorized transcriber as defined in Rule 30(a)(2)(a)-(c) shall be deemed prima facie a correct statement of the testimony taken and proceedings had. No transcripts of the proceedings of the court shall be considered as official except those made from the records certified by the court's certified reporter or other authorized transcriber as defined in Rule 30(a)(2)(b) or (c), unless otherwise ordered by the court.

**[DATE] COMMENT (Redline compared to [2006] Comment)**

**Rule 30(b)(1).** Nothing in this rule precludes the court from granting a party's untimely request for a certified reporter.

**Rule 30(b)(2).** ~~In the absence of a timely request for a certified court reporter,~~ The court may approve use of a certified court reporter, audio or video recording to capture the record of court proceedings. In exercising its discretion ~~under~~

~~subsection (B), giving due deference to the parties' preference~~ of how court proceedings should be captured, the court ~~may~~ should consider the following factors when requiring the presence of the court's certified reporter or otherwise designating the official record: unique demands of the preservation of the official court record by a certified reporter in grand jury proceedings, felony jury trials, particularly first degree murder cases in which the State filed a death penalty notice, initial determinations of sexually violent person status, and proceedings on a request for authorization of abortion without parental consent. Moreover, the court should consider the availability of a certified reporter; the probability that a transcript will be requested; the number of litigants; convenience of the parties and the court's schedule; sufficiency of another form of record to convey the substance of the matters discussed at the proceeding; whether testimonial evidence will be presented at the proceeding; presence of non-native English speakers as witnesses or parties; the likelihood that technical or otherwise difficult terminology will be used; the need for formal or informal proceedings; the need for a real-time transcript; the likelihood that daily transcripts will be required; and any other factor which in the interests of justice warrants a particular form of record, or as otherwise required to serve the interests of justice.

## **Rule 75. Jurisdiction; Definitions**

### **Rule 75(b) Definitions**

9. "Expenses" means all obligations in money, other than costs, necessarily incurred by the state bar in the performance of their duties under these rules. Expenses shall include, but are not limited to, administrative expenses, necessary expenses of bar counsel or staff, charges of expert witnesses, charges of ~~ourt~~certified reporters and authorized transcribers and all other direct, provable expenses.

### **Rule 78. Initial Proceedings**

[no changes]

### **Rule 125. Defining Minute Entry, Order, Ruling, and Notice; Party Responsibility**

[no changes]

## Rules of Civil Procedure

### **Rule 30. Deposition by Oral Examination**

[no changes]

### **Rule 43. Taking Testimony**

(a) [no changes]

(b) [no changes]

(c) [no changes]

(d) [no changes]

(e) [no changes]

(f) [no changes]

### **(g) Preserving Recording of Court Proceedings.**

(1) *Transcripts and Other Recordings.* The official verbatim recording of any court proceeding is an official record of the court. The original recording must be kept by the person ~~who recorded it, a court-designated custodian, or the clerk in a place~~ designated by the court. The recording must be retained according to the records retention and disposition schedules adopted by the Supreme Court, unless the court specifies a different retention period.

(2) [no changes]

### **Rule 75. Hearing Procedures**

[no changes]

## Rules of Criminal Procedure

### **Rule 5.1. Right to a Preliminary Hearing; Waiver; Continuance**

(a) [no changes]

(b) [no changes]

(c) [no changes]

(d) Hearing Demand. A defendant who is in custody may demand that the court hold a preliminary hearing as soon as practicable. In that event, the magistrate must set a hearing date and must not delay its commencement more than necessary to secure the attendance of counsel, ~~a court reporter, and~~ necessary witnesses, and ensure the ability to capture a verbatim recording of the proceeding.

## **Rule 5.2. Summoning Witnesses; Record of Proceedings**

(a) [no changes]

(b) **Record of Proceedings.** The magistrate must make a verbatim record of the preliminary hearing. Proceedings may be recorded by a certified ~~court~~ reporter or by electronic or other means authorized by the superior court ~~presiding judge. But if a party requests that a certified court reporter record the proceedings, the court must record the proceedings in that manner, unless the court is located in an area where a certified court reporter is not reasonably available.~~

## **Rule 5.6. Transmittal and Transcript of the Record**

[no changes]

## **Rule 5.7. Preservation of Recording**

[no changes]

## **Rule 11. Initial Appearance and Trial Procedures**

[no changes]

## Rule 12.4. Who May Be Present During Grand Jury Sessions

**(a) General.** Only the following individuals may be present during grand jury sessions:

- (1) the witness under examination;
- (2) counsel for a witness if the witness is a person under investigation by the grand jury;
- (3) a law enforcement officer or detention officer accompanying an in-custody witness;
- (4) prosecutors authorized to present evidence to the grand jury;
- (5) a certified ~~court reporter~~ reporter or person authorized by the court to ensure the verbatim record is captured; and
- (6) an interpreter, if any.

**(b) [no changes]**

## Rule 12.7. Record of Grand Jury Proceedings

**(a) ~~Court Reporter~~ Recording Arrangements.** The presiding or impaneling judge must ~~assign a certified court reporter~~ make arrangements to ~~record~~ capture all grand jury proceedings, except its deliberations. Any arrangements must ensure that no images of grand jurors are taken or captured.

**(b) Foreperson.** The foreperson must keep a record of how many grand jurors voted for and against an indictment, but must not record how each grand juror voted. If the grand jury returns an indictment, the foreperson's record of the vote must be transcribed ~~by the court reporter~~ and filed with the court no later than 20 days after the return of the indictment, and may be made available only to the court, the State, and the defendant.

**(c) Filing the Transcript and Minutes.** The court reporter's record of grand jury proceedings must be transcribed and filed with the superior court clerk no later than 20 days after return of the indictment, and may be made available only to the court, the State, and the defendant.

**Rule 15.3. Depositions**

[no changes]

**Rule 28.1. Duties of the Clerk**

[no changes]

**Rule 31.2. Notice of Appeal or Notice of Cross-Appeal**

[no changes]

**Rule 31.8. The Record on Appeal**

[no changes]

**Rule 31.9. Transmission of the Record to the Appellate Court**

[no changes]

**Rule 32.4(e). Filing of Notice and Petition, and Other Initial Proceedings**

[no changes]

**Rule 32.8(e). Evidentiary Hearing**

[no changes]

**Rule 32.9(e). Review**

[no changes]

## Rules of Civil Appellate Procedure

### **Rule 1. Scope of Rules; Definitions**

[no changes]

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

(a) [no changes]

(b) [no changes]

(c) [no changes]

(d) [no changes]

(e) [no changes]

#### **(f) Preparation of the Record on Appeal.**

(1) *Index.* The superior court clerk must prepare an index of the record and transmit the index and the superior court's record to the appellate court within 5 business days after the notice of appeal is filed.

(2) *Transcripts; Stipulated Record.*

(A) The appellant must promptly order and ask the ~~court~~certified reporter or authorized transcriber to expedite the preparation of any transcripts necessary for determination of the appeal.

(B) [no changes]

(C) The party that orders a transcript must make payment arrangements with the ~~court~~certified reporter or authorized transcriber, and upon receipt of the transcript, must promptly file it with the appellate court and serve other parties with a copy.

(D) [no changes]

(E) [no changes]

(g) [no changes]

**(h)** [no changes]

**(i)** [no changes]

**(j)** [no changes]

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

[no changes]

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

[no changes]

## **Rules of Procedure for Special Actions**

[no changes]

## **Rules of Procedure for Direct Appeals from Decisions of the Corporation Commission to the Arizona Court of Appeals**

### **Rule 7. Record on Direct Appeal of Commission Decisions or Orders**

#### **Rule 7(f). Transcript Defined; Several Appeals; Inability to Provide Timely Transcript.**

“Transcript” for purposes of this rule shall refer to a ~~reporter’s~~ transcript prepared by a certified reporter or authorized transcriber. When more than one direct appeal is taken from the same Commission decision, a single transcript shall be prepared. If a transcript cannot be obtained within the time limitation provided in this rule for transmission of the Commission record, application for relief may be made by the Commission to the Court of Appeals.

## **Rules of Procedure for Direct Appeals from Decisions of the Governing Bodies of Public Power Entities**

## **Rule 7. Record on Direct Appeal of Decisions or Orders**

### **Rule 7(f). Transcript Defined; Several Appeals; Inability to Provide Timely Transcript.**

“Transcript” for purposes of this rule shall refer to a ~~reporter’s~~ transcript prepared by a certified reporter or authorized transcriber. When more than one direct appeal is taken from the same Governing Body decision, a single transcript shall be prepared. If a transcript cannot be obtained within the time limitation provided in this rule for transmission of the record, application for relief may be made by the Governing Body to the Court of Appeals.

## **Rules of Family Law Procedure**

### **Rule 12. Court Interviews of Children**

#### **Rule 12(c)(1) Record of the Interview**

(1) *Generally*. Unless the parties stipulate otherwise on the record or in writing, the court must record the interview, either by having a ~~court~~certified reporter transcribe it or by recording it ~~through another retrievable and perceivable~~by electronic ~~medium~~means. However, any interview conducted by a judicial officer must be recorded.

### **Rule 8. Telephonic Appearances and Testimony**

[no changes]

### **Rule 18. Preserving a Record of a Court Proceeding**

[no changes]

### **Rule 69. Binding Agreements**

[no changes]

## **Rule 73. Family Law Conference Officer**

### **Rule 73(c)(1) Procedures**

*Conducting a Conference.* The conference officer should conduct the proceedings in an informal manner but must give the parties an opportunity to present their positions. The conference officer may record the proceedings by ~~audiotape~~[electronic means](#) or by a ~~court~~[certified](#) reporter. A party represented by an attorney has the right to have the attorney present at the conference.

## **Rules of Protective Order Procedure**

### **Rule 18. Record of Hearings**

[no changes]

## **Rules of Probate Procedure**

### **Rule 11. Telephonic or Electronic Appearances and Testimony**

[no changes]

## **Rules of Procedure for the Juvenile Court**

### **Rule 1. Applicability; Definitions; Required Format of Stipulations, Motions and Orders**

[no changes]

### **Rule 81. Consent to Adopt**

[no changes]

### **Rule 106**

[no changes]

## **Tax Court Rules of Practice**

[no changes]

## **LOCAL RULES**

### **Apache County Superior Court Local Rules**

[no changes]

### **Cochise County Superior Court Local Rules**

#### **Rule 12.2. Rules of Procedure for Arbitration Services in the Courts of Limited Jurisdiction.**

[no changes]

#### **Rule 15. Audio, Video, and Other Sound Reproduction Exhibits.**

(a) In the interest of a complete and accurate record in the event of an appeal, when audiotapes, videotapes, or other exhibits that reproduce sound are intended to be offered in evidence to demonstrate the substance of conversation, a transcription of that portion intended to be played for the trier of fact shall be made and concurrently offered in evidence as the court's exhibit. The proponent of the exhibit shall cause that portion to be transcribed and shall present it to opposing counsel for comparison against the audio exhibit sufficiently in advance of trial or hearing so that a good faith stipulation may be entered into by counsel as to its accuracy. The proponent may nevertheless establish the accuracy of the transcription sufficient for its admission into evidence by appropriate testimony. When the recording is played for the trier of fact, the transcription shall be incorporated in the record of the trial by the ~~court reporter's~~ reference to its exhibit number.

### **Coconino County Superior Court Local Rules**

[no changes]

## Gila County Superior Court Local Rules

### **Rule 16. Briefs, Memoranda, Argument, and ~~Court~~Certified Reporter Services.**

...

**F. Presence of ~~Court~~Certified Reporter.** ~~Except in criminal, dependency, and delinquency actions, counsel are~~Counsel or a self-represented party is required to advise the court in advance of hearing whether a ~~court~~certified reporter is requested. If such a timely request is made, the court has the discretion whether to grant such a request. The failure to make a timely request may be deemed a waiver of a ~~court~~certified reporter or result in the postponement of a scheduled matter.

### **Rule 27. ~~Court~~Certified Reporters**

**Rule 27(A). Scope.** This rule applies to all ~~court~~certified reporters' notes taken in trials or proceedings in any division of this court or before any commissioner or judge pro tempore. "Reporter's notes" mean paper notes, electronic records of proceedings on hard drive, floppy disc or other electronic medium. "Reporter's notes" does not include ~~tape~~recordings that are the result of the court's use of an electronic recording system, recordings of the proceedings utilized by a reporter for his or her own personal verification of the accuracy of the official notes; nor electronic files prepared as work product for use by court staff in preparation of such things as minute entries.

### **Rule 31. Appeals from Limited jurisdiction Courts.**

[no changes]

## Graham County Superior Court Local Rules

### **Rule 1.19. Appeals from Limited jurisdiction Courts.**

[no changes]

**Greenlee County Superior Court Local Rules**

[no changes]

**La Paz County Superior Court Local Rules**

[no changes]

**Maricopa County Superior Court Local Rules**

**Rule 1.4. Court Proceedings in Other Locations**

...

**h. ~~Court~~Certified Reporter.** No ~~court~~certified reporter will be available for such proceedings unless counsel shall, before 5:00 p.m. on the second day preceding the day on which the attendance of said reporter will be required, notify the assigned judicial officer that the services of a ~~court~~certified reporter are ~~required.~~ The requested. If the request is approved by the assigned judicial officer, the assigned judicial officer shall thereupon arrange for a ~~court~~certified reporter at county expense.

**Rule 1.10. ~~Court~~Certified Reporters' Notes, Electronic Recordings, Duties of Clerk and Reporters and Destruction of Notes**

[no changes]

**Rule 2.22. Record, ~~Court~~Certified Reporter Requests, ~~Court~~Certified Reporter Fees**

...

**b. Request and Fees.** If a party desires a ~~court~~certified reporter for any proceeding ~~in which a court reporter is not mandated by Arizona Supreme Court Rule 30~~, the party must submit a written request to the assigned judicial officer at least ten (10) judicial days in advance of the hearing. If the request is approved by the assigned judicial officer, the party must pay any fee authorized by law for the court reporting services at least two (2) judicial days prior to the proceeding.

### **3.2. Civil Motions; Stipulations, Notices of Settlement, and Proposed Forms of Order**

[no changes]

#### **Rule 10.5. ~~Court~~Certified Reporters, Interpreters and Equipment Requested**

[no changes]

#### **Mohave County Superior Court Local Rules**

#### **Rule AD-10. ~~Court~~Certified Reporters, ~~Court~~Certified Reporters' Notes**

[no changes]

#### **Rule AD-14. Audio, Video, and Other Sound Reproduction Exhibits.**

A. In order to ensure a complete and accurate record in the event of an appeal, when audiotapes, videotapes, or other exhibits that reproduce sound are intended to be offered in evidence to demonstrate the substance of conversation, a transcription of that portion intended to be played for the trier of fact shall be made and concurrently offered in evidence as the court's exhibit. The proponent of the exhibit shall cause that portion to be transcribed and shall present it to opposing counsel for comparison against the audio exhibit sufficiently in advance of the trial or hearing so that a good faith stipulation may be entered into by counsel as to its accuracy. A stipulation as to the accuracy of such a transcript shall not affect the admissibility, or non-admissibility of the recording itself. Absent a stipulation as to the admissibility of such a recording, admissibility shall be determined in accordance with the rules of evidence. The proponent may nevertheless establish the accuracy of the transcription sufficient for its admission into evidence by

appropriate testimony. When the recording is played for the trier of fact, the transcription shall be incorporated in the record of the trial by the ~~court reporter's~~ reference to its exhibit number.

### **Rule AD-17. Telephonic Conference Calls.**

[no changes]

### **Navajo County Superior Court Local Rules**

[no changes]

### **Pima County Superior Court Local Rules**

#### **Rule 1.6. ~~Court~~Certified Reporters, Special Needs and Interpreters**

(A) ~~Absent an advance request, court reporters will be available only for regularly scheduled trials or other matters as required by law.~~ If a certified court reporter is ~~needed for any other matter, including juvenile matters~~requested, counsel or a self-represented party must notify the division to which the case is assigned and the Manager of the Court Reporters by 12:00 noon of the preceding court day of the request to have a ~~court~~certified reporter present. If such a timely request is made, the court [Manager of the Court Reporters] has the discretion whether to grant such a request. No matter will be continued for a lack of a ~~court~~certified reporter unless such required notification has been given to the division to which the case is assigned and the Manager of the Court Reporters. ~~Absent a timely request, the availability of a court reporter may be limited by the priorities stated in Rule 30, Rules of the Supreme Court of Arizona.~~

### **Pinal County Superior Court Local Rules**

#### **Rule 2.2. Motions; Requirements**

##### **2.2(e). Telephonic Argument and Conference.**

[no changes]

## **Santa Cruz County Superior Court Local Rules**

### **Rule 1.4. ~~Court~~Certified Reporters' Notes, Duties of Clerk and Reporters, and Destruction of Notes and Electronic Recordings**

[no changes]

### **Rule 8.6. Presence of ~~Court~~Certified Reporter**

**a. Notice to Court.** All matters may be electronically recorded unless the parties or counsel advise the court at least five (5) court days in advance of hearing that a ~~court~~certified reporter is requested. and the court grants that request. Failure to make a timely request may be deemed a waiver of a ~~court~~certified reporter or result in the postponement of a scheduled matter.

**b. Waiver of ~~Court~~Certified Reporter.** Where a ~~court~~certified reporter has been requested, the party who originally requested the same shall notify the court within twenty-four (24) hours of the commencement of the hearing, if the ~~court~~certified reporter will no longer be necessary. Failure to notify the court may result in the assessment of the cost to provide the ~~court~~certified reporter.

## **Yavapai County Superior Court Local Rules**

### **Rule 2. Administration**

[no changes]

### **Rule 13. ~~Court~~Certified Reporters, ~~Court~~Certified Reporters' Notes**

[no changes]

## **Yuma County Superior Court Local Rules**

### **Rule 8. Criminal Appeals from Lower Courts on the Record**

[no changes]

**Superior Court Rules of Appellate Procedure – Civil**

**Rule 2. Record of Proceedings**

[no changes]

**Superior Court Rules of Appellate Procedure – Criminal**

**Rule 1. Scope; Definitions**

[no changes]

**Rules of Procedure for Enforcement of Tribal Court Involuntary Commitment Orders**

[no changes]

**Rules of Procedure for the Recognition of Tribal Court Civil Judgments**

[no changes]

**Rules of Procedure for Judicial Review of Administrative Decisions**

**Rule 5. Record on Appeal**

[no changes]

**Rules of Court Procedure for Civil Traffic and Civil Boating Violations**

[no changes]

**Justice Court Rules of Civil Procedure**

[no changes]

**Rules of Procedure for Eviction Actions**

[no changes]

**Local Rules of Practice and Procedure – City Court – City of Phoenix**

**Rule 2.18. Record**

[no changes]

**Local Rules of Practice and Procedure In City Court Civil Proceedings City of Tucson**

[no changes]

**Local Rules of Practice and Procedure For the Yuma Municipal Court**

[no changes]

**Local Rules Pima County Justice of the Peace Courts Providing for Pre-Trial Conferences in Criminal Cases**

[no changes]

**Pima County Rules for the Fast Trial and Alternative Resolution Program (“FASTAR”) Pilot Program**

**Rule 123. Hearing Procedures**

[no changes]

**Arizona Administrative Code**

[no changes]

# **Arizona Code of Judicial Administration**

**Section 1-108: Committee on Judicial Education and Training**

[no changes]

**Section 2-101: Records Retention and Destruction Schedule**

**2-101(D) Retention and Disposition Schedule**

15. *Direct Criminal Appeals (Death Penalty) and Petitions for Review of Post-Conviction Relief related to these cases:*

b.(1) Record on Appeal: The record on appeal, including ~~court reporter~~-transcripts (with the exception of the grand jury transcript) shall be retained in the Clerk's Office until execution of sentence or earlier death. At that time, certified copies of the instruments and minutes shall be destroyed. Original (paper) instruments and minutes shall be returned to the Superior Court consistent with Rule 31.23(a)(5), Rules of Criminal Procedure. Original (paper) Grand Jury transcripts and Juror Questionnaires shall be returned to the Superior Court at the time of the mandate. Copies shall be destroyed.

c.(1) Record on Appeal: When conviction and sentence is reversed: The record on appeal, including ~~court reporter~~-transcripts (with the exception of the grand jury transcript) shall be retained in the Clerk's Office until notification that defendant was re-sentenced to life or released. At that time certified copies of the instruments and minutes shall be destroyed. Original (paper) instruments and minutes shall be returned to the Superior Court. Grand Jury transcripts and Juror Questionnaires shall be returned to the Superior Court at the time of the mandate or destroyed if copies.

c. Record on Appeal: The record on appeal, including ~~court reporter~~ transcripts (with the exception of the grand jury transcript) shall be retained in the Clerk's Office unless transfer requested by the Superior Court. At that time, certified copies of the instruments and minutes shall be retained. Original instruments and minutes shall be returned to the Superior Court consistent with Rule 31.23(a)(5), Rules of Criminal Procedure. Original Grand Jury transcripts and Juror Questionnaires shall be returned to the Superior Court.

## **Section 5-206: Fee Deferrals and Waivers**

### **5-206(A) Definitions**

“Fees and costs”, as provided in A.R.S. § 12-302(H) means:

...

7. ~~Court~~Certified reporter's fees for the preparation of court transcripts if the ~~court~~certified reporter is employed by the court.

8. Authorized transcriber's fees for the preparation of court transcripts if the authorized transcriber is employed by the court.

9. Appeal preparation and filing fees at all levels of appeal and photocopy fees for the preparation of the record on appeal pursuant to sections 12-119.01, 12-120.31 and 12-2107 and section 12-284, subsection A.

#### **5-206(H) County-Paid Fees.**

2. *Service by publication and ~~court~~certified reporter fees.* As provided in A.R.S. § 12-302(H)(6)~~&(7)~~, (7) & (8) the county shall pay the fees and costs for service by publication when required by law ~~and~~; for the preparation of the ~~court~~certified reporter's transcript, if the ~~court~~certified reporter is employed by the court; and for the preparation of the transcript prepared by the authorized transcriber, if the authorized transcriber is employed by the court, upon granting a deferral or waiver. An applicant granted a deferral shall reimburse the county for these fees and costs.

#### **Section 5-208: Operational Standards for Interactive Audiovisual Proceedings in Criminal Cases**

[no changes]

#### **Section 7-206: Certified Reporter**

[no changes]